



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

March 25, 1975

Opinion No. 75-145

The Honorable Pete Loux
State Representative
3rd Floor - State Office Building
Topeka, Kansas 66612

Dear Representative Loux:

You request an opinion on the legality of the razzle dazzle promotion which has been submitted to you for approval.

Our opinion is given in light of a letter to Mr. Syl Steinmetz, dated March 3, 1975, where in we expressed our views that the games of red pin bowling and razzle dazzle were prohibited under the lottery statutes of this state.

Red pin bowling, as it has previously been conducted throughout this state, consists of one off-colored pin in every ten pin formation. If this pin appears as the head pin of the ten pin formation, and the bowler rolls a strike during red pin bowling hours, that bowler wins a prize. Razzle dazzle, another variation of this, usually contains more than one off-colored pin, with various combinations of pin placement and successful bowling being combined in order to win a prize. We expressed the opinion in the letter to Mr. Steinmetz that the three elements of a lottery--prize, chance and consideration--were present in red pin bowling and razzle dazzle bowling. The legality of the promotions turned on the element of chance, as we felt that it was pure chance that the off-colored pins would appear in the proper positions to enable a participant to win a prize.

In the proposal you have submitted, the element of the off-colored pins has been eliminated. In its place, razzle dazzle now consists of three games. The first is making a strike in the third, sixth, and ninth frames, or any combinations thereof. A strike in any or all of these frames pays a prize. Second, if the men bowlers bowl six strikes in a row in one game, or if the women bowlers bowl five

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strikes in a row in one game, a prize is given. (It is not clear if each individual woman or man must bowl five or six strikes in a row, or whether the team may bowl five or six strikes in a row in one game, but this really makes no difference to our opinion.) As to these two contests, there is no question that the element of chance has been sufficiently replaced by that of skill, and these promotions fall within the law.

However, the third facet of razzle dazzle consists of converting splits. Prizes for converting splits range from \$.25 for converting the three-ten combination or the two-seven combination to \$20.00 for converting the seven-ten split. Once again, we are faced with the question of whether the element of chance is present.

In 6a Words and Phrases "Chance", p. 162, 163, chance is defined as

". . . something that befalls as result of unknown or unconsidered forces, a happening in a particular way, issue of uncertain conditions, a fortuity, an unforeseen or inexplicable cause or its operation, or an accident. Minges v. City of Birmingham, 36 So.2d 93, 96, 97, 251 Ala. 65."

Obviously, which bowling pins remain standing after a ball has been rolled through them is a function of chance as well as that of skill. It is our understanding, through conversations with persons knowledgeable of the game of bowling, that it is not a certainty that all ten pins will fall every time, even if they are struck in exactly the perfect spot on the formation every time. Therefore, the element of chance creeps in.

In the case of State v. Hahn, et al., 105 Mont. 270, 72 P.2d 459 (1937) it was held that

"it is not enough under the universally recognized tests between games of skill and chance that some skill is involved in the game. That fact alone will not save it from condemnation as a lottery.

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The test which we believe to be the sound one is well stated in the case of People ex rel. Ellison v. Lavin, 179 NY 164, 71 N.E. 753, 755, 66 L.R.A. 601, 1 Ann Cas. 165, as follows: 'the test of the character of the game is not whether it contains an element of chance, or an element of skill, but which is the dominating element that determines the result of the game.' . . ." P.2d at 461.

Further,

". . . But the test as to whether chance predominates over skill is not the only test of whether a game is a lottery. Thus the alternative test is also stated in the cases that if the element of chance is present in such a manner as to thwart the exercise of skill or judgment in a game, then there may be a lottery. [Citing cases.] This test is in harmony with the rule that a result is determined 'by means making the result independent of the will of the manager of the game.' Commonwealth v. Sullivan, 146 Mass. 142, 144, 145, 15 N.E. 491, 494, . . ." Commonwealth v. Plissner, 295 Mass. 457, 4 N.E.2d 241, 245, (1936).

Although our research revealed no Kansas cases directly interpreting the element of chance as opposed to skill, we think the rule is best expressed in a case from our sister state of Missouri, State ex rel. McKittrick v. Globe Democrat Pub. Co., 341 Mo. 826, 110 S.W.2d 705, (1937), wherein it is stated

"It is impossible to harmonize all the cases. But we draw the conclusion from them that where a contest is multiple or serial and requires the solution of a number of problems to win the prize, the fact that skill alone will bring contestants to a correct solution of a greater

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part of the problems does not make the contest any the less a lottery if chance enters in to the solution of another lesser part of the problems and thereby influences the final result. In other words, the rule that chance must be the dominant factor is to be taken in a qualitative or causative sense rather than in a quantitative sense . . ."


We feel that since converting a split is the second part of a bowling frame, bowling is multiple or serial as contemplated by the above quoted decision. As such, we would adhere to the Missouri court's method of determining chance by a qualitative or causative method rather than by quantitative method.

The court in the Globe Democrat case cited above also held that whether the element of chance was present must be viewed from the standpoint of the participants who entered the contest in response to the advertising thereof, rather than by absolute or technical standards; and where the public was informed that no special skill, training, or education was required, and the hope of success was held out to the general public, the question whether chance or skill was the determining factor must depend on the capacity of the general public, not experts, to solve the problems presented. State ex rel. McKittrick v. Globe Pub. Co., supra.

Therefore, applying the existing law cited above to the facts at hand, we have concluded that the existence of a split to be converted depends to a great degree upon pure chance; the ability to convert the split, especially the wider splits, is also based to some degree on chance even though as a person's skill increases, his ability to convert the splits becomes greater. Therefore, it is our opinion that the qualitative degree of chance involved in the split conversion razzle dazzle is sufficient to place that promotion outside the law.

Finally, it must be noted that this opinion does not have the effect of law. The question presented herein is a very close question, with factual as well as legal issues involved, and it may well be that a court of law would disagree with this opinion.

Yours very truly,



CURT T. SCHNEIDER
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