

OFFICIAL OPINION NO. 08-04, Legality of Quarter Pusher Machines

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

April 30, 2008

Paul Kinsman, Secretary
Department of Revenue and Regulation
445 East Capitol Avenue
Pierre, SD 57501-3185

OFFICIAL OPINION NO. 08-04

Legality of Quarter Pusher Machines

Dear Secretary Kinsman:

You have requested an opinion from this office regarding the following factual situation.

FACTS:

The Division of Property and Special Taxes administers the amusement device tax under SDCL ch. 10-58. This chapter imposes a registration requirement and a four percent (4%) excise tax on any owner or operator that receives gross receipts from the operation of mechanical or electronic amusement devices. Currently, owners and operators of amusement devices fill out a form that informs the Department of the number of amusement devices they have and pay a per device registration fee. If the appropriate fee is submitted with the form, the Department issues a corresponding number of registration stickers that are to be placed on each amusement device. The identity or type of amusement device is not stated in the filings with the Department.

It has come to the Department's attention that there are various business establishments throughout the State that have coin pusher or quarter pusher machines or devices ("quarter pusher machines"). These quarter pusher machines have Department of Revenue amusement device stickers displayed on them pursuant to SDCL 10-58-6. The Department

is also aware that on occasion quarter pusher machines are available for play at various fairs and carnivals held throughout the State.

All quarter pusher machines operate in a similar manner. A player deposits a quarter into a machine containing other quarters, money and prizes that are randomly located on a shelf or shelves, on the chance that through the machine's operation the player's quarter will dislodge other quarters, money and prizes and start a chain reaction resulting in one or more quarters, money and prizes being dispensed to the player. The player, through the use of a slide or wheel, has some control over where the coin is initially deposited in the machine. Once a quarter is deposited, however, the player has no control over the operation of the quarter pusher machine. He cannot control the movement of the quarter, the movement of the other quarters, money or prizes, if or how they fall, or whether quarters, money or prizes are actually be dispensed to the player as a result of the chain reaction.

Based upon the above facts, you have asked the following question:

QUESTION:

Whether quarter pusher machines are prohibited by the South Dakota Constitution or other South Dakota law as games of chance or slot machines, or are quarter pusher machines simply amusement devices to be registered and taxed pursuant to SDCL ch. 10-58?

IN RE QUESTION:

Article III, section 25 of the South Dakota Constitution prohibits games of chance except for those constitutionally excepted. Since no applicable exception applies to your opinion request, the pertinent portion of section 25 provides as follows:

The Legislature shall not authorize any game of chance, lottery, or gift enterprise, under any pretense, or for any purpose whatever

Mechanical or electronic games of chance are generally prohibited as slot machines under SDCL 22-25-13 through 14.1. For purposes of this opinion the relevant provisions include SDCL 22-25-13 and 22-25-14. SDCL 22-25-13 provides:

No person may 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. A slot machine or device is any machine 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. This section does 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.

This section does not prohibit the manufacture, or any act appurtenant to the manufacture, of slot machines or devices in this state for distribution and sale.

SDCL 22-25-14 provides:

All slot machines capable of being used for gambling and places where they are kept or operated together with all property of any kind kept or used in connection with operation of the same, are hereby declared to be public nuisances.

This section does not prohibit the manufacture, or any act appurtenant to the manufacture, of slot machines, or devices in this state for distribution and sale.

The South Dakota Supreme Court, in Bayer v. Johnson, 349 N.W.2d 447, 449 (S.D. 1984), defined a "game of chance" for state constitutional purposes as "a contest wherein chance predominates over skill."

Based upon the facts you have provided, it is my opinion that quarter pusher machines are unconstitutional games of chance that also constitute illegal slot machines under SDCL 22-25-13. Under South Dakota law, a quarter pusher machine is illegal since: (1) something of value is staked with a coin-operated machine; (2) something of value is won or lost by the operation of such machine; and (3) whether a thing of value is won or lost is dependent predominantly on chance. The limited player control over the initial location of the quarter only gives the illusionary appearance of skill. Once the coin is deposited the player has no control over the pushing devices, shelve movement, the chain reaction, when or how quarters fall, or what quarters, money or prizes are dispensed to the player. The actual

payoff depends exclusively on chance and how the coins, money or prizes are piled up on the shelf or shelves at the time the player inserts the quarters.

Given these facts, it is my opinion that chance predominates over skill. Under these circumstances, and consistent with the Court's decision in Bayer v. Johnson, these devices are not amusement devices that are subject to registration and taxation pursuant to SDCL ch. 10-58.

In reaching this conclusion, I note that there are three court decisions that have reviewed the legality of quarter pusher machines under various federal and state laws. These decisions, Mississippi Gaming Commission v. Henson, 800 So.2d 110 (Miss. 2001); State v. Maillard, 695 N.E.2d 637 (Ind. Ct. App. 1998); and United States v. Two (2) Quarter Fall Machines, 767 F.Supp. 153 (E.D. Tenn. 1991) all reached the conclusion that the machines were illegal. None of these courts found that skill predominated over chance in the operation of a quarter pushing machine. Both the Mississippi Supreme Court and District Court concluded that they were illegal devices since there was virtually no skill involved in operating the quarter pusher machines. Two (2) Quarter Fall Machines, 767 F. Supp. at 15; and Mississippi Gaming Commission, 800 So.2d at 114.

Therefore, the answer to your question is that quarter pusher machines are illegal games of chance and slot machines and not amusement games subject to regulation and tax under SDCL ch. 10-58.

Very truly yours,

LAWRENCE E. LONG
ATTORNEY GENERAL

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