

company of all cars for which insurance was thus provided and the insurance company sent certificates of insurance to the respective purchasers.

It was held in that case that the statutes of Ohio forbid the insurance of property in the State except by a legally authorized agent, resident in Ohio. Justice Holmes in writing the opinion in that case, on page 305, said:

“Whatever technical form may be given to the reasoning, the substance is that by acts done in Ohio the purchaser obtains for himself the advantage of insurance that before that moment did not exist. It does not matter whether his getting it was a large or an inconspicuous feature of his bargain. It was part of it in any event, and we cannot doubt that the lower Court was right in holding that in such circumstances the State could insist upon its right to tax.”

Under Section 617, General Code, the Superintendent of Insurance is required to see that the laws relating to insurance are duly executed and enforced. This he can not do unless he has some supervisory authority over the parties to the transaction. In other words he may license an agent on certain conditions or he may revoke the license in proper cases of violation.

Specifically answering your question, therefore, it is my opinion that the transaction in question is one substantially amounting to insurance and that the person responsible for the procuring, receiving or forwarding of the identification card to the guest at the hotel is required to be duly licensed by the insurance department of Ohio in compliance with Section 644, General Code of Ohio.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2862.

GAMBLING—PUNCH BOARD—WHEN SAME IS A GAMBLING DEVICE.

SYLLABUS:

A punch board, bearing numbers from one to five hundred, which is operated by the payment of a sum of money in exchange for which the patron obtains in any event a package of gum and may obtain various size boxes of candy as prizes, depending upon chance, is a gambling device within the provisions of Sections 13056 and 13066 of the General Code.

COLUMBUS, OHIO, November 10, 1928.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“Several inquiries have been made of late relative to the placing of various punch board devices in the county, the question being put to me as to whether or not these various punch boards come within the inhibition of the Ohio Statute against gambling devices.

One of the devices described to me is put out by an Ice Cream Company. The board bears numbers from 1 to 500. A package of gum is given with each punch. Various numbers on the board call for various sized boxes of candy as prizes, the number of prizes being from 50 to 75. The Ice Cream

Company leaves it to the discretion of the owner of the punch board the exact number of pounds of candy that he puts up for prizes. The idea seems to be to advertise and popularize the candy which is manufactured by the Ice Cream Company and it is claimed that the candy given as prizes, if charged pro rata to each punch on the board makes the candy sell for the approximate wholesale price thereof.

There are other punch boards containing jewelry and guns, etc., which are purely money-making devices and do not have the element of advertisement that seems to be the idea by the above described punch board. Inasmuch as there are no opinions or cases dealing with punch boards and inasmuch as there seems to be a movement on foot to place punch boards in those places where the various makes of slot machines have been ordered taken out, I would like to have your opinion as to the legality or the illegality of the above named device or devices."

Your letter suggests that you have no question concerning the illegality of slot machines. This subject is fully discussed in Opinion No. 1393, dated December 17, 1927, to Hon. W. J. Jones, Prosecuting Attorney, McArthur, Ohio, and Opinion No. 2290, dated June 28, 1928, addressed to Hon. John H. Houston, Prosecuting Attorney, Georgetown, Ohio, copies of which opinions I am herewith enclosing as having a general bearing upon the question you now present. You intimate, however, that there is some doubt in your mind as to whether the same principles apply to the so-called punch boards which you describe. Your communication does not disclose whether a fixed sum is payable by those patronizing these punch boards or whether the amount paid varies. I assume that a fixed sum, such as five cents, is payable by each patron, although I understand that certain of these boards require the payment of the number of cents represented by the number punched out. However this may be, I do not deem the distinction of any materiality in determining the question you present.

The sole question is whether the punch board is a gambling device within the meaning of the Ohio statutes.

Sections 13056 and 13066, General Code, are as follows:

Section 13056. "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. "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."

On the general subject of gambling devices, the following quotation from 27 Corpus Juris, at page 988, is pertinent:

"The term 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 or 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 playing for

money or other thing of value, so that the result depends more largely on chance than skill; a gaming device; the means, instrument, contrivance, or thing by which the banking or percentage game is played. It has been declared that the device must be something tangible. The term will include only such instruments or contrivances as are intended for the purpose of gaming and such as are used to determine the result of the contest on which the wager is laid. Under some statutes the device need not, however, be intended solely for the purpose of gaming. It is not necessary that both parties should stand to lose in order to constitute or make a device a gambling one."

I am unable to distinguish between a slot machine, which is clearly a gambling device, and a punch board, concerning which you inquire. It is quite obvious that one patronizing the board is actuated by the desire to obtain a return in excess of the amount invested, which return is dependent entirely upon chance. This being so, it is quite immaterial that each patron obtains a package of gum with each punch. The law upon this point is well settled.

Thus in the case of *Akron vs. Stojanovia*, 24 N. P. (N. S.) 479, the court, on page 481, says with reference to slot machines:

"There seems to be the impression abroad that so long as the player receives something of value in return for the money played, the owners of this device are within the law and cannot be prosecuted for keeping and exhibiting a gambling device. That impression is clearly erroneous."

I am confirmed in my impression by the case of *George vs. Candy Company*, 16 O. App., 487. In this case the Candy Company sued to recover the purchase price of merchandise sold and delivered, which included not only candy but a punch board and other equipment. The defense was that it was sold for gambling purposes. With respect to the characteristics of the punch board, the court, on page 490, says:

"The punch board was operated by the player paying a stipulated price for the privilege of punching the board, and if the number in the hole be punched was not a prize number he received nothing for the price paid, but if the hole contained a prize number he received one of the prizes packed and shipped in the carton with the punch board.

That the punch board was a device suitable and appropriate for no other purpose than gambling is too plain for argument."

This case again appeared before the Court of Appeals and is reported in 18 O. App. 114, the judgment having been reversed and the case re-tried in the Common Pleas Court. The Court of Appeals again reversed the case on the weight of the evidence and reiterated its position that the punch board was a gambling device. The case was brought a third time to the Court of Appeals, the report thereof being found in 19 O. App. 137. The court finally decided that upon the evidence the Candy Company had no right of recovery because it knew that the punch board and the candy which it accompanied were to be used for gambling purposes and, therefore, the company participated therein so as to prevent any recovery. Final judgment was rendered in favor of the purchaser of the goods.

Accordingly, the Court of Appeals has three times announced its conclusion that the operation of a punch board of the character which you describe is the operation of a gambling device prohibited by law. The only distinction that I see is that the court states that in the operation of the punch board before it for consideration a player might receive nothing for his money—whereas you state that a package of gum is given with each punch. As I have before stated, however, this fact does not in any way affect the question.

In view of the foregoing, and by way of specific answer to your inquiry, I am of the opinion that a punch board, bearing numbers from one to five hundred, which is operated by the payment of a sum of money in exchange for which the patron obtains in any event a package of gum and may obtain various size boxes of candy as prizes, depending upon chance, is a gambling device within the provisions of Sections 13056 and 13066 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2863.

APPROVAL, BONDS OF THE CITY OF KENMORE, SUMMIT COUNTY—
\$39,644.25.

COLUMBUS, OHIO, November 12, 1928.

Industrial Commission of Ohio, Columbus, Ohio.

2864.

APPROVAL, BONDS OF THE VILLAGE OF OLMSTED FALLS, CUYA-
HOGA COUNTY—\$7,400.00.

COLUMBUS, OHIO, November 12, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2865.

APPROVAL, BONDS OF THE CITY OF PARMA, CUYAHOCA COUNTY—
\$25,100.00.

COLUMBUS, OHIO, November 12, 1928.

Industrial Commission of Ohio, Columbus, Ohio.