

1973 S.C. Op. Atty. Gen. 236 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3580, 1973 WL 21037

Office of the Attorney General

State of South Carolina

Opinion No. 3580

July 25, 1973

***1 A 'slot machine' which has a free play register is in violation of the law if any person keeps it on his premises or operates or permits it to be kept on his premises or operated within this State.**

South Carolina Law Enforcement Division

You have requested, in your capacity as an agent for the South Carolina Law Enforcement Division, that this Office advise you as to whether the 'slot machine' is illegal if it only registers games as prizes, and awards no cash consideration.

Section 5-621, Code of Laws of S. C., 1962 states:

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 whatsoever 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 or, which deposit tokens or coins at irregular intervals or in varying numbers to the player or in the machine. But the provisions of this section shall not extend to coin-operated nonpayout pin tables with free play feature or to automatic weighing, measuring, musical and vending machines which are so constructed as to give a certain uniform and fair return in value for each coin deposited therein and in which there is no element of chance.

This Section further provides for a maximum penalty of \$500.00 and one year's imprisonment for violation of the above. The above-referenced act has been construed as a very far reaching statute against all forms of gambling devices, vending machines which could be operated as gambling devices, and all games of chance. *State Ex Rel v. Kizer, et al.* 164 S. C. 383, 162 S.E. 444. This board prohibition has been interpreted as condemning, ' . . . all vending or slot machines or other devices pertaining to games of chance, which display different pictures, words or symbols at different plays, or different numbers whether words or figures, or which deposit tokens or coins at irregular intervals, are in varying numbers to the player or in the machine. In addition to this, the intention upon the score recorded for a player, free games are awarded. Therefore, a is clear that the lure and inducement to the player to operate the machine is the chance of occasionally being allowed to play a game or games without additional cost. This feature, we think, clearly pertains to a game of chance, and this is true, whether the machine is played for amusement or for other return, such as money.' *Alexander v. Martin, Sheriff* 192 S.C. 176, 6 S.E. 2nd 20.

The fact that the 'slot machine' does not make a cash award and has only a free play feature, would not remove it from the prohibition as set forth in Section 5-621, (supra) for as was stated in the case of *Holiday v. Governor of South Carolina*, 78 Fed. Supp. 918, Affirmed 385 U.S. 803, 69 S. Ct. 56, 93 L. Ed. 360, ' . . . a coin operated nonpay pin table with free play feature is a gambling machine . . . These machines have all the elements of a gambling machine, namely, consideration, chance and prize. They do not give a certain uniform return value for each coin deposited. The varying scores are conducive to side wagers. The owner could easily agree to pay off the winner with money instead of playing balls.'

***2** It is, therefore, the opinion of this Office that a 'slot machine' which has a free play register, is in violation of the law if any person keeps it on his premises or operated or permits it to be kept on his premises or operated within this State.

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