

Gambling, skill in amusement games

Number: INFORMAL

Date: March 11, 1996

Mr. Samuel S. Goren
North Lauderdale City Attorney
3099 East Commercial Boulevard
Suite 200
Fort Lauderdale, Florida 33308

RE: GAMBLING--AMUSEMENT GAMES--application of skill in amusement games. s. 849.161, Fla. Stat. (1995).

Dear Mr. Goren:

Thank you for contacting this office regarding whether certain mechanical amusement devices would violate state law. Attorney General Butterworth has asked that I respond to your inquiry.

According to your letter the City of North Lauderdale recently granted a special exception to an applicant seeking to operate a business establishment for the operation of mechanical amusement devices as a secondary use. The issue you have presented in your letter is whether possession and operation of the proposed mechanical amusement devices is legal under Florida law.

The machines which the applicant wishes to install contain nineteen inch monitors and four "skill stop buttons". The applicant has represented that the reels displayed on the device's monitor can be slowed to such a degree that the operator's skill or reflex time would play a significant role in determining whether points or coupons are awarded. These machines will be equipped with ticket dispensers or otherwise permit patrons who successfully match the spinning objects to accumulate points to be redeemed for merchandise. The cost value of the merchandise or prizes awarded will not exceed 75 cents for any game played.

Pursuant to section 849.15(1), Florida Statutes, it is unlawful to possess or permit the operation of any slot machine or device. Section 849.16, Florida Statutes, defines those machines which qualify as a slot machine or device as

"one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him, may:

- (a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or
- (b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also

sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value."

Thus, if the receipt of a prize is dependent on any element of chance, the machine would fall within the above definition of a slot machine proscribed by section 849.15, Florida Statutes.[1]

An exception to the proscription is contained in section 849.161(1), Florida Statutes, for arcade amusement centers which have certain coin-operated amusement games or machines. The statute defines an "arcade amusement center" as a place of business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. The statute provides:

"Nothing contained in this chapter shall be taken or construed as applicable to an arcade amusement center having amusement games or machines which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played. Nothing in this subsection shall be taken or construed as applicable to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as requiring a federal gambling tax stamp under applicable provisions of the Internal Revenue Code."

Thus, section 849.161, Florida Statutes, creates an exemption for a machine that would otherwise be prohibited by Chapter 849, Florida Statutes, if the machine is located in an arcade amusement center and if, by application of skill, the player receives a prize worth less than 75 cents.

In Attorney General's Opinion 95-27, this office advised that the mere pushing of a button marked "skill" would not appear to constitute the application of skill for purposes of qualifying for the exemption in section 849.161, Florida Statutes. The opinion recognizes that some machines may allow a player, through superior knowledge, attention or practice, to determine when to stop the drums in order to win even though the element of chance still exists.

Ultimately, however, as this opinion notes, a determination of whether an arcade game involves the application of skill is one which cannot be resolved by this office. Florida's gambling laws, including section 849.161, Florida Statutes, are criminal in nature and therefore, must be enforced by local law enforcement agencies and prosecuted by the State Attorney's Office for your judicial circuit. While the City of North Lauderdale may deal with a violation of its special exception use, a determination of a violation of state law would appear to be the province of the appropriate law enforcement agency.

I trust that these informal comments will assist you in resolving this matter.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See Op. Att'y Gen. Fla. 89-5 (1989), in which this office determined that a coin operated "crane game" having an unpredictable outcome or chance which is inherent in the machine qualifies as a slot machine or device within the meaning of Ch. 849, Fla. Stat.