



TYRONE C. FAHNER  
ATTORNEY GENERAL  
STATE OF ILLINOIS  
SPRINGFIELD

June 28, 1982

FILE NO. 82-019

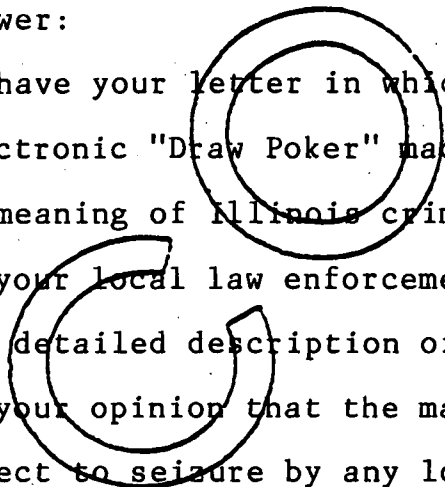
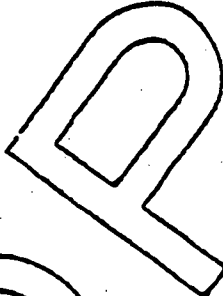
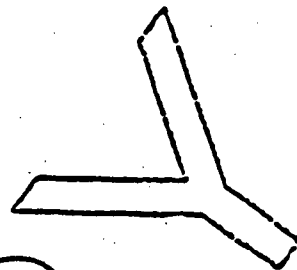
CRIMINAL LAW AND PROCEDURE:  
Gambling Device Subject to  
Seizure by Local Authority

Honorable L. Patrick Power  
State's Attorney  
Kankakee County  
Courthouse  
450 East Court Street  
Kankakee, Illinois 60901

Dear Mr. Power:

I have your letter in which you inquire whether a certain electronic "Draw Poker" machine is a gambling device within the meaning of Illinois criminal law and subject to seizure by your local law enforcement agencies. You have furnished a detailed description of the machine in question. I agree with your opinion that the machine is a gambling device and is subject to seizure by any local authority within whose jurisdiction such a machine may be found.

You describe the "Draw Poker" machine as an electronic, closed circuit television device, approximately four



Honorable L. Patrick Power - 2.

feet in height and two feet in width. At the top of the screen are the words "Draw Poker". You state that a royal flush wins 100 skill points, a straight flush wins 50 skill points, and other poker hands win different numbers of skill points. To play the device a player places one to nine quarters in a 25 cent slot. He receives a credit for each quarter and may bet as many of his credits as he wishes on each deal of the cards. He obtains his deal of five cards which appear on the television screen when he presses the "Deal" button. If he wishes to change any or all the cards he presses a "Discard" button.

If a player receives any of the designated poker hands he receives the amount of stated skill points multiplied by the amount of his bet. You state, for example, that if a player bets 3 credits and receives a straight flush, he receives 50 skill points multiplied times his bet of 3 credits, giving him 150 credits. Players, in some instances, receive cash (usually 25 cents) for each of the total credits that they acquire. After the player is paid for the total credits, the proprietor presses a button hidden below the coin slot. This button cancels all credits won.

Draw poker is a game of chance and constitutes gambling when played for money or other things of value. (Lavick v. Nitzberg (C.A. Cal. 1948), 188 P.2d 758, 759;

Honorable L. Patrick Power - 3.

Zellers v. White (1904), 208 Ill. 518, 527.) The "Draw Poker" machine you describe is a gambling device because it is incapable of lawful use and is constructed for the reception of money and returns on chance to the player a right to receive money (a credit). Section 28-5(a) of the Criminal Code of 1961 (Ill. Rev. Stat. 1981, ch. 38, par. 28-5(a)) provides:

"Seizure of gambling devices and gambling funds.  
(a) Every gambling device which is incapable of lawful use is contraband and shall be subject to seizure, confiscation and destruction by any municipal, or other local authority, within whose jurisdiction the same may be found. As used in this Section, a 'gambling device which is incapable of lawful use' includes any slot machine, and includes any machine or device constructed for the reception of money or other thing of value and so constructed as to return on chance to the player thereof money, property or a right to receive money or property.

\* \* \*

You refer to the decision in People v. One Device Known as a "Joker" or "Slotless" Slot Machine (1952), 346 Ill. App. 562, as authority for your opinion that the "Draw Poker" machine is a gambling device subject to seizure by local authorities. In that decision the court held that a machine designated as a "Joker" or "Slotless" slot machine was a gambling device per se subject to seizure by city police officers. The only difference between the "Joker" or "Slotless" slot machine and the old time slot machines was that no money was put into the machine when played, or discharged

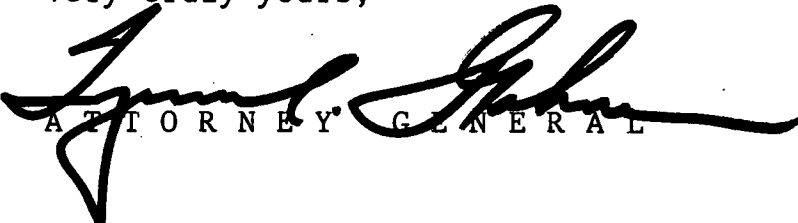
Honorable L. Patrick Power - 4.

therefrom when the person won. The player obtained plays on the "Joker" or "Slotless" slot machine by paying the bartender a nickel for each play. If a winning combination of symbols appeared in the window, the bartender paid the player an appropriate number of nickels.

I agree that there is a similarity between the "Joker" or "Slotless" slot machine and the "Draw Poker" machine that you described. Money is required to play each machine which is a game of chance. If a player receives a winning combination on either machine he is paid a certain amount of money by some person, usually a bartender.

I am of the opinion that the "Draw Poker" machine described by you is a gambling device within the meaning of section 28-5(a) of the Criminal Code of 1961 (Ill. Rev. Stat. 1981, ch. 38, par. 28-5(a)). It is a machine that is incapable of lawful use, is constructed for the reception of money, and returns on chance to the player a right to receive money. This machine is therefore subject to seizure by any local authority within whose jurisdiction such a machine may be found.

Very truly yours,

  
ATTORNEY GENERAL