



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

WAGGONER CARR
ATTORNEY GENERAL

June 5, 1963

This Opinion
Affirms Opinion

#*WW-1506*

Mr. W. C. Lindsey
Criminal District Attorney
Beaumont, Texas

Opinion No. C-89

Re: Opinion No. WW-1506
Subject: Marble
Machines

Dear Sir:

You have recently requested an opinion of this office relative to a special kind of marble machine. The letter of inquiry states in part:

"On April 10, 1963, we requested an opinion from your office on the legality of a certain marble machine which allowed free balls on obtaining a certain objective. ..."

You then state that this office furnished you with a copy of the opinion request of Mr. Henry Wade upon which Opinion No. WW-1506 was based. You state:

"The letter of inquiry did seem to indicate that the subject marble machine was one which is similar to the marble machine which our inquiry inferred.

"However, we are in need of an opinion that sets forth and states that a marble machine which allows an additional ball is in fact illegal, if that is your opinion. Therefore, we request that you clarify or modify your opinion No. WW-1506 to set forth a clear and definite holding on the legality of such a machine. The opinion, as now written, makes no reference to an additional ball except in the quotation from a New York decision, and the facts describing the machine only indicate that it is equipped with 'flippers.'"

In WW-1506 we held as follows:

"Under the facts presented by you, we agree with you 'Flipper Cowboy' does not fall into the category of a coin operated gambling

device. In short, we can say that when a player deposits his money in 'Flipper Cowboy' he pays for and receives one game. That is all he bargained for and all he will get. Only the length of the game is left to be determined and that by the skill of the player. When that one game is completed the only way the machine can be replayed is by depositing an additional coin."

We then held that "Flipper Cowboy," a type of coin-operated marble machine was not a gambling device and was not prohibited under Article 642a of the Texas Penal Code.

In your letter of April 10, 1963, you described the marble machine as follows:

"The said 'marble machine' has a playing field set on four legs and is played by inserting a coin in the machine.

"No free games or money are returned to the player under any circumstances.

"The machine has mechanical devices on either side of the playing field called 'flippers', which, if properly manipulated, enable the player to hit the ball in play thereby preventing the ball from falling into the 'return hole' and allowing the player to continue the same game.

"The game is played with one ball, which is allowed to fall into the 'return hole' after passing through the playing field, the time required to pass through the playing field and the score accumulated being dependent upon the skill of the player in using the 'flippers' to keep the ball in play and make it strike certain objects in the field of play.

"As the ball is allowed to fall into the 'return hole', it is re-played a minimum of five times in one game.

"The game may be continued by the player and with the same ball if said player is skillful enough to obtain certain scores or

to strike certain objects in the field of play under certain known circumstances. This continuation of the game is by the process of allowing the ball to be shot additional times, up to a maximum of five shots in addition to the original five shots, but the score accumulated and the whole process constitutes only one game."

As we understand the operation of the machine, a minimum of five and a maximum of ten balls constitute one game. Whether the player receives the minimum of five balls or more, up to the maximum of ten, is dependent on his skill in manipulating the "flippers". He has, therefore, received only one game for his consideration (coin).

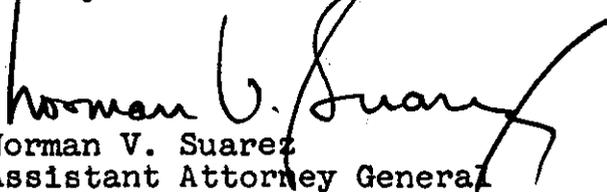
Under these circumstances we affirm our holding in Opinion WW-1506.

S U M M A R Y

A marble machine which allows additional free balls as certain scores are obtained, such balls being obtained within the same game and upon the payment of a single consideration, is not a gambling device per se and is not therefore prohibited under Article 642a of the Texas Penal Code.

Very truly yours,

WAGGONER CARR
Attorney General of Texas

By 
Norman V. Suarez
Assistant Attorney General

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APPROVED:

OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL

BY: Stanton Stone