

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 3, 1973

To Kenneth M. Curtis, Governor Dept. Executive
From Jon A. Lund, Attorney General Dept. Attorney General
Subject Interpretation of Recent Gambling Enactments

SYLLABUS:

1. Pursuant to 17 M.R.S.A., §§301-A and 1803, duly licensed organizations may lawfully operate slot machines, roulette wheels, crap games and other games of chance.
2. Although no state agency can prevent the installation of slot machines by organizations duly licensed to operate slot machines, rigorous enforcement of the Maine gambling laws by the Chief of the State Police, in conjunction with the enforcement of federal gambling statutes by federal authorities, may delay widespread operation of slot machines until the Legislature has had an opportunity to review the recently enacted gambling bills.

FACTS:

During its 1973 Regular Session, the Maine Legislature enacted a bill (P.L. of 1973, c. 265) amending 17 M.R.S.A., §1803 to exclude from that section's general prohibition against gambling the operation of 25¢ games of chance by nonprofit agricultural societies or other nonprofit organizations. A subsequent 1973 enactment (P.L. of 1973, c. 565) further amended 17 M.R.S.A., §1803 by requiring a license for the operation of 25¢ games of chance and by restricting the types of nonprofit organizations eligible to operate games of chance to nonprofit agricultural societies and "bona fide charitable, educational, fraternal, patriotic or religious organizations."

P.L. of 1973, c. 565 also added section 301-A to Title 17 of the Revised Statutes. This new section authorizes the Chief of the State Police to issue a license for the operation of a game of chance, subject to the application provisions of 17 M.R.S.A., §302, to any nonprofit agricultural society or to a bona fide charitable, educational, fraternal, patriotic or religious organization which was in existence at least five years prior to its application for a license.

NOT A FINAL OPINION

17 M.R.S.A. §302 provides that an application for a license to operate a game of chance (1) be signed by a representative of the organization to be licensed, (2) contain the full name and address of the organization or its representative and the location where the game will be conducted, and (3) bear the consent of the municipal officers of the town or city in which the applicant organization proposes to operate the game of chance.

17 M.R.S.A., §306 expressly provides that any statutes or parts of statutes inconsistent with the provisions of Chapter 13 of Title 17 are inoperative as to that chapter.

QUESTIONS:

1. Will the operation of slot machines, roulette wheels and crap games be lawful under the new gambling statutes?

2. If the operation of slot machines will be lawful, does the Governor, the Department of Public Safety or any other office have the authority to prevent the installation of slot machines until the Legislature has an opportunity to review 17 M.R.S.A., Sections 301-A and 1803?

ANSWERS:

1. Yes.

2. No.

REASONS:

1. The second sentence of 17 M.R.S.A., §1803, as amended by P.L. of 1973, c. 565, authorizes the operation of 25¢ games of chance by certain types of organizations. Section 1803 contains no language defining what is meant by a "game of chance," nor does it give any indication as to what games are included within (or excluded from) the term "games of chance." In the absence of any such limiting language, one must assume that the legislature intended the term "games of chance" to mean all games of chance.

NOT A FORMAL OPINION

A "game of chance" has been defined as a game in which the element of chance or luck, rather than skill, is the dominating element that determines the result of the game. See State v. One 5¢ Fifth Inning Baseball Machine, 241 Ala. 455, 3 So.2d 27, 28 (1941); 38 Am. Jur. 2d, Gambling, §4 at n. 14. For a game to constitute a game of chance under 17 M.R.S.A., §1803, not only must the element of chance predominate, but the player must risk something of value (25¢ or less) for a chance to obtain something of value -- that is, there must be a gambling. Section 1803 refers to " ... games of chance where the amount gambled ... " (Emphasis added). Therefore, to constitute a game of chance under 17 M.R.S.A., §1803 a game must have these elements: the payment of a price for a chance to gain a prize. See Westerhaus Co. v. Cincinnati, 165 Ohio St. 327, 135 N.E.2d 318, 325 (1956).

Courts applying these principles generally have held the playing of slot machines, roulette and craps for money and other property to be games of chance. See Zaft v. Milton, 96 N.J.Eq. 576, 126 A.29, 31 (1924) (roulette a game of chance; National Conference on Legalizing Lotteries, Inc. v. Farley, 96 F.2d 861, 863 (D.C. Cir.), cert. denied, 305 U.S. 624, 59 S.Ct. 85, 83 L.Ed 399 (1938) (craps a pure game of chance); State v. LeNoir, 60 Ariz. 57, 130 P.2d 1037, 1039 (1942) (craps a game of chance). See also 38 Am. Jur. 2d, Gambling, §88 at n. 10:

Slot machines of the type where, upon the insertion of a coin and the pulling of a lever, the internal mechanism of the machine is set in motion and the machine occasionally pays off in money or tokens depending upon the operation of that internal mechanism have generally been held to be machines or devices for the playing of games of chance, as that phrase is used in the popular sense to connote a game in which the result depends upon chance as distinguished from certainty or skill.

Since these games constitute games of chance, they may be operated by organizations duly licensed to operate them.

The operation of slot machines by duly licensed organizations cannot be deemed violative of 17 M.R.S.A., §1811, which prohibits the possession of slot machines

NOT A FINAL OPINION

and other gambling devices. Since 17 M.R.S.A., §306 declares that any statutes inconsistent with the provisions of Chapter 13 of Title 17 are inoperative as to Chapter 13, and since 17 M.R.S.A., §1811 is inconsistent with 17 M.R.S.A., §301-A, which authorizes the licensing of organizations to operate slot machines and other games of chance, §1811 is inoperative as to §301-A.

In conclusion, then, under 17 M.R.S.A., §§301-A and 1803 slot machines, roulette, craps and other games of chance may be operated within the State of Maine provided that (1) they are operated by organizations duly licensed by the Chief of the State Police to operate them and (2) no more than 25¢ is gambled by a player on each game played.

2. There is no provision in the Constitution of the State of Maine which restricts the power of the Legislature to permit gambling of any and all sorts. Maine State Raceways v. LaFleur, 147 Me. 367, 370, 87 A.2d 674, 677 (1952). Therefore, the recent enactments authorizing licensed organizations to operate slot machines and other 25¢ games of chance constitute a valid exercise of the legislature's police power. As such, these enactments must be recognized as the declared public policy of the State by the Governor, the Department of Public Safety and other state agencies, which cannot subvert that policy by preventing licensed organizations from installing slot machines.

However, until the Special Session of the 106th Legislature can review the gambling laws, widespread use of slot machines may possibly be abated by the rigorous enforcement of state and federal gambling laws. To achieve this end, the Chief of the State Police, who is responsible for the licensing of games of chance under 17 M.R.S.A., §301-A, might pursue the following courses of action:

- (1) Ascertain whether municipal officers have consented to the operation of slot machines by the applicant within the municipality.

All licenses for the operation of games of chance are issued subject to the provisions of 17 M.R.S.A., §302. Section 302 requires that before a license be issued, the applicant organization must obtain the consent of the municipal officers of the town or city in which the applicant proposes to operate the game. Consequently, if municipal officers throughout the State deny consent to applications for the operation of slot machines within their respective municipalities, the number of organizations licensed to operate slot machines may be greatly

NOT A FORMAL OPINION

reduced. The Chief of the State Police should ensure that license applicants have properly procured the consent of the municipal officers.

- (2) Screen meticulously all applications for licenses to operate slot machines.

In screening applications for licenses to operate slot machines, the Chief of the State Police should make absolutely certain (1) that the applicant has complied with all the provisions of 17 M.R.S.A., §302; (2) that the applicant organization has been in existence for at least 5 years prior to its application for a license; and (3) that the applicant is a nonprofit agricultural society or a bona fide charitable, educational, fraternal, patriotic or religious organization. If, on the basis of the foregoing, the Chief of the State Police determines that there are grounds for the denial of a license, he should return to the applicant both the application and a statement of the grounds for denial. See P.L. of 1973, c. 433.

- (3) Enforce 17 M.R.S.A., §1811 against all persons who possess slot machines but who are not licensed to operate them.

The exemption from the provisions of 17 M.R.S.A., §1811 provided by 17 M.R.S.A., §306 should be limited to organizations licensed to operate slot machines. As a general rule, statutes which authorize gambling activities should be strictly construed and all reasonable doubts should be resolved so as to limit the powers and rights claimed under their authority. See West Indies, Inc. v. First National Bank, 67 Nev. 13, 214 P.2d 144, 154 (1950). See also Aicardi v. Alabama, 19 Wall. (U.S.) 635, 22 L.Ed. 215 (1873). Thus, although 17 M.R.S.A., §1811 must remain inoperative as to organizations licensed to operate slot machines, that section and sections 301-A and 306 should be strictly construed so as to prohibit possession of a slot machine by any person or organization not licensed to operate slot machines.

NOT A FORMAL OPINION

(4) Prohibit the sale or distribution of slot machines within the State.

Again applying the rule of strict construction, the Maine gambling statutes -- Chapters 13 and 61 of Title 17 -- should be construed so as to prohibit the sale or distribution of slot machines within the state. This prohibition would extend even to those organizations licensed to operate slot machines.

First, it must be conceded that implicit in the power to operate a slot machine is the power to obtain a slot machine. To hold otherwise would be to render the "games of chance" legislation a nullity. However, the new gambling enactments give no authorization either expressly or impliedly, for the intrastate sale or distribution of slot machines. Arguably the Legislature did not intend, in an area which has been so closely regulated, to open the door to a new range of gambling activity -- i.e., the wholesale distribution of gambling devices within the state -- without express authorization. Construing the gambling statutes strictly to prohibit the sale or distribution of slot machines within the state will help defer widespread operation of slot machines, but will not infringe upon the right of licensed organizations to obtain slot machines. These organizations may obtain their gambling devices directly from out-of-state sources.

Persons or organizations who sell or distribute slot machines within the state may be subject to the penalty provisions of 17 M.R.S.A., §1811.

(5) Request the cooperation of federal law enforcement authorities.

Several federal statutes attach criminal penalties to the unlawful transportation, operation or distribution of slot machines and other gambling devices. Enforcement of the federal gambling laws within the State of Maine by federal authorities will help forestall the widespread operation of slot machines within the State. State authorities should be aware of the following provisions of federal law:

Under 15 U.S.C. §1172 the interstate transportation of a slot machine to anyone other than a gambling establishment licensed by the State of Maine to operate the slot machine is unlawful. Under the same section it is also unlawful to transport

NOT A FORMAL OPINION

from out-of-state a slot machine to any licensed gambling establishment within the State of Maine unless the machine is to be used at that establishment. Presumably, then, to transport from out-of-state to an in-state person or organization a slot machine which is intended for sale or distribution is unlawful under the federal gambling laws.

Under 15 U.S.C. §1173(a)(3), it is unlawful for any person to operate a slot machine, if such person has purchased or received the machine knowing that it has been transported in interstate or foreign commerce, unless that person has registered with the Attorney General of the United States. Since the strict construction of the Maine gambling statutes as proposed herein would require all slot machines to be obtained from out-of-state sources, under federal law no Maine organization may operate a slot machine until that organization has registered with the Attorney General of the United States.

Under 26 U.S.C. §4901(a) no person may operate a slot machine until he has paid the occupational tax imposed upon slot machines and other gambling devices by 26 U.S.C. §4461(a).

Enforcement of these federal laws, together with the rigorous enforcement of state gambling statutes by Maine law enforcement authorities, will do much to forestall the operation of and minimize the presence of slot machines within the State until such time as the Legislature can review the new gambling laws. If the Legislature should choose to terminate or modify privileges granted under the new gambling laws, objections to the validity of the remedial legislation on constitutional grounds will fail. Maine State Raceways v. LaFleur, 147 Me. 367, 375, 87 A.2d 674 (1952) ("The legislature has seen fit to legalize gambling, in a limited and regulated manner, under (specific statutes). The enactment of the laws therein carried constituted no surrender of its right to terminate the privileges granted at any time or to modify them in any manner it might see fit.")

Finally, it should be noted that although the reasoning for the answer to QUESTION 2 deals primarily with slot machines, the same reasoning may be applied to other games of chance. For example, subsections (1) and (2) to QUESTION 2 apply to all games of chance; subsections (3) and (4) apply to all types of gambling materials and apparatus the possession of which is prohibited by 17 M.R.S.A., §1811; and subsection (5) applies to all "gambling devices" and "coin-operated gaming devices" as defined by 15 U.S.C. §1711(a) and 26 U.S.C. §4462 respectively.

MAINE STATE RACEWAYS