Gambling, Chess Challenge II

Number: INFORMAL

Date: October 06, 2003

The Honorable Sandra L. Murman
Representative, District 56
1107 East Jackson Street, Suite 101
Tampa, Florida 33602-4113

Dear Representative Murman:

This is in response to your recent letter requesting that this office review a game known as Chess Challenge II to determine whether it would violate state law. Attorney General Crist has asked that I respond to your request.

According to your correspondence, Castle King LLC has developed a video game called Chess Challenge II. The machine contains video graphic images controlled with buttons by the player. The object of the game is for the player to match four icons displayed on the screen in order to receive a reward of credits. A player's goal is to stop the graphically displayed and sequencing icons in an attempt to match as many of the four displayed icons as possible. Winning players receive merchandise or gifts available at each location where these games are available for play. You have asked whether operation of this device is legal under Florida law.

Pursuant to section 849.15(1), Florida Statutes, it is unlawful to possess or permit the operation of any slot machine or device. Section 849.16(1), Florida Statutes, defines those machines which qualify as a slot machine or device as:

"[O]ne that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:
(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or
(b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value."

Thus, if the receipt of a prize is dependent on any element of chance, the machine would fall within the above definition of a slot machine proscribed by section 849.15, Florida Statutes.[1]

An exception to the proscription is contained in section 849.161, Florida Statutes, for arcade amusement centers and truck stops which have certain coin-operated amusement games or machines. Section 849.161(2), provides a definition of "arcade amusement center" as a place of

business having at least 50 coin-operated amusement games or machines on premises which are operated for the entertainment of the general public and tourists as a bona fide amusement facility. The statute provides:

"(1)(a)1. Nothing contained in this chapter shall be taken or construed as applicable to an arcade amusement center having amusement games or machines which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.

* * *

(b) Nothing in this subsection shall be taken or construed as applicable to a coin-operated game or device designed and manufactured only for bona fide amusement purposes which game or device may by application of skill entitle the player to replay the game or device at no additional cost, if the game or device: can accumulate and react to no more than 15 free replays; can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; can make no permanent record, directly or indirectly, of free replays; and is not classified by the United States as a gambling device in 24 U.S.C. s. 1171 . . . unless excluded from applicability of the chapter under s. 1178. This subsection shall not be construed to authorize video poker games, or any other game or machine that may be construed as a gambling device under Florida law."

Subsection (1)(a)2., creates a similar exemption for amusement games or machines located in a truck stop as defined therein. Thus, section 849.161, Florida Statutes, provides an exemption for machines that would otherwise be prohibited by Chapter 849, Florida Statutes, if those machines are located in an arcade amusement center or truck stop and if, by application of skill, the player receives a prize worth less than 75 cents.

In Attorney General's Opinion 95-27 this office advised that the mere pushing of a button marked "skill" would not appear to constitute the application of skill for purposes of qualifying for the exemption in section 849.161, Florida Statutes. The opinion recognizes that some machines allow a player, through superior knowledge, attention or practice, to determine when to stop the drums in order to win even though the element of chance still exists. Subsequently an Informal Opinion to Senator James King, Jr., dated April 1, 2003, recognized that section 849.161, Florida Statutes, requires that skill be *a factor* in determining whether the player is entitled to receive a prize but does not appear to require that the outcome of the game be dependent *solely* on skill.

Ultimately, however, as this opinion notes, a determination of whether an amusement game involves the application of skill is a question of fact which cannot be resolved by this office.[2] Florida's gambling laws, including section 849.161, Florida Statutes, are criminal in nature and therefore, must be enforced by local law enforcement agencies and prosecuted by the State Attorney's Office in the appropriate judicial circuit.

I trust that these informal comments will assist you in providing assistance to your constituents.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *And see*, Op. Att'y Gen. Fla. 89-05 (1989), in which this office determined that a coin operated "crane game" having an unpredictable outcome or chance which is inherent in the machine qualifies as a slot machine or device within the meaning of Ch. 849, Fla. Stat.

[2] *Id.*