



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

March 24, 1977

FILE NO. S-1218

CRIMINAL LAW:
Whether Device Used at
Bowling Establishments
Constitutes Gambling
Device.

Honorable Robert J. Renkes
State's Attorney
Whiteside County
Morrison, Illinois 61270

Dear Mr. Renkes:

I have your letter concerning the applicability of the Illinois gambling laws to a particular mechanical device that is being offered for sale to bowling establishments in Whiteside County. According to your letter, the device is designed to operate in the following manner:

"* * * [T]he bowler chooses to insert one dime before rolling his first ball in any frame and if the bowler throws a strike on that first ball,

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the machine returns a token to him which is worth twenty-five cents (\$.25) toward the purchase of merchandise or services at the bowling establishment.

* * *

You have asked the following questions regarding the device:

1. Is the owner of a bowling establishment who installs one of these devices either under a rental or sale agreement, guilty of the crime of gambling?
2. Is a customer who uses this device guilty of the crime of gambling?

It is my opinion that both the owner who installs the device and the customer who uses it commit gambling.

In regard to the owner, section 28-1 of the Criminal Code of 1961 (Ill. Rev. Stat. 1975, ch. 38, par. 28-1) provides in pertinent part:

"(a) A person commits gambling when he:

* * *

(3) Operates, keeps, owns, uses, purchases, exhibits, rents, sells, bargains for the sale or lease of, manufactures or distributes any gambling device; or

* * *

"Gambling device" is defined in section 28-2 of the Criminal Code (Ill. Rev. Stat. 1975, ch. 38, par. 28-2) as follows:

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"(a) A 'gambling device' is any clock, tape machine, slot machine or other machines or device for the reception of money or other thing of value on chance or skill or upon the action of which money or other thing of value is staked, hazarded, bet, won or lost; or any mechanism, furniture, fixture, equipment or other device designed primarily for use in a gambling place. A 'gambling device' does not include:

(1) A coin-in-the-slot operated mechanical device played for amusement which rewards the player with the right to replay such mechanical device, which device is so constructed or devised as to make such result of the operation thereof depend in part upon the skill of the player and which returns to the player thereof no money, property or right to receive money or property.

(2) Vending machines by which full and adequate return is made for the money invested and in which there is no element of chance or hazard.

* * *

"

The device described in your letter is a gambling device. It is a device that receives money which is staked on the skill of the bowler to throw a strike. The device does not meet either of the statutory exceptions to the definition of "gambling device". It is not a "vending machine" because a full return of the dime inserted in the device is not certain. It is not a "coin-in-the-slot operated mechanical device" because the device may return to the bowler a token which is a right to receive merchandise or services. Since the device is a

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gambling device, a person who keeps the device in his establishment commits gambling under subsection (a)(3) of section 28-1 of the Criminal Code.

Subsection (a)(3) also prohibits the use of a gambling device. Thus the customer in your second question commits gambling under subsection (a)(3). The customer's use of the device also violates subsection (a)(1) of section 28-1 which reads as follows:

"(a) A person commits gambling when he:
(1) Plays a game of chance or skill for money or other thing of value, unless excepted in subsection (b) of this Section; or
* * *

Subsection (b) provides in pertinent part:

"(b) Participants in any of the following activities shall not be convicted of gambling;
* * *
(2) Offers of prizes, award or compensation to the actual contestants in any bona fide contest for the determination of skill, speed, strength or endurance or to the owners of animals or vehicles entered in such contest; and
* * *

Subsection (b) does not apply to the device described in your letter. The use of the device is not a contest since the

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person using the device is not competing against other contestants for the determination of relative skill.

Very truly yours,

A T T O R N E Y G E N E R A L