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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 2, 2001

The Honorable Greg Gregory
Senator, District No. 16
P.O. Box 142
Lancaster, South Carolina 29721

**Re: Redemption machines - "Racing machines" or "Cadillac Jack's"
S.C. Code Ann. §12-21-2710**

Dear Senator Gregory:

Your letter to Attorney General Condon concerning the legality of the above video gaming machines has been referred to me for a response. In your letter, you "request an opinion from [this Office] on a new form of gambling machines now in use in South Carolina." You also indicate that the machines are "[c]ommonly referred to as 'redemption machines', 'racing machines' or 'Cadillac Jack's', they require no skill to play ... [and] ... as was the case with poker machines, the games are initiated by inserting money into the machine ... [further] ... [c]redits are accumulated and redeemed in coupons ... [t]he coupons then can be turned in for merchandise or gift certificates."

As is discussed in great detail below, it is my opinion that there is clearly cause to believe that the machines you describe in your letter are in violation of S.C. Code Ann. §12-21-2710. As such, the machines would be considered contraband per se and be subject to immediate seizure and review pursuant to §12-21-2712 (Seizure and destruction of unlawful machines, devices, etc.).

FACTUAL BACKGROUND

In response to your concerns, I, as well as another Assistant Attorney General, reviewed with SLED the operation of a "Cadillac Jack" machine which had been seized as the result of a previous gambling violation. The results of our review are noted as follows:

The machine offers four possible games, or symbols: horses, trucks, boats, and cars. All four games are played the same way. Five symbols appear, each identified with a number on the side in a certain color. The numbers range from one to thirteen and the colors are green, red, blue, and yellow. In the horse game, we saw a "wild card," which was a donkey or a mule with a star on the side. The following produced winning combinations, arranged from highest point value to lowest:

9 - 13 of the same color
5 of the same number
5 in sequence of the same color
4 of the same number
2 of some number and 3 of some number
all same color
any 5 in a sequence
3 of the same number
2 of the same number and 2 of the same number
2 of the same number or jack higher

The game also had a double-up feature in which the player could double his points. In the horse game for example, horses galloped across the screen one after the other, and each contained a red saddle or a green saddle. The player guesses whether he can stop the horses on a green saddle or red saddle. After the player hits a button, the horses quickly slow down and stop. The player cannot see which horse will be the last when he hits the button.

The game also contains other features we have seen before, such as a circuit board, two counters, a printer for receipts, and buttons which control the play of the game. It also allowed the owner to change the features of the game, such as the symbols, the game speed, the value of the credits, the volume, and the hold/discard feature. The hold feature automatically picks the numbers most likely to give the player a winning hand. The discard version requires the player to affirmatively choose which symbols he wants to keep.

Further, on June 27, 2001, SLED Captain Stacy Drakeford forwarded to me a report concerning an additional gambling incident involving such a machine in an upstate convenience store. The pertinent part of that report states as follows:

This particular machine had the title "REDEMPTION". The Department of Revenue license number is **2262558**. Wording on the screen read "LET'S PLAY", "WIN PRIZES", "FOR REDEMPTION ONLY", AND "JACKPOT". The machine had seven (7) buttons across the front to play. The buttons from left to right were, "ticket", "blank red", "blank green", "double up", "take score", and "play/credit button". The front of the machine had a bill acceptor and a coupon dispenser. The bill acceptor had a sticker on it that read "accepts \$1, \$2, \$5, and \$10 bills"; however the machine did accept a twenty (\$20) dollar bill and gave the proper number of credits of \$.25 per credit.

[The Agent] entered a total of sixty (\$60.00) dollars in the machine. During the course of playing this machine, [the Agent] accumulated 238 skill points. The majority of these points, 200, were accumulated on one hand. [The Agent] had ten credits bet and hit a sequence of two of a kind and three of a kind on the same screen. This sequence is called "Horse Shoes" and is the same as a full house on a video poker machine. [The Agent] then hit a yellow button on the left side of the machine labeled "ticket" that dispensed five (5) \$10 coupons. [The Agent] took the coupons to the store clerk, ..., and was paid off fifty (\$50.00) dollars in cash.

This machine played the same as a video poker machine. The winning hands correlated to those on poker machines. Horses with colored numbers gallop across the screen from right to left. Winning hands are determined by the numbers and colors or a combination of each.

[The Agent] accumulated 238 skill points by hitting several different hands. This writer hit one hand where all the colors were alike and played the same as a flush. Some of the other winning hands were as follows: two of a kind and three of a kind, the same as a full house, a pair of 13's, the same as a pair of aces; and a straight with a wild donkey. The wild donkey is the same as a wild card in a hand on a video poker machine.

LAW / ANALYSIS

Section 12-21-2710 provides in pertinent part as follows:

It 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 video game machine 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 12-21-2720 and used for gambling or any punch board, pull 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, and vending machines which are constructed as to give 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 Doctrine” is the appropriate test to determine whether a game is a game of chance. That is, a game is a game of chance when chance predominates over skill in determining the results of the game. (Numerous state and federal citations omitted).

The intent of the Legislature in using the language contained in §12-21-2710 has been expressed this way: “[i]t is clear that the Legislature, by enactment of the statutes involved, did condemn any devices pertaining to games of chance.” Squires v. South Carolina Law Enforcement Division, supra (interpreting predecessor of §12-21-2710 which made it “unlawful for any person to keep on his premises any slot machine or other device pertaining to games of chance of whatever name and kind”). The same language was held by our Supreme Court in 1941 to make unlawful as a “game of chance” a particular machine even “though there was no pay off on the machine or apparatus for pay off ... [and] no free games were awarded and [the] only element of chance was the score that might be made.” Alexander v. Hunnicutt, 196 S.C. 364, 13 S.E.2d 630 (1941). Accordingly, the designation of a machine as one of “Redemption” has absolutely no effect on its status as a “game of chance.”

The Alexander v. Hunnicutt decision recognizes that games of chance, regardless of their actual or intended use, are uniquely suited for wagering and gambling. As the Court quoted with approval in Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20 (1939), “[e]ven if the ... machine involved in this case is manufactured and intended for lawful operation, its potentiality and design is such that it may be easily put to unlawful use. The regulation or prohibition of such a mechanism need not be postponed until such event occurs [citation omitted].” Further, it is “proper for the Legislature, in order to prevent the use of a device for gambling, to prohibit its possession or ownership.” Squires v. South Carolina Law Enforcement Division, supra.

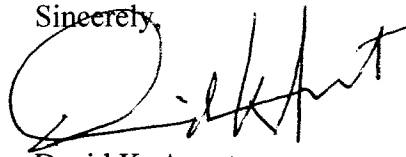
CONCLUSION

As described above, the “Cadillac Jack” or “racing machine” clearly appears to be a “game of chance” as covered by §12-21-2710. The accumulation of the misnamed “skill points” is dependent not on the players skill, but the luck of the draw. In fact, from the above observations of the machine’s operation, it could be said that these machines are no more than expressly prohibited video poker machines playing the game of “Five Card Draw.”

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Based on the information provided and the foregoing authority, it is my opinion that there exist clear probable cause to believe that the "Cadillac Jack" and other substantially similar devices fall within the prohibitions of S.C. Code Ann. §12-21-2710. Consequently, a law enforcement agency would be justified in seizing the device and taking it "before any magistrate ... who shall immediately examine it, and if satisfied that it is in violation of Section 12-21-2710 or any other law of this State, direct that it be immediately destroyed" pursuant to S.C. Code Ann. §12-21-2712.¹

Sincerely,



David K. Avant
Assistant Attorney General

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¹ On July 30, 2001 the South Carolina Supreme Court filed its opinion in the case of Stardancer Casino, Inc. v. Robert M. Stewart, et al. The Court held § 12-21-2710 inapplicable to vessels/boats as they are not premises within the meaning of the statute.