

OPINION NO. 2013-030**Syllabus:**

2013-030

1. An automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a “slot machine,” as defined in R.C. 2915.01(QQ)(1).
2. The definition of the term “slot machines” in Article XV, § 6(C)(9) of the Ohio Constitution does not include an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players.
3. An automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution.
4. R.C. 2915.02(A)(2) prohibits a charitable organization from using at a festival conducted by the organization an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players.

To: Dennis P. Will, Lorain County Prosecuting Attorney, Elyria, Ohio

By: Michael DeWine, Ohio Attorney General, September 30, 2013

You have requested an opinion about playing poker for money at a festival held by a charitable organization.¹ To facilitate playing poker, the charitable organi-

¹ Poker is a game in which a player wagers that the value of his cards is greater than that of the other players participating in the game. *Merriam-Webster's Collegiate Dictionary* 958 (11th ed. 2005); see also Belinda Levez, *How to Win at Casino Games* 89-124 (2006) (describing the game of card room poker); Darwin Ortiz, *Darwin Ortiz on Casino Gambling* 237-38 (1986) (same as the previous parenthetical).

zation will utilize automated, electronic poker tables. These tables allow players to play poker against each other without using playing cards, chips, or a person who serves as the dealer.²

To play poker at an automated, electronic poker table, a player must first deposit money on a gaming card.³ The card represents the amount of money the player may wager at the table. While at a table, the amount of money on the card is the property of the player who initially deposited money on the card.

The amount of money on a gaming card is increased when a player wins a hand in a poker game and decreased when a player loses a hand.⁴ When a player wins a poker hand, the amount of money on the player's gaming card is increased by the total amount wagered on the hand minus the rake.⁵ Correspondingly, the amount of money on the gaming card of a player losing the hand is decreased by the amount he wagered on the hand.

When a player quits playing poker at an automated, electronic poker table, the player may redeem his gaming card and receive the entire amount of money on the card. This amount may be more or less than the amount he initially deposited on the card or it may be the same amount as initially deposited. A player may also be awarded additional prizes or money for playing poker at an automated, electronic poker table.

In light of the nationwide trend to use automated, electronic poker tables to raise money for charitable organizations, you ask:

1. Is an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money

² An automated, electronic poker table functions as the dealer and uses video screens with graphical representations of playing cards and chips. *See* 2013 Op. Att'y Gen. No. 2013-027, slip op. at 2.

³ In some instances, a player may be required to pay a non-refundable fee to obtain a gaming card. The fee is collected and retained by the charitable organization holding the festival.

⁴ In poker, a "hand" is the set of cards a player uses to make the best poker combination. Bill Burton, *1000 Best Casino Gambling Secrets* 324 (2005); Darwin Ortiz, *Darwin Ortiz on Casino Gambling* 261 (1986).

⁵ The amount wagered on a hand is generally known as the "pot." Belinda Levez, *How to Win at Casino Games* 172 (2006); John Marchel, *K•I•S•S Guide to Gambling* 344 (2001). The "rake" is the commission "a card room takes out of a pot as a charge for using the facility." John Marchel, *K•I•S•S Guide to Gambling* 344 (2001); accord Darwin Ortiz, *Darwin Ortiz on Casino Gambling* 265 (1986).

In your situation, the charitable organization holding the festival receives the rake from each hand played. The organization then pays a portion of these moneys to pay the rental rate for the facility used to hold the festival.

- to players a “slot machine,” as defined in R.C. 2915.01(QQ) and Article XV, § 6(C)(9) of the Ohio Constitution?
2. Is an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution?
 3. May a charitable organization use at a festival conducted by the organization an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players?
 4. May a charitable organization rent for use at a festival conducted by the organization an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players, and, if so, may the organization pay, as rent, a defined fee per seat at the table or a percentage of the total amount of money wagered at the table?

I. Constitutional Provisions and Statutes Prohibiting Poker Games for Profit and the Operation of Slot Machines

We begin with a brief overview of the laws of Ohio prohibiting poker games for profit and the operation of slot machines. Pursuant to R.C. 2915.02, these activities are prohibited unless Ohio law provides otherwise:

(A) No person shall do any of the following:⁶

. . . [.]

(2) Establish, promote, or operate or knowingly engage in conduct that facilitates any *game of chance* conducted for profit or any *scheme of chance*[.]

. . . .

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

. . . .

(F) Whoever violates this section is guilty of gambling, a misdemeanor of the first degree. If the offender previously has been convicted

⁶ For purposes of R.C. Chapter 2915, a “person” is any entity listed in R.C. 1.59 and “any firm or any other legal entity, however organized.” R.C. 2915.01(HH); see also R.C. 1.59(C) (defining “person” as “an individual, corporation, business trust, estate, trust, partnership, and association”).

of any gambling offense, gambling is a felony of the fifth degree. (Emphasis and footnote added.)

R.C. 2915.01, in turn, defines the terms “game of chance” and “scheme of chance” for purposes of R.C. Chapter 2915 as follows:

(C) “Scheme of chance” means a *slot machine*, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit.

(D) “Game of chance” means *poker*, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo. (Emphasis added.)

See also R.C. 2915.01(E) (the phrase “game of chance conducted for profit,” as used in R.C. Chapter 2915, means “any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo”).

The terms “scheme of chance” and “game of chance,” as used in R.C. 2915.02, thus include slot machines and poker, respectively. R.C. 2915.01(C)-(D). For this reason, a person is prohibited from conducting a poker game for profit or operating a slot machine unless Ohio law provides otherwise.⁷ R.C. 2915.02(A)(2); see R.C. 2915.02(C); 2013 Op. Att’y Gen. No. 2013-027, slip op. at 4-5.

Exceptions to this prohibition are set forth in R.C. 2915.02(D)(1) and Article XV, § 6 of the Ohio Constitution. R.C. 2915.02(D)(1) declares that the aforementioned prohibition does not apply to a charitable organization conducting games of chance for profit when all of the following apply:⁸

(a) The games of chance are not craps for money or roulette for money.

⁷ 2013 Op. Att’y Gen. No. 2013-027, slip op. at 4 n.7 explained:

When a game, machine, or device is included in R.C. 2915.01(C)-(D)’s list of legislatively prescribed games of chance, *i.e.* poker, craps, or roulette, or schemes of chance, *i.e.* slot machine, lottery, numbers game, or pool conducted for profit, the game, machine, or device is a game of chance or scheme of chance for purposes of R.C. Chapter 2915. Thus, to establish the existence of a game of chance or scheme of chance for purposes of R.C. 2915.02(A)(2), there is no need to further prove that (1) a legislatively prescribed game of chance was played by a player giving value in hope of gain or (2) a legislatively prescribed scheme of chance was played by a player giving valuable consideration for a chance to win a prize, respectively. (Citations omitted.)

⁸ For purposes of R.C. Chapter 2915, the term, “charitable organization,” is defined as follows:

(b) The games of chance are conducted by a charitable organization that is, and has received from the internal revenue service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

(c) The games of chance are conducted at festivals of the charitable organization that are conducted not more than a total of five days a calendar year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance.

...

(d) All of the money or assets received from the games of chance after deduction only of prizes paid out during the conduct of the games of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(H) Except as otherwise provided in [R.C. Chapter 2915], "charitable organization" means either of the following:

(1) An organization that is, and has received from the internal revenue service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

(2) A volunteer rescue service organization, volunteer firefighter's organization, veteran's organization, fraternal organization, or sporting organization that is exempt from federal income taxation under subsection 501(c)(4), (c)(7), (c)(8), (c)(10), or (c)(19) of the Internal Revenue Code.

R.C. 2915.01. An entity may not qualify as a "charitable organization" for purposes of R.C. Chapter 2915 unless it has "been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under [R.C. 2915.08] or the conducting of any game of chance as provided in [R.C. 2915.02(D)]." *Id.*

⁹ The language omitted from R.C. 2915.02(D)(1)(c) limits the situations in which a charitable organization may lease premises from a veteran's or fraternal organization to conduct games of chance.

(e) The games of chance are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only pursuant to [R.C. 2915.12].

No person shall receive any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance. (Footnote added.)

A charitable organization has authority under R.C. 2915.02(D)(1) to conduct games of chance for profit when the organization complies with the requirements prescribed therein. 2013 Op. Att’y Gen. No. 2013-027, slip op. at 6. Because poker is per se a game of chance for purposes of R.C. 2915.02, *see* R.C. 2915.01(D); note 7, *supra*, a charitable organization may conduct a poker game for profit when it complies with R.C. 2915.02(D)(1). *See* R.C. 2915.02(C).

An exception for casino gaming is also set forth in Article XV, § 6 of the Ohio Constitution, which provides, in part:

(C)(1) *Casino gaming shall be authorized at four casino facilities* (a single casino at a designated location within each of the cities of Cincinnati, Cleveland, and Toledo, and within Franklin County) to create new funding for cities, counties, public school districts, law enforcement, the horse racing industry and job training for Ohio’s workforce.

(6) Casino gaming authorized in section 6(C) shall be conducted only by licensed casino operators of the four casino facilities or by licensed management companies retained by such casino operators . . .

(9) For purposes of this section 6(C), the following definitions shall be applied:

“*Casino gaming*” means any type of slot machine or table game wagering, using money, casino credit, or any representative of value, authorized in any of the states of Indiana, Michigan, Pennsylvania and West Virginia as of January 1, 2009, and shall include slot machine and table game wagering subsequently authorized by, but shall not be limited by subsequent restrictions placed on such wagering in, such states. Notwithstanding the aforementioned definition, “casino gaming” does not include bingo, as authorized in article XV, section 6 of the Ohio Constitution and conducted as of January 1, 2009, or horse racing where the pari-mutuel system of wagering is conducted, as authorized under the laws of Ohio as of January 1, 2009. (Emphasis added.)

See generally Ohio Const. art. XV, § 6(C)(10) (“[t]he General Assembly shall pass

laws within six months of the effective date of [Article XV, § 6(C) of the Ohio Constitution] to facilitate the operation of section 6(C)"); R.C. Chapter 3772 (setting forth provisions to implement casino gaming at casino facilities in accordance with Article XV, § 6(C) of the Ohio Constitution).

Article XV, § 6(C) of the Ohio Constitution authorizes conducting poker for profit and the operation of slot machines at the four casino facilities described therein.¹⁰ 2013 Op. Att'y Gen. No. 2013-027, slip op. at 6-7. Article XV, § 6(C) of the Ohio Constitution and R.C. 2915.02 thus prescribe when it is legal to conduct poker for profit or operate a slot machine in Ohio.

II. Meaning of the Term "Slot Machine," as Used in R.C. Chapter 2915

Your first question asks whether an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a "slot machine," as defined in R.C. 2915.01(QQ) and Article XV, § 6(C)(9) of the Ohio Constitution. The term "slot machine," as used in R.C. Chapter 2915, means either of the following:

(a) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain;

(b) *Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.*

(2) "Slot machine" does not include a skill-based amusement machine or an instant bingo ticket dispenser. (Emphasis added.)

R.C. 2915.01(QQ).

The automated, electronic poker table described in your letter is an electronic device that enables persons to play poker, which is a game of chance, *see* R.C. 2915.01(D), against each other without using playing cards, chips, or a person who serves as the dealer. *See* 2013 Op. Att'y Gen. No. 2013-027, slip op. at 8. Additionally, to play a hand of poker at the table, a player must deposit money on a gaming card and use the card to wager money at the table. As explained above, a portion of the money wagered on each hand of poker, or the rake, is retained by the table for the charitable organization. In other words, the table accepts from the players something of value, *i.e.*, money, to play the game of poker. *See generally* R.C. 1.03(A) (as used in the statutes setting forth criminal offenses, the term "anything of value" includes "money"). Therefore, insofar as an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or

¹⁰ Article XV, § 6(C)(9) of the Ohio Constitution establishes the location of the four casino facilities in Ohio.

money to players is an electronic device that accepts something of value from a person to conduct a game of chance, such a table is a “slot machine,” as defined in R.C. 2915.01(QQ)(1).¹¹

III. Meaning of the Term “Slot Machines,” as Used in Article XV, § 6(C)(9) of the Ohio Constitution

For purposes of Article XV, § 6(C) of the Ohio Constitution, the term “slot machines” is defined as follows:

“Slot machines” shall include any mechanical, electrical, or other device or machine which, upon insertion of a coin, token, ticket, or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, makes individual prize determinations for individual participants in cash, premiums, merchandise, tokens, or any thing of value, whether the payoff is made automatically from the machine or in any other manner.

Ohio Const. art. XV, § 6(C)(9). *See generally* R.C. 3772.01(X) (defining “slot machine” for purposes of R.C. Chapter 3772, which implements casino gaming at casino facilities in accordance with Article XV, § 6(C) of the Ohio Constitution).¹²

To qualify as a “slot machine,” as defined in Ohio Const. art. XV, § 6(C)(9), a device or machine must, among other things, make “individual prize determinations for individual participants in cash, premiums, merchandise, tokens, or any thing of value.” With respect to an automated, electronic poker table, the table does not determine whether a player wins money from other players playing poker at the table or whether a player is awarded prizes or money for playing poker at the table. Instead, these determinations are based on how a player plays the game of poker against other players at the table.

Put simply, the players, rather than the table, determine who wins and loses each hand of poker played at the table. The table thus does not make individual prize determinations for players playing poker at an automated, electronic poker table. The absence of this feature from the automated, electronic poker table described in your letter indicates that the table does not meet the requirements for a

¹¹ In 2013 Op. Att’y Gen. No. 2013-027, slip op. at 9 n.11, we determined that an automated, electronic poker table is not a skill-based amusement machine or instant bingo ticket dispenser for purposes of R.C. 2915.01(QQ)(2), which declares that skill-based amusement machines and instant bingo ticket dispensers are not slot machines for purposes of R.C. Chapter 2915.

¹² A “skill-based amusement machine,” as defined in R.C. 2915.01, is not a “slot machine” for purposes of R.C. Chapter 3772. R.C. 3772.01(X). As explained in the previous footnote, an automated, electronic poker table is not included within the meaning of the term “skill-based amusement machine,” as defined in R.C. 2915.01, and thus such a table is not a skill-based amusement machine for purposes of R.C. 3772.01(X).

slot machine set forth in Article XV, § 6(C)(9) of the Ohio Constitution. Accordingly, the definition of the term “slot machines” in Article XV, § 6(C)(9) of the Ohio Constitution does not include an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players.

IV. Definition of “Table Game” in Article XV, § 6(C) of the Ohio Constitution

Your second question asks whether an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution. For purposes of this constitutional provision, a “table game” is “any game played with cards, dice, or any mechanical, electromechanical, or electronic device or machine for money, casino credit, or any representative of value.” Ohio Const. art. XV, § 6(C)(9). *See generally* R.C. 3772.01(Y) (defining “table game” for purposes of R.C. Chapter 3772, which implements casino gaming at casino facilities in accordance with Article XV, § 6(C) of the Ohio Constitution).

As explained previously, an automated poker table is an electronic device that enables a player to play the traditional game of poker against other players without the use of cards. Moreover, the players play against each other for money. This means that an automated, electronic poker table is an electronic device that is used to play the traditional card game of poker for money, and thus such a table is a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution. Therefore, an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution.

V. Use of an Automated, Electronic Poker Table at a Festival Conducted by a Charitable Organization

Your third question asks whether a charitable organization may use at a festival conducted by the organization an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players. Pursuant to R.C. 2915.02(A)(2) and R.C. 2915.02(C), a charitable organization is prohibited from conducting poker for profit or operating a slot machine unless Ohio law provides otherwise.

A charitable organization is authorized to conduct games of chance for profit when the organization complies with R.C. 2915.02(D)(1). Because the General Assembly has expressly declared poker a game of chance for purposes of R.C. 2915.02, *see* R.C. 2915.01(D), a charitable organization may conduct poker for profit in accordance with the conditions and requirements of R.C. 2915.02(D)(1). *See* 2013 Op. Att’y Gen. No. 2013-027, slip op. at 12.

2013 Op. Att’y Gen. No. 2013-027 determined, however, that the exception

created under R.C. 2915.02(D)(1) does not apply to playing poker for profit on an automated, electronic poker table when the table is classified as a “slot machine,” as defined in R.C. 2915.01(QQ)(1). In reaching this conclusion, the opinion stated:

R.C. 2915.01(QQ)(1)(b) states that a game of chance becomes a “slot machine” for purposes of R.C. Chapter 2915 when the game is conducted through the use of a “mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player.” This means that, when a game of poker is played through a “mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player,” the game is considered a “slot machine” for purposes of R.C. Chapter 2915. Consequently, an automated, electronic poker table that enables players to play poker against each other for a fee and does not award prizes or money to players is a “slot machine” for purposes of R.C. Chapter 2915.

As a “slot machine,” such a table is a “scheme of chance” for purposes of R.C. Chapter 2915. R.C. 2915.01(C); *see note 7, supra*. No statute permits a charitable organization to conduct a scheme of chance or otherwise operate a slot machine. *See* 2008 Op. Att’y Gen. No. 2008-015 at 2-166 n.13; 2006 Op. Att’y Gen. No. 2006-045 at 2-433. In the absence of such authority, a charitable organization may not operate an automated, electronic poker table that enables players to play poker against each other for a fee and does not award prizes or money to players because the table is a “scheme of chance” for purposes of R.C. Chapter 2915, rather than a “game of chance.” *See* R.C. 2915.02(C).

2013 Op. Att’y Gen. No. 2013-027, slip op. at 12.

In your particular situation, we have already determined that an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a “slot machine,” as defined in R.C. 2915.01(QQ)(1). For this reason, R.C. 2915.02(A)(2) prohibits a charitable organization from using at a festival conducted by the organization an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players.

VI. Charitable Organization’s Authority to Rent Automated, Electronic Poker Tables

Your final question asks whether a charitable organization may rent for use at a festival conducted by the organization an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players, and, if so, may the organization pay, as rent, a defined fee per seat at the

table or a percentage of the total amount of money wagered at the table. Because we have determined that a charitable organization is prohibited from using such a table at a festival conducted by the organization, it is unnecessary for us to answer your final question.

VII. Conclusions

For the foregoing reasons, it is my opinion, and you are hereby advised as follows:

1. An automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a “slot machine,” as defined in R.C. 2915.01(QQ)(1).
2. The definition of the term “slot machines” in Article XV, § 6(C)(9) of the Ohio Constitution does not include an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players.
3. An automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players is a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution.
4. R.C. 2915.02(A)(2) prohibits a charitable organization from using at a festival conducted by the organization an automated, electronic poker table that enables players to play poker against each other for money, keeps a percentage of the total amount of money wagered at the table, and awards prizes or money to players.