

1980 WL 120658 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1980

*1 The Honorable Nicholas P. Sipe
Executive Director
South Carolina Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Sipe:

I have been asked to respond to your letter of November 19, 1979, to this Office.

In that letter you asked whether a particular 'slot machine' was an 'unlawful gambling device'. You also asked whether your agents could confiscate such a device without observing a 'payoff'.

The machine looks like what is commonly called a 'slot machine' or 'one armed bandit'. While it does not have an automatic payoff feature, either in money or tokens, the machine registers 'credits' the operator compiles by matching up the figures on the spinning wheels in the center of the machine. The 'credits' can be used for free games.

The machine is activated by depositing coins in it. The figures match up by chance when the operator pulls the lever. The machine works electrically and the only thing the operator does is pull the lever. Almost exactly the same sort of machine was examined by the South Carolina Supreme Court in [State v. DeAngelis](#), 257 S.C. 44, 183 S.E.2d 906 (1971). In that case the court said that the machine violated what is now [Code § 52-15-10](#) (Code of Laws of South Carolina, 1976, as amended), which says in part:

It shall be unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, punch board, pull board or other device pertaining to games of chance of whatever name or kind, including such machines, boards or other devices that display different pictures, words or symbols, at different plays or different numbers, whether in words or figures. . . . [emphasis added]

The section says, however, that 'coin-operated nonpayout pin tables with free play feature' are legal.

In [DeAngelis](#) the machine had the same features as the one you are asking about: coin-operated, electrical, requiring no skill to play and with a free play feature. The court in [DeAngelis](#) said that that machine did not come under the pin table exemption.

Therefore, to answer your first question it is the opinion of this Office that the machine I have described is a device made unlawful by [§ 52-15-10](#).

Your second question was whether your agents could confiscate such a machine without seeing a 'payoff'. Section 52-15-20 allows officers of the law to confiscate devices prohibited by [§ 52-15-10](#). [Section 52-15-10](#), which I have quoted in part above, prohibits the possession of certain devices. The section does not actually use the word 'gambling' and whether a device is intended for gambling by the owner is irrelevant to whether it is prohibited by [§ 52-15-10](#). See, [Squires v. S. C. Law Enforcement Division](#), 249 S.C. 609, 155 S.E.2d 859 (1967); [State v. Apley](#), 207 S.C. 284, 35 S.E.2d 835 (1945).

Mere possession of the machine is unlawful under § 52-15-10 and officers may seize any machine that is unlawful under that section.

*2 Thus it is the opinion of this Office that officers of the law may confiscate such a device as I have described without seeing a 'payoff'—i.e., the exchange of money in connection with the device's use.

I hope this letter has helped you.

Sincerely,

Eugene W. Yates, III
Assistant Attorney General

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