S T A T E O F T E N N E S S E E
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April 30, 2002

Opinion No. 02-054

Legality of Redemption Machines

QUESTION

Whether a so-called "redemption machine," which upon payment of a fee allows a person an opportunity to play to potentially win coupons redeemable on-premises for merchandise perceived as having a greater value than the cost to play the machine, is legal under Tennessee's Constitution and statutes?

OPINION

The "redemption machine" as described herein is an illegal "lottery" prohibited by the Tennessee Constitution and the gambling laws.

ANALYSIS

The opinion of this Office has been requested as to the legality of a so-called "redemption machine," which for the deposit of money, allows a person to play a video or other game with the opportunity to win coupons. Apparently these coupons are redeemable on the premises for merchandise or food. The machine is described as not containing a knock-off switch to remove winning credits. Apparently, there are no free plays and a person must deposit money in order to play the machine for an opportunity to win the coupons redeemable for merchandise. It is assumed that whether a player wins coupons on the machine is principally determined by chance. It is further assumed that the merchandise for which the coupons may be redeemed may be perceived by a player as having a greater value than the cost to play the machine.

Lotteries for any purpose, charitable or otherwise, are unlawful in Tennessee. *Secretary of State v. St. Augustine Church/St. Augustine School*, 766 S.W. 2d 499, 500 (Tenn. 1989). Article XI, Section 5 of the Tennessee Constitution provides: "The Legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this State." If the "redemption machine" is a lottery, currently the legislature cannot pass a law to allow the machine to be operated in Tennessee.

Early Tennessee decisions defined a lottery as "a game of hazard in which small sums are ventured for the chance of obtaining a larger value either in money or articles". *France v. State, 65 Tenn.* 478, 484 (1873). Three elements present in a lottery are: (1) chance, (2) prize, and (3) consideration. *State ex rel. District Attorney General v. Crescent Amusement Co.*, 170 Tenn. 351, 357, 95 S.W. 2d 310, 312 (1936). The "redemption machine" as described herein exhibits the three elements of a lottery.

Furthermore, by design, the definitions in the current gambling provisions include lotteries and are broader than those found in earlier law. Following an amendment in 1989, "gambling" is presently defined in Tenn. Code Ann. § 39-17-501(1) as "risking anything of value for a profit whose return is to any degree contingent on chance, but does not include a lawful business transaction." The Sentencing Commission Comments state that "the commission intends to include any scheme by which value is risked upon a chance for greater value as a 'gambling' offense." *Id.* "'Gambling' includes lotteries . . . or any as yet unnamed scheme where value is risked for profit." *Id.* The exemption for a "lawful business transaction," such as futures and commodities trading, is not applicable here. Tenn. Code Ann. § 39-17-503 prohibits as a misdemeanor offense "gambling promotion," while Tenn. Code Ann. § 39-17-504 prohibits as a felony offense "aggravated gambling promotion."

"Gambling device" is defined in Tenn. Code Ann. § 39-17-501(3) to mean "anything designed for use in gambling, intended for use in gambling, or used for gambling." Tenn. Code Ann. § 39-17-505(a) specifies that it is a criminal offense if a person "knowingly owns, manufactures, possesses, buys, sells, rents, leases, stores, repairs, transports, prints or makes any gambling device or record."

It is evident that the features of the "redemption machine" in question present a player with the opportunity to win coupons redeemable for merchandise, that is, a "profit whose return is . . . contingent upon chance." The gaming statutes historically have been found to prohibit prize giveaways restricted to purchasers of products (commonly known as "gift enterprises"). *See, e.g., Painter v. State*, 163 Tenn. 627, 45 S.W. 2d 46 (1932)(mint vending machine that delivered in addition to mints an unknown number of chips with value constituted a "gaming device"); *Eubanks v. State*, 50 Tenn. 488 (1871)(sale of ten cent candy for fifty cents in a box with a prize of unknown value constituted "gaming"); and *Bell v. State*, 37 Tenn. 507 (1857)(prize giveaway only for purchasers of books constituted "gaming").

We believe that a trier of fact objectively analyzing this type of gaming machine as a method to distribute coupons redeemable for merchandise would conclude that its various versions violate the current lottery and gaming prohibitions set forth above.

Enforcement of the lottery prohibitions and the gaming statutes falls within the responsibility of the independent district attorneys general. The ultimate decision whether to prosecute under these statutes, based upon any particular factual situation, would rest with the district attorney general in the appropriate judicial district.

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