

1978 S.C. Op. Atty. Gen. 221 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-197, 1978 WL 22665

Office of the Attorney General

State of South Carolina

Opinion No. 78-197

November 17, 1978

***1 SUBJECT: Gambling, Vending Machines**

A bead dispensing machine which upon payment of a quarter dispenses different playing card symbols that are cashed in for various returns with the proprietor of the tavern wherein it is located is prohibited by § 52-15-10.

TO: Nicholas P. Sipe, Esquire
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Alcoholic Beverage Control Commission

QUESTION:

Are 'bead machines' which dispense upon payment of a quarter plastic beads containing slips of paper depicting different playing card symbols which are cashed in for various amounts of cash prohibited under § 52-15-10 of the Code?

AUTHORITIES: § 52-15-10 et seq. Code of Laws of South Carolina, 1976, as amended; [Holiday v. Governor of South Carolina](#), 78 F. Supp. 918 (1948); [Harvie v. Heise, Sheriff, et al.](#), 150 S.C. 277, 148 S.E. 66 (1929) [Griste v. Burch](#), 112 S.C. 369, 99 S.E. 703 (1919); [Alexander v. Hunnicutt, Sheriff, et al.](#), 196 S.C. 364, 13 S.E. 2d 630 (1941); [Calcutt v. McGeachy](#), 213 N.C. 1, 195 S.E. 49; [Alexander v. Martin](#), 192 S.C. 176, 6 S.E. 2d 20 (1939); [Alexander v. State](#), 246 S.C. 530, 144 S.E. 2d 718.

DISCUSSION:

The coin slot machine subject of inquiry operates in the following manner. The operator inserts a quarter in the coin slot. A small opaque plastic bead is dispensed; the bead contains a slip of paper which portrays a facsimile of a 'playing card.'¹ Each slip depicts a different playing card. Depending upon the machine the slip of paper may contain a 'fortune' on the side opposite the 'playing card.' The slip of paper has no intrinsic value, however, the card symbol maintains extrinsic value in that certain depicted cards may be exchanged for money from the proprietor of the tavern or his employee.

[Section 52-15-10, Code of Laws of South Carolina](#), 1976, as amended, proscribes the maintenance and operation of certain types of machines. The drafters intention was to proscribe gambling devices and games tending to promote and encourage gambling instincts. [Holiday v. Governor of South Carolina](#), 78 F. Supp. 918. Within that proscription is '. . . any vending or slot machine, . . . or other device pertaining to games of chance of whatever 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 . . .'

(Emphasis added). The Supreme Court of South Carolina in construing identical language in a predecessor statute concluded that machines which display, at different plays, different numbers, whether in words or in figures are definitely condemned. [Alexander v. Hunnicutt, Sheriff, et al.](#), 196 S.C. 364, 369, 13 S.E. 2d 630. The Court in [Hunnicutt](#) unlawful a slot machine that:

. . . in the playing of which the operator has a chance to make varying scores or tallies upon the outcome which wages might be made. [Alexander v. Hunnicutt, supra](#), citing [Calcutt v. McGeachy](#), 213 N.C. 1, 195 S.E. 49, 51.

*2 The operator of the bead machine undergoes a 'chance occurrence' that one or another symbol will appear. These different and distinct symbols of various playing cards dispensed by the machine vary sufficiently so that bets and wagers may be made thereon. It cannot be said that a machine which dispenses different playing symbols upon slips of papers has any distinction to a machine that displays symbols upon its face. Under each scheme, the end result is the chance occurrence of different and distinct symbols upon which wages might be made.

Furthermore, an additional analysis of the machine's operation reveals that the return is not 'fair and uniform', a requirement for legality. The Courts in South Carolina have carefully scrutinized various slot devices to determine whether or not they fall within the prohibitions of § 52-15-10, especially where the machine appears as offering nothing of value. This scrutiny has involved an analysis of extrinsic factors to determine the machine's true purpose. See, Harvie v. Heise, Sheriff, et al., 150 S.C. 277, 148 S.E. 66; Griste v. Bruch, 112 S.C. 369, 99 S.E. 703. The Court in both Heise and Griste took into consideration the extrinsic value of dispensed trade checks whose intrinsic value was worthless. The evidence revealed that the trade checks could be cashed or traded for property, similar to the situation herein. The Court concluded that this extrinsic value should be considered in determining whether the machine gave a uniform return. Thus, since the extrinsic value of the slips of papers varies depending upon the particular card symbol it cannot be said that the return is uniform. In addition, a worthless return cannot be considered a fair return. Harvie v. Heise, supra. Therefore, it cannot be said that the 'bead machine' gives a fair and uniform return.

CONCLUSION:

The bead machine which dispenses different symbols of playing cards that are cashed in for various returns with the proprietor of the tavern wherein it is located is prohibited by § 52-15-10.

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Footnotes

- 1 Similar machines dispense in identical fashion various portrayals of symbols of a kind and nature displayed on 'monkey machines'. The discussion that follows would apply equally to such machines.
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