

Opinion No. 15-1614

August 10, 1915

BY: FRANK W. CLANCY, Attorney General

TO: Mr. L. McNeill, Encino, New Mexico.

As to whether a "string table" is a gambling device.

OPINION

{*187} Yesterday I received your letter of the 7th instant, to which I have given very careful attention. Your argument as to the "string table" device which you have invented, to show that it does not partake of the nature of any game of chance is worth a very careful consideration. The nearest approach, in any adjudicated case that we have been able to find, to such a device as yours is in the case of *People v. Stein*, which is reported in Vol. 145 of the New York Supplement. In that case the question was as to whether the operation of a slot machine was gambling or not. It appears that the machine was one by which the player, in return for a penny inserted in a slot, received a penny's worth of gum, but had a chance of receiving more gum or candy, depending upon the channel in which the coin might fall, and it was held that it was a gambling device. The court said that the inducing cause to operate such a device was not to get a cent's worth of gum for present enjoyment, but the chance of getting more as the price of the play, and that this stamped the operation as gambling.

There was, however, in another case which is published in Vol. 91 of the New York Supplement, at page 607, which held as to a slot machine by the operation of which, on the deposit of a nickel, one five cent cigar would certainly come out, and possibly three it was not a gambling device, the court saying that there was absent any element of chance and resulting loss. This decision would be in harmony with your contention. A year later, however, that court reversed itself on this question.

In the case of *Lyman v. Kurtz*, 166 N.Y., 274, it seems that the machine gave out checks to be used in trade, the majority of which were for the precise sum deposited in the slot, but others were for larger amounts, and the court said that the inducement was that the player might get one of the checks for something in excess of the nickel he put in, and that was the vice of the scheme. This is quite applicable to your invention, where the customer pays ten cents and is induced to do so by the chance of his getting something worth more than ten cents.

In view of the conflicting opinions in the New York courts, and we have not had time to give the matter further consideration, I will not venture to predict what our courts might hold as to your "string table." I will say, however, that if the matter should be brought into court by way of any prosecution for the operation of your invention, I am sure that the court, even if it should hold against you, would for a first offense, impose the

slightest possible penalty, and you can never find out whether you are operating an unlawful device or not until you get a judicial decision.