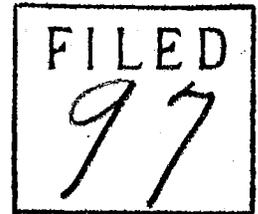


GAMBLING: Setting up or using punch boards violate the provisions of Section 4678, R. S. Mo. 1939.

May 28, 1945



Mr. Hugh P. Williamson
Prosecuting Attorney
Callaway County
Fulton, Missouri

Dear Mr. Williamson:

We acknowledge your request for an opinion, as follows:

"I am writing to inquire whether in your opinion a Punch Board would be considered a gaming and gambling device contrary to the statute.

"These boards, as you may know from observation, have a group of squares on them which are numbered for the consideration of the nickel or dime or quarter to punch one of the squares and get out a number. If this is a lucky number one receives a box of candy or some other valuable article. I believe that the chance for drawing a prize is somewhere in the neighborhood of 100 to 1.

"I would appreciate your opinion on this matter. I find nothing in the law which talks specifically about a punch board. The test of whether a device is a gambling device is whether it is preponderantly a matter of chance and these punch boards certainly are."

In the case of State v. Turlington, 204 S. W. 821, 200 Mo. App. 192, the defendant was charged by information of the Prosecuting Attorney with violating Section 4753, R. S. Mo. 1909 (now Section 4678, R. S. Mo. 1939) by per-

mitting a punch board, alleged to be a gambling device, to be used or operated in his store building.

Section 4678, supra, provides:

"Every person who shall permit any gaming table, bank or device to be set up or used for the purpose of gaming in any house, building, shed, booth, shelter, lot or other premises to him belonging or by him occupied, or by which he hath at the time the possession or control, shall, on conviction, be adjudged guilty of a misdemeanor and punished by imprisonment in the county jail or workhouse for not more than one year nor less than thirty days, or by fine not exceeding five hundred dollars or less than fifty dollars."

The point was made by the appellant in the above case, that the manner in which he conducted the punch board was no offense under the law. The court said that the evidence showed:

"The evidence shows that the punch board was a board in which there were a great many holes. In each of these holes was a small strip of paper containing a number. These holes were covered, but the cover was so designed as to indicate exactly the location of each hole. The prizes were knives and post cards. The knives ranged in value from 50 cents to \$1.50, and the post cards were worth 3 cents each. A small wooden pin was used to punch the covering of the hole. Five cents a punch was charged, and the number on the slip of paper in the hole punched indicated whether a post card or a knife was the reward, and, if a knife, it indicated what knife. There were no blanks. The purchaser of a punch got a post card or a knife. When the board was first set

up a 'punch' was sold for 5 cents; but, being advised that there might be less taint of a gamble or game of chance if the post card was sold in advance, this method was adopted. The post card was sold for 5 cents, and the purchaser was then entitled to a punch. If he got a knife, he was a post card ahead, as compared with original system. The defendant would buy back for three cents the post card if the purchaser desired to sell it. The defendant testified that the post card cost 3 cents, and that he bought back a number of them. So in any event the defendant was 2 cents ahead if the purchaser who got a post card did or did not sell it back. The slips of paper in the holes calling for post cards were far in excess of those calling for knives so that when the entire board was punched there was a margin of gain in favor of the defendant."

And, in holding that such was a gambling device, said:

"Clearly we think such board falls within the class of gambling devices. The incentive prompting any one to take a punch was the chance of getting something of more value than the cost of the chance. The amount of the winner's gain or loser's loss would make no difference, if the chance to win more than was invested was present. It is this chance to get something of more value than the amount invested that characterizes the device as a gambling one. Had the post card which was always drawn, except when a prize of more value was drawn, been in fact of the value of five cents, so that there would have been no chance for the customer or patron to lose, this would not purge the enterprise of its chance character-

istics, because the chance to win more than invested yet remained. This is clearly the law as written in *Moberly v. Deskin*, 169 Mo. App. 672, 155 S. W. 942, from which we quote:

"The chief element of gambling is the chance or uncertainty of the hazard. It is not essential that one of the party to the wager stands to lose. The chance taken by the player may be in winning at all on the throw, or in the amount to be won or lost, and the transaction should be denounced as gaming whenever the player hazards his money on the chance that he may receive in return money or property of greater value than that he hazards. If he is offered the uncertain chance of getting something for nothing, the offer is a wager, since the operator offers to bet that the player will lose and in accepting the chance the player bets that he will win. Such offer, therefore, is a direct appeal to the gambling instinct, which, it is said, possesses every man in some degree, and it is the temptation to gratify the instinct that all penal laws aimed at gambling are designed to suppress."

The court, in passing on the sufficiency of the information under Section 4753, supra, said:

"The sufficiency of the information is challenged. Omitting formal parts, the information is as follows:

"That J. A. Turlington * * * did unlawfully permit a certain gambling device called a punch board, designed and used for the purpose of playing games of chance for money and property,

May 28, 1945

to be used for the purpose of gambling in a certain building there situate, and under the control of him, the said J. A. Turlington,' * * * * *

"The information charges the offense in the language of the statute, and follows approved forms and precedents, and, we think, is sufficient. State v. Wade, supra; State v. Leaver et al., 171 Mo. App. 371, 157 S. W. 821; State v. Howell, 83 Mo. App. 198; Kelly's Crim. Law & Pr. (3rd Ed.) Sec. 953."

In the Turlington case, supra, the court said:

"It is this chance to get something of more value than the amount invested that characterizes the device as a gambling one,"

From the foregoing, we are of the opinion that punch boards are covered by Section (4753 R. S., 1909) 4678 R. S. Mo., 1939.

CONCLUSION

Therefore, it is the opinion of this department that any person who allows any device known as a punch board, which requires a consideration to be paid wherein there is a chance to get something of more value than the amount invested, to be set up or used on his premises is in violation of Section 4678, R. S. Mo. 1939.

Respectfully submitted,

APPROVED:

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Attorney General

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Assistant Attorney General

AVO:CP