

Opinion No. 72-39

August 28, 1972

BY: OPINION OF DAVID L. NORVELL, Attorney General Oliver E. Payne, Deputy Attorney General

TO: James M. Brandenburg, Assistant District Attorney, P. O. Box 617, Taos, New Mexico

QUESTIONS

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Is a converted slot machine which has been mechanically transformed into a vending machine to sell souvenir tokens for 25 cents with no element of chance being involved to be considered a "gambling device" within the meaning of Section 40A-19-1(C), N.M.S.A., 1953 Comp.?

CONCLUSION

No.

OPINION

{*66} ANALYSIS

Section 40A-19-1(C), N.M.S.A., 1953 Comp. defines "gambling device" as a "contrivance which, for a consideration, affords the player an opportunity to obtain anything of value, the award of which is **determined by chance**, even though accompanied by some skill and whether or not the prize is automatically paid by the device." (Emphasis added)

The definition of commercial gambling includes (Section 40A-19-3(F), N.M.S.A., 1953 Comp.):

"Setting up for use, for the purpose of gambling, or collecting the proceeds of, any gambling device."

The offense of commercial gambling is a fourth degree felony. Sections 40A-19-4 and 40A-19-5, N.M.S.A., 1953 Comp. also provide penalties in connection with gambling devices.

Under the plan about which you inquire the conversion of the slot machine is a complete transition from the normal gambling device to a simple vending machine where no element of chance exists. When a quarter is placed into the machine and the lever

pulled, the machine would appear to operate the same as any normal functioning slot machine. The three cylinders which contain various symbols which are displayed through the three glass panels on the front of the machine will operate in the same manner as they would before the machine was converted. However, despite what symbols appear through the glass panels when the machine stops, the participant receives only a token souvenir much the same size and shape as a quarter. One side of the token contains a symbol and the name of the location where the machine is located. The other side of the token contains the words "good luck" and bears a replica of the United States flag. This is all the participant receives, there being no element of chance involved.

Since the element of chance is absent, these machines upon conversion do not fall within the definition of "gambling device" that is contained in Section 40A-19-1, **supra**.