

slot machines which are operated in the same manner as the one here in question are gambling devices whose operation is contrary to law." (The court then cites numerous cases in support of its statement).

In the cases above referred to the judgments of the several courts were based upon the theory that the machines in question made an appeal to the gambling instinct, because the player had constantly before him the chance that the next play would assure him of the right on the next succeeding play to secure a number of "trade checks." It is the chance of receiving something of value for nothing which appeals to the cupidity of human nature and to the gambling instinct possessed by human beings. The slot machines in these several cases were so designed as to induce the player to deposit his coin for the purpose of ascertaining what, if any, trade checks he will receive in return, for the coins thereafter deposited. In other words, it is the element of chance involved in the second operation of the machine which attracts the player and makes the machine a gambling device.

Upon the facts that you present any person might place a nickel in the slot of such machine, pull a lever, and he would receive for the coin so played, one package of mints and a check or checks, which checks are merely for the purpose of replaying the machine and having one's fortune told. The checks have no cash value and cannot be used to purchase any article or merchandise. I seriously doubt, upon the facts stated by you, whether the "intent" could be shown so as to meet the statement of the Supreme Court of Ohio in the Krauss Case, *supra*, to the effect that "the intent of the defendant to keep the machine as a gambling device for gain is of the essence of the offense."

Upon such a state of facts I am of the opinion that the machine is simply operated as a merchandise vending device and the fortune telling inducement is merely an element of its salesmanship. No reasonable and prudent person would consider the fortune telling feature anything but a novelty used or played for innocent purposes.

In order to bring such a machine within the prohibitions of Section 13066, *supra*, it must be a "gambling device or machine" kept or exhibited "for gain or to win or gain money or other property" and to bring it within the prohibition of Section 13056, *supra*, it must be "a game to be played for gain upon or by means of a device or machine."

In view of the foregoing and answering your question specifically it is my opinion that:

1. A slot vending machine is not per se a gambling device since it may be used and operated for innocent purposes.
2. A slot vending machine, which upon deposit of a five cent coin, will release a package of mints together with checks which checks are merely for the purpose of replaying the machine and having one's fortune told and which checks have no cash or trade value is not a gambling device within the provisions of Sections 13056 and 13066, General Code.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

1394.

COUNTY COMMISSIONERS—MAY EMPLOY ARCHITECT FOR PRELIMINARY WORK—COMPENSATED FROM GENERAL FUND.

*SYLLABUS:*

1. *Under the provisions of Section 2343, General Code, the board of county commissioners of a county is authorized to employ an architect for the purpose of making*

*such preliminary plans, drawings and sketches as may be necessary for the purpose of enabling such board to adopt a definite plan for the erection or construction of a county building or building improvement, and for the purpose of enabling said board to determine the required amount of a proposed bond issue for constructing such building or building improvement.*

2. *The compensation of such architect should be paid out of the general county fund, after appropriation covering such contract of employment and expenditure for such services is made.*

COLUMBUS, OHIO, December 17, 1927.

HON. D. A. BAIRD, *Prosecuting Attorney, 904 Lorain County Bank Bldg., Elyria, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication from you submitting certain questions for my opinion. Your letter is as follows:

“For the past several years the court house of Lorain County has been inadequate to accommodate the various offices that should be located in the building, and it has been necessary for the county commissioners to rent outside office space and the offices that are now utilized in the court house are not large enough to transact the usual and customary business and the county commissioners are considering the submission of a bond issue to the voters of the county, either for the purpose of enlarging the present building or building a unit on the present court house site, but before submitting this question to the voters or before determining which method to pursue, they have felt that they ought to employ an architect to advise them in the premises, and to furnish them with an idea of the kind of improvement they should make and the probable cost, so that they could go to the voters with a definite plan.

We would like to inquire whether or not the county commissioners can employ an architect for this purpose before a building commission is appointed and if so, out of what fund the architect should be paid, and what, if any, resolution the commissioners should pass in advance of the employment of such architect.”

The solution of the question submitted with respect to the power and authority of the board of county commissioners to employ an architect, for the purposes indicated in your communication, prior to the submission to the electors of the county of the proposition of constructing a building or improvement for the purpose of enlarging the court house facilities, depends upon the construction to be placed upon the provisions of Section 2343, General Code. This section provides as follows:

“When it becomes necessary for the commissioners of a county to erect or cause to be erected, a public building or substructure for a bridge, or an addition to or alteration thereof, before entering into any contract therefor or repair thereof, or for the supply of any materials therefor, they shall cause to be made by a competent architect or civil engineer the following: full and accurate plans showing all necessary details of the work and materials required with working plans suitable for the use of mechanics or other builders in the construction thereof, so drawn as to be easily understood; accurate bills, showing the exact amount of the different kinds of material, necessary to the construction, to accompany the plans; full and complete specifications of the work to be performed showing the manner and style required to be done, with such directions as will enable a competent builder to carry them out, and af-

ford to bidders all needful information; a full and accurate estimate of each item of expense, and of the aggregate cost thereof.

Nothing in this section shall prevent the commissioners from receiving from bidders on iron or reinforced concrete substructures for bridges the necessary plans and specifications therefor."

The only limitation in this section with respect to the time when such architect may be employed by the board of county commissioners is contained in the provision that "when it becomes necessary for the commissioners of a county to erect or cause to be erected a public building, \* \* \* or an addition to or alteration thereof, before entering into any contract therefor or repair thereof or for the supply of any materials therefor, they shall cause to be made by a competent architect \* \* \* " the plans and other matters and things specified in the section.

I do not feel at liberty to read into the statute any limitation with respect to the time when the county commissioners may employ an architect, for the purposes mentioned in this section other or in addition to that therein expressed.

In this view, I am of the opinion that the county commissioners may, before the submission of a proposed bond issue to the electors for the purpose of constructing the improvement or improvements desired, employ an architect to make such plans, sketches, drawings and estimates with respect to the different suggested plans of improvement, for the purpose of enabling the board of county commissioners to entertain and exercise an intelligent judgment with respect to the kind of improvement to be adopted to meet the situation, and to determine the amount of money to be included in the proposed bond issue for the purpose of providing funds for such improvement.

The question of the amount of the bond issue to be submitted to the electors, for the purpose of constructing the improvement or improvements desired for the purpose of enlarging the court house facilities of the county, is one of importance; for if a bond issue for such purposes should be submitted to the electors and approved, and the proceeds thereof should prove insufficient to complete the same, the board of county commissioners would not be authorized to appropriate or expend other county monies, in addition to the proceeds of said bond issue, for the purpose of completing said improvement; nor would the board of county commissioners be authorized to enter into any contract for the construction of said improvement at a cost price in excess of the amount of the bond issue.

*State ex rel. vs. Andrews*, 105 O. S. 489.

*State ex rel. vs. Pierce*, 96 O. S. 44.

On the other hand, and for obvious reasons, the amount of said bond issue should not substantially exceed the cost and expense of the improvement.

In arriving at the amount of the proposed bond issue to be submitted to the electors of the county, it will be necessary for the board of county commissioners to consider the different plans suggested for the purpose of enlarging the court house, according to said several plans, and of furnishing the same. The determination of these matters may well call for the assistance of an architect who may have special skill and knowledge with respect to matters of this kind in order to aid the board of county commissioners in arriving at a determination of the plan of improvement or improvements to be adopted and the amount of the proposed bond issue therefor to be submitted to the electors of the county.

As before indicated, I am of the opinion that said Section 2343, General Code, affords ample authority to the board of county commissioners to employ an archi-

tect, for the purposes above indicated, prior to the submission to the electors of the county of a bond issue for the improvement or improvements that may be determined upon by said board.

With respect to your question as to the fund out of which the compensation of the architect so employed is to be paid, it is quite clear that such compensation is to be paid out of the general county fund subject, of course, to the provision that an appropriation covering a contract for the services of an architect and the expenditure of money for such services has been made by the board of county commissioners in the manner required by law.

You inquire what resolution should be passed by the board of county commissioners with respect to the employment of an architect for the preliminary services mentioned in your communication, and above noted. With respect to this, I can only suggest that such resolution should contain some recital of the conditions calling for the erection and construction of some improvement or improvements for the purpose of providing additional court house facilities. Such resolution should further contain a finding or determination by the board of county commissioners of the necessity of erecting and constructing such improvement or improvements by the erection of a new building or by the extension, enlargement, alteration and repair of the present building as may be later determined on by the board; the resolution should likewise recite the necessity of the employment of an architect for the purpose of making such plans, sketches, drawings and estimates as will be necessary in aiding the board of county commissioners in determining the kind of improvement to be constructed, and the amount of the bond issue to be submitted therefor; and the same should provide for the employment of some architect to be named therein to render such services.

No question is made by you with respect to the employment of an architect for services to be rendered in the construction of the building improvement determined upon, in the event of the approval of the bond issue therefor by the electors of the county; and I do not deem it necessary to discuss this question further than to say that this is a matter depending, in the first instance, on whether the building improvement to be made is one to be erected under the supervision of the county building commission under the provisions of Sections 2333, et seq., General Code, or, on the other hand, the building improvement is one that may be constructed by the board of county commissioners under the authority of Section 2433, General Code, as amended, (112 O. L. 381).

I am likewise of the view that there is nothing in your communication calling for any expression of opinion at this time with respect to the application of Sections 4343 and 4344, General Code, originally enacted as Section 216 of the Municipal Code Act of 1902, and relating to the appointment and duties of a board of supervision in the erection of public, municipal or county buildings in cities.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1395.

ELECTIONS—ELECTOR MAY VOTE FOR REGULARLY NOMINATED CANDIDATE WHOSE NAME IS OMITTED FROM BALLOT BY WRITING IT IN—FACE OF RETURNS WILL GOVERN UNLESS ELECTION IS CONTESTED.

**SYLLABUS:**

1. *If by inadvertence, or otherwise, the name of a candidate regularly nominated is omitted from the ballot, an elector may nevertheless vote for said candidate by*