



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

BRAD D. SCHIMMEL
ATTORNEY GENERAL

Andrew C. Cook
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Richard J. Dufour
Assistant Attorney General
dufourrj@doj.state.wi.us
608/264-9488
FAX 608/267-2778

July 9, 2015

Attorney Mark Sostarich
6 South Church St.
Elkhorn, WI 53121

Re: *Quick Charge Kiosks*

Dear Attorney Sostarich:

In regard to the above matter, the Department of Justice has been asked to review an investigation done by agents of the Division of Criminal Investigation. The investigation involved so-called "quick charge kiosks." I am writing to you, in that you provided an opinion letter to Mr. Jeremy Hahn, the distributor for Quick Charge Kiosks, Inc. If you are not the attorney representing Mr. Hahn, I would ask that you so advise, and let us know either who is representing him, or if he is currently unrepresented by counsel.

Based on the investigation, the Department of Justice has determined that these machines are illegal for a variety of reasons.

First, the so-called quick charge kiosks are gambling machines. A gambling machine is defined by statute as a contrivance for which a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, even though accompanied by some skill and whether or not the prize is automatically paid by the machine. See Wis. Stat. § 945.01(3)(a).

These quick charge kiosks clearly fit the definition of a gambling machine.

It is further the position of the Department of Justice that the "in pack chance promotion" is not an exception to a machine being a gambling machine as defined in Wis. Stat. § 945.01(3)(a). The Legislature chose not to make "in pack chance promotion" an exception to a machine being a gambling machine. See Wis. Stat. § 945.01(3)(b). It is only an exception to a lottery. See Wis. Stat. § 945.01(5)(b)2g. If the "in pack chance promotion" does not apply, then there is no question the quick charge kiosk is an illegal gambling machine, contraband, subject to seizure and forfeiture.

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While in your opinion letter you liken these machines to the promotion in the case of *Bohrer v. City of Milwaukee*, 2001 WI App 237, 248 Wis. 2d 319, 635 N.W.2d 816, this matter is really not controlled by *Bohrer*. *Bohrer* involved the sale of souvenir milk caps with a lottery attached to them. They were not gambling machines. That is the distinction between this situation and yours. You also cite a couple of out-of-state cases to support your position. I have not reviewed the particular gambling laws in those states, but am aware there are numerous other out-of-state cases finding similar gambling laws to Wisconsin's gambling laws, are violated by similar machines. In any event, as it relates to out-of-state cases, Wisconsin law is clear: "in pack chance promotion" is not an exception to a machine being a gambling machine.

Further, even if the "in pack chance promotion" exception does apply, it is the opinion of the Department of Justice that these machines do not meet all seven requirements for a legal "in pack chance promotion." Specifically, there is no true free play, there can be no random distribution of "game pieces," there can be no random distribution of prizes if all "game pieces" are not used, and there is no representation of the odds of winning. Frankly, your client's machines themselves belie their intent that this be an "in pack chance promotion." The machines contain a prominent disclaimer that reads "for amusement only." This is obviously false, as winners are paid out by the cashier, but the display is intended to make them look like there is no payout, the opposite of an "in pack chance promotion".

Based on our investigation, it is therefore the Department's opinion that distribution of these machines constitutes the distribution of gambling devices and as such is illegal. Please have your client make arrangements to remove all of these machines within the next thirty days. If you wish to discuss this matter, please contact my office at the above phone number and address to set up a meeting.

If you have any questions about this, please advise.

Sincerely,



Richard J. Dufour
Assistant Attorney General

RJD:kw

c: Assistant Attorney General Roy Korte
David Meany, Division of Legal Services Administrator