bling device”. Such a machine is a “gambling device” regardless of the existence or nonexistence of an internal meter which further records the canceled free replays. If the recording meter is truly made inoperable so that free games cannot be actually recorded, the pinball machine is granting an “unrecorded” right to replay and would therefore not be a “gambling device.”

Attempts to camouflage the meter so that it is no longer visible to the player, while still recording the free games won, will not render the machine legal. As long as free games are recorded as defined above, the machine is a “gambling device.”

In conclusion and to specifically answer your questions raised:

1. A free-game meter, visible to the player of a pinball machine, is a “recorder” and does render a machine equipped with such a meter illegal as a “gambling device” within the Indiana statute.
2. The answer to (1) controls regardless of whether the right to replay is mechanically or electronically conferred.

OFFICIAL OPINION NO. 33

August 27, 1968

ELECTIONS—Certification of Parties and Candidates by State Election Board for General Election.

Opinion Requested by Hon. Roger D. Branigin, Governor.

You have called to my attention the fact that in this year of 1968, September 1 falls on Sunday, and that Monday, September 2, is Labor Day. This circumstance raises ques-
tion as to the last date by which political parties and electors may file with you certificates or petitions for placing names of candidates on the ballot in the 1968 general election, and as to the last date by which you must certify the names and residences of the candidates to county clerks.

The Governor's certification duties concerning candidates in a general election (and the printing duties of the State Election Board) pertain only to those candidates for a public office for which all the electors of the state are entitled to vote, Indiana Election Code, section 111, as last amended by Acts 1951, ch. 57, § 6, Burns IND. STAT. ANN. § 29-3806. Therefore, this opinion will be confined to the consideration of petitions and certifications for such candidates only.

The names of candidates nominated by conventions of political parties which received one-half of one per-cent (½%) of the total vote of the state of all parties at the last preceding general election shall be printed on the ballot by the State Election Board when the names are certified to the Board by the officers of the convention or the party unit. Section 106 of the Indiana Election Code, as amended by Acts 1947, ch. 120, § 13, Burns § 29-3801. The names of candidates petitioned for pursuant to that section by electors qualified to vote for them shall also be printed on the ballot. Each petition must bear petitioners' names in the number of one-half of one per-cent (½%) of the total vote of all parties cast in the State for Secretary of State at the last preceding general election. The petition shall state the name and residence of each candidate, that each is legally qualified to hold the office for which he is nominated, and that each subscriber desires and is legally qualified to vote for such candidates. Section 107 of the Indiana Election Code, Burns § 29-3802, forbids the State Election Board to consider a name upon a petition for nomination if the same is not signed by the petitioner in person or by duly attested mark. No such petition shall be effectual to authorize a name to appear on the official ballot unless the signatures on the petition in the number required by law are duly acknowledged before an officer authorized to take acknowledgments.
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Petitions and certificates must be filed with you, Indiana Election Code, section 106, as amended by Acts 1947, ch. 120, § 13, Burns § 29-3801, and "shall not be filed later than September 1st before the date fixed by law for the election of the persons in nomination." Indiana Election Code, section 110, as amended by Acts 1947, ch. 120, § 14, Burns § 29-3805. The next section of the Code reads as follows:

"Not later than September 2 before an election of the state to fill any public office for which all the electors of the state are entitled to vote, the governor of the state shall certify to the county clerks of each county the name and the place of residence of each person nominated for such office, as specified in the certificates and petitions of nominations filed with the governor of the state, and shall designate therein the device under which the group or list of candidates of each party will be printed, and the order in which they will be arranged." Indiana Election Code, section 111, as amended by Acts 1947, ch. 120, § 15, and Acts 195, ch. 57, § 6, Burns 29-3806.

It is interesting to note that as enacted in 1945, the sections both contained the date of August 1, while the 1947 amendments changed the date in both sections to September 1. The 1951 amendment to section 111, Burns § 29-3806, changed the date by which the Governor is required to certify the names to the county clerks to September 2, thus providing an extra day for examination of petitions and certificates submitted on the last day of filing. The State Election Board customarily examines the petitions to discover whether they are in the proper form, signed by the petitioners, and have the proper number of signatories, whose signatures are properly subscribed and attested.

Both Sunday and Labor Day are made legal holidays "for all purposes" in the State of Indiana by Acts 1947, ch. 236, § 1, as last amended by Acts 1955, ch. 6, § 1, Burns § 19-11-101:

"The first day of the week, commonly called Sunday. . . the first Monday of September, commonly
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called Labor Day. . . shall be legal holidays within the State of Indiana for all purposes. . . . Provided, however, That the provisions of this act shall not affect any action taken by the general assembly while in regular or special session and any action taken by the general assembly on any such holiday shall be valid for all purposes.”

This section was interpreted in a well-reasoned opinion of my predecessor, 1953 O.A.G. p. 406, to mean that no official action may be taken on a day which is a legal holiday “for all purposes”. Further, it is my opinion that the proviso validating action of the General Assembly taken on a legal holiday established by the act indicates that the General Assembly intended to preclude other valid official action on such a day.

A 1953 act establishing hours of business for state offices provides in part as follows:

“It shall be lawful for state offices to close their doors for business from the close of the working day each Friday or in the event Friday is a legal holiday, then from the close of the working day on the Thursday which immediately precedes such legal holiday, until the commencement of the working day on the next following Monday or in the event Monday is a legal holiday, then until the commencement of the working day on the Tuesday which immediately follows such legal holiday. . . .” Acts 1953, ch. 133, § 1,

Burns § 49-406a. (Emphasis added.)

That Act further provides:

“Legal action required to be taken at state offices during the time said offices are closed pursuant to the provisions of this act, can be taken on the next following day said offices are open pursuant to the provisions of this act to the same effect as if this act had not become law.” Section 2, Burns § 49-604b. (Emphasis added.)
Since your office will be closed pursuant to the provisions of this 1953 statute (and the act creating legal holidays), on Sunday, September 1, 1968, and Monday, September 2, 1968, the next following day your office will be open pursuant to the statute above will be Tuesday, September 3, 1968. It is my opinion that September 3, 1968 will therefore be the last day upon which petitions and certificates for nomination prepared pursuant to section 106 of the Indiana Election Code, as amended, Burns § 29-3801, may be filed in your office, and that September 3, 1968, is also the date by which you should certify to the county clerks the name and place of residence of each person nominated for office as specified in the petitions and certificates of nominations filed with you, together with the device of each party, in the order in which they will be arranged on the ballot.

OFFICIAL OPINION NO. 34
August 28, 1968

CITIES AND TOWNS—CONDEMNATION—Necessity that Such Action be Authorized by Common Council.

Opinion Requested by Mr. Richard L. Worley, State Examiner.

This is in response to your request for an Official Opinion specifically raising the following questions:

"1. Does the Board of Public Works have authority to condemn, rent or purchase any real estate or personal property without approval of the common council, when a sum of more than $2,000 is