

er places five cents in a slot and nine balls are released, and, after playing, the score is computed and for scores over 3100 a prize of twenty-five cents in merchandise or trade checks is given. The winning score is also posted and an additional prize of \$2.50 worth of merchandise or trade checks is given to the person making the highest score each week. You have asked for an opinion as to whether the operation of such device is unlawful.

The prohibition against gambling games is contained in Section 11159 Revised Codes of Montana, 1935, as amended by Chapter 153, Laws of 1937, as follows:

"Every person who deals, or carries on, opens or causes to be opened, or who conducts or causes to be conducted, operates or runs, either as principal, agent, owner, or employee, whether for hire, or not, any game of monte, dondo, fan-tan, stud horse poker, craps, seven and a half, twenty-one, faro, roulette, pangeni or pangene, hokey-pokey, draw-poker, or the game commonly known as round-the-table poker, or any banking or percentage game, or any game commonly known as sure-thing game, or any game of chance played with cards, dice or any device whatsoever, or who runs or conducts or causes to be run or conducted, or keeps any slot machine, punch board, or other similar machine or device, or permits the same to be run or conducted for money, checks, credits, or any representative of value, or any property or thing whatsoever, \* \* \*

This game is not among those games specifically prohibited and unless it comes within the general interdiction, "or any game of chance played with cards, dice, or any device whatsoever" it is not unlawful as a gambling game.

A game of chance is one that is largely determined by mere luck in which judgment, practice, skill, or adroitness is thwarted by chance. (27 C. J. 968). A game of skill is one in which superior knowledge or ability is the determining factor in gaining a victory. The test is whether chance or skill is the dominant element in determining the ultimate outcome. Such games as baseball, billiards, chess, quoits, and rifle matches have all been held to be games of skill. From the

**Opinion No. 279.**

**Gambling—Trade Checks—Ski Ball—Games of Skill.**

HELD: 1. The game of "Ski-Ball," as described in the particular facts given, is a game of skill and not prohibited by statute.

2. Trade checks, redeemable in merchandise, may be given as prizes for superior ability in playing a game of skill, without violation of Chapter 153, Laws '37.

May 10, 1938.

Mr. L. D. Glenn  
County Attorney  
Harlowton, Montana

My dear Mr. Glenn:

You have in your county a miniature bowling alley, known as Ski Ball or Rock-O-Ball, which consists of an inclined plane up which the player rolls a ball, attempting to get it into various sized receptacles at the top. The play-

facts stated the game you have described is in the same category with those mentioned, such as billiards, bowling, in that it requires superior muscular control and a practiced eye to make a score high enough to win a prize. Such a game then must be held to be a game of skill and is not prohibited by the statute.

One other question must be resolved, and that is the question of the payment of prizes in trade checks. In the recent case of *State v. Aldahl and Ober*, No. 7764, 106 Mont. 390, decided March 24, 1938, the supreme court held that the use of trade checks in playing any of the games enumerated in Section 11159, as amended, is gambling, but there is nothing in Chapter 153 or in the decision cited to prevent the award of merchandise prizes for superior ability in the playing of a game of skill, nor is there anything to prevent the award of trade checks representing such merchandise. The prohibition is against the use of the trade checks in playing the enumerated games prohibited by the statute; hence it is my opinion that the game, as described, is not unlawful and is not being conducted in an illegal manner.