

tions you refer to are incompatible under the common law. This rule in Ohio, as stated in the case of *State ex rel. vs. Gebert*, 12 O. C. C. (N. S.) 274, is as follows:

“Offices are considered incompatible when one is subordinate to or in any way a check upon the other, or when it is physically impossible for one person to discharge the duties of both.”

It is the opinion of the attorney-general that there is nothing in the law making either of the positions you mention subordinate to or a check upon the other, and if it is physically possible for a court stenographer to properly perform and discharge the duties of both positions, the same may be done and such court stenographer under such circumstances would be entitled to receive additional compensation from the funds allowed to the prosecuting attorney for the payment of a stenographer.

In Opinion No. 379, rendered on June 9, 1919, to the Bureau of Inspection and Supervision of Public Offices and found at p. 618 of Opinions of the Attorney-General for 1919, it was held that the positions of fire chief and street commissioner were compatible.

In Opinion No. 391, rendered on June 13, 1919, to Hon. Phil H. Wieland, Prosecuting Attorney and found at p. 642 of Opinions of the Attorney-General for 1919, it was held that the offices of county recorder and mayor of a city or village were not incompatible.

It is believed that the same reasoning set forth in said opinions by analogy will apply to the situation presented in your communication.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1024.

SLOT MACHINE—GAMBLING DEVICE—VIOLATION OF SECTIONS 13056  
AND 13066 G. C.

*The operation of a slot machine, where the player may receive trade checks ranging in value from five cents to one dollar by dropping a nickel in said machine, is a gambling device notwithstanding the player receives a package of gum with every play, and in violation of sections 13056 and 13066 G. C.*

COLUMBUS, OHIO, February 26, 1920.

HON. EDWARD GAUDERN, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—Your recent communication is as follows:

“Will you kindly advise me whether in your opinion the operation of a gum vending machine is punishable under the laws of Ohio. This machine as described to me is placed on the counter of grocery stores and pool rooms; the customer puts a nickel in the slot and draws a bunch of gum and a number of trade checks like those enclosed. The machine is also operated by putting in these trade checks and drawing out one to five, ten and twenty of them in return, similar to the old nickel slot machine, and the proprietor will cash the checks in trade, either cigars or candy or groceries. The machines have the stamp of the federal government upon them, the license fee having been paid.

If the operation of these machines constitutes an offense in Ohio, will you kindly so advise? It is not clear in my own mind that a conviction could be maintained."

The question presented is whether or not a slot machine such as you describe constitutes a gambling device under the laws of this state.

Section 13056 G. C. provides:

"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 G. C. provides:

"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."

In an opinion rendered by the Attorney-General, reported in Vol. II, page 1341, Annual Report of the Attorney-General for 1912, this question seems to have been passed upon. The question then presented was as follows:

"The question that concerns a portion of this county is: How far can a slot machine go before it is run in violation of the law? A firm has a slot machine in its place of business, a 'nickel' is placed in the machine, and in return you are liable to get five-cent chips up to as high as \$2.00 in the aggregate, a person receiving at least a package of chewing gum. Does the giving of the gum prevent the machine becoming a gambling device under the statutes?"

The conclusion of said opinion is in part as follows:

"It is my opinion that the giving of gum, whether equal to or less than the value of a nickel for each nickel placed in the slot of the machine, is not such an act or subterfuge as to take such machine from out of the operation of the statutes above quoted. As you suggest in your opinion, the nickel is put in to pay for the chance to get more than its value, which fact clearly brings such machine within what is termed a 'gambling device.'

There are no Ohio decisions decisive of the question as based upon the facts in your inquiry. I find upon investigation, however, that there are a number of decisions from other states which hold such machine to be a 'gambling device' where the operator of the machine in every instance receives value or something of value for the money he puts into such machine and with a chance of receiving more than the value of money he so puts into such machine."

Said opinion quoted from the following cases in support of the conclusion:

Meyer vs. State of Georgia, 51 L. R. A., 496;  
Culliman vs. Hosmer, 100 App. Div. 148, 91 N. Y. Supp. 607;

Meeks vs. State (Texas Crim. App.) 74 S. W., 910;  
 State vs. Vasquez, 49 Fla., 126, 38 So., 830;  
 Lythe vs. State (Tex. Crim. App.) 100 S. W. 1160;  
 Lang vs. Merwin, 99 Maine Reports, 486.

In the case of Mills Operating Co. vs. Toronto, 21 N. P. (N. S.) 525, the question was presented as to what constituted a gambling device under a village ordinance. Said ordinance provided as follows:

"If any person shall permit any game to be played for gain upon or by means of any gaming device or machine, in any building, booth, arbor, canal boat or water craft owned or controlled by such person, he or she shall, on conviction thereof, pay a fine not exceeding fifty dollars and pay the costs of the prosecution."

The following is quoted from the opinion rendered by Judge Smith in said case:

"\* \* \* Were said machines as constructed and operated, legal vending machines or were they illegal slot machines or gambling devices? \* \*

From the facts it appears that by dropping a nickel in these machines, each person is guaranteed at least one package of chewing gum, and in addition thereto may receive from two to twenty checks in trade from the store of the lessee, Mr. Dawson.

It also appears from the cut that certain characters are on these machines representing certain cards, and that in accordance with the order or arrangement of these cards after a play would depend whether or not the player would receive one package of chewing gum and possibly two to twenty trade checks in return. The checks might be exchanged for articles in Mr. Dawson's store.

From these facts it clearly appears that this is a gaming or gambling device. There seems to be the impression abroad among the lessees of these machines so long as the player receives something of value in return for the money played they are within the law and can not be prosecuted for conducting a gambling machine or device. That impression is clearly erroneous. Wherever the element of chance enters into the playing and the player has the opportunity to receive something for nothing, something without consideration, it comes within the provision of the law, prohibiting the operation of a gambling machine or device. There is no dispute among the authorities upon that proposition.

\* \* \* \* \*

It is the element of chance in the game that makes it illegal; whether one receives something or whether he receives nothing is not material. If that were not the case every game of chance, every gambling device, could be legalized by giving to the player some consideration for the money which he wagers upon the game. These machines are therefore clearly within the law prohibiting the operating of a gambling device or machine as provided in the ordinance of the village."

In view of the foregoing, it seems that a machine such as you describe in your letter is a gambling device, the operation of which is prohibited by the laws of this state.

Respectfully,  
 JOHN G. PRICE,  
 Attorney-General.