

## Opinion No. 37-1608

April 21, 1937

**BY:** FRANK H. PATTON, Attorney General

**TO:** Honorable Frank Andrews Mayor, Santa Fe, N. M.

{\*78} This office has within the past few weeks received several inquiries in regard to the matter of licensing by municipalities the operation of slot machines, and in order that the position of this office may be made public in connection with this matter we are taking this opportunity of addressing you and expressing our views due to the fact that it is rumored that the City of Santa Fe intends to pass an ordinance imposing an occupation tax upon the operation of such slot machines.

We wish to direct your attention to Section 58-201 of New Mexico Statutes Annotated, 1929 Compilation, which prohibits the operation of slot machines and which has the effect of placing them in the category of gambling devices.

Chapter 145 of the Session Laws of 1937 is an act authorizing municipal corporations to assess and collect license and occupation taxes. Numerous businesses have been enumerated in this act upon which such taxes may be levied and collected and among these we find slot machines.

There are, of course, many types of slot machines, but for the purpose of this opinion we shall confine these machines to that type of device which requires the insertion in same of a coin and the chance or hazard of securing from the play of same additional coins or chips which have a redeemable value.

It is elementary that municipalities may only enact such legislation as is within the power granted to it by the State Legislature. This power, of course, may be express or implied. A municipality has no power to enact {\*79} legislation which is in contravention of statutory provisions.

The question arises as to the effect of the licensing of slot machines by a municipality insofar as state law is concerned, and this office is taking the position that the use of the words "slot machines" in the occupation tax law does not act as a repeal of the state statute which classes these machines as gambling devices and it is my belief that the operator of a slot machine even though operating under a license issued by the municipality and paying to the municipality a license tax as a privilege for such operation, would nevertheless still be liable to prosecution for operating a gambling device in violation of state law.

It is our belief that the use of the words "slot machines" in the municipal occupation tax law simply means that municipalities may authorize the operation of slot machines if

and when same have been declared by the legislature to be outside the category of gambling devices.

It is the duty of the Attorney General and of the District Attorneys to prosecute gambling cases and should any of these cases be called to the attention of this office and complaint be made, we shall not hesitate to file criminal complaints even though the operator be licensed by the municipality and paying an occupation tax.