

**Lotteries, What Are. Vending Machines, When Lotteries.**

When the prizes which may be given by a gum vending machine are unequal, or when it cannot be told at the time a coin is placed therein whether or not any prize will be forthcoming, same is a lottery.

September 5th, 1914.

Hon. W. H. Meigs,  
County Attorney,  
Great Falls, Montana.

Dear Sir:

I am in receipt of your communication and the enclosures, relating to a gum vending machine which one McCullom asks permission to set up in your county. I have examined the correspondence, and note that you have concluded that the machine comes within the statutory provisions against slot machines. In this I think you are correct, and in addition thereto will say that I think the machine constitutes a lottery, and is therefore, prohibited. This office has had occasion to investigate the question of lotteries, and what would constitute a lottery. Here are some of the definitions as laid down by the courts:

"A lottery is a scheme by which some result is reached by some action or means taken, and in which result man's choice or will has no part; nor can human reason, foresight, sagacity or design, enable him to know or determine such result until same has been accomplished."

People vs. Elliott, 41 N. W., 916, 3 L. R. A. 405.

"Where a pecuniary consideration is paid, and it is determined by lot or chance, according to some scheme held out to the public, what or how much he who pays the money is to have for it, that is a lottery."

"The inducement for investing in such bonds, is the offer of getting some bonus, large or small in the future, soon or late, according to the wheel's disclosure."

Horner vs. U. S. 147 U. S. 462, quoting from Ballock vs. State, 75 Maryland, 1.

"The character of the transaction is not changed by assuming that every chance represents an article intrinsically worth the amount which the person will have to pay. If the prizes are of unequal value, the scheme of distribution would still be a lottery, so also, the fact that along with the element of chance, there is an element of certainty entirely lawful and praiseworthy in itself, does not absolve the uncertain chance element from being a lottery."

Horner vs. U. S. 147 U. S. 462.

From the above definitions, I think you will agree with me that the machine in question would be a lottery, in as much as the prizes in addition to the values given, if any prizes there be, are unequal, and for the further reason that when money is placed in the machine, it cannot be told whether the machine will upon the next play give any prize at all.

Yours very truly,

D. M. KELLY,  
Attorney General