

Gambling equipment seized by federal government

Number: INFORMAL

Date: June 01, 1998

Mr. Donald Moreland
United States Marshal
United States Department of Justice
611 North Florida Avenue
Tampa, Florida 33602

RE: GAMBLING--UNITED STATES--inspection of gambling equipment seized by potential U.S. bidder.

Dear Mr. Moreland:

You ask whether gambling equipment seized by the federal government may be inspected by prospective buyers in Florida if "sale" of the equipment is conducted in another state.

According to your letter, the United States Marshals Service recently seized gambling equipment that was in violation of Title 15 United States Code 1177, Transportation of Gambling Devices. You state that the equipment has been registered with the Legislative History and Gambling Devices Unit, Criminal Division of the United States Department of Justice, and has been ordered forfeited and disposed of by local, state, and federal law.

You recognize that it is illegal to sell the gambling machines in this state. The equipment, therefore, will be auctioned off in another state. You ask, however, whether Florida law would permit interested buyers to inspect the equipment here. The successful buyer would then make arrangement to transport the equipment from your custody, thus saving the United States Government the expense of transporting the equipment to another state for sale.

Section 849.231(1), Florida Statutes, provides:

"Except in instances when the following described implements or apparatus are being held or transported by authorized persons for the purpose of destruction, as hereinafter provided, and except in instances when the following described instruments or apparatus are being held, sold, transported, or manufactured by persons who have registered with the United States Government pursuant to the provisions of Title 15 of the United States Code, ss. 1171 et seq., as amended, so long as the described implements or apparatus are not displayed to the general public, sold for use in Florida, or held or manufactured in contravention of the requirements of 15 U.S.C. ss. 1171 et seq., it shall be unlawful for any person to manufacture, sell, transport, offer for sale, purchase, own, or have in his or her possession any roulette wheel or table, faro layout, crap table or layout, chemin de fer table or layout, chuck-a-luck wheel, bird cage such as used for gambling, bolita balls, chips with house markings, or any other device, implement, apparatus, or paraphernalia ordinarily or commonly used or designed to be used in the operation of gambling houses or establishments, excepting ordinary dice and playing cards."

This office has taken the position that slot machines do not come within the scope of section 849.231(1), Florida Statutes, and, thus, the exemption contained in the statute which authorizes a person who is in compliance with the Federal Gambling Devices Act to hold, sell, transport or manufacture certain gambling devices, does not apply to such machines.[1]

Moreover, while section 849.231(1), Florida Statutes, recognizes a limited exception for certain types of gambling equipment and paraphernalia, it does not permit the equipment to be displayed to the general public. Permitting members of the public who may wish to bid on the gambling equipment at public auction to view the equipment within the state would appear to be contrary to such a provision. As an exception to the general prohibition against gambling in this state, the provisions of the statute should be read strictly.[2]

Accordingly, I am of the opinion that the gambling machines held by the federal government may not be shown in this state to persons who may be interested in bidding on such equipment even though the actual auction is held outside of the state.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See Op. Att'y Gen. Fla. 94-69 (1994). The conclusion is based on the language of the statute which does not include slot machines as well as case law which has recognized a distinction between slot machines and other gambling devices. See *Schultz v. State*, 361 So. 2d 416 (Fla. 1978), in which the court determined that the certain items listed in s. 849.231, Fla. Stat., could, under some circumstances, be innocent in nature; and *Department of Business Regulation, Division of Alcoholic Beverages and Tobacco v. Rains*, 477 So. 2d 1029 (Fla. 2d DCA 1985), making it clear that s. 849.15, Fla. Stat., relating to slot machines, and s. 849.231 are not interrelated and in fact, reflect the dissimilar natures of the gambling devices listed therein.

[2] See *Perlman v. State*, 269 So. 2d 385 (Fla. 4th DCA 1972); *PPI, Inc. v. Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering*, 698 So. 2d 306 (Fla. 3d DCA 1997); Op. Att'y Gen. Fla. 96-17 (1996). And see *Samara Development Corp. v. Marlow*, 556 So. 2d 1097, 1100 (Fla. 1990) (exceptions or provisos should be narrowly and strictly construed); *State v. Nourse*, 340 So. 2d 966, 969 (Fla. 3d DCA 1976) (statutory exceptions to general prohibitions must be construed strictly against the one who attempts to take advantage of the exception).