

Opinion No. 251.**Gambling—Pin Board.**

HELD: "Pin Boards," as described in the facts given, are prohibited by the anti-gambling laws.

February 11, 1936.

Mr. Eugene L. Murphy
County Attorney
Choteau, Montana

You have asked for the official opinion of this office as to whether a machine known as a "pin board" is a gambling device as defined by Sections 11159 and 11160, Revised Codes of Montana 1921.

The facts presented in your request are as follows:

"The machine mentioned is operated as follows:

"A coin is placed in a slot and a lever pulled back, at which time ten marbles roll into a compartment within the machine. The operator pulls back a spring plunger and knocks the marbles out upon the board which is studded with numerous nails. There are also slots on the board with numbers on them, the purpose of the game being to knock the marbles into one of these slots. This is quite difficult to do as the nails are placed in such a manner as to keep the marbles out. In case the operator is successful in getting the marble into certain slots he is paid so much in trade or in cash."

We have carefully searched the decisions and all of the opinions that we have been able to find, and they are to the effect that said machines are prohibited as gambling devices.

In *Sparks v. State*, 173 S. E. 216, it is held: "The inherent evil at which this law is aimed is gambling. The fact that one might lose 5 cents or he might for that 5 cents receive 15 cents in merchandise, makes the table a scheme or device for the purpose of hazarding money within this statute. The defendant says, 'Undoubtedly, the table has more skill than chance.' The fact that skill or proficiency might enter into the operation of the machine makes no difference."

In *Howle v. City of Birmingham*, 159 Southern 206, the Supreme Court of Alabama held: "The fallacy of the argument, that the game is one of skill, and that its controlling characteristic is to sell pleasure to the public, clearly appears when we look to the agreed facts showing that, by the turn of a screw or a set of screws in the legs of the machine, it is so re-adjusted that the skill of the most expert player is upset and destroyed. The game is clearly a gambling contest with the owner and operator on the one side, and the members of the public on the other, who, while seeking a moment of diversion, are willing to hazard a nickel with the hope of winning three times that amount, and in which, as the facts alleged in the bill and the admitted facts show, the owner and operator hold the whip handle, and eventually win the stakes in the profits which the machine takes."

In New York the appellate division of the Supreme Court recently pointed out, in *Shapiro v. Moss*, 281 N. Y. S. 72: "This game, which relies for its popularity upon that gambling spirit innate in so many people and which from common knowledge is only a money-making device for the owner and at the expense of the player, should not be looked upon with favor by courts or those public officials who in any way exercise control over them. In our opinion, the machine was designed primarily for gambling purposes, and, therefore, the commissioner of licenses exercised a proper discretion in refusing the license in question." See also *Steed v. State*, 72 S. W. (2d) 542.

In all of the foregoing cases, the machines described by you were condemned as gambling devices. We saw

no cases to the contrary. Therefore, we must advise you that the said machines are prohibited by the anti-gambling act of this State.