

May 26, 1949

Mr. James Boyce Scott
County Attorney
Greenlee County
Clifton, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. Scott:

This will acknowledge receipt of your letter of May 19, 1949, requesting an opinion from this office on the following questions:

Your first question:

"1. Are pin ball machines which do not pay remuneration in tokens for trade or coin considered games of skill and therefore legal?"

Answering your first question, Section 43-2701, ACA 1939, so far as material to your question reads as follows:

"* * * or any similar game whatsoever, played with cards, dice, or any other device, * * *"
(Emphasis Supplied.)

The Supreme Court of Idaho defines pin ball machines as follows:

"'Pin ball machines' are the progeny of the well known omnipresent slot machine, and are simply a specie of that numerous family."
Pepple v. Headrick, 128 P. 2d 757.

We will list the following cases in which the exact question here involved was also involved in them, and wherein the courts held that the chance of obtaining a replay was of sufficient value to the player to be a thing to be won or lost by him, so as to bring the contrivance and the results of its operation by the player, within the terms of the statute as being a gambling device. Those cases are:

Colbert, Sheriff, v. Superior Confection Co.,
154 Okl. 28, 6 P.2d 791; Mackay v. State, 65
Okl. Cr. 149, 83 P.2d 611; Harvie v. Heise,
150 S.C. 277, 148 S.E. 66; Painter v. State,
163 Tenn. 627, 45 S.W. 2d 46, 81 A.L.R. 173;
Kraus v. City of Cleveland et al., 135 Ohio St.
43, 19 N.E. 2d 159; State ex rel. Manchester,
etc. v. Marvin, 211 Iowa 462, 233 N.W. 486; City
of Milwaukee v. Burns, 225 Wis. 296, 274 N.W.
273; People v. Cerniglia, Mag. Ct., 11 N.Y.S.
2d 5; Shapiro v. Moss, 245 App.Div. 835, 281
N.Y.S. 72; State v. Abbott, 218 N.C. 470, 11 S.E.

2d 539; State v. Baitler, 131 Me. 285, 161 A. 671; and Brocdus v. State, 141 Tex. Cr.R. 512, 150 S.W. 2d 247; 60 A.L.R. 343, 132 A.L.R. 1004, and 135 A.L.R. 104.

In answering your next question which reads as follows:

"(a) What procedure has been followed where a complaint has been made because of minors playing pin ball machines?"

It is our opinion that the procedure to be followed is covered by Sections 43-1006 and 43-1008 ACA 1939.

Your second question:

"2. Are cash bank nights considered as lottery and therefore illegal when conducted by theaters?"

In answering your second question we will invite your attention to Section 43-2706, ACA 1939, which section so far as material to your question reads as follows:

"* * * Any person who keeps, maintains, employs or carries on any lottery, or lottery scheme or device, or raffle shall be guilty of a misdemeanor."

Our Supreme Court in re Gray, 23 Ariz. 461, stated as follows:

"A 'lottery' * * * is a scheme for the distribution of prizes by chance and embraces the elements of procuring through lot or chance, by the investment of a sum of money, or something of value, some greater amount of money or thing of greater value."

In the case of Engle v. State, 53 Ariz. 458, our Supreme Court stated:

"The three necessary elements of a lottery are: (a) the offering of the prize (b) giving of a consideration for an opportunity to win the prize, and (c) the awarding of the prize by chance."

In the case of Stearnes v. State, 21 Tex. 692, Judge Roberts defines a "lottery", which he terms a "grand raffle", as:

"a game in which there is a keeper or exhibitor who has the real fund, and against this the bettor stakes his money, which may be evidenced by tickets. On the side of those who hold tickets, it is a perfect game of chance. On the side of the keeper, there are both chance and skill."
(Emphasis Supplied.)

Other definitions that convince us that bank nights are lotteries and have been held in other states to be gambling are:

State ex rel. Draper v. Lynch, 137 P.2d 949, 951, 953; Doskey v. United Theatres, La. App., 11 So. 2d, 276, 277, 278; Troy Amusement Co., v. Attenweiler, 28 N.E. 2d, 207, 212, 213; Little River Theatre Corp., v. State ex rel. Hodge, 185 So. 855, 861; State ex rel. Trampe v. Multerer, 289 N.W. 600, 603.

We could cite many more cases that hold that bank night is a lottery or scheme or device for gambling.

Your third question reads:

"What is your opinion of the status of a situation arising in which a general merchandise store allows customers to drop their sales receipts in a box and certain receipts are drawn each week and prizes given in trade or in cash?"

We believe your third question is answered by the answer to your second question. The same principle of law would be applicable to your third question.

Your fourth question:

"4. What is the general position of County Attorney concerning the operation of slot machines in Elks Clubs?"

Answering your fourth question as to what general position each county attorney is concerning the operation of slot machines in Elks Clubs, we cannot say what the position of county attorney is concerning operation of slot machines in Elks Clubs. But it is our opinion that it is just as much illegal to operate slot machines in Elks Clubs as it is to operate them in a pool hall, drug store or any other place.

Trusting the above answers your questions satisfactorily, we remain

Very truly yours,

FRED O. WILSON
Attorney General

MAURICE BARTH
Assistant Attorney General

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