

I am herewith returning said abstract of title, warranty deed copy, and other files.

Respectfully,
GILBERT BETTMAN,
Attorney General.

692.

SLOT MACHINE—WHEN A GAMBLING DEVICE.

SYLLABUS:

When a slot machine is a gambling device, discussed.

COLUMBUS, OHIO, July 30, 1929.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which is as follows:

“I am enclosing herewith a photograph of a device which is now on the market, and which several people are seeking to install in this county. I would like, very much, to have your opinion as to whether or not this is a gambling device.

You will note that the nickel is inserted at the top of the machine, and is shot over towards the other side of the machine by means of a lever which is visible in the picture. I am informed that when the nickel finally drops, if it hits a certain spot immediately above any of the so-called jack pots, whatever nickels happen to be in the jack pots are released, and the player gets the nickels. If the nickel does not hit one of these spots, it eventually finds its way into one of the jack pots, and the player receives nothing. If one of the jack pots becomes filled with nickels before anyone is lucky enough to empty it, the operator of the machine gets that pot, and this is the way he makes his money.

The contention of the manufacturer is that this is a game of skill, and that it requires skill to shoot the nickel in such a manner as to make it drop on one of the spots which will cause the jack pot to empty.

I would appreciate a reply from you as soon as possible and also ask that you kindly return the illustration which I am enclosing.”

The following authorities pertaining to your inquiry are cited.

“A slot machine, it has been said is not per se a gambling device, since it may be used or played upon for an innocent purpose, and courts cannot, therefore, take judicial notice that every slot machine is a gambling device, as the use to which it is put must determine its character.” 12 R. C. L., 73, *State vs. Krauss*, 114 O. S., p. 346.

“The term gambling device has no settled and definite meaning, it is not defined by the common law and often the statutes fail to define it. It has been judicially defined as an invention used to determine the question as to who wins and who loses, that risk their money on a contest of chance of any kind; anything necessarily adapted to the use, and necessarily used in the carrying on, of any gambling game; an instrumentality for the playing of a game upon which money may be lost or won; anything which is used as a means of play-

ing for money or other thing of value, so that the result depends more largely on chance than skill." 27 Corpus Juris, p. 988.

The various courts have formulated different rules for determining when a slot machine is a gambling device, but one which seems to have been accepted generally, is that where one who plays a slot machine stands to win or lose money, trade or a check by hazard or chance, the machine is a gambling device.

From the description given by you in your letter as to the operation of the machine, there is no question that the player stands to lose or win money. He stands to lose a nickel if it does not hit a certain spot which releases the jack pot, and if it hits the spot, he wins the jack pot. The only question presented is whether or not it is a game of chance or hazard, or a game of skill. A game of chance has been defined as a game determined entirely, or *in part*, by lot, by mere luck, and in which judgment, practice, skill or adroitness have honestly no office at all, or are thwarted by chance; a game in which hazard entirely predominates. 27 Corpus Juris, 969.

A game of skill is defined as one in which nothing is left to chance, and in which superior knowledge and attention, or superior strength, agility and practice gain the victory. 27 C. J., 969.

The test of character of the game is not whether it contains an element of chance or an element of skill, but which of these is the dominating element which determines the result of the game. 27 C. J., 969.

In the case of *State vs. Randall*, 256 Pac., 393, the court held in the second branch of the syllabus, as follows:

"The game of throwing balls into a box divided into numbered spaces, for prizes held 'game of chance' notwithstanding the element of skill within Oregon Law, Section 2105 prohibiting playing or the conducting of certain games played, such as cards, dice, or any device for money, checks, credits or other representative of value and for violation of this statute the defendant was guilty of a misdemeanor.

It cannot be urged successfully that this machine, as described by you, can be operated solely as a game of skill, because a person who has never played the machine before can win the jack pot even though he has never operated this machine, and a person who has operated the machine on previous occasions cannot always win the jack pot. It is apparent that if it were possible for one to become so skillful as to win the jack pot by reason of his skill, the owners of these machines would not put them into operation, since the machines are not placed in operation for the benefit of the players, but for the benefit of the operators.

It appears to me that the operation of this machine is a game determined entirely or in part by mere luck, and that judgment, practice or skill have honestly no office at all, or are thwarted by chance.

I am of the opinion that the use and operation of such a machine as you have described in your letter constitutes a game of chance, that is a game in which chance is the dominating element, and therefore is a gambling device.

Respectfully,

GILBERT BETTMAN,

Attorney General.