

Gambling, slot machines at truck stops

Number: INFORMAL

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The Honorable James E. "Jim" King, Jr.
President, Florida Senate
Suite 409, The Capitol
404 South Monroe Street
Tallahassee, Florida 32399-1100

Dear Senator King:

You ask for this office's opinion regarding the legality of amusement games operated at truck stops.

Section 849.161(1)(a)2., Florida Statutes, currently provides:

"Nothing contained in [Chapter 849, Florida Statutes] shall be taken or construed as applicable to any retail dealer who operates as a truck stop, as defined in chapter 336 and which operates a minimum of 6 functional diesel fuel pumps, having amusement games or machines which operate by means of the insertion of a coin or other currency 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 limited to noncash prizes, toys, novelties, and Florida Lottery products, excluding 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. This subparagraph applies only to games and machines which are operated for the entertainment of the general public and tourists as bona fide amusement games or machines. This subsection shall not apply, however, to any game or device defined as a gambling device in 24 U.S.C. s. 1171, which requires identification of each device by permanently affixing serial numbering and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, 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."

Thus, section 849.161, Florida Statutes, creates an exemption for a machine that would otherwise be prohibited by chapter 849, Florida Statutes, if the machine is located in a truck stop which operates a minimum of 6 functional diesel fuel pumps and if, by application of skill, the player receives a prize worth less than seventy-five cents. In order to qualify for the exemption, the application of "skill" must be a factor in the player being entitled to receive something of value. While the statute requires that skill be a factor in determining whether the player is entitled to receive a prize, it does not appear to require that the outcome of the game be dependent solely on skill.[1]

As this office has previously recognized, however, the determination as to whether an amusement game entails the application of skill involves questions of fact that this office cannot

resolve.[2] Nor does it seem that amusement games can be evaluated as a whole, but rather must be considered individually. The Legislature may wish to consider authorizing a state agency, such as the Department of Agriculture and Consumer Services or the Department of Business and Professional Regulation, to adopt rules setting standards and guidelines for the operation of these types of games. This would afford the state attorneys and law enforcement more definitive direction regarding the enforcement of Chapter 849, Florida Statutes.

This office stands ready to consider any suggestions on this issue. Thank you for contacting this office.

Sincerely,

Charlie Crist
Attorney General

CC/tjw

[1] Attorney General Opinion 95-27.

[2] *Id.*