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STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

CRIMINAL DIVISION

POUCH KC - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

March 12, 1981

The Honorable Bettye Fahrenkamp
Senate Resources Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99811

Re: SB 142, "An Act authorizing the possession
of antique slot machines."

Dear Senator Fahrenkamp:

I am writing in response to your recent inquiry pertaining to SB 142, "An Act authorizing possession of antique slot machines." Specifically you requested that I analyze whether the bill is necessary in view of the existing provisions in the crime of Possession of a Gambling Device, AS 11.66.260.

For your information I have enclosed a copy of AS 11.66.260 and the commentary adopted by the legislature that accompanied that statute. In order to commit the crime the person must know that the device is used or is to be used in unlawful gambling. The commentary to that section stresses that in order to obtain a conviction "the prosecution must establish that the defendant knew that the device was to be used in the promotion of unlawful gambling." Consequently, a person who possesses an antique slot machine without the intent to use it in unlawful gambling does not commit a crime under this section and the device may not be forfeited under AS 11.66.270. It also should be noted that subsection (b) of AS 11.66.260 specifically recognizes that a person is not guilty of the crime of Possession of a Gambling Device even if he occasionally uses the device for social gambling, as that term is defined in AS 11.66.280(9).

Consequently, it is the position of this Department that passage of SB 142 is unnecessary as the conduct described in that bill is already exempt from coverage if the machine is not intended for use in unlawful gambling.

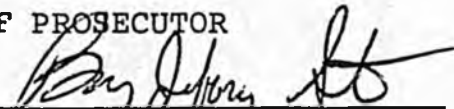
If I can be of any further assistance to you on this matter, do not hesitate to contact me at your convenience.

Very truly yours,

WILSON L. CONDON
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

BY:



Barry Jeffrey Stern
Assistant Attorney General

Enc:

cc: Arthur H. Peterson
Assistant Attorney General

MAR 16 1981

POSSESSION OF A GAMBLING DEVICENEW CRIMINAL CODE

Sec. 11.66.260. POSSESSION OF A GAMBLING DEVICE. (a)

A person commits the offense of possession of a gambling device if, with knowledge of the character of the device, he manufactures, sells, transports, places, or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a gambling device knowing that the device is used or is to be used in unlawful gambling.

(b) It is an affirmative defense in a prosecution under this section that the gambling device possessed by the defendant was used or intended to be used only in a social game.

(c) Possession of a gambling device is a class A misdemeanor.

PRIOR CRIMINAL CODE

None.

COMMENTARY

From Senate Journal, 119: .

This section prohibits the unlawful possession of all gambling devices. Possession of a gambling device is a class A misdemeanor. The term "gambling device", is defined in Sec. 11.66.280(3) as "any device, machine, paraphernalia or equipment that is used or usable in the playing phases of unlawful gambling", other than lottery tickets or policy slips (possession of which is punishable as possession of gambling records, Sec. 11.66.230; 240). The definition of

gambling device also specifically excludes pinball machines that only "pay-off" in free games.

The conduct prohibited by the statute includes the manufacture, sale, transportation, and possession of any gambling device or the conducting or negotiating of any transaction affecting or designed to affect ownership, custody or use of such items. The prosecution must establish that the defendant knew that the device was to be used in the promotion of unlawful gambling. This culpable mental state requirement insures that a prima facie case of possession of a gambling device cannot rest on proof that the defendant possessed such otherwise innocuous items as chips or a deck of playing cards, which would otherwise be covered because of the broad definition of a gambling device.

See also TD IV, 120-121.

CROSS REFERENCES

Definition of "gambling", "gambling device", "social game", "unlawful" - AS 11.66.280.

Definition of "knowingly" - AS 11.81.900(a)

Definition of "possess", "affirmative defense" - AS 11.81.900(b)

Gambling - AS 11.66.200

Promoting gambling in the first and second degree - AS 11.66.210; 220

Possession of gambling records in the first and second degree - AS 11.66.230;240



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Public Safety	Sponsor (Principal) Fahrenkamp	Bill Number SB 142
Department Position Support with amendment.		
Division Director T.R. Anderson	Date 2/17/81	Commissioner <i>WILL FOR</i> William R. Nix
		Date 2-20-81

GOVERNOR'S OFFICE USE

Comments:

<input type="checkbox"/> Position Noted	By	Date
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SUMMARY

1. a) Related Bills (Similar or Conflicting)	1. b) Other Agencies Affected by Bill
2. a) Organizational Support for Bill	2. b) Organizational Opposition to Bill
3. Program Effects of Bill	

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:
That it be required that the machines be made and kept inoperable.

6. Comments:

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 142
 Title "An Act authorizing possession of antique slot machines; and providing for an effect
 Requested by Senator Fahrenkamp Date 2/20/81 d.

II. FISCAL DETAIL

Agency Affected Public Safety
 Program Category Affected Administration of Justice
 BRU, Program, or Subprogram(s) Affected Detachments & CIB

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		- 0 -	- 0 -	- 0 -		

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This is no fiscal impact.

IV. DATE 2/20/81 PREPARED BY Michael J. Clemens

AGENCY Public Safety

PHONE 465-4322

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

(Effective January 1, 1980)

Sec. 11.66.260. Possession of a gambling device. (a) A person commits the offense of possession of a gambling device if, with knowledge of the character of the device, he manufactures, sells, transports, places, or possesses, or conducts or negotiates a transaction affecting or designed to affect ownership, custody, or use of, a gambling device knowing that the device is used or is to be used in unlawful gambling.

(b) It is an affirmative defense in a prosecution under this section that the gambling device possessed by the defendant was used or intended to be used only in a social game.

(c) Possession of a gambling device is a class A misdemeanor. (§ 8 ch 166 SLA 1978)

As to what constitutes a gambling device, see note to AS 11.66.280.

Am. Jur. and ALR references. — 24 Am. Jur., Gaming and Prize Contests, § 12 et seq.

Possession of gambling device as offense, 162 ALR 1188.

Sec. 11.66.270. Forfeiture. If used in violation of §§ 200--280 of this chapter, the following property shall be forfeited:

- (1) a gambling device or gambling record;
- (2) money, not found on the person, used as a bet or stake;
- (3) money used as a bet or stake which is found on the person of one who conducts, finances, manages, supervises, directs, or owns all or part of an unlawful gambling enterprise. (§ 8 ch 166 SLA 1978)

Editor's note. — The cases and opinions cited in the note below were decided under former AS 11.66.270.

Constitutionality of former statute relating to seizure and destruction of gambling devices. — See Pin-Ball Machine, Serial No. 2334 v. State, Sup. Ct. Op. No. 86 (File No. 162), 371 P.2d 805 (1962).

Strict construction of former statute. — See One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Former section distinguished from narcotics and fish and game forfeiture statutes, AS 17.12.130 and 16.05.195. — See One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

As to what constitutes gambling device, see note to AS 11.66.280.

As to forfeiture of money under former law, see United States v. Three Thousand Two Hundred Thirty-Six Dollars, 167 F. Supp. 495 (D. Alas. 1958); One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Wager slips subject to seizure under former law. — Wager slips or pool tickets used in carrying on a scheme involving wagering bookmaking or pool selling may be seized and forfeited as gambling implements under former AS 11.66.260. 1962 Op. Att'y Gen., No. 22.

Forfeiture of glassware, beverages, etc., held error. — Forfeiture of glassware, beverages, cigarettes and furniture used to make the gambling establishment a more pleasant and comfortable place for the customers but not used in the gambling game per se, was error. One Cocktail Glass v. State, Sup. Ct. Op. No. 1437 (File No. 2729), 565 P.2d 1265 (1977).

Procedure under former law. — See United States v. Three Thousand Two Hundred Thirty-Six Dollars, 167 F. Supp. 495 (D. Alas. 1958); State v. Pin-Ball Machine, Serial No. A-2885, 2 Alas. L.J. No. 2, p. 24 (Feb., 1964).

Am. Jur. reference. — 24 Am. Jur. Gaming and Prize Contests, §§ 1, 15, 57, 58.

(Eff)

Sec. 11.66.280. Definition unless the context requires:

(1) "contest of chance" means a gaming device in which the element of chance, notwithstanding it may also be a factor;

(2) "gambling" means the value upon the outcome of event not under his control, understanding that he or so in the event of a certain out

(A) bona fide business transaction for the purchase or sale at and agreements to compensate chance, including contracts or accident insurance; or

(B) playing an amusement (i) confers only an immediate something of value other than

(ii) does not contain a mechanism immediate replay may be called

(3) "gambling device" means equipment that is used or gambling, whether it consists by a person involving the player not include

(A) lottery tickets, policy phases of lottery or policy

(B) an amusement device

(4) "gambling enterprise"

(A) includes five or more supervise, direct, or own all

(B) has been or remains in period in excess of 30 days on any single day; and

(C) is not a qualified organ for purposes of this paragraph 15.210(15) is required to be

(5) "gambling record" means used in the operation or promotion lottery tickets, pool slips, playing phases of lottery or

(6) "player" means a person contestant or bettor, believing of winning are the same for of skill and luck, without re-

(Effective January 1, 1980)

11.66.280. Definitions. As used in §§ 200 — 280 of this chapter, the context requires otherwise, "contest of chance" means a contest, game, gaming scheme, or device in which the outcome depends in a material degree upon element of chance, notwithstanding that the skill of the contestants may also be a factor;

"gambling" means that a person stakes or risks something of value upon the outcome of a contest of chance or a future contingent event not under his control or influence, upon an agreement or understanding that he or someone else will receive something of value in the event of a certain outcome; "gambling" does not include

(A) bona fide business transactions valid under the law of contracts or the purchase or sale at a future date of securities or commodities or agreements to compensate for loss caused by the happening of an event, including contracts of indemnity or guaranty and life, health, or accident insurance; or

(B) playing an amusement device that (1) confers only an immediate right of replay not exchangeable for something of value other than the privilege of immediate replay; and (2) does not contain a method or device by which the privilege of immediate replay may be cancelled or revoked;

"gambling device" means any device, machine, paraphernalia, or equipment that is used or usable in the playing phases of unlawful gambling, whether it consists of gambling between persons or gambling by a person involving the playing of a machine; "gambling device" does not include

(A) lottery tickets, policy slips, or other items used in the playing phases of lottery or policy schemes; or

(B) an amusement device as described in (2)(B) of this section;

"gambling enterprise" means a gambling business which (A) includes five or more persons who conduct, finance, manage, supervise, direct, or own all or part of the business;

(B) has been or remains in substantially continuous operation for a period in excess of 30 days or has a gross income of \$2,000 or more in any single day; and

(C) is not a qualified organization under AS 05.15.210(15), except that, for purposes of this paragraph, no application for a license under AS 05.15.210(15) is required to be considered a qualified organization;

"gambling record" means any writing or paper of a kind commonly used in the operation or promotion of unlawful gambling and includes lottery tickets, policy slips, or other writings or papers used in the playing phases of lottery or policy schemes;

"player" means a person who engages in gambling solely as a contestant or bettor, believing that the risk of losing and the chances of winning are the same for all participants except for the advantages of skill and luck, without receiving or becoming entitled to receive any

Introduced: 2/3/81
Referred: Judiciary

1 IN THE SENATE

BY FAHRENKAMP

2 SENATE BILL NO. 142

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing possession of antique slot machines;
7 and providing for an effective date."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 11.66.260 is amended by adding a new subsection to read:

10 (d) In this section and in AS 11.66.270, "gambling device" does
11 not include a slot machine which is more than 25 years old, and which
12 has not been used for unlawful gambling in the state after it was
13 acquired by its present owner.

14 * Sec. 2. This Act takes effect immediately in accordance with AS 01.10.-
15 070(c).

16
17
18 AMEND 11.66.260(b) TO READ:

19
20 (c.) A SLOT MACHINE WHICH IS MORE THAN 25
21 YEARS OLD, AND WHICH HAS NOT BEEN USED FOR
22 UNLAWFUL GAMBLING IN THE STATE AFTER IT
23 WAS ACQUIRED BY ITS PRESENT OWNER.
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29

Paul Oscar Biers

RE: SLOT MACHINES

(12)

Oscar Bourg Bourge

SR 10662

FBX, AK
99701

907-479-5996

Notin - We
conceded act in
O.K., since no
answer from
"Oscar"

na
12/22/80