

Number	Name
1035	Council of Boy Scouts of America
1050	Estella Neel
1051	Carol Songer
1056	Geo. W. Rowland
1057	M. E. Ballard
1058	L. C. Harper

By the above grants there is conveyed to the State of Ohio, certain lands described therein, for the sole purpose of using said lands for public fishing grounds, and to that end to improve the waters or water courses passing through and over said lands.

Upon examination of the above instruments, I find that the same have been executed and acknowledged by the respective grantors in the manner provided by law and am accordingly approving the same as to legality and form, as is evidenced by my approval endorsed thereon, all of which are herewith returned.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1106.

MONEY IN CONFISCATED SLOT MACHINES—MUST BE
PAID INTO COUNTY TREASURY AS PROVIDED BY LAW.

SYLLABUS:

Money in slot machines which are seized by a sheriff during a gambling raid may be rightfully confiscated. Such money, however, may not be used to pay the fines or costs of the party convicted of having them in his possession, but must be accounted for by the sheriff as money which has been taken in his official capacity and should accordingly be paid into the County Treasury as provided by law.

COLUMBUS, OHIO, September 9, 1937.

HON. H. LLOYD JONES, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR: This will acknowledge receipt of your recent letter in which you made the following request for an opinion:

“What disposition is to be made of money in slot machines

confiscated by the Sheriff as gambling devices? These machines are of both the 'jack-pot' and 'non jack-pot' varieties. They have been declared illegal by the Court.

Can the money in said machines be used by the sheriff to purchase county equipment for his office?"

Sections 13056 and 13066 of the General Code, under which slot machines used for gambling are prohibited, read as follows:

Section 13056.

"Whoever permits a game to be played for gain upon or by means of a device or machine in his house or in an out-house, booth, arbor or erection of which he has the care or possession, shall be fined not less than fifty dollars nor more than two hundred dollars."

Section 13066.

"Whoever keeps or exhibits for gain or to win or gain money or other property, a gambling table, or faro or keno bank, or a gambling device or machine, or keeps or exhibits a billiard table for the purpose of gambling or allows it to be so used, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than ninety days, and shall give security in the sum of five hundred dollars for his good behavior for one year."

These sections do not contain express provisions directing what is to be done with the machine or the money involved. However, further provisions as to procedure where such property is seized may be found in Sections 13430-8 and 13430-9 of the General Code.

Section 13430-8.

"If the accused is discharged by the judge or magistrate, the property or other things seized shall be returned to the person in whose possession they were found, unless the possession of such articles is in itself an offense, in which case they shall be destroyed. If he is convicted, the property shall be returned to its owner, and the other things destroyed under the direction of the court."

Section 13430-9.

"Upon conviction of a person for keeping a room or place to be used or kept for gambling, or knowingly permitting gambling to be conducted therein, or permitting a game to be played for gain, or a gaming device for gain, money or other

property or for betting, or gambling, or permitting such device to be so used, or for being without a fixed residence and in the habit of gambling, if money or other property won in gaming, be found in his possession, such money or other property shall be subject to seizure and payment of a judgment which may be rendered against him, growing out of such violation of law."

These sections expressly provide for the destruction of property, the possession of which is in itself an offense, and for the seizure and application of money found in the convicted person's possession to judgments against him growing out of his violation of the law in question.

It may be here contended that the law does not expressly authorize a forfeiture. However, under the law applicable, it is consistent to reason that if one is given authority to seize and confiscate such slot machines as gambling devices, and if the money contained in them is such an integral part of the machines as to be involved in their operation as gambling devices and must be taken with their removal, then it follows that the money should be confiscated also. Especially, since the law does not recognize any property right in a gambling device and the money is in this instance unquestionably a part of the gambling device.

It is therefore my opinion that this money should be confiscated and not returned to the owner of the unlawful slot machines or the person having them in possession.

We come now to the matter of applying such money to the fines and judgment of the person convicted under the gambling laws quoted above. Section 13430-9, *supra*, subjects money or other property won in gaming found in the convicted person's possession to judgments against him in his violation of the law. This, however, does not cover the circumstances before us if the party convicted is not the owner of the slot machines. The money in these machines cannot be considered his. He has not won it and he has no legal title to it. Moreover, it cannot be reasonably held that the Legislature intended to permit a convicted party to use money he holds unlawfully to pay his fine or judgment.

The courts have permitted money found in slot machines used for gambling to be used to pay costs in *in rem* proceedings where the machines were seized and confiscated. (*Englehardt vs. Kunming*, 10 N.P. (N.S.) 609). However, this in no way authorizes application of such money to the convicted party's fine. Justice demands here that the convicted party should pay personally his judgment out of his own pocket and not have legal penalties lightened by the fruits of his outlawry.

The money contained in slot machines used for gambling which have been seized and confiscated is neither a fine nor a forfeiture. It is, however, money which comes into the hands of an officer in his official capacity and as such is money arising from "other sources" as provided in Section 5625-10 of the General Code, and it should in my opinion go to the County Treasury to be placed in the general fund.

In specific answer to your inquiry, it is my opinion that the money in slot machines seized during a gambling raid may be rightfully confiscated, and such money may not be used to pay the fines and costs imposed on the party convicted of having them in his possession, but must be accounted for by the sheriff as money taken in his official capacity to be paid into the County Treasury as provided by law.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

1107.

APPROVAL—LEASE EXECUTED BY THE STATE OF OHIO
TO ONE PAUL B. McQUADE OF CHILLICOTHE, OHIO.

COLUMBUS, OHIO, September 9, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You recently submitted for my examination and approval a canal land lease in triplicate executed by you in your official capacity as Superintendent of Public Works and as Director of said department to one Paul B. McQuade of Chillicothe, Ohio.

By this lease, which is one for a stated term of fifteen years and which provides for an annual rental of \$9.00, there is leased and demised to the lessee above named the right to occupy and use for cottage site and agricultural purposes that portion of the abandoned Ohio Canal property, including the full width of the bed and banks thereof, located in Franklin Township, Ross County, Ohio, which is described as follows:

Beginning at a line drawn through station 150 and being the northwesterly line of a permit granted to L. D. McQuade, under date of December 11th, 1936, and running thence northwesterly with the lines of said canal property, four hundred (400') feet to station 154 as shown by plat No. 177, of W. O.