



CITY MANAGER M E M O R A N D U M

To: The Honorable Mayor and City Commissioners

From: Barbara Lipscomb, City Manager

Date: April 28, 2011

Subject: Public Hearing: First Reading of Ordinance 11-1349 - ULDR Amendment to Provide Criteria for Simulated Gambling Devices

Introduction: Ordinance 11-1349 provides for consideration on first reading to amend the City of Casselberry Unified Land Development Regulations (ULDR) to add a new land use category entitled “Non-traditional Indoor Use”.

Background: The City Commission placed a 180-day moratorium on the issuance of permits and licenses for the operation of certain businesses within the City of Casselberry related to game rooms, arcades, internet cafes, sweepstakes redemption centers, and similar indoor entertainment and amusement activities in May of 2010. The moratorium will expire on May 4, 2011. This moratorium was based on the proliferation of “Internet Café” type uses that have lottery games and other vehicles for gambling that skate a fine line between what is legal and what is illegal.

On January 10, 2011, Seminole County adopted legislation prohibiting the use of “simulated gambling devices”. The effect is to eliminate the use of the machines that display casino-type games that result in winning money or losing the money when someone pays to access the games. The “Internet Café” business use may stay in operation offering the use of computers for actual Internet use. A “simulated gambling device” is defined by Seminole County as “any device that, when connected with an object, is available to play or operate a computer simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff.” That legislation was immediately challenged by Allied Veterans of the World, Inc. and a Temporary Restraining Order was handed down by the U.S. District Court for the Middle District of Florida (U.S. District Case No. 6:11-cv-155-Orl-28DAB).

The 2011 Florida Legislature is now attempting to address this issue through House Bill 217 and the companion Senate Bill 576. This legislation would prohibit establishments such as the “Internet Cafes” from using computers that provide casino games by creating the “Electronic Machines and Devices for Sweepstakes Prohibited Act.”

Due to the near end of the City’s moratorium, it is necessary for the City to take action to provide regulations for such uses in the City. Legislation initially proposed by staff dealt with the location of the business use - be it an internet cafe, sweepstake redemption center, or similar use. The legislation proposed by staff at this time is similar to that which the State is proposing in HB 217 and SB 576.

This legislation deals with the type of machine that is being used by a business.

The Planning and Zoning Commission reviewed the proposed code change at an advertised public hearing on April 13, 2011 (Attachment A) and provided a favorable recommendation to the City Commission (Attachment B). As an amendment to a permitted use within the City, two public hearings are required. The first public hearing was advertised in the *Orlando Sentinel* on April 14, 2011.

Discussion: Ordinance 11-1349 provides several changes to the Unified Land Development Regulations (ULDR). They include:

1. Amending Table 2-5.3, Land Use by District to include “non-traditional” indoor amusements in the “non-traditional use category”.
2. Amending the definition for “Non-traditional use” to add “non-traditional indoor amusements”.
3. Providing two new definitions to the glossary.

Non-traditional indoor amusements. Game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement activities that utilize simulated gambling devices.

Simulated gambling device. Electronic machine or device that operates mechanically, electrically, or electronically that is intended to be used by a sweepstakes entrant and is capable of displaying information on a screen or other mechanism to access or display:

- sweepstakes systems with simulated game play related to slot machines, video poker, bingo, craps, keno, lotto, or any other game of chance;
 - other video games based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player;
 - other video games not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes; and
 - any other similar devices.
4. Amending the ULDR to add “Non-traditional indoor amusements” into Section 2-7.30, Non-traditional uses. This places various conditions on the business including locating in only the CG (Commercial General) zoning district; conditional use approval from the Planning and Zoning Commission; location in a planned, unified shopping center with a minimum of 10,000 square feet of gross leasable area; minimum distance separation of fifteen hundred feet (1,500') from another non-traditional use; minimum distance separation of three hundred feet (300') from of an educational institution, church, park, day care facility, or residentially zoned land; and a restriction of one non-traditional use in any single shopping center. Additionally, the site must meet several exterior design requirements and business hours are restricted to between 7:00 a.m. and 11:00 p.m.

Budget Impact: There is no impact to the City’s budget.

Recommendation: The City Manager and the Community Development Director recommend approval of Ordinance 11-1349.

Prepared by: Sandra J. Smith, AICP, Chief Planner

Reviewed by: Donald Martin, AICP, Community Development Director

Attachments: Ordinance 11-1349

Attachment A: Planning and Zoning Commission staff report, April 13, 2011

Attachment B: Planning and Zoning Commission minutes, April 13, 2011

ORDINANCE 11-1349

AN ORDINANCE OF THE CITY OF CASSELBERRY, FLORIDA; AMENDING THE CITY OF CASSELBERRY, FLORIDA, CODE OF ORDINANCES, PART III, UNIFIED LAND DEVELOPMENT REGULATIONS TO DESIGNATE BUSINESSES THAT USE "SIMULATED GAMBLING DEVICES" AS A "NON-TRADITIONAL USE" BY AMENDING SECTION 2-5.3, LAND USE BY DISTRICTS, TABLE 2-5.3 LAND USE BY DISTRICTS (1); AMENDING SUBSECTION 2-7.30, "NON-TRADITIONAL USES"; AMENDING SECTION 5-21.2, DEFINITION OF TERMS, TO INCLUDE THE DEFINITION FOR "NON-TRADITIONAL INDOOR AMUSEMENTS" AND "SIMULATED GAMBLING DEVICE"; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS, AND EFFECTIVE DATE.

WHEREAS, game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement activities are operating in a gray area of the Florida Statutes regulating gambling; and

WHEREAS, game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement activities are not traditional indoor amusements; and

WHEREAS, there is a concern that a proliferation of "Non-traditional indoor amusements" will decrease property values and threaten the aesthetics of the City, thus threatening the public health, welfare and safety of the City; and

WHEREAS, the proliferation of "Non-traditional indoor amusements" may affect the development and re-development efforts of the City of Casselberry; and

WHEREAS, the City Commission seeks to provide regulatory criteria to "Non-traditional indoor amusements"; and

WHEREAS, the City Commission finds that it is essential to protect and preserve the aesthetics, the environment and the public health, welfare and safety of the City and its citizenry, and that it is in the City's best interest, and that it is consistent with the Comprehensive Plan for the City to regulate the location of "Non-traditional indoor amusements" within the city limits of Casselberry; and

WHEREAS, the City Commission of the City of Casselberry held a duly noticed public hearing on the proposed changes set forth herein and considered advice of staff, citizens, and all interested parties submitting written and oral comments and supporting data and analysis, and after complete deliberation, hereby finds the requested changes consistent with the City of Casselberry's Comprehensive Plan; and

WHEREAS, words with double underlined type shall constitute additions to the original text and ~~strike through~~ shall constitute deletions to the original text.

NOW, THEREFORE, BE IT ENACTED by the City Commission of the City of Casselberry, Florida:

SECTION 1. That Section 2-5.3, Land Use by Districts, Table 2-5.3(1) of Article V, Zoning District Regulations, Chapter II, District and General Regulations, Part III, Unified Land Development Regulations, of the Code of Ordinances of the City of Casselberry, Florida shall be amended as follows:

* * *

April 2011	OR (4)	CL	CG	CS	I(5)	IM (12)	PMX-L
* * *	*						*
	*						*
Non-traditional Uses: pawn shop, body art establishments &, check cashing/payday loan businesses, <u>and "Non-traditional indoor amusements" (13) (15)</u>			C				
* * *							

* * *

SECTION 2. That Section 2-7.30, Non-traditional uses, of Article VII, General Regulations, Chapter II, District and General Regulations, Part III, Unified Land Development Regulations, of the Code of Ordinances of the City of Casselberry, Florida, shall be amended as follows.

* * *

Section 2-7.30. Non-Traditional Uses.

Non-traditional uses are a service or retail use that requires additional regulations to ensure that the business is in harmony with the goals and vision of the City. Non-traditional uses include, but are not limited to body art establishments, check cashing/payday loan businesses, ~~and pawn shops,~~ and "Non-traditional indoor amusements". These uses are defined in Chapter V, Glossary.

A. Regulations.

1. Prior to issuance of a business tax receipt, the proposed non-traditional use must receive a conditional use approval from the Planning and Zoning Commission to operate at a specific location.
2. Location.
 - a. Criteria for the location of check cashing/payday loan businesses are provided in ULDR

Section 2-7.29.

- b. The following location criteria apply to all other non-traditional uses.
- 1) A non-traditional use shall not be located within a ~~radius of~~ fifteen hundred feet (1,500') of another non-traditional use, including check cashing/payday loan establishments; nor shall such use be located within three hundred feet (300') of an educational institution, church, park, day care facility, or residentially zoned land. The method of measurement is the same as provided within ULDR Section 2-7.29 (2).
 - 2) A non-traditional use may only be permitted in a planned, unified shopping center with a minimum of 10,000 square feet of gross leasable area.

* * *

SECTION 3. That Section 5-21.2, Definition of terms, of Article XXI, Language and Definitions, Chapter V, Glossary, Part III, Unified Land Development Regulations, of the Code of Ordinances of the City of Casselberry, Florida shall be amended as follows:

* * *

Non-traditional indoor amusements. Game rooms, arcades, internet cafes, sweepstakes redemption centers and similar indoor entertainment and amusement activities that utilize simulated gambling devices.

* * *

Non-traditional uses. A service use that requires additional regulations to ensure that the business is in harmony with the goals and vision of the City. Non-traditional uses include body art establishments, pawn shops, ~~and~~ check cashing and/or /payday loan businesses, and non-traditional indoor amusements.

* * *

Simulated gambling device. Electronic machine or device that operates mechanically, electrically, or electronically that is intended to be used by a sweepstakes entrant and is capable of displaying information on a screen or other mechanism to access or display:

- sweepstakes systems with simulated game play related to slot machines, video poker, bingo, craps, keno, lotto, or any other game of chance.
- other video games based on or involving the random or chance matching of different pictures, words, numbers, or symbols not dependent on the skill or dexterity of the player.
- other video games not dependent on skill or dexterity that is played while revealing a prize as the result of an entry into a sweepstakes; and
- any other similar devices.

* * *

SECTION 4: CODIFICATION. It is the intention of the City Commission of the City of Casselberry, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Casselberry, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

SECTION 5. SEVERABILITY. If any Section or portion of a Section of this Ordinance proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other Section or part of this Ordinance.

SECTION 6: CONFLICTS. All Ordinances or parts of Ordinances in conflict with any of the provisions of this Ordinance are hereby repealed.

SECTION 7: EFFECTIVE DATE. This Ordinance shall become effective ten (10) days after the second reading and adoption.

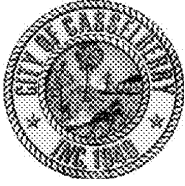
FIRST READING this ____ day of _____, A.D. 2011.

SECOND READING AND ADOPTION this _____ day of _____, A.D. 2011.

ATTEST:

Donna G. Gardner, City Clerk

Charlene Glancy, Mayor/Commissioner



City of Casselberry

Chief Planner

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Attachment A

TO: Planning and Zoning Commission

FROM: Sandra J. Smith, AICP, Chief Planner

DATE: April 13, 2011

RE: LPA 11-10: Amend the City Code to provide criteria for Simulated Gambling Devices

The City Commission placed a 180-day moratorium on the issuance of permits and licenses for the operation of certain businesses within the City of Casselberry related to game rooms, arcades, internet cafes, sweepstakes redemption centers, and similar indoor entertainment and amusement activities in May of 2010. The moratorium was extended several times and will expire on May 4, 2011. This moratorium was based on the proliferation of "Internet Café" type uses that have lottery games and other vehicles for gambling that skate a fine line between what is legal and what is illegal. Internet Cafes provide access to a gambling website based on the purchase of internet or telephone time and the provision of a "free" sweepstakes ticket to the patron as a bonus for buying the computer or telephone time. The outcome (win or loss) of the sweepstakes ticket requires access to a dedicated site maintained by the "Internet Café".

On January 10th, Seminole County adopted legislation prohibiting the use of simulated gambling devices. The effect is to eliminate the use of the machines that display casino type games that result in winning money or losing the money you paid to access the games. The business use may stay in operation offering the use of computers for actual Internet use. The need for this prohibition was based on an analysis by the Florida Council on Compulsive Gambling, an Economic Impact Statement developed by the Seminole County Fiscal Services Division, and complaints from law enforcement. The FCCG report finds that these "gaming" centers are attracting mostly low income women who are the least able to sustain a loss of income and the negative effects are similar to those caused by "gambling" casinos. The Seminole County Impact Statement finds that "lawful gambling operations are required by law to have safeguards to deal with problem gamblers while the establishments that would be affected by the prohibitions contained within the (Seminole County) ordinance do not."

A "simulated gambling device" is defined by Seminole County as "any device that when connected with an object is available to play or operate a computer simulation of any game, and which may deliver or entitle the person or persons playing or operating the device to a payoff." That legislation was immediately challenged by Allied Veterans of the World, Inc. and a Temporary Restraining Order was handed down by the U.S. District Court for the Middle District of Florida (U.S. District Case No. 6:11-cv-155-Orl-28DAB).

The 2011 Florida Legislature is now attempting to address the issue House Bill 217 and the companion Senate Bill 576. This legislation would prohibit establishments such as the "Internet Cafes" from using computers that provide casino games by creating the "Electronic Machines and Devices for Sweepstakes Prohibited Act." The legislation is proceeding "favorably" through committee review.

It is difficult to predict the outcome of the challenge to the Seminole County prohibition or the possible implementation of legislation by the State. It is; therefore, necessary for the City to take action to provide regulations for such uses in the City. Legislation initially proposed by staff dealt with the location of the business use - be it an internet cafe, sweepstake redemption center, or similar use. The legislation proposed by staff at this time is similar to that the State is proposing in HB 217 and SB 576. This legislation deals with the type of machine that is being used by a business.

The proposed ordinance classifies the type of machines that display casino games as a "simulated gambling device". Businesses that use these devices, whether it be a game room, arcade, internet cafe, sweepstakes redemption center, or any similar indoor entertainment and amusement activity are then defined to be a "non-traditional indoor amusement". All "non-traditional indoor amusements" are then placed within the "non-traditional use" category.

Non-traditional uses are allowed to locate within only the CG (Commercial General) zoning district and only after a conditional use approval has been granted by the Planning and Zoning Commission. Non-traditional uses are subject to the regulations provided within ULDR Section 2-7.30, Non-traditional Uses. Those conditions include:

- A. Regulations.
 1. Prior to issuance of a business tax receipt, the proposed non-traditional use must receive a conditional use approval from the Planning and Zoning Commission to operate at a specific location.
 2. Location.
 - a. Criteria for the location of check cashing/payday loan businesses are provided in ULDR Section 2-7.29.
 - b. The following location criteria apply to all other non-traditional uses.
 - 1) A non-traditional use shall not be located within fifteen hundred feet (1,500') of another non-traditional use, including check cashing/payday loan establishments; nor shall such use be located within three hundred feet (300') of an educational institution, church, park, day care facility, or residentially zoned land. The method of measurement is the same as provided within ULDR Section 2-7.29(2).
 - 2) A non-traditional use may only be permitted in a planned, unified shopping center with a minimum of 10,000 square feet of gross leasable area.
 3. Only one non-traditional use may be permitted in any single shopping center. Check cashing and payday loan uses may operate together in one location.
 4. Design. A non-traditional use shall be housed in a building that complies with the following regulations:
 - a. The building in which the use is located conforms to all current land development and building regulations.
 - b. The building shall be painted in muted colors and finished in materials that are consistent and harmonious with the surrounding area and with the character of the City.
 - c. There shall be no security bars on the outside of doors or windows which are visible from a public right-of-way.
 - d. Exterior phones and roll up doors shall be prohibited.
 - e. Windows shall not be obscured by the placement of signs, dark window tinting, shelving, racks or similar obstructions.
- B. Hours of Operation. Non-traditional uses shall only operate between the hours of seven (7:00) a.m. and eleven (11:00) p.m.
- C. Maintenance. The building and site shall be maintained in a neat, clean, and orderly condition.
- D. Signs. All signs shall be legally permitted in accordance with ULDR Article XVI.

RECOMMENDATION

Staff requests the Planning and Zoning Commission to provide a favorable recommendation to the City Commission to adopt the definitions and regulations for simulated gambling devices provided in the attached ordinance based on the findings of this staff report dated April 13, 2011 and the data and analysis provided in the May 12, 2010 Planning and Zoning Commission staff report (Attachment A with Exhibit C only).



City of Casselberry

Chief Planner

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TO: Planning and Zoning Commission
FROM: Sandra J. Smith, AICP, Chief Planner
DATE: May 12, 2010
RE: LPA 10-04: Internet Cafes

The City Commission, on February 8, 2010, placed a 180-day moratorium on the issuance of permits and licenses for the operation of certain businesses within the City of Casselberry related to game rooms, arcades, internet cafes, sweepstakes redemption centers, and similar indoor entertainment and amusement activities. The moratorium expires on August 7, 2010. Staff has developed the following information for discussion purposes to determine if regulation is required; and, if so, what type of regulation is required.

BACKGROUND.

The City Code of Ordinance, Chapter 14, Amusements, provides a purpose and intent, definitions and a prohibition on the use of slot machines or similar devices. This is based on Florida Statute (F.S.) 849.16 and was adopted in 2004.

Table 2-5.3, Land Use by District, provides various types of uses and indicates whether the use is permitted in the zoning district, allowed as a conditional use, or prohibited. Up to this time, a game room, arcade, internet café and similar indoor entertainment and amusements were considered as a commercial use and permitted in the CG, CS, PMX-L, PMX-H, PMX-Mid, and PMX-High zoning districts. Within the past few years, a new type of indoor amusement has developed that appears to be gambling on a slot machine via a computer terminal. This use is commonly referred to as an "Internet Café". There has been a proliferation of this use from Broward County into Orange, Volusia and Seminole Counties.

This item was advertised as a Public Hearing in the *Orlando Sentinel* on April 27, 2010.

Internet Café operation:

After entering the establishment you are required to provide your driver's license to establish an account. You are also required to sign a document that includes the statement "This is not gambling." You can purchase "time" on the computer based on the amount of money you pay. With each dollar of computer time you purchase you receive 100 sweepstakes credits. The time purchased is tracked on the card you receive when you sign in. It also tracks your "winnings" that can be redeemed for cash at any time.

When you swipe your card at the computer, a screen comes up. The touch screen provides choices between access to the internet and various types of games. If you choose the games, a selection of twenty different game types is provided. They include slot machines, poker, keno and others. The poker game screen provides the opportunity to use ("bet") a minimum of 25 sweepstakes credits up to 1,000 sweepstakes credits. So if you have purchased \$20 worth of computer time, you have 2000 credits. If you "bet" 1,000 credits on a game – you have two opportunities to play. If you "bet" 25 credits on each game you have 80 opportunities to play.

The poker game provided five cards. You can choose to either "hold" or "discard" any of the cards. The game gives you a hint on each card whether or not to hold or discard. After you decide whether to take the machines advice or make your own choices, you simply touch the option "Reveal" to determine if you are a winner. You continue to play until you cash out or until you have lost enough money. Machines are available that take cash to purchase additional

time (and the affiliated sweepstake credits) to continue to play on the computer games. Every aspect of the operation is similar to Las Vegas gambling.

FS 849.16, Machines or devices which come within provisions of law defined, states that a slot machine or device is one that requires the insertion of any piece of money, coin or other object to cause it to operate and the winner is determined by chance. FS 849.094, Game promotion in connection with sale of consumer products or services, requires the purchase of a product and the outcome is based on chance. The operators of internet cafes and sweepstake redemption centers state that their games are operated within the requirements of F.S. 849 because a person does not have to make a purchase to participate and the card provides a pre-determined winner – the element of chance is not present.

The card purchased for computer time can be used on a home computer if you obtain a CD from the business that will provide access to an internet provider. The poker and slot machine games can only be accessed from the business establishments' computers.

The Allied Veterans of America internet café is located in the Casselberry Square shopping center on SR 436 at Red Bug Lake Road. The business was opened in January, prior to the moratorium taking effect. The business has one hundred terminals and drinks and snacks are provided at no charge. The business operates as a charitable non-profit organization, contributing a percentage of their profit to military organizations, police and sheriff departments, and other service organizations.



FINDINGS.

- o The Florida State Supreme Court has decided that the enforcement of gambling is the responsibility of local law enforcement; be it County or City.
- o State Attorney's Office has decided not to pursue these uses.
- o State Legislature has taken no action to amend the State's gambling laws to address this variation of gambling.
- o State Prosecutor's office will actively pursue any business that has stepped into the area of gambling.
- o Casselberry's City Attorney has advised staff that the business legally exists until it can be proven that the State Statutes for gambling have been violated.
- o The Casselberry's Police have conduct inspections of the existing Internet Café within the City and state that the business is operating with the Florida Statutes.

ALTERNATIVES.

1. Take no action and allow additional "internet cafes" and "sweepstake redemption centers" to conduct business within the City.
2. Impose zoning regulations to ensure the subject business uses provide the necessary accommodations to minimize negative impacts to the surrounding properties.
3. Prohibit the use of particular machines that simulate a gambling operation. These machines have been defined by the City of Jacksonville as "look-alike machines closely simulating the operation of slot machines" and the City has found them to be a threat to public welfare.

Alternative 1. This option should be pursued if the operation of "internet cafes" or "sweepstake redemption centers" does not have the potential to create adverse impacts on adjacent properties or if it is not a detriment to the public's health or welfare.

Alternative 2. This option should be pursued if the operation of "internet cafes" or "sweepstake redemption centers" has the potential to create adverse impacts on adjacent properties, but those impacts can be determined and mitigated.

An ordinance has been developed that considers these uses as "non-traditional indoor amusements" and places them into the "Non-traditional use" category. A non-traditional use must meet certain distance separation requirements from other similar uses, must be in a shopping center that is at least 10,000 square feet in size, and must obtain a conditional use approval. Exhibit A provides an ordinance that requires these criteria.

Based on staff's experience, an internet café can install a large number of terminals in a relatively small space. Patrons using the terminals generally drive individually to the use. The use generates a need for a large amount of parking. The standard parking requirement for a commercial site is three parking spaces per 1,000 square feet of building area. The tenant space for the Allied Veterans site is approximately 4000 square feet. The parking provided for this tenant space is 32 spaces; however, the business provides 100 opportunities for customer use and requires additional parking for employees. This results in a 200% increase of needed parking greater than that provided. The Casselberry Square shopping center can absorb this parking impact but a smaller strip center or stand alone building could impact adjacent uses due to overflow parking needs.

Alternative 3. This option should be pursued if it is determined that a machine that appears and functions as a slot machine is a detriment to the public health and welfare.

The City of Jacksonville is considering an ordinance prohibiting the use of machines that simulate a slot machine, whether it is actually gambling or not. The bill's preamble states that, while slot machines in Florida are limited to certain regulated facilities in Broward and Miami-Dade Counties, there has been a proliferation of look-alike machines closely simulating the operation of slot machines that this ordinance is meant to prohibit. Exclusions are provided for use of a "slot machine" in the "operation of a state lottery, or pursuant to the provisions of a lawful gaming compact between the State of Florida and federally recognized Indian tribes, whether to display the results of a raffle, sweepstakes, contest or other promotion". Exhibit B provides the ordinance amended to affect the City of Casselberry. If staff takes this option forward, the text should be incorporated into the portion of Chapter 14 that regulates slot machines (Sections 14-1 through 14-3)

This ordinance discusses the use of the "machines" as a detriment to the public's health and welfare. Staff has requested justification for this finding from the City of Jacksonville. Their analyst, Jeff

Clements, stated that he has requested this documentation from the proponents of the legislation and he will provide it when he has received the documentation.

Pertinent reading material including: a Bar Journal article explaining Florida Statutes Chapter 849 dated December 1996, a report by the Florida Senate on adult arcades and game promotions dated November 2008, a letter to Police Chief Ruf from Allied Veterans detailing their operation, and letters provided by staff to Allied Veterans discussing the status of their Business Tax Receipt are provided in Exhibit C.

RECOMMENDATION

Staff requests the Planning and Zoning Commission discuss this issue and the proposed alternatives and provide direction to staff.

Attachments:	Exhibit A:	Ordinance providing "Non-traditional indoor amusement" requirements
	Exhibit B:	Ordinance prohibiting simulated slot machine
	Exhibit C:	Various reading material



EXHIBIT C

December 07, 2009

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Chapter 849

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CRIMES

GAMBLING

849.16 Machines or devices which come within provisions of law defined.--

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Bill #:

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(1) Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:

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(a) Receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or

(b) Secure additional chances or rights to use such machine, apparatus, or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment, or other thing of value.

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(2) Nothing contained in this chapter shall be construed, interpreted, or applied to the possession of a reverse vending machine. As used in this section, a reverse vending machine is a machine into which empty beverage containers are deposited for recycling and which provides a payment of money, merchandise, vouchers, or other incentives. At a frequency less than upon the deposit of each beverage container, a reverse vending machine may pay out a random incentive bonus greater than that guaranteed payment in the form of money, merchandise, vouchers, or other incentives. The deposit of any empty beverage container into a reverse vending machine does not constitute consideration nor shall a reverse vending machine be deemed to be a slot machine within this section.

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History.--s. 2, ch. 18143, 1937; CGL 1940 Supp. 4151(405-b); s. 1, ch. 67-203; s. 1, ch. 77-275; s. 2, ch. 84-247; s. 3, ch. 89-176; s. 1368, ch. 97-102.

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849.094 Game promotion in connection with sale of consumer products or services.--

(1) As used in this section, the term:

(a) "Game promotion" means, but is not limited to, a contest, game of chance, or gift enterprise, conducted within or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present. However, "game promotion" shall not be construed to apply to bingo games conducted pursuant to s. [849.0931](#).

(b) "Operator" means any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion, except any charitable nonprofit organization.

(2) It is unlawful for any operator:

(a) To design, engage in, promote, or conduct such a game promotion, in connection with the promotion or sale of consumer products or services, wherein the winner may be predetermined or the game may be manipulated or rigged so as to:

1. Allocate a winning game or any portion thereof to certain lessees, agents, or franchisees; or
2. Allocate a winning game or part thereof to a particular period of the game promotion or to a particular geographic area;

(b) Arbitrarily to remove, disqualify, disallow, or reject any entry;

(c) To fail to award prizes offered;

(d) To print, publish, or circulate literature or advertising material used in connection with such game promotions which is false, deceptive, or misleading; or

(e) To require an entry fee, payment, or proof of purchase as a condition of entering a game promotion.

(3) The operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall file with the Department of Agriculture and Consumer Services a copy of the

rules and regulations of the game promotion and a list of all prizes and prize categories offered at least 7 days before the commencement of the game promotion. Such rules and regulations may not thereafter be changed, modified, or altered. The operator of a game promotion shall conspicuously post the rules and regulations of such game promotion in each and every retail outlet or place where such game promotion may be played or participated in by the public and shall also publish the rules and regulations in all advertising copy used in connection therewith. However, such advertising copy need only include the material terms of the rules and regulations if the advertising copy includes a website address, a toll-free telephone number, or a mailing address where the full rules and regulations may be viewed, heard, or obtained for the full duration of the game promotion. Such disclosures must be legible. Radio and television announcements may indicate that the rules and regulations are available at retail outlets or from the operator of the promotion. A nonrefundable filing fee of \$100 shall accompany each filing and shall be used to pay the costs incurred in administering and enforcing the provisions of this section.

(4)(a) Every operator of such a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall establish a trust account, in a national or state-chartered financial institution, with a balance sufficient to pay or purchase the total value of all prizes offered. On a form supplied by the Department of Agriculture and Consumer Services, an official of the financial institution holding the trust account shall set forth the dollar amount of the trust account, the identity of the entity or individual establishing the trust account, and the name of the game promotion for which the trust account has been established. Such form shall be filed with the Department of Agriculture and Consumer Services at least 7 days in advance of the commencement of the game promotion. In lieu of establishing such trust account, the operator may obtain a surety bond in an amount equivalent to the total value of all prizes offered; and such bond shall be filed with the Department of Agriculture and Consumer Services at least 7 days in advance of the commencement of the game promotion.

1. The moneys held in the trust account may be withdrawn in order to pay the prizes offered only upon certification to the Department of Agriculture and Consumer Services of the name of the winner or winners and the amount of the prize or prizes and the value thereof.
2. If the operator of a game promotion has obtained a surety bond in lieu of establishing a trust account, the amount of the surety bond shall equal at all times the total amount of the prizes offered.

(b) The Department of Agriculture and Consumer Services may waive the provisions of this subsection for any operator who has conducted game promotions in the state for not less than 5 consecutive years and who has not had any civil, criminal, or administrative action instituted against him or her by the state or an agency of the state for violation of this section within that 5-year period. Such waiver may be revoked upon the commission of a violation of this section by such operator, as determined by the Department of Agriculture and Consumer Services.

(5) Every operator of a game promotion in which the total announced value of the prizes offered is greater than \$5,000 shall provide the Department of Agriculture and Consumer Services with a certified list of the names and addresses of all persons, whether from this state or from another state, who have won prizes which have a value of more than \$25, the value of such prizes, and the dates when the prizes were won within 60 days after such winners have been finally determined. The operator shall provide a

copy of the list of winners, without charge, to any person who requests it. In lieu of the foregoing, the operator of a game promotion may, at his or her option, publish the same information about the winners in a Florida newspaper of general circulation within 60 days after such winners have been determined and shall provide to the Department of Agriculture and Consumer Services a certified copy of the publication containing the information about the winners. The operator of a game promotion is not required to notify a winner by mail or by telephone when the winner is already in possession of a game card from which the winner can determine that he or she has won a designated prize. All winning entries shall be held by the operator for a period of 90 days after the close or completion of the game.

(6) The Department of Agriculture and Consumer Services shall keep the certified list of winners for a period of at least 6 months after receipt of the certified list. The department thereafter may dispose of all records and lists.

(7) No operator shall force, directly or indirectly, a lessee, agent, or franchise dealer to purchase or participate in any game promotion. For the purpose of this section, coercion or force shall be presumed in these circumstances in which a course of business extending over a period of 1 year or longer is materially changed coincident with a failure or refusal of a lessee, agent, or franchise dealer to participate in such game promotions. Such force or coercion shall further be presumed when an operator advertises generally that game promotions are available at its lessee dealers or agent dealers.

(8)(a) The Department of Agriculture and Consumer Services shall have the power to promulgate such rules and regulations respecting the operation of game promotions as it may deem advisable.

(b) Whenever the Department of Agriculture and Consumer Services or the Department of Legal Affairs has reason to believe that a game promotion is being operated in violation of this section, it may bring an action in the circuit court of any judicial circuit in which the game promotion is being operated in the name and on behalf of the people of the state against any operator thereof to enjoin the continued operation of such game promotion anywhere within the state.

(9)(a) Any person, firm, or corporation, or association or agent or employee thereof, who engages in any acts or practices stated in this section to be unlawful, or who violates any of the rules and regulations made pursuant to this section, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.



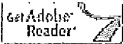
(b) Any person, firm, corporation, association, agent, or employee who violates any provision of this section or any of the rules and regulations made pursuant to this section shall be liable for a civil penalty of not more than \$1,000 for each such violation, which shall accrue to the state and may be recovered in a civil action brought by the Department of Agriculture and Consumer Services or the Department of Legal Affairs.

(10) This section does not apply to actions or transactions regulated by the Department of Business and Professional Regulation or to the activities of nonprofit organizations or to any other organization engaged in any enterprise other than the sale of consumer products or services. Subsections (3), (4), (5), (6), and (7) and paragraph (8)(a) and any of the rules made pursuant thereto do not apply to television

or radio broadcasting companies licensed by the Federal Communications Commission.

History.--ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, ch. 71-304; s. 1, ch. 73-292; s. 1, ch. 81-38; s. 1, ch. 83-118; s. 1, ch. 85-197; s. 1, ch. 90-36; s. 5, ch. 91-206; ss. 5, 6, ch. 92-280; s. 1, ch. 93-160; s. 251, ch. 94-218; s. 1364, ch. 97-102; s. 2, ch. 97-108; ss. 60, 70, ch. 2000-258; s. 1, ch. 2005-99.

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 Division of Consumer Services FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES 1-800-HELP-FLA (435-7352) • 1-800-FL-AYUDA (352-9832) • (850) 488-2221 	
Charles H. Bronson, Commissioner - LuAnn Stiles, Director	
<ul style="list-style-type: none"> Department Home Consumer Services Home About Us Info For Consumers Regulated Programs Info For Businesses Register Online <small>NEW</small> File a Complaint A-Z Resource Guide Gift Givers' Guide Consumer E-Newsletter Florida's Lemon Law Florida Do Not Call List Price Gouging Publications LifeSmarts Contact Us Search Public Meetings, Hearings, or Workshops Select a Division 	<h2 style="text-align: center;">Game Promotion/Sweepstakes</h2> <p>The Department of Agriculture and Consumer Services regulates game promotions, more commonly known as sweepstakes. Before entering a sweepstakes, consumers should keep in mind the following tips:</p> <ul style="list-style-type: none"> » No purchase or entry fee is required in sweepstakes. » Under the law, you should have an equal chance of winning, whether you purchase something or not. » Read the rules carefully. If you can't find, read or understand the rules, think again. » Don't give out your credit card or bank account information. » If you receive a promotion congratulating you on winning a prize, but require you to pay a shipping or handling fee, the sweepstakes may be fraudulent. You should never have to pay a fee before receiving a prize in a sweepstakes. » Make sure you know the company that's offering the sweepstakes. It may sound like a well-known firm, but many disreputable companies use a variation of a nationally recognized name. <h3 style="text-align: center;">Additional Resources</h3> <p>Game Promotions: (Brochure) Did you know that a game promotion is a marketing technique designed to induce you, the consumer, to purchase a product or service? This information was compiled to inform citizens about game promotions and to assist in making them aware of promotions that are fraudulent.</p> <ul style="list-style-type: none"> » Chapter 849, Florida Statutes (F.S.) » Chapter 5J-14, Florida Administrative Code <p><i>On the FAC site, please select "latest version" to view the rules</i></p> <p>Do you have more questions about Sweepstakes/Game Promotions? Contact us via email.</p> <p style="text-align: center;">File a Complaint Against a Sweepstakes/Game Promoter</p>
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Internet cafe operator loses Florida battle

Posted on December 02, 2009 in [Casino News & Announcements](#)

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The Internet cafe operator who asked a Florida judge to declare that its activities do not violate state law was disappointed this week when its arguments were rejected by a Tallahassee court.

Allied Veterans of the World, which has had internet cafes shut down in Seminole, Marion, Jackson and Pinellas counties, challenged the law in the state capital, reports the Orlando Sentinel newspaper, hoping for a ruling that would finally settle a long-running issue with enforcement agencies.

The non-profit group raises money for veterans' causes, using a loophole in the state's sweepstakes law to operate about 25 cafes around the state.

Starting in August this year, various centres were raided by police, disrupting business and spurring the Allied Veterans to turn to the courts for relief.

But Circuit Court Judge Jackie L. Fulford ruled that each sheriff in Florida is a local official and not an arm of the state - that means Allied Veterans of the World must pursue its challenge piecemeal in individual counties.

Allied Veterans of the World has other legal problems with which it has to contend; the Jacksonville Greyhound Racing Inc., which operates the Jacksonville Kennel Club, Orange Park Kennel Club and a poker room at the St. Johns Greyhound Park is launching litigation seeking to shut down the internet cafes, with damages and costs.

"This was Allied Veterans' attempt to pick a forum to somehow have its practices declared lawful," said attorney Michael Freed. "Now that their attempt has failed, Allied Veterans will have to continue to defend the lawsuit that our client has brought to declare their practices illegal."

The lawsuit, filed in circuit court in Jacksonville in August, claims that Allied Veterans of the World is in violation of Florida's Deceptive and Unfair Trade Practices Act and Florida's Civil Remedies for Criminal Practices Act. The lawsuit also maintains that Allied Veterans' establishments are a common nuisance under Florida Statutes.



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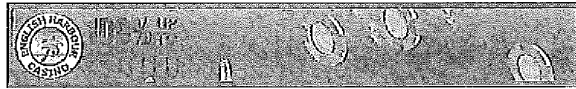
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Internet Cafe Gambling Becoming Popular In Florida

A few years ago the popular way to skirt the law in many states when it came to gambling was to open gambling halls where people could play slot machines and earn points that could be retrieved for prizes.

The prizes usually were shopping gift cards or merchandise. Authorities quickly caught on in many areas and chased many of these businesses out of their towns. Now, there is a new way to try and run a gambling operation.

Internet cafes are popping up in Florida. The basis of the cafe is that people come in and buy time on the Internet. Along with the Internet time comes credits that can be used to play video sweepstakes games.

If a person wins on these sweepstakes games, they are paid in cash. So far, police agencies have yet to bust one of these cafes for illegal gambling. Many who run these cafes believe they are not breaking any Florida laws.



Florida law actually protects these gambling houses. The law, as interpreted by the cafe owners, is that sweepstakes and game promotions are legal in the state because they are not the main attraction of the cafe.

According to the Herald Tribune in Sarasota, Florida, the selling of Internet time is the actual attraction, and the games and the prizes are just a bonus people are receiving for buying the Internet time.

Other establishments have opened that are using phone cards as the main draw. People are buying phone cards and receiving credits that can be used to enter in the sweepstakes games. While the establishments are sure they are not violating the law, authorities have not yet determined that to be true.

Several police agencies have become aware of the new Internet cafes and have begun keeping an eye on them. Undercover officers will most likely be used to verify whether or not the law is being broken.

December 30, 2008
Posted By Leroy Rutherford
Staff Editor, CasinoGamblingWeb.com
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December, 1996
Volume LXX, No. 1.1

F.S. §849.0935: Drawings by Chance **by Kent J. Perez**

Page 61

Feeling amazingly upbeat and positive for a lawyer, one Saturday morning you come out of your local K-Mart after dashing in for a few sorely needed items when you are approached by a young man who asks if you would like to buy a chance to win a vintage 1965 Mustang convertible for only \$10 a ticket. The convertible belongs to the local antique auto club. He advises you that the money is for a worthy cause and that a drawing will be held sometime the week before Christmas.

Having graduated from law school clueless and then becoming educated through the practice of law, the first thought that comes to your mind is, "This can't be that easy." Your second thought is, "I wonder who represents them?" After asking to see at least a picture of the Mustang, you slowly fork over \$10 to receive a little ticket with a number on it and a tab that requires filling out your name, address, and telephone number. You tear off the completed tab and hand it back to the young man, then stuff the ticket of chance into your pocket soon to be forgotten.

The Game

Charities and other not-for-profit organizations are always addressing ways to increase revenues and solicit more funds. An attractive way to do this is to hold a raffle or drawing by chance. A drawing by chance is really nothing more than a lottery.¹ It consists of the three elements of a lottery which are prize, chance, and consideration.²

As a practicing attorney, what do you need to know to advise the local antique auto club on how to lawfully hold this drawing of chance? Well, for starters, Florida has a general prohibition against gambling with the exception of pari-mutuel wagering, and the State of Florida Lottery.³ Ch. 849 of the Florida Statutes is entitled "Gambling," and proscribes a host of activities including conducting a lottery, keeping a gambling house, playing games of chance, unlawfully betting on the results of trial or contest of skill, and possessing gambling paraphernalia, among others.

When one thumbs through Ch. 849 and the various types of conduct that constitute gambling activity, it becomes apparent that the legislature intended to recognize certain exemptions to gambling prohibitions, provided that the activity is conducted in a manner that by strict definition does not equate to gambling. This may seem to be a somewhat backward approach, yet one of these so-called exemptions would be your first stop and your main stop in the Florida Statutes, as you seek to give the local auto club legal advice.⁴

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1984.⁸ While materials expressing the legislative intent of this section are lacking and case law is nonexistent, it would seem safe to presume that the original statute as passed in 1984 was intended to provide some authorization and guidance to your local church or other charitable organization wanting to conduct their annual raffle and giveaway in order to raise money for their organizations.⁹ As the law currently exists, subsection 849.0935(1) sets forth the definitions of a "drawing by chance" and "operator." A drawing by chance simply includes the random selection of a winner from entries submitted by the public. It does not by definition include those enterprises commonly known as matching, instant winner, or preselected sweepstakes promotions that involve, for example, a mailing of previously designated winning numbers to the public. The law also defines the term "operator" as an organization qualified under federal law as a 501(c)(3) not-for-profit corporation. This is key to the existence of this statute.

Building on these definitions, subsection 849.0935(2) says that the prohibition against an illegal lottery in this state shall not be construed to prohibit an organization from conducting a drawing by chance for fund-raising purposes if the operator is an organization qualified under 26 U.S.C. §501(c)(3), and has complied with the applicable provisions of F.S. Ch. 496, The Solicitation of Contributions Act.¹⁰

Subsection 849.095(3)(a)-(d) sets forth disclosure requirements of a specific nature for all brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance. It requires disclosure of the rules governing the conduct and operation of the drawing, the name of the organization or operator and its principal place of business, the source of the funds used to award cash prizes or purchase prizes, and the date, hour, and place where the winner will be chosen unless advertisement of the drawing is not offered to the public more than three days prior to the drawing.

Subsections 849.0935(4)(a)-(f) set forth a list of prohibitions making it unlawful for any operator who engages in a drawing by chance or promotes, operates, or conducts a drawing by chance to conduct any drawing in which the winner is predetermined by means of matching, instant winner, preselected sweepstakes, or otherwise in which the selection of winners is in any way rigged; require monetary consideration as a condition for entering the drawing; remove, disqualify, disallow, or reject an entry or discriminate in any manner between entrants who gave contributions; fail to notify at the address on the entry blank, any person whose entry is selected to win, of the fact that they are a winner; fail to award all prizes offered in the manner and at the time stated; and print, publish, or circulate literature or advertisement used in connection with the drawing that is false, deceptive, or misleading.

In this subsection list of prohibitions, (4)(b) specifically states it is unlawful "to require an entry fee, payment, proof of purchase, or contribution as a condition of entering the drawing or being selected." As in F.S. §§849.092 and 849.094, the express prohibition of consideration as a condition of entering a retail game promotion or drawing by chance is fundamental to these exemptions allowing for chance activities. The argument also exists that this specific expression overrules

Florida case law defining the lottery element of consideration, at least for purposes of these sections.¹¹ That is, by reading these subsections .092, .0935, and .094, one could argue that the focus is now directed toward tangible monetary consideration only and no longer the case law interpretation of any consideration sufficient to enter into a contract.

Finally, subsections 849.0935(5) and (6) set forth the penalties for anyone who violates this law and exempts the state lottery operated pursuant to Ch. 24. The penalty for a violation of F.S. §849.0935 is a second degree misdemeanor with the exception of a violation of the advertising disclosures of date, time, and place, punishable as a second degree misdemeanor by fine only.

Further Clarification

Now that we have read the statute, how do we apply the law? Facing an absence of case law, a further understanding of F.S. §849.0935 in today's marketplace and the current gambling fervor can be found in two opinions of the Office of the Attorney General. AGO 93-59 repeats the statute, but AGO 93-85 provides insight. AGO 93-85 was issued December 3, 1993, as a result of a request from the Office of the State Attorney, Ninth Judicial Circuit. Certain law enforcement agencies and prosecutors in Orange and Seminole counties were experiencing resistance from individuals who chose to interpret F.S. §849.0935 in what the state attorney considered to be an incorrect application and abuse of the law.

Television commercials were appearing all over the Orlando/Disney World area inviting individuals to enter into a sweepstakes being conducted by a well-known community not-for-profit charitable organization. This particular organization, in conjunction with a third party promoter, was soliciting the public to purchase tickets of \$100 per entry in exchange for the opportunity to win a house and a yacht, but with the giveaway contingent upon the receipt of at least the sum of money necessary to pay for the house and the yacht. Any additional monies would then go to the not-for-profit organization. The advertising for this sweepstakes also expressed the reserved right to cancel this giveaway promotion. State Attorney Lawson Lamar asked some basic questions regarding the application of this statute.¹²

First, may a promoter who is a Ch. 496 registered professional solicitor, conduct and profit from a private lottery or drawing by chance operated by a charitable organization, if some of the proceeds benefit the charitable organization? The Attorney General opinion answers this question by stating that a drawing by chance may be lawfully conducted by a promoter provided that the operator is an organization qualified as a 501(c)(3) and is in compliance with F.S. Ch. 496, The Solicitation of Contributions Act. That act further imposes restrictions and registration requirements on charitable organizations, sponsors, and professional solicitors, who solicit funds. The opinion concludes that a professional solicitor is not precluded from assisting a qualified operator in a drawing by chance provided the professional solicitor is an employee, officer, or agent of the qualified organization and is acting in compliance with the requirements of Ch. 496. This interpretation would seem to make it clear that the application of §849.0935 could arguably go beyond your local neighborhood charitable organization to assist a

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large group like the Red Cross in conducting a commercial drawing by chance. However, it seems that the possible commercialization of the privilege to conduct a raffle lacks a practical application in the marketplace with little pecuniary benefit when AGO 93-85 declares the entire world is entitled to a ticket without contributing, and the giveaway prize must exist independent of the drawing.

Second, the state attorney asked whether advertising a drawing by chance without indicating that no purchase or contribution is necessary to enter the drawing, and displaying a dollar amount in connection with the advertisement, is in violation of subsection (4) of §849.0935. The opinion responds succinctly, stating that in light of the requirement for the advertisements to refrain from the use of false, deceptive, or misleading information, literature, and materials, and the prohibition on requiring an entry fee, payment, proof of purchase, or a contribution as a condition of entering the drawing, a promotion that states a dollar amount in conjunction with the drawing and then fails to provide additional language stating that no purchase or contribution is necessary in order to participate in the drawing, is misleading and deceptive in violation of the prohibitions set forth under F.S. §849.0935. This interpretation, in the opinion of this author, is crucial to any charitable or not-for-profit organization that desires to engage in a drawing by chance and offers that drawing by chance to the general public. The focus must remain on the fact that no consideration is necessary to enter into a drawing by chance, and the fact that this drawing is being conducted in conjunction with the organization's request for a donation in their lawful solicitation of contributions. While the statute, as currently written, does not require the phrase, "no purchase or contribution is necessary for participation," using language such as "tickets cost \$100" or "entry fee is \$100/person" will create a false impression among the consumer public that a contribution is necessary to enter the drawing. The impression created, however, should be viewed as a whole. Allowing the organization to suggest a minimum contribution or donation along with the disclosure that no contribution is necessary seems an acceptable alternative.

Third, the state attorney asked whether a drawing by chance that sets forth rules allowing the operator to fail to award prizes if no contributions are received or if the promoter is not satisfied with the amount of contributions received violates this law. The Office of the Attorney General again replies in keeping with what appears to have been the original intent of this particular statute. Section 849.0935(4)(e) clearly makes it "unlawful for any operator to fail to award all prizes offered in the manner and at the time stated." This, coupled with the fact that §849.0935 constitutes a limited exception to the general prohibition against gambling in this state, leads the Attorney General to conclude that since this statute contemplates that a prize will be awarded, accordingly, there is no grant to an operator to cancel a drawing or refuse to award a prize regardless of the reason. The Attorney General clarifies §849.0935(4)(e) by its literal language of prohibiting an operator from failing to award all prizes offered. Here again, it seems the intent of this statute was to allow a local nonprofit charitable organization to solicit funds by offering a prize in exchange for donations received without tying the giveaway prize to the amount of contributions received.

Fourth, the state attorney essentially restates question three. "May the operator of a drawing by chance reserve the right to cancel?" The opinion answers *again* that as no contingencies appear to be allowed, *i.e.*, the drawing cannot require a level or amount of contribution, and as §849.0935(3)(d) requires specific disclosures on advertisements, brochures, notices, tickets, and entry blanks, as to the date, hour, and place where a winner will be chosen, the statute does not authorize or contemplate the cancelling of the drawing at the mere discretion of the operator.

Finally, the state attorney asked whether an operator under §849.0935 must have an independent source for the prize giveaway, as opposed to using funds received to purchase the prize to be awarded. The Attorney General opinion responds that an operator who does not have the prize at the time the tickets or entries are offered, but relies on contributions to obtain the prize, violates F.S. §849.0935. This conclusion follows the presumed intent to keep the prizes and expenses of the drawing independent from the solicitation of contributions as there can be no guarantee that sufficient contributions will be received. To permit otherwise would have the impact of placing unknown numbers of charities and not-for-profit organizations on par with the likes of Las Vegas and Atlantic City, effectively, allowing these entities to engage in drawings by chance at the level of a commercial enterprise. A simple examination of the historical abuses behind Florida's statutory bingo exemption to unlawful gambling would provide the nightmarish glimpse of how this drawing by chance privilege could also be abused.¹³

Changes

During the 1994 and 1995 legislative sessions, attempts were made to provide statutory amendments to the drawings by chance law. In the 1994 session, a bill was sponsored by Rep. Elaine Bloom and Sen. Donald Sullivan that incorporated clarification of the interpretations set forth in AGO 93-85. In the provision of law requiring disclosure of date, hour, and place where the winner will be chosen, language was added to specifically require the disclosure of the place the prizes will be awarded. The proposed language made it abundantly clear that all brochures, advertisements, notices, tickets, etc., used in connection with the drawing must conspicuously disclose that no purchase or contribution is necessary. Further, the 1994 proposed changes to F.S. §849.0935 made it unlawful to require a donation, or substantial consideration, in addition to an entry fee, payment, proof of purchase, or contribution as a condition of entering the drawing or being selected to win a prize. It set forth specific prohibitions to canceling a drawing, or purchasing or obtaining a prize with voluntary donations or contributions, and identified a violation of §849.0935 as a deceptive and unfair trade practice actionable under Florida's Little FTC Act.¹⁴

The 1994 bills carrying these changes to F.S. §849.0935 also contained revisions requested by the Department of State to F.S. §849.094, "Game Promotions in Connection with the Sale of a Consumer Good or Service."¹⁵ Presented as a cleanup piece of legislation, it easily passed its House committees and the full member body of the House only to die on the Senate special calendar a victim of

time during a hectic 1994 session.

A worthy endeavor, the same piece of legislation was picked up in the 1995 session as a proposed committee bill and Interim project by the House Committee on Regulated Industries. The bill traveled in essentially the same form as 1994 during the 1995 session with some minor changes to the proposed revisions of §849.0935. Two key changes to the 1995 revisions were changing the word "operator" to "organization" to clarify who may conduct a drawing by chance, and adding language to state that nothing would prohibit an organization from suggesting a minimum donation or from including a statement of any suggested minimum donation on their advertising material. Specific language was also added to make it unlawful for an organization to condition a drawing on a minimum number of tickets having been dispersed to contributors or on a minimum number of contributions having been received. The 1995 version of the bill again traveled with revisions to F.S. §849.094, "Game Promotions in Connection with the Sale of a Good or Service," that would make it easier for the Department of State to register and enforce proper compliance with those retail game promotions.

The 1995 bill, explained by committee to provide greater consumer protection and to assist not only organizations authorized to conduct drawings by chance but also legitimate businesses, found itself as perhaps the only bill addressing revisions to F.S. Ch. 849 to pass both the House and Senate chambers. Needless to say, any piece of legislation that was moving with a high probability of success and dealing with changes to Florida's gambling laws became extremely attractive to varied legislative interests. After several attempts by interests to use this bill as a vehicle to make changes to other provisions of Ch. 849, it became apparent that this piece of legislation would not survive.¹⁶

Changes to §849.0935 based on AGO 93-85 surfaced again in the 1996 session as a "strike everything after the enacting clause" to House Bill 407 by Rep. Mike Fasano. Rep. Fasano's original HB 407 was amended in the House Regulated Industries Committee and became CS/HB 407 which, after being withdrawn from the remaining committees of reference, was placed on the House calendar. A similar bill in the Senate was amended to conform to the House version and passed the Senate Regulated Industries Committee.

CS/HB 407 passed the full House the last week of session with a floor amendment that restated the prohibited nexus between receipt of donations and the purchase of the prize to be awarded. The language was reworded to make it unlawful to condition the acquisition or giveaway of any prize upon the receipt of voluntary donations or contributions. This would allow an organization to effectively use its receipts for any debt incurred, even those connected with the prize to be awarded, as long as the receipts and acquisition remain two separate and independent functions of the giveaway. In the final days of the 1996 session, CS/HB 407 also passed the Senate. It became law without the Governor's signature.

Conclusion

For the most part, charitable and not-for-profit organizations are worthwhile endeavors that seek to make life better for needy people in their communities. It is probably for this reason that the legislature will continue to grant these organizations the privilege to conduct drawings by chance and other solicitation activities. These activities are about being free and unregulated and are truly intended to benefit a worthy cause. However, this privilege must always be balanced against the legislature's commitment to protect the public from fraud and abuse and the current will of the public to prohibit gambling in the State of Florida.

Your local charitable or civic organization will be able to give away their donated prizes at the Fourth of July picnic by requesting contributions and placing everyone's name in a hat. The antique auto club may even choose to raffle off a vintage Mustang, depending on the structure of their organization. However, an attempt to use this statute to take charitable not-for-profit organizations from a community giveaway level to the sophisticated business of a questionable commercial enterprise, raises significant questions of state policy and can only result in potential abuse to the general public. q

¹ At common law lotteries were illegal only when they became public nuisances. See *Lee v. City of Miami*, 121 Fla. 93, 163 So. 486 (1935).

² See *Little River Theater Corporation v. State ex rel. Hodge*, 185 So. 855 (1939), *Dorman v. Publix-Saenger-Sparks Theaters*, 184 So. 886 (Fla. 1938). And see AGO 90-58 and AGO 58-266.

³ See Fla. Const. art. 10, §§7 and 15, Fla. Stat. Ch. 849, "Gambling," and *Berron v. State*, 271 So. 2d 115 (1972). Note, however, Fla. Stat. Ch. 849 does permit bingo and certain penny-ante games.

⁴ Depending on the nature of the activity, several other Florida statutes may have application to the practices undertaken by not-for-profit charitable organizations. See also Fla. Stat. Ch. 495, The Charitable Solicitations Act, and Fla. Stat. Ch. 501, Part II, The Deceptive and Unfair Trade Practices Act.

⁵ See Fla. Stat. §849.092(3)(a) (no person to be eligible to receive such a gift shall ever be required to pay any tangible consideration to such licensee in the form of money or other property or thing of value), and Fla. Stat. §849.094(2)(e) (unlawful to require an entry fee, payment, or proof of purchase as a condition of entering a game promotion).

⁶ See *id.* §849.094.

⁷ See *id.* §849.0935(4)(b).

⁸ *Id.* §849.0935, as passed in 1984, was amended by HB 1193, Fla. Laws ch. 88-115 (1988), to add the word "tickets" to §849.0935(3) requiring all brochures, advertisements, notices, tickets, or entry blanks used in connection with a drawing by chance to conspicuously disclose the rules of the drawing, the name of the operator and its place of business, and the source of funds used to award the prizes. Also added to this list of disclosure requirements, was "(d)" requiring the date, hour, and place where the winner will be chosen to be disclosed unless the brochures, advertisements, notices, tickets, or entry blanks are not offered to the public more than three days prior to the drawing. In keeping with this newly required disclosure, additional language was added to §849.0935(5), providing that any operator or other person who sells or offers for sale in this state a ticket or entry blank for a raffle or other drawing by chance without complying with the requirements of (3)(d) is guilty of a misdemeanor of the second degree punishable by fine only. See Fla. Laws ch. 88-115.

⁹ When Fla. Stat. §849.0935 was enacted in 1984 as an exception to the general prohibition against any person conducting a lottery in this state, a key feature was the provision that no donation or minimum payment could be required as a condition for participating in the raffle. The absence of the consideration requirement in the raffles authorized by Fla. Stat. §849.0935, ensured that such activities would, if conducted according to the statute, not violate the lottery prohibition. Organizations conducting fund-raiser drawings by chance are allowed only to ask for a donation but not require a donation for a chance at winning the prize to be given away. Even persons who elect not to make a contribution must be given a chance to win the prize if they request one.

¹⁰ See §§496.401-496.424, cited as the Solicitation of Contributions Act. This law is regulated by the Department of Agriculture and Consumer Services and requires registration of organizations, fund-raising consultants, professional solicitors, charitable organizations, and sponsors. It specifies prohibited acts and sets forth available remedies.

¹¹ Where only tangible monetary consideration is specifically prohibited, would the use of other consideration with the elements of prize and chance, for the purposes of the activities identified by these statutes, constitute an illegal lottery? The argument could be made that the enactment of Fla. Stat. §§849.092 and 849.094 referring explicitly to tangible monetary consideration, does for purposes of these sections overrule the standing case law interpretations of lottery consideration. (See *Blackburn v. Ippolito* (App., 156 So. 2d 550 (1963), cert. denied, 166 So. 2d 150). Pecuniary consideration is not necessary to constitute a lottery. Consideration necessary to establish a simple contract is sufficient.)

¹² Fla. Stat. §849.0935 in its current form is entitled, "Charitable, non-profit organizations; drawings by chance; required disclosure; unlawful acts and practices; penalties."

¹³ See report of the 12th Statewide Grand Jury regarding the operation of commercial bingo halls in the State of Florida, case no. 83,984, Supreme Court, State of Florida.

¹⁴ The Florida Legislature has no less than 16 specific statutory locations identifying acts or practices that would be *literal per se* violations of §501.203(3)(c) of Florida's Deceptive and Unfair Trade Practices Act. Recent legislative changes to this law should make it applicable to charitable not-for-profit organizations.

¹⁵ See HB 1733 and SB 2100 from the 1994 Legislative Session.

¹⁶ See CS/HB 2483 and CS/SB 1008 of the 1995 Legislative Session.

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The Florida Senate

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Committee on Regulated Industries

REVIEW OF ELECTRONIC GAMING EXCEPTIONS FOR ADULT ARCADES AND GAME PROMOTIONS

Issue Description

Senators and Senate professional staff have received many complaints and comments regarding whether adult amusement arcades and electronic game promotions/sweepstakes/Internet cafes are operating legally under ch. 849, F.S., the chapter that governs gambling in the state.

During the 2008 legislative session, the Senate Regulated Industries Committee conducted two days of hearings on these issues and the Chair of the Senate Regulated Industries Committee, Senator Dennis L. Jones, D.C., requested an interim project to review the operation of s. 849.161, F.S., concerning amusement games and machines, and s. 849.094, F.S., concerning game promotions in connection with the sale of consumer products or services. The exemptions under ss. 849.161 and 849.094, F.S., are two distinct provisions and the electronic games played under each exemption are quite different.

Background

Adult Amusement Arcades

During the committee meetings, several issues were identified, such as the inability to identify the location of the adult amusement machines because they are not registered in their own tax classification, the machines are not tested or certified, it is not clear whether the machines can be manipulated internally, there is some question whether the machines operate by an application of skill, it is not clear how the maximum limitation of 75 cents on any game played is being applied, there is currently no agency overseeing or licensing these machines, it is not clear if seniors or the operators are being taken advantage of in some places, and finally, the police do not have clear rules or guidelines or legal authority to know when and if illegal gambling is occurring at these locations.

Over the past several years, law enforcement agencies have closed down or attempted to close down adult amusement arcades in Pinellas County, Hillsborough County, Panama City, Sarasota, and Jacksonville. The Broward County Sheriff's Office has also been very active in the past investigating adult arcades. The Broward State Attorney brought illegal gambling charges last year against the owner of an adult arcade who was also president of the Florida Arcade and Bingo Association. The owner was acquitted by a jury and it is not clear whether additional charges will be filed.¹

Electronic Game Promotions

Utilizing electronic machines as game promotions (also called sweepstakes or Internet cafes) is a relatively new occurrence in Florida. Operators of game promotions are required to register with the Department of Agriculture and Consumer Services (DACCS) under s. 849.094, F.S. In a game promotion, a person may conduct a game of chance in connection "with the sale of consumer products or services and which the elements of chance and prize are present." The electronic game promotions usually sell phone cards or Internet time with usage minutes in connection with the game promotions. The cards are used to play an electronic gaming machine that reveals whether a player has won a prize. It is unclear to law enforcement whether these electronic gaming machines are

¹ Jon Burstein, "Patrons cheer Broward jury's decision that game room operates legally," *South Florida Sun-Sentinel*, 15, Aug. 2006, A1.

illegal slot machines or are legal under the game promotion statute. Law enforcement has conducted raids of several phone card sweepstakes and Internet café establishments and closed locations down around the state.

Findings and/or Conclusions

Senate professional staff reviewed the Florida Statutes, rules, relevant case law, other state statutes, and articles concerning adult arcades and game promotions/sweepstakes/ Internet cafes. Interviews were conducted with the staff of the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation (division), the Florida Department of Law Enforcement (FDLE), the Division of Consumer Services of the Department of Agriculture and Consumer Services, industry experts, and other interested persons. Senate professional staff also sent surveys to the 67 Sheriffs and 20 State Attorneys. (See Appendix I and II). Eight surveys were received from the State Attorneys' Offices. Thirty Sheriffs responded to the survey. Sheriffs in eleven counties did not have any adult arcades or game promotions/Internet cafes.²

Chapter 849, F.S., provides the prohibitions, guidelines, and exceptions, concerning gambling. Gambling is prohibited in Florida, with certain exceptions, by s. 849.08, F.S., which provides that "[w]hoever plays or engages in any game at cards, keno, roulette, faro or other game of chance, at any place, by any device whatever, for money or other thing of value, shall be guilty of a misdemeanor of the second degree . . ." A person who keeps a gambling house under s. 849.01, F.S., which includes keeping, exercising, or maintaining gaming tables, rooms, implements, apparatus, or other places for the purpose of gaming or gambling, is guilty of a felony of the third degree. The chapter also includes prohibitions regarding employees of gambling houses, renting houses for gambling purposes, and lotteries; and it provides for forfeiture, confiscation, liens, and penalties.

Slot Machine Gaming in Florida

Slot machine gaming was legal in Florida for approximately two years between 1935 and 1937. Chapter 17257, L.O.F. (1935), provided for three classes of "coin-operated devices;" adoption of rules and licensing by the Comptroller; and payment of licensing fees to the Tax Collector. The act was challenged in *Lee v. City of Miami*, 121 Fla. 93, 163 So.486 (Fla. 1935), on the issue of whether coin-operated devices authorized by the act were lotteries prohibited by the Florida Constitution.³ The court held that the "coin-operated devices" were not lotteries per se and could be authorized by the Legislature.

In 1937, the Legislature enacted a prohibition against slot machines. The prohibition against slot machines is codified at ss. 849.15 and 849.16, F.S.,⁴ also with certain exceptions. Section 849.15, F.S., prohibits the leasing, renting or selling of certain slot machines or other devices, "pursuant to which the user thereof, as a result of any element of chance or other outcome unpredictable to him, may become entitled to receive any money, credit, allowance, or thing of value or additional chance or right to use such machine or device . . ." (emphasis supplied) Section 849.16, F.S., provides, in part:

- (1) Any device is a slot machine . . . that, as a result of the insertion of any . . . object, such . . . device is caused to operate . . . by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may . . . become entitled to receive any . . . thing of value. . . or
- (b) Secure additional chances or rights to use such machine . . . even though it may . . . present some merchandise, indication of weight, entertainment, or other thing of value. (emphasis supplied)

² Responses are on file with the Senate Regulated Industries Committee.

³ In 1935, the prohibition against lotteries was found in Art. 3, s. 23, Florida Constitution (1885). The prohibition is now found in Art. X, s. 7, Florida Constitution which provides:

SECTION 7. Lotteries.—Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state.

State operated lotteries are authorized by Art. X, s. 15, Florida Constitution, which provides, in part, that "[l]otteries may be operated by the state."

⁴ Section 849.15, F.S., was originally enacted by s. 1, ch. 18143, L.O.F. (1937), and s. 849.16, F.S., was also originally enacted in 1937 by s. 2, ch. 18143, L.O.F. (1937).

Sections 849.161 and 849.094, F.S., are exceptions to the general prohibitions against gambling and slot machines found in ch. 849, F.S. The provisions in s. 849.16, F.S., remained unchanged until 1967 when that section was amended to exempt arcade amusement centers from the slot machine prohibition in that section. The limitation that a place of business must have at least 50 or more coin-operated amusement games or machines on the premises was also included in that act.⁵

Arcade Amusement Centers

In 1984, the provisions dealing with arcade amusement centers were removed from s. 849.16, F.S., and placed in a newly created s. 849.161, F.S.⁶ The provisions relating to amusement games and machines at any retail dealer who operates a truck stop were added in 1996.⁷

Section 849.161(1)(a)1., F.S., provides that:

Nothing contained in this chapter [ch. 849, F.S.] shall be taken or construed as applicable to an arcade amusement center having amusement games or machines which operate by means of the insertion of a coin and which by application of skill may entitle the person playing or operating the game or machine to receive points or coupons which may be exchanged for merchandise only, excluding cash and alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played.

Section 849.161(1)(a)2., F.S., provides that the provisions of ch. 849, F.S., shall not be taken or construed to apply to amusement games or machines located at "any retail dealer who operates as a truck stop, as defined in chapter 336⁸ and which operates a minimum of 6 functional diesel fuel pumps." The machines at a truck stop may operate "by means of the insertion of a coin or other currency" and the points and coupons may be exchanged for "merchandise limited to noncash prizes, toys, novelties, and Florida Lottery products, excluding alcoholic beverages, provided the cost value of the merchandise or prize awarded in exchange for such points or coupons does not exceed 75 cents on any game played."

An arcade amusement center must have at least 50 coin-operated amusement games or machines on the premises to qualify for this exception.⁹ The provisions of s. 849.161(1), F.S., are not applicable to a coin-operated game or device that entitles a player, by application of skill, to replay the game at no additional cost and that can "accumulate and react to no more than 15 free replays; [that] can be discharged of accumulated free replays only by reactivating the game or device for one additional play for such accumulated free replay; [and that] can make no permanent record, directly or indirectly, of free replays."

The provisions of s. 849.161(1), F.S., do not apply to:

any game or device defined as a gambling device in 24 U.S.C. s. 1171, [sic]¹⁰ which requires identification of each device by permanently affixing serial number and name, trade name, and date of manufacture under s. 1173, and registration with the United States Attorney General, unless excluded

⁵ See s. 1, ch. 67-203, L.O.F., codified at s. 849.16, F.S. (1968).

⁶ See s. 2, ch. 84-247, L.O.F. This act attempted to place the arcade amusement center provisions in a newly created ch. 512, F.S. (as s. 512.01, F.S., the only section in the new chapter). The Division of Statutory Revision renumbered that section as s. 849.161, F.S.

⁷ The provisions were added in three different sections in two different bills. See s. 159, ch. 96-320, and s. 79, ch. 96-323, L.O.F. Different provisions amending subparagraph (1)(a)2. and paragraph (1)(b) of s. 849.161, F.S., were also included in s. 69, ch. 96-323, L.O.F., and that version is noted in footnote 1 to s. 849.161, F.S. For a description of multiple provisions in the same session affecting a statutory provision, see preface to the *Florida Statutes*, "Statutory Construction."

⁸ Provisions referencing truck stops in ch. 336, F.S., was in s. 336.021(1)(c)3., F.S.; it was deleted by s. 15, ch. 97-54, L.O.F. Section 336.021(1)(c)3., F.S., provided, in part, that a "truck stop" is any retail dealer registered pursuant to chapter 212, excluding marinas, that has declared its primary fuel business to be the sale of diesel fuel."

⁹ See s. 849.161(2), F.S.

¹⁰ Title 24 of the United States Code relates to hospitals and asylums; chapter 24 of Title 15 of the United States Code relates to transportation of gambling devices.

from applicability of the chapter under s. 1178. This subsection shall not be construed to authorize video poker games or any other game or machine that may be construed as a gambling device under Florida law.

Several different types of establishments are operating under the exemption provided in s. 849.161, F.S. There are arcade amusement centers that cater predominantly to children. ChuckE.Cheese's is an example of this type of center. These centers cater to families with young children.¹¹ Tickets can be won at the games and redeemed for prizes on-site. Facilities known as "adult amusement centers" also operate under this section. Dave and Busters is an example of an adult amusement center that includes different types of games catering to adults.¹² These games include billiards, video games, and other games where tickets can be won and redeemed for prizes on-site. Dave and Busters also serves food and alcoholic beverages to its patrons. Electronic games are also located in truck stops that have six diesel pumps. Finally, electronic games are located at what are known as "senior arcade amusement centers." The Florida Bingo and Arcade Association represent 29 of these establishments in Florida.¹³ According to the association, these arcades have been in operation since 1984. It also uses the term "penny arcades."¹⁴

Some electronic games resemble traditional slot machines but are equipped with a "skill stop button" that supposedly stops the game activity when engaged. The electronic games that resemble slot machines and use a "skill stop button" have caused concern in the law enforcement community that these games may be violating the gambling devices provisions in ch. 849, F.S.

The FDLE addressed the Senate Regulated Industries Committee concerning some of these electronic games.¹⁵ The department indicated that some adult arcades have operated in Florida without any rules, regulations, or industry norms. At issue is the use of particular types of gaming machines. The owners of adult arcade facilities, according to the department, have used vague interpretations of Florida gaming laws to open and operate what appear to be illegal gambling halls. The method of play in these adult arcades has created a grey area for enforcement and prosecution of illegal gambling across the state. The operators maintain that the devices in these adult arcades are legal under Florida law. They also maintain that the machines are not illegal gambling devices because they do not pay out in cash, they pay out only with merchandise in the form of gift cards, and operate by "application of skill" and not as games of chance.

Senior Arcades and Their Patrons

The Senate Regulated Industries Committee received testimony from seniors that frequent the senior arcades.¹⁶ The speakers stressed the importance of the facilities to the entertainment of senior citizens. They also emphasized that the seniors have a place to socialize and enjoy themselves. They enjoy the machines and can sit at the machines and play for hours. The players receive gift cards to stores, such as Publix, Wal-Mart, Walgreens, and Target. According to the testimony, the seniors can use these cards for prescription drugs, food, and eating out. The seniors indicated that they feel safe at these locations. The locations also serve free breakfast, hot lunches, hot dinners, snacks, and non-alcoholic beverages. These have been called "play pens" for seniors. The seniors indicated that the games require skill because they can choose a machine and how to play the games by "holding" the symbols on one or two of the reels in addition to stopping the reels with the skill stop button. The testimony also indicated that many of the seniors who frequent the senior arcades cannot afford to play at the "Vegas-style" slot machine casinos offered at the Broward County pari-mutuel facilities or the Seminole Tribe's facilities.

The president of the Florida Arcade and Bingo Association asserted that the senior amusement arcade centers are no different than the children's amusement arcades except that their patrons are 60, 70, and 80 years of age or

¹¹ See <http://www.chuckecheese.com/company-info> (Last visited October 31, 2008).

¹² See <http://www.daveandbusters.com/Misc/HousePolicies.aspx> (Last visited October 31, 2008).

¹³ See <http://www.floridaarcadeassociation.com/members.htm> (Last visited October 31, 2008).

¹⁴ A penny arcade, according to the association, is an eight or nine line electronic machine where the play is a penny a line so that the maximum is eight or nine cents per play.

¹⁵ Senate Regulated Industries Committee meeting, February 19, 2008.

¹⁶ Senate Regulated Industries Committee meeting, March 4, 2008.

older. In addition to providing seniors with an opportunity to socialize with persons their own age, the association indicated that the facilities usually employ five to seven persons, pay a state and local license fees for each machine, and pay 4 percent of gross sales to the Department of Revenue. According to the association, the types of machines operated at the senior arcade amusement centers by its members are the same type of machines played in the truck stops. The association also indicated that the operations of their members are legal and qualify as arcade amusement centers under s. 849.161(1)(a)1., F.S.

According to the Department of Revenue, no method currently exists to identify how much revenue the senior arcade amusement centers and the machines at the truck stops are remitting to the state because all amusement machines, including pinball games, video games, kid's games, are combined under one reporting category – coin-operated amusement machines. The Senate Regulated Industries Committee heard testimony from the owner of facilities in Bonita Springs and Naples who started her game rooms in 2004 and 2005, respectively. She indicated that she paid \$119,650 in state taxes for the facility in Bonita Springs over a three year period. At the 4 percent tax rate, that is gross revenue of approximately \$2.9 million or \$997,000 per year. The facility in Naples paid approximately \$60,000 in gross receipts taxes. Over the three year period, that is gross revenue of approximately \$1.5 million or \$500,000 per year. The facilities employ 20 persons.

Enforcement

The FDLE has also conducted its own survey of law enforcement agencies around the state. Additionally, the department has identified several issues involved in determining the legal status of these facilities based on its experience in the investigating and providing of assistance in the prosecution of adult arcades.

The department has found that some machines could be set at a variable payout rate. For example, over the past three or four years in Manatee County, law enforcement agencies seized machines in small "back room" operations of less than six machines. In 2006, larger operations were identified with machines that paid out winnings in the form of Visa debit cards and gift cards. Although the operators maintained that the machines were skill-based, the investigations determined that the machines could be set at a variable payout rate of between 55 to 95 percent. These machines were set at 55 percent. It was also determined that the machines were manufactured out-of-state and were supplied on a revenue sharing basis. The manufacturers indicated that the machines were intended for lawful entertainment purposes and not meant for gambling.

The department also found that citizens could be easily cheated of their winnings by the operators of the facilities. In 2007, the Polk County Sheriff's Office raided an adult arcade based upon citizens' complaints that citizens were being cheated. The business had approximately 50 video slot machines that accepted debit cards that were loaded with credit by the staff. The minimum bet was \$1.00. Winners were paid in cash, but complained that they did not receive any payouts unless there was at least \$50 worth of credit remaining on the debit card. Usually the machines would be reset by the attendants to cause the patrons to lose any remaining credits. These machines were manufactured out-of-state, South Carolina. The manufacturer was subsequently closed down by the South Carolina authorities.

The manufacturers/distributors can also be defrauding the operators of the senior arcade amusement centers. Some manufacturers/distributors include an electronic reduction factor installed in the machines they provide and they can manipulate the software to "skim" a larger percentage from the operator without the operator's knowledge.

The FDLE also indicated that in 2008 there have been reports of arcade closures in Delray Beach and Cape Coral. These closures are significant because patrons were never notified and therefore lost any accumulated credit that they had. Furthermore, the owners of the Cape Coral location allegedly re-opened in a different location after telling patrons that they had gone bankrupt after a burglary.

Games of Skill or Chance

One of the difficulties in enforcing or applying the gambling restrictions and exemption in ch. 849, F.S., is determining whether a device or machine is a game of chance or a game of skill. The department indicated that,

after reviewing reports of illegal gambling devices and operations, it is very difficult to determine in an investigation or prosecution whether the proprietors of facilities with suspect machines are in violation of Florida gambling law. The "safe harbor" exemption under s. 849.161, F.S., requires that the game or machine must entitle a person playing or operating the game or machine by application of skill to receive points or coupons that may be exchanged for merchandise. The department emphasized that skill is easy to discern when, for example, the game requires a person to roll or throw a ball into a round hole or cylinder to accumulate points, but it is much more difficult to discern skill when the game involves rotating reels on a video screen run by a computer chip on a electronic gaming machine. It is this type of electronic gaming machine that is commonly seen in the facilities that law enforcement refers to as adult arcades and that law enforcement considers illegal under ch. 849, F.S.

The department indicated that some experts assert that these electronic games are games of chance because they can be altered by the game computer while the game is being played. For example, the order that the symbols appear can be changed so that a player does not win and the jackpot does not exceed the payout percentage set by the game operator. The payout percentage is set by use of a "dip switch" located on the computer board. This is termed "morphing" in the industry. No amount of skill can overcome the game's manipulation of the game and its result.

The representative from Gaming Laboratories International¹⁷ also testified before the committee. He reiterated the concern about the electronic gaming machines being able to "morph." In addition he noted that the machines could also be set to "coast." This is the situation in which the emblems continue to "spin" even though the skill stop button has been engaged. This prevents the emblems from stopping at the time the player activates the skill stop button.

According to the Florida Arcade and Bingo Association, there have been dozens of court cases over the years and no court has ruled that a machine with a skill stop button does not meet the definition of skill. The association maintains that Florida law is very clear: if the facility has 50 machines that operate by insertion of a coin, if you have an operation of skill, if the player receives points or coupons that are exchangeable for merchandise (other than cash or alcohol), and if the value of the merchandise does not exceed 75 cents per game played, then the machine is not a slot machine and falls under exemption to the slot machine provisions of ch. 849, F.S. The association asserts that the electronic machines with a skill stop button are similar to an electronic video game like Pac Man, and that the machines have different skill levels with no set payout. The player can make the determination of what symbols can be held and the player's determination affects the outcome of the game. According to the association, payouts have never been part of the amusement machine business.

Testimony was presented before the Senate Regulated Industries Committee from a person with nation-wide casino experience, including experience at various Indian casinos. Based on his understanding of the types of machines used at the senior arcade amusement centers, he analyzed the machines to determine whether the technology and mathematics in the machines brought them under the jurisdiction of the federal Johnson Act,¹⁸ which prohibits the transportation of slot machines across state lines without state statutory approval. The Johnson Act allows the transportation of machines that are packed and sealed for transport. He concluded that the machines used at Florida senior arcade amusement centers are not slot machines because they are not equipped with the requisite technology (an EPROM chip),¹⁹ they do not have a fixed percentage of payouts, and they do not have random number generators. He asserted that each one of these elements is a necessary component of a slot machine.

The department and the survey respondents noted that the investigation and prosecution of suspected gambling devices involves great expense to law enforcement agencies in addition to the cost of prosecution. Many times the

¹⁷ Gaming Laboratories International, BMM North America, and Nick Farley and Associates, Inc., are licensed by the Division of Pari-mutuel Wagering to test the slot machines authorized by ch. 551, F.S.

¹⁸ 15 U.S.C. ss. 1171-1178.

¹⁹ An EPROM check stands for Erasable Programmable Read-Only Memory. It is a type of memory chip that retains its data when its power supply is switched off. It can be erased by exposure to UV-C light. See <http://en.wikipedia.org/wiki/EPROM> and <http://www.progshop.com/shop/electronic/eprom-programming.html> (Last visited November 3, 2008).

cases are decided on what is skill and the case is determined by a battle of costly experts to determine whether a game is played by application of skill or whether the game is a game of chance.

The department and the survey respondents recommend amending ch. 849, F.S., to provide better guidance and to clarify the types of gaming devices that qualify under the exemption in s. 849.161, F.S. The clarification should include what qualifies as a skill-based game. Such a clarification would assist law enforcement to ascertain the legality of these games. The department and the survey respondents do not believe that law enforcement and state attorneys should have to rely on competing expert testimony to determine the legality of the games. If these machines are legally authorized, then the department and the survey respondents recommend that the machines be regulated by a state agency to ensure the integrity of the games.

Regulation

Currently, slot machines are authorized in Florida only at the pari-mutuel facilities in Broward and Miami-Dade Counties.²⁰ The slot machines are regulated by the Division of Pari-mutuel Wagering. The regulation includes audits and monitoring the operation of the slot machines.²¹ Staffs from the division and the FDLE are located on the premises. The payout percentage is required to be set at no less than 85 percent.²² The machines are tested and certified by an independent testing laboratory.²³ The manufacturers of the slot machines have the machines tested and sealed before shipping them to Florida.

Another major concern with the machines in adult arcades is the ability of these machines to be tampered with to cheat both the patrons and the operators of these facilities. The department and the survey respondents noted that there is no intensive regulation similar to the regulation of the slot machines at the pari-mutuel facilities. The department and the survey respondents indicated that, without regulation and more specificity or clarification in the law regarding games of chance and games of skill, communities will continue to be unsure whether they have legal amusement centers or illegal gambling houses.

Some counties, such as Seminole County, have prevented the operation of the machines by ordinance. The department also noted that enforcement varies depending on the local jurisdiction. Some state attorneys have issued cease and desist orders against these establishments. Other state attorneys offices leave it up to the local law enforcement agencies to make the determination. The differing enforcement decisions can lead to the perception of disparate or selective enforcement and prosecution practices.

The Florida Arcade and Bingo Association noted that the amusement machines have never been regulated by a state agency. It has expressed the concern regarding previous draft legislation discussed in the House Business Regulation Committee²⁴ that any regulation should be equally applied to children's amusement arcades, machines at truck stops, and senior amusement arcades, and not aimed solely at eliminating all the senior amusement arcades. The president of the Disabled American & Vietnam Veterans does not support any regulation of the senior arcade amusement centers. He believes that the law is clear regarding the conduct of the electronic games at these centers.

Actions by Other States

States have used three methods to attempt to carve out a gambling exception for amusement games. The first is to require that the amusement game be based on skill or the application of skill. States have used different guidelines to determine the degree of required skill. The second method is to limit the payouts that an amusement machine

²⁰ Art. X, s. 23, Florida Constitution, and ch. 551, F.S. The tribal-state compact that purportedly authorized slot machines at the Seminole Tribe's casinos was held invalid by the Florida Supreme Court in *Florida House of Representatives, et al. v. The Honorable Charles J. Crist, Jr., et al.*, 990 So.2d 1035 (Fla. 2008).

²¹ Section 551.103, F.S.

²² Section 551.104(4)(j), F.S.

²³ Section 551.103(1)(e), F.S.

²⁴ The draft was discussed at the House Business Regulation Committee meeting on January 24, 2008. See http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2354&Session=2008&DocumentType=Meeting Packets&FileName=BusinessReg_01_24_08.pdf (Last visited on November 7, 2008).

may dispense. The third method is a combination of the skill requirements and limitation of payouts. However, the amusement exception has created a gray market for gambling in many states. Businesses have taken advantage of loopholes and have placed games in their establishments that may have a degree of skill, but look and play like a slot machine.

Texas provides an amusement game exception that limits payouts to “noncash merchandise prizes, toys or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.”²⁵ Texas does not limit the games with a skill requirement. An electronic game machine known as an “eight liner” began to appear. The electronic game machine was similar to a slot machine and awarded tickets that could be redeemed for prizes. The electronic game machine was believed legal only if the payout was below the statutory \$5 limit. Law enforcement stated that it was difficult and costly to prove that operators were violating the payout limits.²⁶ The Texas Supreme Court clarified the legality of the “eight-liner” game machine in 2003 when it ruled that tickets won by the player could not be redeemed for cash, that gift certificates were the equivalent of cash, and that the electronic gaming machine was an illegal slot machine.²⁷

Ohio originally permitted games that required at least 50 percent skill. After a game called “Tic Tac Fruit”²⁸ started to appear in the state, the authorities found it difficult and expensive to prosecute the operators because of the question of skill.²⁹ In response, the Governor of Ohio issued an emergency executive order to temporarily stop the estimated 50,000 games in Ohio.³⁰ The Ohio legislature subsequently banned the games by redefining the skill-based amusement machine to prohibit machines in which the success of the player is or may be determined by a chance event that cannot be altered by the player’s actions, and limited the amount a machine could payout.³¹ Georgia also has an amusement exception similar to the one in Ohio. It limits payouts and addresses the issue of the ‘skill stop’ by providing that the players’ use of a skill stop is not considered the use of skill under Georgia law.³²

Electronic Game Promotions

In 1971, the Legislature enacted s. 849.094, F.S.³³ That section authorizes game promotions in connection with the sale of consumer products. Game promotion, under s. 849.094 F.S., means:

a contest, game of chance, or gift enterprise, conducted with-in or throughout the state and other states in connection with the sale of consumer products or services, and in which the elements of chance and prize are present...³⁴

This provision is intended to allow companies to promote their products or services with a promotion or sweepstakes. An example is McDonald’s Monopoly game. These types of sweepstakes were considered an illegal lottery until the passage of s. 849.094, F.S. There are several requirements under s. 849.094, F.S., for the operation of a sweepstakes/game promotion in Florida, including:

1. Registering the game promotion with the DACS if the prizes offered are greater than \$5,000. This requirement also includes providing a copy of rules which specify eligibility requirements, the exact

²⁵ TEX. PENAL CODE ANN. §47.01(4)(B) (2007)

²⁶ Shannon Edmunds, *Gaming, Gambling, and Eight-liners: Separating Fact From Fiction*, Texas District & County Attorneys Association, May 14, 2004.

²⁷ *Hardy v. Texas*, 102 S.W.3d 123 (Texas 2003).

²⁸ In Tic Tac Fruit, the customer puts the money in the machine, then the video fruit strips spin. When the fruit strips stop the customer is left with a nine-square box that resembles a tic-tac-toe board. The purported skill aspect is deciding, as the clock ticks, which of the squares to keep and which to not.

²⁹ Bill Toland, “Ohio ‘Skill’ Game a Cross-Border Lure,” *Pittsburg Post-Gazette*, 1 May 2006.

³⁰ Reginald Fields, “Strickland, Dann Crackdown on Video Gambling,” *The Plain Dealer*, 22 Aug. 2007.

³¹ See OHIO REV. CODE ANN. S. 2915.01(AAA)(1) (2008).

³² See GA. CODE ANN. S.16-25-35 (2008).

³³ See ss. 1-9, ch. 71-304, L.O.F.

³⁴ Section 849.094(1)(a), F.S.

nature of each prize and its associated retail value, and the aggregate value of all prizes to be awarded to the DACS.³⁵

2. Establishing a trust fund or surety bond for the total amount of the prizes offered,³⁶ unless they qualify for an exception under s. 849.094(4)(b), F.S.³⁷
3. Allowing for a reasonable way for a person to enter without purchasing the product.³⁸

Game promotions are conducted by an "operator," defined as "any person, firm, corporation, or association or agent or employee thereof who promotes, operates, or conducts a game promotion, except any charitable nonprofit organization."

According to the DACS, game promotions in Florida have historically taken the form of periodically operated contests, e.g., by national fast food franchise chains, television networks, Internet companies, banks, soft drink manufacturers, etc., that give away cash, cars, products, vacations, or similar prizes. Such promotions accept entries only during a stated promotional period, which is followed by a random drawing.

In 2006, DACS received a game promotion filing from a company to put free-standing game promotion machines in truck stops. The machines would dispense phone cards for \$5, and award the consumer a certain number of credits or game points which would have no cash value, but could be used to play a video game. The games resembled traditional slot machines, including three rows of three symbols (cherries, oranges, plums etc.) that appear to spin, and depending on the final configuration, the consumer could earn prize credits which could be redeemed for cash. This company filed 20 separate game promotions in February 2007. The department treated each machine as a separate game promotion. Also in that same month, DACS began to see an influx of similar game promotions in different regions of the state. As of November 6, 2008, there are at least 61 electronic game promotions registered with the DACS.

Several companies in Florida have started to offer sweepstakes promotions in connection with the sale of Internet time and prepaid phone cards. According to representatives from a company that operates sweepstakes promotions at Internet cafés, the customer at an Internet café can buy Internet time and also receive a set number of entries in a sweepstakes. The Internet time and sweepstakes entries can be placed on an electronic card that can be swiped at one of the computers in the Internet café. According to the representative, the sweepstakes have a finite number of predetermined entries and the customer is randomly assigned a set amount of these entries on the basis of the amount of Internet time the customer purchases. For example, if the customer purchased \$10 in Internet time he or she would receive 1000 entries into the sweepstakes. Representatives from the Internet café explained that the central server at the Internet café randomly picks from the predetermined, finite sweepstakes entries at the time when the customer purchases the Internet time. Whether the customer is a winner in the sweepstakes is determined prior to the customer scanning the card at the computer terminal and playing the "Vegas-style" games. If the customer is a sweepstakes winner, he or she can either receive his or her money or use the winnings to purchase additional Internet time and thereby receive more entries into the sweepstakes. The customer can also request a free entry in order to satisfy the no-purchase requirement under s. 849.094(2)(a)(1)(e), F.S.

Representatives for some of these companies recommended that the source code for these machines should be made available for inspection by a licensed testing company. They further recommended that the statutory bond be increased. They also recommended that the DACS be given the authority to certify that the games are true game promotions through testing of the source code and software in the machines. These machines are server-based machines.

³⁵ Section 849.094(3), F.S.

³⁶ Section 849.094(4)(a), F.S.

³⁷ Section 840.094(4)(b), F.S., permits the DACS to waive the requirement of a bond or escrow account if the operator has conducted game promotions in the state for not less than five consecutive years and has not had any civil, criminal, or administrative action brought against him or her in violation of s. 849.094, F.S., in the last consecutive five years.

³⁸ Section 849.094(2)(a)(1)(e), F.S., does not allow the operator to require an entry fee, payment, or proof of purchase as a condition for entering a game promotion.

In testimony before the committee, the FDLE indicated that six businesses were shut down in the northwest area of the state. Each of businesses operated on a phone-card game promotion premise. Some of the patrons stated that they were unaware that the cards had any pre-paid telephone time. The department indicated that the definition under s. 849.094, F.S., fails to provide sufficient guidance to assist law enforcement in determining whether these types of games and electronic gaming machines are illegal under this section. The department and several of the State Attorneys and Sheriffs responding to the survey consider these games and machines illegal under the slot machine provisions of ss. 849.15, 849.16, and 551.102, F.S.

In addition, the department reported it had assisted the Pinellas County Sheriff's Office in their investigation of three electronic game promotion locations. Interviews indicated that the software running the slot machine games on the computers may be managed or manipulated remotely, generally out of the state or country; in this case data was received remotely from Canada. The department also noted that many of these machines have a "kill switch" that can be activated to immediately sever the connection with the server and it deletes all data and prevents analysis of the data. The FDLE has recently shut down three electronic game promotion locations in Perry, Clermont, and Fanning Springs; and the Sheriff in Hillsborough County also shut down an electronic game promotion location in that county.

According to the DACS, there is currently nothing in s. 849.094, F.S., which explains how a game promotion must be conducted. Filing a game promotion with the DACS is not tantamount to acquiring the imprimatur of state approval, it is considered a "file and use" statute and requires no approval by the department prior to commencement. The operator receives a "package complete" letter, but the department takes no position on the validity, efficacy, advisability, or propriety of the game itself. Although the DACS monitors compliance with the statute, it has no authority to determine whether the game in fact is permissible under other gambling prohibitions.

Actions by Other States

Other states have had similar sweepstakes operations that were either banned by legislation or found by the courts to be illegal games of chance. North Carolina experienced a surge of sweepstakes-based games after the state banned video poker in 2006. The sweepstakes games were based on the purchase of a phone card. The games' operators claimed that the sweepstakes operated under the same statute as other sweepstakes, like the popular McDonald's Monopoly game sweepstakes.³⁹ Amid complaints by state and local law enforcement as the computer/video terminals spread rapidly through North Carolina, the North Carolina legislature banned these types of server-based sweepstakes and terminals in 2008.⁴⁰ The North Carolina prohibition defines a server-based game promotion as a system that meets all of the following criteria:

1. A database contains a pool of entries with each entry associated with a prize value.
2. Participants purchase or otherwise obtain by any means, a prepaid card.
3. With each prepaid card purchased or obtained, the participant also obtains one or more entries.
4. Entries may be revealed in any of the following ways:
 - a. At a point-of-sale terminal at the time of purchase or later.
 - b. At a game terminal with a display that simulates a game ordinarily played on a slot machine or a video gaming machine regulated under state law.

In 2006, the Alabama Supreme Court ruled that a sweepstakes promotion at the Birmingham Racetrack amounted to a slot machine under Alabama law.⁴¹ The racetrack had provided a cyber café with basic Internet services, Microsoft office applications, and photocopying services. When a customer purchased Internet time, he or she was also entered into a sweepstakes. The sweepstakes used a central server at the race track to determine if the customer had won or lost as soon as the Internet time was purchased by randomly selecting out of a finite amount of entries. The court found that the sweepstakes contained the three basic elements of gambling: chance, consideration, and prize. The court found that the entire network of computer terminals, servers, and programming amounted to a game of chance. It found that the customer provided consideration by paying for the

³⁹ Gary D. Robertson, "NC House Bill Bars Video-Game Style Sweepstakes," *International Business Times*, July 2, 2008.

⁴⁰ N.C. GEN. STAT. s. 14-306.3(c).

⁴¹ *Barber v. Jefferson County Racing Association*, 960 So.2d 599, 608 (Ala. 2006).

sweepstakes not the Internet time. The fact that a customer could also enter free of charge did not negate this. The awarding of a prize satisfied the final element of gambling.

South Carolina also experienced a wave of phone card dispensers in stores around the state. These machines would dispense a two-minute phone card and a pre-printed game card, which the operators claimed was designed to promote the sale of the phone cards. The phone card dispenser would display "Vegas-style" games to show whether the customer had won. The outcome was determined on the pre-printed cards and not by the machine.⁴² The South Carolina Supreme Court found that the machines were illegal slot machines and not a valid sweepstakes under South Carolina law.⁴³

Options and/or Recommendations

Based upon the findings in this report, Senate professional staff recommends that the Legislature could consider the following actions:

Regarding arcade amusement centers the Legislature could:

- Maintain the status quo and not amend s. 849.161, F.S. It appears that this course of action would be supported by the Florida Arcade and Bingo Association and proprietors of senior arcade amusement centers. However, law enforcement agencies and state attorney offices believe that changes should be made to clarify what is or is not a legal electronic gaming machine.
- Amend s. 849.161, F.S., to assure that the electronic gaming machines are not cheating the operators or the patrons by prohibiting "morphing," "coasting," and the setting of a payout percentage.
- Provide a range of regulation, either by the state or local governments, that could include random testing of machines at the individual amusement arcade centers, requiring the machines to be tested and sealed before a manufacturer could transport a machine into Florida, or complete regulation of the facilities through licensure, testing of the machines, and payment of regulatory fees.
- Amend s. 849.161, F.S., to restrict the amount of payouts and types of machines in a manner similar to the legislation adopted in Ohio and Georgia. This would have the effect, according to the Florida Arcade and Bingo Association, of putting the senior arcade amusement centers out of business.

Regarding game promotions the Legislature could:

- Maintain the status quo and not amend s. 849.094, F.S. However, law enforcement agencies and state attorney offices believe that changes should be made to clarify what is or is not a legal game promotion. The companies utilizing electronic gaming machines for game promotions support increased regulation of the industry.
- Amend s. 849.094, F.S., to provide for the testing of the computer source code to assure compliance with the game promotion requirements of s. 849.094, F.S., increase the bond requirements for electronic game promotions, provide for more regulatory authority by DACS, or prohibit the electronic gaming machines from having a kill switch.
- Amend s. 849.094, F.S., to prohibit "server-based" electronic gaming machines in a manner similar to the legislation adopted in North Carolina.

⁴² *Sun Light Prepaid Phone Co. v. South Carolina*, 600 S.E. 2d 61, 63 (S.C. 2004).

⁴³ *Id.* at 65

**Questionnaire on
Review of Adult Arcades Amusement Centers and Internet Cafes
The Florida Senate Committee on Regulated Industries
August 2008**

Name of person completing the questionnaire:

Title of person completing the questionnaire:

Office of person completing the questionnaire:

Telephone number of person completing the questionnaire:

E-mail address of person completing the questionnaire:

Please attach additional sheets if necessary.

Questions

1. Does your county have any adult arcade amusement centers? Yes or No.
2. If you answered "yes" to question 1, please list the names and addresses of the locations, if known:
3. Does your county have any game promotion or internet cafes? Yes or No.
4. If you answered "yes" to question 3, please list the names and addresses of the locations, if known:

If you answered no to questions 1 and 3, then do not complete the rest of this survey and return it at this time.

5. Has your office conducted any investigations or arrests at any of these locations? Yes or No.
6. If you answered "yes" to question 5, please explain the details and outcome of the investigations or arrests?
7. If you answered "no" to question 5, please explain the circumstances:
8. Is there anything that has made it difficult for your office to conduct these types of investigations? Yes or No.
9. If you answered "yes" to question 8 please explain:
10. Please provide any additional information or response that you think would be helpful in the analysis of adult arcade amusement centers and/or internet cafes, including any recommendations you may have that would improve the enforcement of legislation or opinions you may have regarding current law.
Thank you for taking the time to complete this Questionnaire. Replies to the Questionnaire by September 1,

2008, would be appreciated. Replies may be sent via e-mail to imhof.booter@flsenate.gov, fax (850) 410-5120, or regular mail to Booter Imhof, Florida Senate, 330 Knott Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100.

Any information that you provide in this survey is only intended for use by Legislative staff for the purposes of this study.

If you have any questions, please don't hesitate to contact Mr. Imhof via e-mail or at (850) 487-5957.

Florida State Attorneys Survey
Adult Arcade Amusement Centers and Electronic Game
Promotions/Internet Cafes
The Florida Senate Committee on Regulated Industries
August 2008

Name of person completing the questionnaire: _____

Title of person completing the questionnaire: _____

Office of person completing the questionnaire: _____

Telephone number of person completing the questionnaire: _____

E-mail address of person completing the questionnaire: _____

Please attach additional sheets as necessary.

Questions

1. Has your office investigated or prosecuted any adult arcade amusement centers? Yes or No.
2. If you answered "yes" to question 1, please list the names and addresses of the locations, if known, and the violations charged:
3. Has your office or prosecuted any electronic game promotion or internet cafes? Yes or No.
4. If you answered "yes" to question 3, please list the names and addresses of the locations, if known, and the violations charged:
5. If you answered "yes" to questions 1 and 3, please explain the details and outcome of the investigations or prosecutions?
6. Has your office seized any machines at any of these locations? Yes or No.
7. If you answered "yes" to question 6, please explain the circumstances.
8. If you answered "yes" to question 6, who has been responsible for the storage of the seized machines and has there been any storage issues? Please explain.
9. Does your office have any issues or concerns in accepting, filing, or prosecuting violations of s. 849.01, F.S., in which a business utilizes the arcade amusement statute, s. 849.161, F.S., to offer slot machine type games with the defense that it that requires "an application of skill" and offers a reward with cash, merchandize, or other types of

payouts? If you answered "yes," please explain.

10. Does your office have any issues or concerns in accepting, filing, or prosecuting violations of s. 849.01, F.S., in which a business utilizes the game promotion statute, s. 849.094, F.S., to operate a sweepstakes business offering slot machine type games with rewards with cash, merchandize, or other types of payouts? If you answered "yes," please explain.

14. Please provide any additional information or response that you think would be helpful in the analysis of adult arcade amusement centers and/or internet cafes, including any recommendations you may have that would improve the enforcement of legislation or opinions you may have regarding current law.

Thank you for taking the time to complete this Questionnaire. Replies to the Questionnaire by September 12, 2008, would be appreciated. Replies may be sent via e-mail to imhof.booter@flsenate.gov, fax (850) 410-5120, or regular mail to Patrick L. "Booter" Imhof, Florida Senate, 330 Knott Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100.

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March 12, 2009

VIA HAND DELIVERY

Police Chief James C. Ruf
Casselberry Police Department
Casselberry, Florida

Re: Allied Veterans
Our File No.: 264.01

Dear Police Chief Ruf:

I wanted to take this opportunity to provide to you information regarding my clients. I have the privilege of representing Allied Veterans of the World, Inc. and Affiliates ("Allied Veterans") and Digitrac, Inc., a Florida corporation ("Digitrac").

Allied Veterans is seeking to establish a new location in the City of Casselberry, Florida. Allied Veterans currently has affiliates established in Jacksonville, Lake City, Mount Dora, Daytona, Deland, Merritt Island, and other locations. To fund its mission and programs Allied Veterans relies on charitable fund raising. Allied Veterans believes that its innovative form of fund raising will help further its civic and charitable purposes. Although my clients sincerely believe that this proposed activity does not violate any applicable law, and have sought my legal counsel in that regard, they wanted me to present the project to you before they begin operation in your city out of an abundance of caution.

I previously had the opportunity to meet with the State Attorney's Office in Seminole County to discuss the operations of Allied Veterans. However, I wanted to also provide this information to you since your officers would most likely have initial contact with my clients.

Police Chief Ruf
March 12, 2009
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We are not seeking legal advice. My clients are relying wholly on me for their legal advice. However, we wanted to provide you with a complete explanation of the proposed operation and our legal authority simply to avoid any misunderstandings or misconceptions.

Allied Veterans was founded in 1979 as the first non-profit veterans group to originate in the State of Florida. The first post was established in Panama City, Florida. Allied Veterans was originally called Veterans Bomb Group 451st, Inc. and Affiliates. It changed its name to Allied Veterans in 1989. The founding members were war veterans of several different countries. Since that time the members of Allied Veterans have utilized their time and financial resources to support VA hospitals, nursing homes and provide other community activities. In addition, Allied Veterans provides direct financial support and services to veterans in need wherever it finds them. Allied Veterans has helped tens of thousands of veterans. I have included in the enclosed materials some information relating to donations made in 2008.

Allied Veterans is duly registered and qualified with the Internal Revenue Service as a Section 501(c) (19) organization. It is duly registered and incorporated with the State of Florida as a non-profit organization meeting all state requirements. In addition, Allied Veterans is registered to solicit contributions with the Florida Department of Agriculture and Consumer Services. It has been issued registration no. CH22577.

Allied Veterans is seeking the opportunity to open an affiliate post in the City of Casselberry, Florida. To do so it is seeking to utilize an innovative fund raising method which involves operation of a sweepstakes. However, rather than utilizing a drawing, pull-tab, scratch-off tab, or information contained on the inside of a bottle cap to reveal winners, the Allied Veterans sweepstakes utilizes a computer to reveal whether the entrant is a winner with audio and video images on the screen. This approach also provides entertainment value.

Allied Veterans will host the operation of what will essentially be an internet café or internet center. Digitrac will provide management and operations services for the internet venture and will contract with Allied Veterans to provide the service. Payment to Digitrac will be based on a percentage of revenue.

Allied Veterans plans to operate a facility where it will sell internet or cyber time to be used on computers which are available to its patrons. The patrons will purchase a magnetic card with pre-set amounts of internet time. Each of the computers will have a card reader that will activate the internet and keep track of the time remaining. Patrons will be

Police Chief Ruf
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able to check email, conduct research, access websites or use the internet for any other valid purpose.

To promote the sale of internet time, the use of its facility and solicit direct contributions, Allied Veterans will provide a sweepstakes or electronic scratch off game. The entries will be revealed electronically rather than by pulling a tab or scratching off to uncover the result. This method of revealing the result of the promotion is similar to many other recent promotions or sweepstakes, such as MyCokeRewards, that contain a prize code that must be entered on a website to reveal the results. The computers at the Allied Veterans' location can be used to access the internet and also to reveal the results of the entries. The sweepstakes entries are provided absolutely free of charge. Additionally, there is no charge to use the computer to reveal the results of the electronic scratch off nor does it reduce the available internet time purchased by the customer.

Sweepstakes or electronic scratch off entries will be available free of charge on request. Neither a contribution to Allied Veterans nor the purchase of internet time is required to participate. Winning entries will be paid out on a "pay as you go" system. That is, all winning entries will be paid at the time they are revealed. **All prizes will be awarded.** All net proceeds will be used by Allied Veterans in furtherance of its designated civic and charitable purposes.

When a new customer enters the Allied Veterans location they will receive a verbal explanation of how to purchase internet access time and how to participate in the sweepstakes. If the customer wishes to participate in the sweepstakes they will be provided with an entry form. A copy of the entry form is enclosed. The entry form explains that the customer cannot purchase sweepstakes entries but that they are provided free of charge. It also explains that the sweepstakes entries are electronic and can be revealed on any of the available computer terminals.

The customers would obtain a card from the cashier which contains a magnetic strip, similar to a credit card. This magnetic strip would be encoded with a specific unique account number and password linked exclusively to that person. The patron would then go to a self-service kiosk to purchase internet time. For instance, if the patron wished to obtain \$5.00 worth of internet time he would insert \$5.00 into the kiosk and \$5.00 worth of internet time (twenty-five (25) minutes of time) would be credited to his account. The internet time is based on a charge of 20 cents per minute, which is a competitive fair market rate. We believe that Kinko's charges 25 cents per minute and computer terminals at the airport charge

Police Chief Ruf
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50 cents per minute. Participants can use the internet time to "surf" the net, check email, research and perform other activities allowed by access to the world wide web.

At the same time that the customer purchases internet time his account is also given a specified number of free sweepstakes entries. The participants receive the service for which they pay, access to the internet, and also sweepstakes entries much the same way that a patron at McDonald's receives his order of french fries with a peel off sweepstakes entry. The sweepstakes entries are provided free of charge, without any consideration, with the purchase of the internet access time. In addition, entries are also available without making a purchase or donation to Allied Veterans on request or by mailing a postcard. Participants are not required to make any purchase or contribution to obtain sweepstakes entries. All entries have the same chance of winning a prize regardless of how the entry is obtained.

Computers are available at the internet center for the convenience of the patrons. Each computer has a card swiping mechanism that simply reads the customer's account number just like a credit card terminal. This process essentially logs the customer in to that computer terminal. The computer terminals can be used to access the internet and as video display monitors for the sweepstakes entries. The participants can select among several different options to review the results of the sweepstakes entries.

The electronic sweepstakes entries that are provided to the customer are in the nature of an electronic scratch off game. Rather than using a coin or other device to uncover the winning entries they are uncovered or revealed by electronic video display with the assistance of the computer. The computer does not alter or modify the entries in any way but simply reads and displays the results of the sweepstakes entry. The computers cannot affect whether the entries win or lose or the amount of the prize. The customer cannot affect whether or not they have won or the amount of the prize. The entries are drawn from a single finite pool that has been randomly shuffled. The sweepstakes software utilized by Allied Veterans has been certified by an independent laboratory. A copy of this certification report is available on request.

The results of the entries are depicted on the video screen through several different graphic means. The uncovering of the sweepstakes entries is designed to be entertaining and amusing by the nature of the graphic video display. However, the results are already established before the results are revealed. The choice of the method of revealing the entries does not affect the result.

Use of the computer terminals to reveal the sweepstakes entries does not get charged against the available internet time and thus there is no charge to reveal the results of the sweepstakes entries on the computer. If the customer elects to reveal their sweepstakes entries first all of the internet access time that they purchased is still available for use. The customer can use the internet time from the computers that are available. In addition, the customer can use their internet time from any computer that has access to a standard phone line. For instance, a customer that wanted to use the internet access time at home would be provided an installation CD at no extra charge. This installation CD would be put into their computer at home and allow access to the internet through a standard phone line. This service is more cost efficient for people who do not use the internet enough to pay for a monthly internet subscription fee.

The Law

Any potential prohibitions against this kind of enterprise would seem to originate from Chapter 849, Fla.Stat. In general, a lottery is prohibited by §849.09, Fla.Stat. A lottery has been defined to contain three (3) essential elements: (1) a prize; (2) an award of a prize by chance; and (3) consideration. See, Blackburn v. Ippolito, 156 So.2d 550, 551, (Fla. 2d DCA 1963). The Florida Supreme Court stated these elements in Little River Theatre Corp. v. State holding that, "Without dispute a lottery has three (3) elements: (1) a prize; (2) awarded by chance; (3) for a consideration." Little River Theatre Corp. v. State, 135 Fla. 854 (Fla. 1939). For decades, both the Courts and the Attorney General's Office have recognized these three (3) necessary elements to constitute a prohibited lottery or gambling act.

However, §849.0935, Fla.Stat., specifically authorizes charitable and other exempt organizations to conduct drawings or raffles. However, these drawings must be conducted in the manner prescribed by subsection (3), which requires certain disclosures. Thus, the prohibition against lotteries is made specifically inapplicable to charitable organizations pursuant to the provisions of §849.0935(2), Fla.Stat. This exemption provides:

The provisions of s.849.09 shall not be construed to prohibit an organization qualified under 26 U.S.C. s.501(c)(3), (4), (7), (8), (10), or (19) from conducting drawings by chance pursuant to the authority granted by this section, provided the organization has complied with all applicable provisions of Chapter 496.

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The provisions of §849.0935 allow drawings by chance and defines that term as follows.

The term "drawing" does not include those enterprises commonly known as "matching," "instant winner," or "preselected sweepstakes," which involve the distribution of winning numbers, previous designated as such, to the public.

Section 849.094 permits a game promotion in connection with the sale of consumer products or services. The statute sets forth a statutory framework with specific rules that must be followed to allow a business to engage in a game promotion. Charitable organizations, however, are not required to meet the requirements of §849.094 which regulate game promotion in connection with the sale of consumer products or services. See, §849.094(10). The requirements of this section only apply to for-profit businesses.

My client specifically attempted to file an application for a game promotion as set forth in §849.094, Fla.Stat. with the Department of Agriculture and Consumer Services in Tallahassee for this operation. However, the filing was rejected since the provisions of §849.094, Fla.Stat., were not applicable to a charitable organization. Thus, the statutes do not appear to prohibit a charitable non-profit organization from conducting a game promotion in connection with the operation of a fund raising venture but simply do not regulate it as stringently. In fact, the regulatory provisions of §849.094, Fla.Stat., are applicable only to an "operator" as specifically defined therein. "Operator" specifically excludes "any charitable non-profit organization." Section 849.094(1)(b), Fla.Stat. However, my clients believe that institution and compliance with most of the regulations contained in this statute would demonstrate good practice and their good faith in the operation. Specifically, my clients intend to comply with the following:

- Preclude from participation any employees, agents, officers, lessees, or franchises. (§849.094(2)(a)(1)).
- Prevent the allocation of a winning game or a part thereof to a particular period of the game promotion or to a particular geographic area. (§849.094(2)(a)(2)).
- No entry will be arbitrarily removed, disqualified, disallowed or rejected. (§849.094(2)(b)).
- All prizes will be awarded. (§849.094(2)(c)).

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- o No literature or advertising material used in connection with the game promotion will be false, deceptive, or misleading. (§849.094(2)(d)).
- o There will be no entry fee, payment, or proof of purchase necessary as a condition of entering the game promotion. (§849.094(2)(e)).
- o The rules and regulations of the game will be conspicuously posted. (§849.094(3)). A copy of the proposed rules and regulations are attached hereto.
- o A list of winners who have won in excess of \$25 on a single entry will be maintained and available on request. (849.094(5)).

Since the winning entries will be paid immediately on their disclosure, my clients do not intend to maintain a separate trust account or surety bond as required for a for-profit business. Each winning entry will be redeemed at the time it is revealed rather than being paid after a future drawing.

Beginning in 2007 the Florida Department of Agriculture and Consumer Services was requested by several local law enforcement agencies to conduct an investigation of sweepstakes operators around the state. Based on this request the Department conducted months of field investigations. Included in this investigation were the Allied Veterans locations. Based on their field investigation the Department requested extensive documentation from Allied Veterans. Allied Veterans fully cooperated and provided the Department with the information it requested. Early last year Allied Veterans was notified that the investigation was closed and that Allied Veterans "was found to be following the requirements set forth in Chapter 496, Solicitation of Contributions Act." The Department's only request was that Allied Veterans notify the Department of all new locations that are opened in the future. A copy of this correspondence is enclosed.

Although my clients believe that their proposed operation meets all requirements of Florida law, there is, unfortunately, very little established precedent which provides them with clear guidance. In 1995 the Florida Attorney General issued an Advisory Legal Opinion (AGO 95-27) which dealt with the anti-gambling provisions of Chapter 849, Fla.Stat. In that Opinion the Florida Attorney General addressed the prohibition against a lottery involving a machine which dispensed arcade tokens. A token machine was apparently available which

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dispensed an occasional silver colored token mixed in with the standard gold tokens that were dispensed. The silver token entitled the customer to eight (8) additional gold tokens. The Florida Attorney General opined that this procedure was not illegal. His opinion was based on the rationale that:

The individual placing money in the machine for tokens gets what he paid for. Although he may receive more, no additional consideration was given for the chance to win such a prize.

In my clients' proposed venture the patrons will be purchasing internet time as the specifically identified service. They will always receive exactly what they paid for, a prescribed amount of available internet time. However, in addition, they are also given the chance to win a prize for no additional consideration. Thus, the rationale of the Attorney General's Opinion appears to allow the venture proposed herein.

If the element of consideration is absent from the activity, then it is no longer considered an illegal lottery. The Florida Supreme Court has stated that,

One may give away his money by chance, and if the winner pays no price there is no lottery. 'Price' in this connection means something of value and not the formal and technical consideration which would be sufficient to support the contract.

Dorman v. Publix-Saenger-Sparks Theaters, Inc., 135 Fla. 284 (Fla. 1938), quoting Commonwealth v. James Wall, 3 NE 2d 28. It is plain that without the required element of consideration the gaming activity is not prohibited by statute.

Sections 849.0935 and 849.094, Fla.Stat., effectively remove the element of consideration by requiring that no purchase or contribution is necessary to obtain a chance to win. In other words, receipt of an entry cannot be conditioned on the purchase of a product or contribution. Allied Veterans ensures that free entries are made available on request and these free entries have the same chance of winning as those obtained by someone making a purchase or a contribution.

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In an analogous situation involving the federal taxation of gambling winnings the Internal Revenue pointed out the essence of this distinction under federal law.

Lotteries and sweepstakes conducted in various ways are often prohibited by Federal or local law. In order for a marketing sweepstakes to avoid these prohibitions the element of consideration must be removed. This is generally accomplished by providing that no purchase is necessary to enter the sweepstakes...and by furnishing a free alternative method of entry.

* * *

An entrant who obtained a chance to win the sweepstakes in the regular manner, by purchasing Corporation's product, would not have made a wager for those purposes.

* * *

To state the obvious, in order to enter the sweepstakes the taxpayer was not required to pay more for Corporation's product than he otherwise would have paid; in fact, he was not required to purchase the product at all [therefore, there was no consideration and no wager].

TAA 200417004, 04/22/2004, IRC Sec. 165.

In 1998 the Florida Attorney General issued an Advisory Legal Opinion which is analogous to this situation (AGO 98-07). In AGO 98-07 an operation was proposed in Clay County which would dispense a phone card from a special vending machine. The cost of the card would be \$1 and it would entitle the purchaser to two (2) minutes of domestic calling time. With the phone card a sweepstakes ticket would be dispensed as well. The Florida Attorney General believed that the delivery of merchandise was merely incidental to the provision of the sweepstakes ticket and therefore not permitted. His opinion, no doubt, was strongly influenced by the fact that the phone card, as a separate item of merchandise or service, had independent value that was de minimus. Obviously, two (2) minutes of domestic phone time is virtually unuseable and worthless.

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The factual situation at issue in Attorney General Opinion 2007-48 also involved sweepstakes entries that were awarded with the purchase of a long distance phone card. However, the factual recitation in that Opinion did not disclose the cost of the card or how many minutes of phone time were provided. The Opinion followed the precedent of AGO 98-07 although it completely failed to address the element of consideration which is necessary to violate Chapter 849, Fla. Stat. This Opinion also failed to adequately or correctly address the application of the game promotion statute, §849.094, Fla. Stat.

In AGO 2007-48 the Attorney General first took great pains to point out that Florida's gambling laws must be interpreted and enforced by local law enforcement. It then summarily concluded that "if the receipt of a prize is dependent on any element of chance" it is an illegal slot machine without any discussion or inclusion of the element of consideration. This necessary pre-requisite was completely ignored. The only reference to §849.094 was to conclude that "gambling activities may not be disguised as a game promotion under the terms of section 894.094..." Thus, no clear guidance was provided.

Section 894.094, Fla.Stat. provides a safe harbor and a clearly enunciated exception to Florida's gambling laws. In essence, Florida law permits game promotions in connection with the sale of consumer products or services. These activities permitted by the statute are not illegal as a violation of the lottery prohibition. The applicable statute, §849.094, Fla.Stat., clearly permits such game promotions by a for-profit business as long as the rules set forth in the statute are met. The statute further provides that these rules are not applicable to a charitable non-profit organization. As such, it appears that a charitable non-profit organization can conduct a game promotion in connection with the sale of consumer products or services as a means of fundraising. Such activity would be further subject to §496.414, Fla. Stat., which regulates the fundraising by commercial co-venturers.

Chapter 496, Fla.Stat., governs the solicitation of funds by a charitable organization. This chapter, in essence, regulates what activities a charitable organization can conduct for raising funds in the State of Florida. This chapter specifically recognizes the involvement of a commercial co-venturer with a charitable organization that engages in a charitable sales promotion or sponsor sales promotion with the charitable organization. See, §496.404(4) and §496.414, Fla.Stat. However, prior to engaging in the charitable or sponsor sales promotion the commercial co-venturer is required to obtain the written consent of the charitable organization. Section 496.414(1), Fla.Stat. In addition, the commercial co-venturer must provide a final accounting to the charitable organization and maintain this final accounting for three (3) years to be provided to the Department of Agriculture and Consumer Services

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upon request. Section 496.414(3), Fla.Stat. My clients will certainly abide by all of these provisions.

The other applicable statutes are §§849.15 and 849.16, Fla.Stat. Section 849.15 prohibits slot machines. Section 849.16 defines "slot machines" as follows:

(1) Any machine or device is a slot machine or device within the provisions of this chapter if it is one that is adapted for use in such a way that, as a result of the insertion of any piece of money, coin, or other object, such machine or device is caused to operate or may be operated and if the user, by reason of any element of chance or of any other outcome of such operation unpredictable by him or her, may:

(a) receive or become entitled to receive any piece of money, credit, allowance, or thing of value, or any check, slug, token, or memorandum, whether of value or otherwise, which may be exchanged for any money, credit, allowance, or thing of value or which may be given in trade; or (b) secure additional chances or rights to use such machine, apparatus or device, even though it may, in addition to any element of chance or unpredictable outcome of such operation, also sell, deliver, or present some merchandise, indication of weight, entertainment or other thing of value.

No court has specifically addressed the relationship of §§849.15 and 849.16, Fla.Stat., with the provisions of §849.094 which permit game promotions in connection with the sale of consumer products or services. The game promotion statute specifically addresses the presence of the elements of chance, prize, and consideration by allowing the presence of the elements of chance and prize ("game promotion" means... in which the elements of chance and prize are present") and also addresses consideration by prohibiting any entry fee, payment, or proof of purchase. Since §849.16 prohibits machines which operate by reason of any element of chance and dispense a prize, the game promotion statute must be viewed as an exception to this prohibition in order to give meaning to both statutes. Moreover, §849.094 was enacted after §849.16 thereby creating a safe harbor for the operation of a game promotion.

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Although the statute itself very broadly defines the term "slot machine" case law has been specific in addressing what is contemplated by the statute. In Deeb v. Stoutamire, 53 So.2d 873, the Florida Supreme Court recognized that the element of chance "must be inherent in the machine." In Deeb, the court was distinguishing a skill based machine but recognized that a "slot machine" is one which relies on "the chance or unpredictability of the mechanism, which we construe the law to prescribe." Deeb was later cited and relied upon by Seminole Tribe of Florida v. Florida, 1993 U.S. Dist. Lexis 21387 (S.D. Fla. 1993) which relied on Deeb as follows:

In Deeb, the Florida Supreme Court stated that, to violate the statutes at issue in the instant case, the "element of unpredictability" must be "inherent" in the machine itself. Thus, the unpredictable outcome or chance, upon which the money or prize is awarded, must be part of the machine's operation.

As has been stated another way, "a slot machine, as defined in §849.16, does not have the quality of possible innocence." Dept. of Business Regulation v. Rains, 477 So.2d 1029 (Fla. 2d DCA 1985). In other words, the slot machine must be inherently a gambling machine. My clients will be utilizing regular desk top computers for access to the internet and as video display terminals. The machines themselves will not be making any determination of whether or not the person seated at the machine wins a prize or the amount of the prize. It merely reveals the selected entries through video display. As the Florida Supreme Court has stated a "gambling device is the instrument by which money may be lost or won "and includes only such instruments or contrivances as are intended for the purpose of gaming." See, Cooper v. City of Miami, 36 So.2d 195, 196 (Fla. 1948).

Chapter 849 prohibits gambling which, by definition, consists of a prize, chance, and consideration. The Florida Attorney General has given the opinion that there is no consideration, and thus no violation of Chapter 849, if the individual gets what he has paid for even though he may receive more as long as there is no additional consideration given the chance to win a prize. See, AGO 95-27 where the Attorney General stated:

The individual placing money in the machine for tokens gets what he paid for. Although he may receive more, no additional consideration was given for the chance to win such a prize.

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I have also included a copy of a Florida Bar Journal article from a Senior Assistant Attorney General describing the application of §849.0935, Fla.Stat., to charitable institutions.

I believe that from the above you can see that the computer terminals used by my clients are not slot machines and would not violate Chapter 849, Fla.Stat. The magnetic card is swiped on the machine for the primary purpose of logging on to the computer terminal. The primary purpose of utilizing the magnetic strip card is simply a shortcut to manually entering a long user identification number and password. The computer merely reveal the sweepstakes entries by different methods at the option of the purchaser of the card.

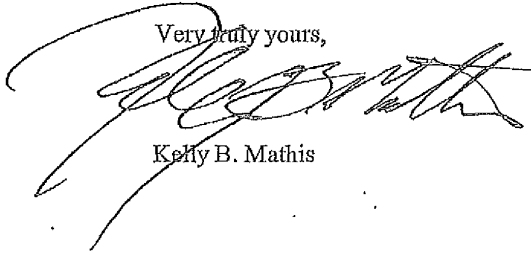
If the game promotion statute is not viewed as an exemption then the consideration element of §849.16 must be strictly construed. The game promotion contemplated by my clients provides the sweepstakes entries without any additional consideration whatsoever. The patrons are purchasing internet time at fair market value and thus receiving full value for the money paid. Nothing extra is paid for the sweepstakes entries and the sweepstakes entries can also be obtained free of charge. Thus, the consideration paid is only for the internet time and not tied in any way to the sweepstakes entries themselves.

Thank you for your consideration with respect to this enterprise. My clients wish to operate an establishment that is within the bounds of all applicable statutes and cooperate fully with all law enforcement personnel. If there is any concern whatsoever that any anticipated or actual activity of my clients is noncompliant for any reason, I would like the opportunity to discuss this with you further to ensure that there is no question as to the nature of their activities.

Please feel free to contact me if you have any questions.

With best regards, I am

Very truly yours,



Kelly B. Mathis



City of Casselberry Planning Division

95 Triplet Lake Drive, Casselberry, Florida 32707 • Telephone (407) 262-7700, Ext. 1112
Fax (407) 262-7763 • E-mail: csenzee@casselberry.org

December 9, 2009

Allied Veterans of the World, Inc
c/o Johnny Duncan, Nat'l Commander
P.O. Box 633
Callahan, FL 32011

RE: Commercial Business Tax Receipt Application
Allied Veteran's of the World, Inc. Affiliate 74

Dear Mr. Duncan,

This letter is written in response to your application for a Business Tax Receipt for Allied Veterans of the World, Inc. at 944 State Road 436. The property in question is located within the jurisdictional boundaries of the City of Casselberry and is governed by its Code of Ordinances and Comprehensive Plan. The property is currently zoned "CG" (Commercial General) which is consistent with its Future Land Use Map designation of "Commercial".

After a review of this request, Community Development staff members have determined that the proposed use would constitute a gambling activity which is not an authorized land use under the City's comprehensive plan and zoning code. See § 849.16, Fla. Stat. (2008); AGO 2007-48; AGO 1998-07.

Please understand that obtaining a Business Tax Receipt from the City of Casselberry is simply an acknowledgement that you have paid a tax to operate a business in the City. The issuance of a Business Tax Receipt does not grant approval or authorization for prohibited uses to operate within City limits. As a courtesy, staff has not issued a Business Tax Receipt for your proposed business. Since the proposed business is prohibited within the City of Casselberry, it seems inappropriate to assess business taxes. Staff is not denying you the right to pay business taxes or obtain a Business Tax Receipt, but instead advising you that the proposed business use is not permitted. Please contact staff if you would like your submitted tax receipt to be processed and issued. But it must again be stressed that the issuance of the Business Tax Receipt will not grant you the ability to operate your proposed business within Casselberry.

If you have any questions or require any further information, please do not hesitate to contact me at 407-262-7700, extension 1112.

Sincerely,


Charles Senzee
Planner



City of Casselberry

Planning Division

95 Triplet Lake Drive, Casselberry, Florida 32707 Telephone (407) 262-7700, Ext. 1112
Fax (407) 262-7763 E-mail: csenzee@casselberry.org

January 6, 2010

Allied Veterans of the World, Inc
c/o Johnny Duncan, Nat'l Commander
P.O. Box 633
Callahan, FL 32011

RE: Commercial Business Tax Receipt Application
Allied Veteran's of the World, Inc. Affiliate 74

Dear Mr. Duncan,

In a letter dated December 9, 2009, Community Development staff members determined that the business use proposed by Allied Veterans of the Worlds, Inc. at 944 State Road 436 constitutes a gambling activity which is not an authorized land use under the City's comprehensive plan and zoning code. See § 849.16, Fla. Stat. (2008); AGO 2007-48; AGO 1998-07. As a courtesy, staff did not issue a Business Tax Receipt at that time. It seemed inappropriate to assess business taxes on a prohibited business. However, staff did not deny the right of the applicant to pay business taxes or obtain a Business Tax Receipt, but instead advised that the proposed business use was not permitted.

Community Development staff received an email from Laurie Lee with Mathis & Murphy, P.A. on December 28, 2009. This email requested that the City proceed with the issuance of the Business Tax Receipt in spite of the determination that the proposed activity is not an authorized land use.

As requested, Community Development staff will proceed with the issuance of a Business Tax Receipt. Please understand that obtaining a Business Tax Receipt from the City of Casselberry is simply an acknowledgement that you have paid a tax to operate a business in the City. The issuance of a Business Tax Receipt does not grant approval or authorization for prohibited uses to operate within City limits.

For informational purposes, a letter dated March 12, 2009 from Kelly Mathis with Mathis & Murphy, P.A. has been attached which describes the proposed business operation. The office of the City Attorney has spoken to Lawrence Collins of the Office of the Statewide Prosecutor regarding your request to operate a business in the City of Casselberry. Mr. Collins has stated that if Allied Veterans opens a business in the City that operates in the same manner as its businesses in other cities and if the Casselberry Police Department investigates said business and finds evidence of an illegal gambling operation, his office will evaluate the case for consideration of prosecution.

If you have any questions or require any further information, please do not hesitate to contact me at 407-262-7700, extension 1112.

Sincerely,


Charles Senzee
Planner

cc: Mrs. Robin Drage, Office of the City Attorney (Brown Garganese, Weiss & D'Agresta, P.A.)
Mr. Lawrence Collins, Office of the Statewide Prosecutor

Fifth Item of Business: LPA 11-10: Internet Café/Sweepstakes Redemption. Proposed amendments to portions of the Unified Land Development Regulations relative to Simulated Gambling Devices.

Ms. Sandra Smith, Chief Planner, reviewed the information provided in her memorandum dated April 13, 2011, to the City of Casselberry Planning and Zoning Commission (a copy is on file in the Community Development Department). Ms. Smith said Staff requests the Planning and Zoning Commission provide a favorable recommendation to the City Commission to adopt the definitions and regulations for simulated gambling devices provided in the ordinance attached to the staff report based on the findings of the staff report dated April 13, 2011 and the data and analysis provided in the May 12, 2010 Planning and Zoning Commission staff report (Attachment A with Exhibit C only).

Mr. Parkhurst asked if there was anyone in the audience who wished to speak in favor of, or in opposition to, the request. No one came forward.

Mr. Parkhurst asked for a motion to address LPA 11-10.

Mr. Aramendia moved to provide a favorable recommendation to the City Commission for LPA 11-10 Simulated Gambling Devices based on the staff memo dated April 13, 2011 from Ms. Smith to the Planning and Zoning Commission, with findings of fact and conclusions of law. Mr. Van Meter seconded the motion. The motion passed unanimously.

Sixth Item of Business: Workshop. The City Attorney will provide a workshop to the Planning and Zoning Commission regarding procedures and motions. Robin Drage, City Attorney, provided information to the Planning and Zoning Commission regarding ex parte discussion, Sunshine Law, procedures for testimony during presentation of an application, formation of motions, voting procedure, and developing findings for an application through discussion among the Commissioners.

Seventh Item of Business: Other Business.
There was no other business.

Eighth Item of Business: Adjournment.

There being no further business to come before the Board, Mr. Parkhurst adjourned the meeting at 7:30 p.m.