

7404- Lelovny



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

August 28, 2002

The Honorable John M. Knotts, Jr.
Senator, District No. 23
Post Office Box 142
Columbia, South Carolina 29202

Re: Video Game Machine Identical to "Chess Challenge"

Dear Senator Knotts:

In a letter to this Office, you have requested that we "... investigate [a] particular [video game] machine and issue an opinion as to whether or not the machine is legal." By way of background, you indicate that you "... have an individual who desires to place video machines in various businesses within [your] district ..." and that the "... machine is basically identical to the 'Chess Challenge' game, but it has race cars on it rather than chess pieces." You also indicate that you have been advised that "... the machine is a game of skill and not a game of chance just like the 'Chess Challenge.'" You have attached to your request a copy of my April 23, 2002 opinion regarding the Chess Challenge video machine.

Initially, I must advise that, by opinion dated July 25, 2002 (copy attached), the April 23, 2002 opinion regarding the Chess Challenge video game machine was rescinded. Subsequent to the issuing of the April 23 opinion, agents with the State Law Enforcement Division seized a Chess Challenge machine as the result of a violation of South Carolina's gambling laws. After reviewing the seized machine, it was apparent that there were material differences in the manner of operation of the Chess Challenge distributed for public use and the machine presented for this Office's review prior to the issuance of the April 23, 2002 opinion. Chance rather than skill determined the outcome of the game played on the seized machine. Accordingly, it is the opinion of this Office that the Chess Challenge video machine is an illegal game of chance, prohibited as contraband *per se* by S.C. Code Ann. §12-21-2710.

Further, with regard to the specific machine addressed in your request, a determination of its legality (whether the machine is contraband *per se*) depends on the application of S.C. Code Ann. §12-21-2710. That Section of the Code provides in pertinent part as follows:

[i]t is 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, or any

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video game with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo or craps, or any machine or device licensed pursuant to Section 12-21-2710 and used for gambling or any punch board, or other device pertaining to games of chance of whatever name or kind, including those 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 regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or to automatic weighing, measuring, musical or vending machines which are constructed as to a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.

The statute makes illegal the mere possession of certain machines and devices regardless of their use or intended use. See State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000); Squires v. South Carolina Law Enforcement Division, 249 S.C. 609, 155 S.E.2d 859 (1967); State v. Appley, 207 S.C. 284, 35 S.E.2d 835 (1945). Machines and devices that fall within the proscriptions of §12-21-2710 are therefore considered contraband per se. State v. 192 Coin-Operated Video Game Machines, supra. While the statute specifically mentions such machines and devices as "slot machines" and "punch boards," it also outlaws any "other device pertaining to games of chance of whatever name or kind ..." A game of chance is simply a "game in which chance rather than skill determines the outcome." See *Black's Law Dictionary*. It is the opinion of this Office as well as a majority of jurisdictions in the United States that the "Dominant Factor" test is the appropriate test to determine whether a game is a game of chance. See OP. ATTY. GEN. DATED AUGUST 28, 2002. That is, a game is a game of chance when chance predominates over skill in determining the results of the game. See OPS. ATTY. GEN. DATED AUGUST 2, 2001, SEPTEMBER 5, 1995, DECEMBER 5, 1978.

In August of 2002, agents with the State Law Enforcement Division seized a video game machine matching the description of the one given in your request as the result of a violation of South Carolina's gambling laws. With the exception that the animated icons resembled race cars, the machine operated in an identical manner to the Chess Challenge. I have been able to review operation of the seized machine with SLED Captain Stacy Drakeford.

The operation of the seized machine can be described briefly as follows: The machine is activated by inserting currency and pressing a start button. The middle of the video screen displays icons [various animated race cars] that rotate in four (4) separate columns. The player can stop the columns all at the same time by pressing a single button or the player can stop each column individually by pressing a button which corresponds to the particular column. Once all columns have been stopped, the machine then triggers a carousel or roulette-style feature which forms a border around the screen. The border consists of panels containing the same icons as may appear

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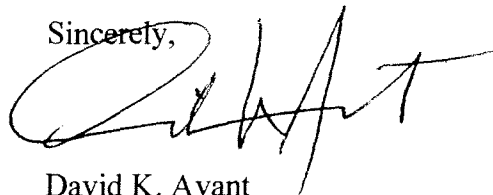
in the columns in the middle of the screen. The machine will eventually stop and will illuminate a panel containing a race car-type animated character. If a combination of numbers on the icons matches in the columns and/or the border, the operator receives additional credits which allow for further play. Although the player may have some ability to control the length of time the icons rotate in the columns, the icons spin in such a manner that skill or manual dexterity plays no part in determining the combination of characters which appear. The speed in which the machine's icons advance is so rapid that the human eye cannot distinguish them or predict where they will land. Further, the rotation and subsequent cessation of the carousel or roulette-style feature is totally beyond the control of the player.

The operation of the seized machine is nearly identical to the Chess Challenge machine which this Office has opined to be an illegal game of chance. The operation is also nearly identical to a video gaming machine known as, among other names, the "Jungle King." Numerous Jungle King machines have been seized by SLED around South Carolina and have been found by reviewing courts to be illegal games of chance pursuant to Section 12-21-2710. Moreover, Captain Drakeford, as well as a well recognized expert in the field who has reviewed these similar machines at the request of the State, has characterized them as video slot machines and "Cherry Master" machines in disguise. Of course, our Supreme Court has found the Cherry Master to be an illegal per se game of chance. See State v. One Coin-Operated Video Game Machine, 321 S.C. 176, 476 S.E.2d 443 (1996).

Given my review of the operation of the video game machine described in your letter and its obvious similarities in manner of operation and appearance to those which courts and this Office have previously opined to be illegal games of chance, it is my opinion that the referenced video machine is a game of chance prohibited by S.C. Code Ann. §12-21-2710. As such, the machine would be subject to seizure by law enforcement and an action for destruction pursuant to S.C. Code Ann. §12-21-2712.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

DKA/an
Enclosure