

## Opinion No. 16-1845

July 13, 1916

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Charles I. Irvine. Chief of Police, Clovis, New Mexico.

**Slot Machines.**

### OPINION

{\*406} I have just received your letter of the 11th instant asking my opinion as to a slot machine which you say you have confiscated from one of the pool halls in Clovis, on the ground that such machines are prohibited by law or ordinance. You do not sufficiently describe the operation of the machine so that I can be certain of what answer to make. You say that the owner of the machine contends that its operation is permissible because he gives the player a stick of gum as compensation for each roll, but you think the gum proposition is simply an effort to evade the provisions of the law and ordinance as the machine operates in "the pay what you win" manner of all machines, paying cash when you win.

I notice that on the wrapper of the sample of the gum which you enclosed with your letter appears the name of "Mills Novelty Company." Last year, and again less than a month ago, there was submitted to me the legality of the operation of what is known as the "Mills O. K. Gum Vendor", but from what you say in your letter I must assume that this machine which you have confiscated is of a different character. If, however, your machine is one of the kind called the "Mills O. K. Gum Vendor", I hope that the matter will be promptly and vigorously prosecuted in the courts so that we may have a judicial determination of the question whether that machine is one of the kind forbidden by law or not. In the opinion which I gave in response to the application to me, I indicated that I thought that that machine was forbidden by the law, but I said that I did not predict what view the courts might take. It appeared to me that it was a rather ingenious method of trying to evade the law. If, however, the machine which you write about is as your letter indicates, one where a man may get some money if he wins, I have no doubt that it is forbidden by the statutes.

In 1907 our legislature adopted a statute making it an offense to run or operate any banking games of chance, and the supreme court of the Territory in 1908, in the case of Territory vs. Jones, 14 N.M., 579, held that a slot machine which was played by depositing a coin with a chance of the player getting from one to forty times the amount played by him, was a game of chance within the meaning of that statute. Our present statute was passed in 1913, appearing in Sections 1757 and 1758 of the Codification, and makes it an offense for any person to conduct or operate any game of chance. If the machine which you have seized has any element of chance in its operation by which a person may win varying amounts of money, the fact that the player always gets a

piece of gum would not be sufficient to take the machine out of the definition of a game of chance as given by our supreme court in the case above cited.

{\*407} I have no knowledge of what your city ordinance may be on this subject, but if it attempts merely to cover the same ground as the statute, it would not be operative, but it may go entirely outside of the scope of the statute, and in that case it would be valid.