

OPINION NO. 2013-027

Syllabus:

2013-027

1. 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,” as defined in R.C. 2915.01(QQ).
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 a fee and does not award prizes or money to players.
3. 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 not 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 a fee and does not award prizes or money to players.

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

By: Michael DeWine, Ohio Attorney General, August 16, 2013

You have requested an opinion about the use of automated, electronic poker tables by charitable organizations at festivals.¹ You have described a situation in which a city sublets a senior recreation facility to a charitable organization for conducting festivals.² The city does not own the real property on which the senior recreation facility is located. Instead, the city sublets the real property from a for-profit investor group that leases the property from the owner of the property.

¹ In addition to concerns about the use of automated, electronic poker tables by charitable organizations at festivals, you have questions related to the payment of expenses associated with, and the use of proceeds derived from, the operation of games of chance by charitable organizations. We will address your additional questions in a formal opinion to be issued at a later date.

² The sublease between the city and charitable organization will not exceed five days per calendar year. *See generally* R.C. 2915.02(D)(1)(c) (a charitable organization may not conduct games of chance at its festivals for “more than a total of five days a calendar year”).

At the festivals, the charitable organization will have automated, electronic poker tables that enable players at the same table to play poker against each other after paying an entry fee.³ When a player pays the entry fee, the charitable organization conducting the festivals will issue the player a gaming card that establishes a monetary equivalent the player will have to play poker.⁴ The automated poker table will not award prizes or money to the players for playing poker at the table. *See* note 4, *supra*.

Unlike the traditional card game of poker, the automated, electronic poker table does not use playing cards, chips, or a person who serves as the dealer. *See generally Merriam-Webster's Collegiate Dictionary* 958 (11th ed. 2005) (defining “poker” as “any of several card games in which a player bets that the value of his or her hand is greater than that of the hands held by others, in which each subsequent player must either equal or raise the bet or drop out, and in which the player holding the highest hand at the end of the betting wins the pot”). *See generally 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). Instead, as described in your letter:

The [automated, electronic poker] tables simulate the actual play of the game of poker between the participants but without the use of a dealer. The electronic device creates a virtual reality setting where the participants are able to play the game of poker against each other using display screens controlled by each player. . . . This electronic device is not a “draw poker” machine such as one seen in the typical casino, but a machine that allows up to 10 players to electronically play the game of poker against each other.⁵ (Footnote added.)

Put simply, an automated poker table is an electronic device whereby persons may play poker against each other without using playing cards, chips, or a

³ The charitable organization will collect and retain the entry fee from the players. The organization also will be responsible for operating the automated poker tables and the overall management of the festivals.

⁴ The gaming card is a restricted monetary equivalent that is issued by the charitable organization for use as an alternative to money at the automated poker table. The card has no monetary value. When a player finishes playing poker, the player may not redeem the gaming card for money or prizes.

⁵ An electronic draw poker machine or video poker machine is “[a] kind of electronic slot machine game in which a poker hand appears on a video screen, the player has the option of improving it by drawing more cards, and payoffs are given based on the rank of the hand.” Darwin Ortiz, *Darwin Ortiz on Casino Gambling* 267 (1986); accord Bill Burton, *1000 Best Casino Gambling Secrets* 67 (2005); Marten Jensen, *The Big Book of Slots and Video Poker* 125-34, 281 (2010); Darwin Ortiz, *Darwin Ortiz on Casino Gambling* 200-02 (1986); see *Mills-Jennings of Ohio, Inc. v. Dep’t of Liquor Control*, 70 Ohio St. 2d 95, 95-96, 435 N.E.2d 407 (1982). A player using a draw poker machine or video poker machine does not play

person who serves as the dealer. *See generally Mills-Jennings of Ohio, Inc. v. Dep't of Liquor Control*, 70 Ohio St. 2d 95, 97, 435 N.E.2d 407 (1982) (“[w]hether the game being played is on a video screen or a card table makes no real difference. In whatever way the game is played the object is the same and that is to win by obtaining the best hand possible. Therefore the game being played on the machine is a game of ‘poker’”); *Ohio Vending Operators Grp. v. Dep't of Liquor Control*, Case No. 87AP-64, 1987 Ohio App. LEXIS 8308, at **15-16 (Franklin County Aug. 13, 1987) (“poker by any other name is still poker. Changing the name of Draw Poker to Dwarf’s Den or any of the other names used does not change the statutory meaning of the word ‘poker’ which includes Draw Poker by whatever name it may be called, by whatever device it may be Played, and by whatever symbols may be used”).

The automated, electronic poker tables will be provided to the charitable organization by the for-profit investor group that is subletting to the city the real property where the festivals are to be held. The charitable organization will pay a fee to rent the automated poker tables from the investor group, rather than purchase them. In addition to renting the automated poker tables to the charitable organization, the investor group may assist the charitable organization in operating the tables.

Given the novelty of automated, electronic poker tables and the uniqueness of the proposed situation, you have asked us to answer the following questions:

1. Is 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 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 a fee and does not award 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 on real property subleased from a city 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 when (1) the city does not own the real property and (2) the organization rents the table from a for-profit investor group?
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 a fee and does not award 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 gross moneys bet at the table?

against other players. Bill Burton, *1000 Best Casino Gambling Secrets* 67 (2005); *see Mills-Jennings of Ohio, Inc. v. Dep't of Liquor Control*, 70 Ohio St. 2d at 95-96.

I. Ohio Law Prohibiting Poker Games for Profit and the Operation of Slot Machines

Before considering your specific questions, we will begin with a brief overview of Ohio law prohibiting poker games for profit and the operation of slot machines. R.C. 2915.02, which establishes the criminal offense of gambling, declares:

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

As used in R.C. 2915.02, the terms “game of chance” and “scheme of chance” have the following meanings:

(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.)

R.C. 2915.01; *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”).

⁶ The term “person,” as used in R.C. 2915.02, is defined broadly to include the entities 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) (unless another definition is provided in a statute or a related statute, the term “person,” as used in a statute, “includes an individual, corporation, business trust, estate, trust, partnership, and association”).

Pursuant to R.C. 2915.01(C)-(D), the General Assembly has determined that the terms “scheme of chance” and “game of chance” include slot machines and poker, respectively, for purposes of R.C. 2915.02. This means that R.C. 2915.02(A)(2) prohibits a person from conducting a poker game for profit or operating a slot machine unless Ohio law provides otherwise.⁷ See R.C. 2915.02(C). See generally 2013 Op. Att’y Gen. No. 2013-012, slip op. at 6 (“[a] violation of R.C. 2915.02(A)(2) is predicated upon the existence of either a scheme of chance or game of chance”).

There are two exceptions to this prohibition. R.C. 2915.02(D)(1) provides that the prohibition does not apply to games of chance conducted for profit by charitable organizations when all of the following apply:⁸

⁷ 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. See *VFW Post 8586 v. Ohio Liquor Control Comm’n*, 83 Ohio St. 3d 79, 82-83, 697 N.E.2d 655 (1998); *Mills-Jennings of Ohio, Inc. v. Dep’t of Liquor Control*, 70 Ohio St. 2d at 97; *Kennedy v. Ohio Liquor Control Comm’n*, 184 Ohio App. 3d 392, 2009-Ohio-4971, 921 N.E.2d 266, ¶¶7-11 (Franklin County 2009). See generally *Garono v. State*, 37 Ohio St. 3d 171, 524 N.E.2d 496 (1988) (syllabus, paragraph 1) (“[t]he General Assembly appropriately determined poker to be a game of chance under R.C. 2915.01(D)”). See *Massa v. Ohio Liquor Control Comm’n*, Case No. 84AP-634, 1985 Ohio App. LEXIS 7380, at *6 (Franklin County Mar. 21, 1985) (“[t]he legislature and the Supreme Court have determined that poker is a game of chance”). 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. See *VFW Post 8586 v. Ohio Liquor Control Comm’n*, 83 Ohio St. 3d at 83-84; *Mills-Jennings of Ohio, Inc. v. Dep’t of Liquor Control*, 70 Ohio St. 2d at 97-98; *Kennedy v. Ohio Liquor Control Comm’n*, 184 Ohio App. 3d 392, at ¶¶7-11. See generally *Massa v. Ohio Liquor Control Comm’n*, 1985 Ohio App. LEXIS 7380, at **4-5 (“the determinative interpretation of R.C. 2915.01, and the one that this court and the Supreme Court adopted in *Mills-Jennings*, is that the language of subsection (D) speaking of a game, ‘the outcome of which is determined largely or wholly by chance’, modifies ‘other game’ only, and not poker, craps, roulette, slot machine or punch board. Poker is a game of chance according to R.C. 2915.01, and the skill/chance analysis . . . has no application”).

⁸ Except as otherwise provided in R.C. Chapter 2915, a “charitable organization” is either of the following for purposes of R.C. Chapter 2915:

- (1) An organization that is, and has received from the internal revenue service a determination letter that currently is in effect stating

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

(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.

. . . .⁹

(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;

(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].

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(H). 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]." *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.

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.)

See generally State v. Elk's Lodge No. 1718, C.A. No. OT-85-28, 1987 Ohio App. LEXIS 5529, at *7 (Ottawa County Jan. 16, 1987) (“the General Assembly has deemed it appropriate public policy to allow gambling, if conducted by a qualified charitable organization under limited circumstances”).

R.C. 2915.02(D)(1) expressly authorizes a charitable organization to conduct games of chance for profit when the organization strictly complies with certain prescribed requirements. *See generally* 2008 Op. Att’y Gen. No. 2008-015 at 2-164 (“[a] charitable organization, as defined in R.C. 2915.01(H), thus is authorized to conduct games of chance when the charitable organization strictly complies with the requirements of R.C. 2915.02(D)(1)”). Insofar as poker is 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 the requirements of R.C. 2915.02(D)(1). *See* R.C. 2915.02(C).

The second exception to R.C. 2915.02(A)(2)’s prohibition against conducting poker for profit or operating slot machines is set forth in Article XV, § 6 of the Ohio Constitution. This constitutional provision 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 Consti-

tution 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 the operation of slot machines at the four casino facilities described therein.¹⁰ In addition, given that the term “table game,” as used in Article XV, § 6(C) of the Ohio Constitution, includes poker and other games played with cards for money, casino credit, or any representative of value, *see* Ohio Const. art. XV, § 6(C)(9), poker for profit may be conducted legally at the four casino facilities. Article XV, § 6(C) of the Ohio Constitution and R.C. 2915.02(D)(1) thus set forth the circumstances in which it is legal to conduct poker for profit or operate a slot machine.

II. Meaning of the Term “Slot Machine,” as Used in Article XV, § 6(C) of the Ohio Constitution and R.C. Chapter 2915

Your first question asks whether 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,” as defined in R.C. 2915.01(QQ) and Article XV, § 6(C)(9) of the Ohio Constitution. We will consider first whether 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,” as defined in R.C. 2915.01(QQ). We will then determine whether the definition of “slot machines” in Article XV, § 6(C)(9) of the Ohio Constitution includes such a table.

A. R.C. 2915.01(QQ)’s Definition of “Slot Machine”

R.C. 2915.01(QQ) defines the term “slot machine” for purposes of R.C. Chapter 2915 as follows:

(1) “Slot machine” 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.)

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

As explained previously, an automated poker table is an electronic device that enables persons to play poker, which is a game of chance, *see* R.C. 2915.01(D); note 7, *supra*, against each other without using playing cards, chips, or a person who serves as the dealer. *See generally VFW Post 8586 v. Ohio Liquor Control Comm'n*, 83 Ohio St. 3d 79, 83, 697 N.E.2d 655 (1998) (“poker is per se a ‘game of chance’ within the meaning of R.C. 2915.01(D)”). To play poker at the table, a person must purchase a gaming card from the entity operating the table and use the card at the table. While the card has no monetary value, *see* note 4, *supra*, the card has intrinsic value to the extent that it represents the amount of money a person has paid to play poker at the automated, electronic poker table. In essence, when a person uses a gaming card at an automated, electronic poker table, the person is giving something of value, *i.e.*, the amount he paid for the card, to the operator of the table to play poker at the table. *See generally Ohio Vending Operators Grp. v. Dep’t of Liquor Control*, 1987 Ohio App. LEXIS 8308, at **10 (“[t]he necessity of paying a price to play a device is the equivalent of giving something of value”). Therefore, insofar as 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 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).¹¹

¹¹ Pursuant to R.C. 2915.01(QQ)(2), skill-based amusement machines and instant bingo ticket dispensers are excepted from R.C. 2915.01(QQ)’s definition of “slot machine.” For the reasons that follow, 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).

The term “skill-based amusement machine,” as used in R.C. 2915.01(QQ), means the following:

[A] mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

- (a) The wholesale value of a merchandise prize awarded as a result of the single play of a machine does not exceed ten dollars;
- (b) Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than ten dollars;
- (c) Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than ten dollars times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize; and

B. Definition of “Slot Machines” 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

(d) Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play.

R.C. 2915.01(UU)(1).

However, a device is not a skill-based amusement machine, but rather, a slot machine if “[t]he success of any player is or may be determined by a chance event that cannot be altered by player actions.” R.C. 2915.01(UU)(2)(d). In R.C. 2915.01(D), the General Assembly determined that, while the skill of a player participating in a poker game may increase the person’s chances of winning the game, the outcome of a poker game is determined largely by chance events. *See* 2006 Op. Att’y Gen. No. 2006-045 at 2-438 and 2-439. Because the success of a person playing poker at an automated, electronic poker table is or may be determined by chance events that cannot be altered by the player’s actions, an automated, electronic poker table does not possess the characteristics of a “skill-based amusement machine,” as defined in R.C. 2915.01(UU). Thus, such a table is not a skill-based amusement machine for purposes of R.C. 2915.01(QQ).

For purposes of R.C. Chapter 2915, an “instant bingo ticket dispenser” is “a mechanical device that dispenses an instant bingo ticket or card as the sole item of value dispensed” and that has the characteristics prescribed in R.C. 2915.01(NN)(1)-(8). R.C. 2915.01(NN). In other words, an instant bingo ticket dispenser is a device used to play instant bingo.

R.C. 2915.01(AA) defines “instant bingo,” as used in R.C. Chapter 2915, to mean:

[A] form of bingo that shall use folded or banded tickets or paper cards with perforated break-open tabs, a face of which is covered or otherwise hidden from view to conceal a number, letter, or symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners, and may also include games in which some winners are determined by the random selection of one or more bingo numbers by the use of a seal card or bingo blower.

Given that players at an automated, electronic poker table do not utilize the tickets or paper cards described in R.C. 2915.01(AA) when playing poker at the table, it follows that an automated, electronic poker table may not be characterized as a device used to play instant bingo. Hence, an automated, electronic poker table is not an instant bingo ticket dispenser for purposes of R.C. 2915.01(QQ).

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

The definition of “slot machines” set forth in Article XV, § 6(C)(9) of the Ohio Constitution includes an electronic device that is capable of accepting something of value from a player to play or operate a game the outcome of which is determined by chance events. As the outcome of a poker game is determined largely by chance events, the term “slot machines,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution, includes an electronic poker game that enables participants to play poker against each other for a fee unless the device does not make “individual prize determinations for individual participants in cash, premiums, merchandise, tokens, or any thing of value.”

In the situation you have described, the players do not receive prizes or money for playing poker at the automated, electronic poker table. *See* note 4, *supra*. Absent the payment of prizes or money by the operator of an automated, electronic poker table, an automated, electronic poker table does not meet the requirements for a slot machine prescribed by 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 a fee and does not award prizes or money to players is not a “slot machine,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution.

III. Meaning of the Term “Table Game,” as Used 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 a fee and does not award prizes or money to players is a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution. This constitutional provision states that the term “table game,” as used in Article XV, § 6(C) of the Ohio Constitution, denotes “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).

¹² The definition of “slot machine” set forth in R.C. 3772.01(X) states that the term “does not include any device that is a skill-based amusement machine, as defined in [R.C. 2915.01].” Earlier we determined that R.C. 2915.01’s definition of “skill-based amusement machine” does not include an automated, electronic poker table. *See* note 11, *supra*. Consequently, an automated, electronic poker table is not a skill-based amusement machine for purposes of R.C. 3772.01(X).

As explained above, an automated poker table is an electronic device that enables persons to play the game of poker. Thus, the term “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution, includes an automated, electronic poker table that enables participants to play poker against each other for a fee unless the game is not played “for money, casino credit, or any representative of value.”

A person who plays poker at an automated poker table described in your letter does not win prizes or money. *See* note 4, *supra*. Nor may he win credits that may be used at the casino facilities described in Article XV, § 6(C) of the Ohio Constitution or anything else of value. As a player at an automated, electronic poker table does not play poker at the table “for money, casino credit, or any representative of value,” such a table does not constitute a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution. Accordingly, 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 not a “table game,” as defined in Article XV, § 6(C)(9) of the Ohio Constitution.

IV. Authority for Charitable Organizations to Use Automated, Electronic Poker Tables

Your third question asks whether a charitable organization may use at a festival conducted by the organization on real property subleased from a city 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 when (1) the city does not own the real property and (2) the organization rents the table from a for-profit investor group. R.C. 2915.02(A)(2) and R.C. 2915.02(C) prohibit a charitable organization from conducting poker for profit or operating a slot machine unless Ohio law provides otherwise.

As indicated earlier, under Ohio law, a charitable organization is authorized to conduct games of chance for profit when the conditions and requirements of R.C. 2915.02(D)(1) are satisfied. As the General Assembly has declared poker 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 poker for profit when the conditions and requirements of R.C. 2915.02(D)(1) are satisfied. *See* 2006 Op. Att’y Gen. No. 2006-045 at 2-434.

However, the General Assembly has created an important and significant caveat to this authority. Specifically, 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). *See generally* 2006 Op. Att’y Gen. No. 2006-045 at 2-434 (“[t]he classification of a charitable fund-raising activity as a ‘game of chance’ or ‘scheme of chance’ is critical to determining whether a charitable organization may conduct the activity. If a particular fund-raising activity is classified as a ‘scheme of chance,’ a charitable organization may not conduct the activity. If the fund-raising activity is a ‘game of chance,’ a charitable organization may conduct the activity when the conditions set forth in R.C. 2915.02(D)(1)(a)-(e) are satisfied”). 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 a fee and does not award prizes or money to players.

V. A Charitable Organization’s Lease of 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 a fee and does not award 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 gross moneys bet at the table. Because we have determined that a charitable organization is prohibited from using at a festival conducted by the organization 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, it is unnecessary for us to answer your final question.

VI. Conclusions

Based on the foregoing, 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 a fee and does not award prizes or money to players is a “slot machine,” as defined in R.C. 2915.01(QQ).
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 a fee and does not award prizes or money to players.
3. 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 not 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 a fee and does not award prizes or money to players.