

Slot machines, games dependent on player's skill

Number: INFORMAL

Date: December 02, 2003

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

Dear Representative Murman:

You have requested the opinion of this office as to whether a game known as Chess Challenge II complies with the laws of the state if it operates as a game of skill in which a player's skill determines his or her receipt of a prize.

You have provided this office with a Summary of Forensic Findings of Chess Challenge II prepared by Bob Snyder and Associates of the National Games Laboratories as well as play trials and subject declarations. According to your letter, Mr. Snyder states that Chess Challenge II is a game of skill that awards redemption tickets to a player and which outcome is determined by the ability of the player and not the game. You ask this office to confirm that if Chess Challenge II operates as a game of skill in which a player's skill determines his or her receipt of a prize, it is a lawful game under the laws of Florida.

While this office has recognized that games of skill in which skill predominates over chance do not constitute prohibited lotteries,[1] slot machines are treated differently in Florida. 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." (e.s.)

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.[2] The Supreme Court of Florida, in considering the statutory definition of a slot machine, stated in

Deeb v. Stoutamire,[3]

"The law denouncing slot machines defines them as devices so adapted that 'as a result of the insertion' of a coin they are 'caused to operate or may be operated, and by reason of *any element of chance or of other outcome of such operation unpredictable by him*, the user may receive or become entitled to receive any thing of value' or anything which may be exchanged for something of value, such as money or merchandise, 'or the user may secure additional rights' to play, 'even though [the machine] may, in addition to any *element of chance or unpredictable outcome*' deliver merchandise or entertainment." (emphasis supplied by Court)

The Court defined slot machines by referring to the chance or unpredictability of the mechanism, not of the player. While the statutory definition of slot machines has been subsequently amended, such amendments do not appear to have affected the operative language of the Court's holding in *Deeb*. More recently, the district court in *State, Department of Business and Professional Regulation, Division of Alcoholic Beverages v. Broward Vending, Inc.*,[4] relied on *Deeb* in reversing the lower court's ruling that a game machine in which skill was a significant factor in operating and winning did not violate the statute. Instead the district court held that where chance is an element of the game, section 849.15, Florida Statutes, is violated:

"In the instant case, the owner of the machine admitted that chance is an element of the game. Indeed, if a player does not manipulate the levers to improve the score, the machine is preset for the player to win 55% of the time, although that percentage could be modified by an adjustment of the machine. While skill will significantly improve the player's winning percentage, it does not eliminate the element of chance in the machine itself. The machine is not like the bowling machine, which requires solely the skill of the player to slide the puck and knock down the pins, the machine merely tabulating the score. Here, the game is set to play itself and to record a certain win/loss ratio. Thus, the element of chance is inherent in the game.

The rationale of *Deeb* requires a reversal of the order of the trial court."[5]

According to your letter, the Summary of Forensic Findings of Chess Challenge II and submitted play trials and subject declarations indicate that Chess Challenge II is a game of skill in which the player's skill and not the machine determines his or her receipt of a prize. If Chess Challenge II does not contain an element of chance inherent in the machine and the player's skill rather than any element of chance in the machine determines the outcome of the game, the game would not constitute a slot machine within the meaning of section 849.15, Florida Statutes. The determination, however, as to whether, in fact, Chess Challenge II depends solely on the player's skill with no element of chance inherent in the machine presents a question of fact that this office cannot resolve.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See, e.g., Ops. Att'y Gen. Fla. 90-58 (1990) and 90-35 (1990).

[2] 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.

[3] 53 So. 2d 873, 874 (Fla. 1951).

[4] 696 So. 2d 851 (Fla. 4th DCA 1997).

[5] *Id.* at 852.