

1978 WL 34922 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 23, 1978

*1 Col. J. L. Altman, Jr.
Chief of Police
City of Beaufort
Post Office Box 889
Beaufort, South Carolina 29902

Dear Col. Altman:

Mr. McLeod has asked me to respond to your opinion request of May 5, 1978. Your letter indicates that the pinball machines in question register free games, yet it is the practice of the bowling alley operator to give cash payoffs for the games. If this understanding is correct, then any illegality would lie with the individual giving the payoff, not with the machine itself. South Carolina Code of Laws, 1976, Section 52-15-10, does specifically proscribe certain gambling machines and devices, but a 'coin-operated nonpayment pin table with free play feature' is expressly excluded from illegality. Since the machines in question are not inherently illegal, they cannot be seized. (See [Alexander Amusement Company v. State](#), 246 S.C. 530, 144 S.E. 2d 718, so construing S.C. Code of Laws, 1962, Section 5-622, presently S.C. Code of Laws, 1976, Section 17-13-20).

Regarding cash payoffs to the pinball player in lieu of extra games, it has been and is the opinion of this office that such a practice constitutes an illegal lottery within the meaning of S. C. Code of Laws, 1976, Section 16-19-10. See 1978, Attorney General's Opinion (March 17 to John H. Cook), 1973 Attorney General's Opinion No. 3544, at 181. In [Darlington Theater, Inc. v. Cooper](#), 190 S.C. 282, 291 (1938), the South Carolina Supreme Court held 'to constitute a lottery or a scheme in the nature of a lottery, it is essential that three elements be present, to wit: (1) The giving of a prize; (2) by a method involving chance; (3) for a consideration paid by the contestant or participant.' The cash payoffs do constitute a 'prize' and clearly the pinball player pays 'consideration' to play the game. With regard to requirement (2) above, winning on some types of pinball machines arguably depends on skill, not chance. Nonetheless, this office maintains that as long as skill and judgment are non-dominant factors in winning, then the machines in question involve the requisite amount of chance to satisfy requirement (2).

To summarize, if all three requirements are in fact met, then the activity is a lottery prohibited by the cited statutory provisions. The activity is punishable but the machines cannot be confiscated. This opinion is predicated upon my understanding, as stated above, that the machine itself merely registers extra games, and it is the owner of the bowling alley in which the machine is located who transfers the extra games into cash payoffs.

If we may be of any further assistance, please do not hesitate to let us know.

Sincerely,

Joseph R. Barker
Assistant Attorney General

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