

813

PINBALL MACHINES—NOT “GAMBLING DEVICE”—IF DOES NOT CONTAIN ELEMENT FOR PRIZE. §§2915.16, 2915.17, 2915.18, R.C.

SYLLABUS:

1. In general, the elements of gambling are payment of a price for a chance to gain a prize.
2. A pinball machine with a push button for releasing free plays and a meter for registering the plays so released, is a “gambling device” *per se* within the purview of Section 2915.15, Revised Code.
3. A pinball machine with provision for multiple coin insertion for increasing the odds, but with no free games, delivery of coins, tokens or similar thing of value for attaining a certain score, while containing the elements of *price* and *chance* in its operation, does not contain the element of *prize* and so is not a “gambling device” within the purview of Sections 2915.15, 2915.16, 2915.17 and 2915.18, Revised Code.

Columbus, Ohio, September 9, 1959

Hon. R. C. Crouch, Director
Department of Liquor Control, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“It has come to my attention that the United States Internal Revenue Service recently ruled that pinball machines with a push

button for releasing free plays and a meter for registering the plays so released, or with provision for multiple coin insertion for increasing the odds, is prima-facie evidence that the machines are being used for gambling purposes.

“In order that we might institute a uniform enforcement policy regarding pinball machines on permit premises, we respectfully request a ruling from your department as to the above described equipment used in conjunction with pinball machines.”

Several sections of Chapter 2915., Revised Code, contain references to gambling devices. These are as follows:

Section 2915.15:

“No person shall keep or exhibit for gain or to win money or other property, a gambling table, or faro or keno bank, or a *gambling device* or machine, other than as is defined in section 2915.10, 2915.12, and 2915.16 of the Revised Code, to keep or exhibit a billiard table for the purpose of gambling or allow it to be so used. Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars and imprisoned not less than ten nor more than ninety days, and shall give security in the sum of five hundred dollars against further violation of this section for one year.” (Emphasis added)

Section 2915.16:

“As used in sections 2915.17 and 2915.18 of the Revised Code, ‘*gambling device*’ means:

(A) Any slot machine or any other machine or mechanical device, other than as is defined in sections 2915.10 and 2915.12 of the Revised Code, an essential part of which is a drum or reel with insignia thereon which when operated may deliver, as the result of an element of chance, any money, property, or other thing of value or by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money, property, or other thing of value;

“(B) Any machine or mechanical device, other than as is defined in sections 2915.10 and 2915.12 of the Revised Code, designed and manufactured to operate by means of insertion of a coin, token, or similar object so that when operated it may deliver as the result of an application of an element of chance, any money, property, or other thing of value;

“(C) Any subassembly or essential part intended to be used in connection with any such machine or mechanical device.” (Emphasis added)

Section 2915.17:

“No person shall now, possess, or exhibit any *gambling device*, other than as is defined in sections 2915.10 and 2915.12 of the Revised Code. This section does not prohibit the possession of a gambling device during the act of and for the sole purpose of transportation except as provided by section 2915.18 of the Revised Code.

“Whoever violates this section shall be fined not more than five thousand dollars and imprisoned for not less than one nor more than five years.” (Emphasis added)

Section 2915.18:

“No person shall knowingly transport any *gambling device*, other than as is defined in sections 2915.10 and 2915.12 of the Revised Code, for delivery within this state.

“Whosoever violates this section shall be fined not more than five thousand dollars and imprisoned for not less than one nor more than five years.” (Emphasis added)

In the case of *Westerhaus Co., Inc., Appellant, v. City of Cincinnati et al., Appellees*, 165 Ohio St., 327, the court held in paragraphs 5 to 12, inclusive, of the syllabus:

“5. In general, the elements of gambling are payment of a price for a chance to gain a prize.

“6. Where the operator of a pinball machine puts a nickel into the machine to operate it, he thereby pays the price which is necessary in order to have the operation of such a machine constitute gambling.

“7. The right, to replay a nickel pinball machine, if a sufficient score is attained, by merely pushing a button and without using another nickel, may represent the prize which is necessary in order to have the operation of such a machine constitute gambling.

“8. In order to have a lottery, the determination as to who gets a prize or how much of a prize he gets must be dependent at least predominately upon the element of chance.

“9. The term ‘gambling’ includes a lottery but is broader and may encompass more than the term ‘lottery.’

“10. Although there can probably be no gamble upon something certain, there can be a gamble on the happening of an event, the happening of which may be largely dependent upon skill, even though dependent upon the skill of one or all of those participating in the gamble.

“11. The element of chance which is necessary in order to have gambling can be supplied by having the happening of some future event determine who gets a prize or how much he gets, at least where such event is not certain to happen and even though the happening of such event is dependent predominantly upon skill.

“12. Where it is necessary to put a nickel into a pinball machine in order to operate it, and where the operation of such machine may enable the operator to replay the machine by merely pushing a button and without a further payment for such replay if the operator obtains a sufficient score, and where the operation of such machine will not certainly result in attaining such sufficient score, such operation constitutes gambling and such machine is, within the meaning of Section 13066, General Code, (now Section 2915.15, Revised Code), a ‘gambling machine or device’ per se notwithstanding that the operation of such machine to attain such sufficient score is predominate dependent on the skill of the operator.”

You will note that the machine in question in the *Westerhaus case, supra*, was a pinball machine which provided for free replays if the operator obtained a sufficient score, the court holding such machine to be a “gambling machine or device” *per se* within the meaning of Section 2915.15, Revised Code.

Your question appears to be concerned with two types of pinball machines:

1. A pinball machine with a push button for releasing free plays and a meter for registering the plays so released.
2. A pinball machine with provision for multiple coin insertion for increasing the odds.

Regarding the first machine, it would appear that if such machine provides free plays and is operated by a player after a coin insert, it has the essential elements of a “gambling device” —*price, chance and prize*— within the purview of Section 2915.15, Revised Code. It is also possible that such a machine is a “gambling device” within the provisions of division (B) of Section 2915.16, Revised Code, set forth earlier in this opinion, and thus within the prohibitions of Sections 2915.17 and 2915.18, *supra*. Since such machines are definitely covered by Section 2915.15, *supra*, however, I see no necessity for exploring this aspect in answering your question.

The second machine is operated by coin insert and thus has the element of *price*. Being a pinball machine, such operation also has the

element of *chance*. Adding the element of multiple coin insertion serves to *increase* the price. The question thus arises as to whether the element of *prize* exists in the operation of such machine.

As noted above, I am assuming that the second machine *does not* provide for free plays on the attainment of a certain score. Thus, the only thing that might be considered to be a prize in the operation of the machine would be the increasing of the odds. But such increasing of odds does not depend on the chance element since such occurs automatically upon the insertion of extra coins. While the final score *is* dependent on the chance element, the machine does *not* provide a *prize* for the attainment of a certain score. Thus, I can not say that the element of *prize* is contained in the operation of said machine and do not consider it to be a "gambling device" within the purview of Sections 2915.15, 2915.16, 2915.17 or 2915.18, Revised Code.

While your request is concerned only with pinball machines I might note that under the statutes discussed herein "gambling device" includes *any* machine which allows payment of a *price* for a *chance* to gain a *prize*. See *Westerhaus case, supra*, page 335. Thus, any machine which requires insertion of a coin to set it in motion, the result being dependent on chance, and a prize being offered, would be a "gambling device" under the laws of this state. Conversely, a machine operation which does not contain the essential elements of price, chance and prize *is not* a "gambling device" under the laws of Ohio.

I am aware, of course, that although a machine may not be a "gambling device" *per se*, such a machine might be used for gambling purposes just as other devices which are not expressly "gambling devices" might be used for gambling. This fact, however, does not serve to make such a machine a "gambling device" *per se* under the statutes of Ohio.

Accordingly, it is my opinion and you are advised:

1. In general, the elements of gambling are payment of a price for a chance to gain a prize.

2. A pinball machine with a push button for releasing free plays and a meter for registering the plays so released, is a "gambling device" *per se* within the purview of Section 2915.15, Revised Code.

3. A pinball machine with provision for multiple coin insertion for increasing the odds, but with no free games, delivery of coins, tokens or

similar thing of value for attaining a certain score, while containing the elements of *price* and *chance* in its operation, does not contain the element of *prize* and so is not a "gambling device" within the purview of Sections 2915.15, 2915.16, 2915.17 and 2915.18, Revised Code.

Respectfully,

MARK McELROY

Attorney General