

OFFICIAL OPINION NO. 88-39, Manufacture of coin-operated slot machines in South Dakota

September 6, 1988

Mr. Charles M. Turbiville
Governor's Office of Economic Development
Capitol Lake Plaza
Pierre, South Dakota 57501

Official Opinion No. 88-39

Manufacture of coin-operated slot machines in South Dakota

Dear Mr. Turbiville:

You have requested an official opinion from this Office on the following questions:

QUESTIONS:

1. Does the manufacture of coin-operated slot machines in South Dakota for sale outside the state constitute a violation of SDCL 22-25-13?
2. Does the transportation of coin-operated slot machines over South Dakota highways constitute a violation of SDCL 22-25-13?
3. May a fully operational coin-operated slot machine be tested in a manufacturing facility in South Dakota without violating SDCL 22-25-13?

GENERAL DISCUSSION:

Your questions require a careful review of the language of SDCL 22-25-13 and the interpretation given that language by the South Dakota Supreme Court in State v. Cummings, 262 N.W.2d 56 (S.D. 1978).

SDCL 22-25-13 presently provides:

No person shall have in his possession, custody, or under his control or permit to be kept in any place under his possession or control, any slot machine or device upon the action of

which anything of value is staked and which is operated by placing therein or thereon any coins, checks, slugs, balls, chips, tokens, or other articles, or in any other manner as a result of such operation anything of value is won or lost by the operation of such machine, when the result of such operation is dependent upon chance. But the provisions of this section shall not extend to coin-operated nonpayout pin tables and arcade amusements, with free play features. A violation of this section is a Class 1 misdemeanor.

In Cummings the defendant, on appeal from his conviction under SDCL 22-25-13, argued that the provisions of said statute only prohibited the use of slot machines for gambling purposes. The South Dakota Supreme Court rejected defendant's contentions finding that the legislature intended a broader application. The court concluded that:

Language in SDCL 22-25-13 that speaks of a machine 'upon the action of which anything of value is staked and which is operated by placing therein or thereon any coins ... or in any other manner as a result of such operation anything of value is won or lost ...' is language of description and not language that limits the prohibition against the devices described therein to those that are being or have been used for gambling. (Emphasis added.)

262 N.W.2d 59.

The court's decision made it clear that the statute's provisions prohibited the mere possession as well as the use of coin-operated slot machines in this State.

IN RE QUESTION NO. 1:

In answering your first question, it should be noted that the court in Cummings in holding that the possession of slot machines was unlawful referred to slot machines that are "operable." Such language suggests that the statute's application is limited to machines that are capable of immediate or instant operation. The argument can at least be made that a slot machine not completely assembled and ready for use may not be considered "operable" and its possession may not be prohibited.

Whether the slot machines are viewed as "inoperable" or outside the purview of SDCL 22-25-13 would logically depend on the degree to which the machines remained unassembled or in any other manner altered to prohibit operation. Clearly the manufacture of slot machine parts would be permissible under SDCL 22-25-13. On the other hand, the manufacture of a slot machine incapable of operation which can be made operable with

minimal effort, for example with the insertion of a key or attachment of a handle, may be viewed as an attempt to circumvent the intended application of SDCL 22-25-13 and could result in prosecution.

Assuming the slot machines manufactured are considered "operable" as apparently contemplated under Cummings, my answer to your first question is yes.

IN RE QUESTION NO. 2:

Consistent with the foregoing, assuming the same, it is my opinion that SDCL 22-25-13 also prohibits the transportation of coin-operated slot machines over South Dakota highways.

The court's decision in Cummings declaring the mere possession of slot machines in this State unlawful would also equally ban their transportation.

IN RE QUESTION NO. 3:

Lastly, you question whether a fully operational coin-operated slot machine may be tested in a manufacturing facility in South Dakota. In response, I can only conclude that any such testing would constitute a clear violation of the statute.

Without question, the court in Cummings has held that SDCL prohibits the possession of "operable" slot machines. Despite the fact that no money or anything else of value is actually waged in testing. In as much as the testing requires possession of a fully operational machine, it must be deemed unlawful.

Although I doubt the legislature intended to prevent the manufacture of such products in this state by the enactment of SDCL 22-25-13, I feel this interpretation of its prohibition is necessary under the rationale of the Cummings case. A legislative modification of SDCL 22-25-13 would be necessary to permit such an activity.

Respectfully submitted,

Roger A. Tellinghuisen
Attorney General