

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

RONNIE MOORE and JEFF MOORE

APPELLANTS

v.

CASE NO. 2009-CA-00235

STATE OF MISSISSIPPI

APPELLEE

BRIEF OF APPELLEE

ORAL ARGUMENT NOT REQUESTED

STATE OF MISSISSIPPI and
MISSISSIPPI GAMING COMMISSION

BY: JIM HOOD, ATTORNEY GENERAL

THOMAS H. MUELLER, MSB NO [REDACTED]
SPECIAL ASSISTANT ATTORNEY GENERAL

DEANNE B. SALTZMAN, MSB NO [REDACTED]
SPECIAL ASSISTANT ATTORNEY GENERAL

OF COUNSEL:
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 23577
Jackson, Mississippi 39225-3577
601-576-3872 (telephone)
601-576-3866 (facsimile)
Counsel for Mississippi Gaming Commission

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judge of this Court may evaluate possible disqualification or recusal.

1. **Ronnie Moore and Jeff Moore, Appellants**
John P. Scanlon, PYLE, MILLS, DYE & PITTMAN
Jerry L. Mills, PYLE, MILLS, DYE & PITTMAN
Jeffery J. Hosford, ROSS, KELLEY & HOSFORD
counsel for Appellants
2. **State of Mississippi, Appellee**
Jim Hood, Attorney General
Thomas Mueller, Special Assistant Attorney General
Deanne Saltzman, Special Assistant Attorney General
counsel for Appellee
3. **The Honorable James T. Kitchens, Jr., Clay County Circuit Court Judge**
4. **The Honorable Joe M. Taggart, Clay County Justice Court Judge**

SO CERTIFIED, this the 1st day of October, 2009.


DEANNE B. SALTZMAN, MSB NC [REDACTED]
SPECIAL ASSISTANT ATTORNEY GENERAL

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STATEMENT OF ISSUES

- I. THE CIRCUIT COURT CORRECTLY HELD THAT THE MACHINES SEIZED WERE ILLEGAL SLOT MACHINES.
 - A. THE PLAY OR OPERATION REQUIRES THE PAYMENT OF CONSIDERATION
 - B. THE PLAYER HAS THE POTENTIAL TO WIN A REWARD
 - C. THE WINNING OF SOME PART OR ALL OF THE POTENTIAL REWARD IS DEPENDANT IN SUBSTANTIAL PART UPON AN ELEMENT OF CHANCE
- II. *MISSISSIPPI GAMING COMMISSION v. TREASURED ARTS* IS INAPPLICABLE TO THE FACTS BEFORE THIS COURT AS SUCH PRECEDENT DISCUSSES LOTTERIES AND NOT ILLEGAL SLOT MACHINES
- III. THE CIRCUIT COURT CORRECTLY HELD THAT THE CLAY COUNTY JUSTICE COURT DID NOT RETAIN JURISDICTION OVER THE SEIZED ITEMS
- IV. PUBLIC POLICY AND LEGISLATIVE MANDATE DEMAND THE CIRCUIT COURT ORDER BE AFFIRMED

STATEMENT REGARDING ORAL ARGUMENT

The State submits that the facts and legal arguments are adequately presented in its brief and contained within the record before this Court. Accordingly, the State does not believe the decisional process would be aided by oral argument.

STATEMENT OF THE CASE

The procedural posture of this case is confusing at best. It comes before this Court through a unique and unnecessarily complex set of circumstances. Nonetheless, the underlying issue remains simple and the Clay County Circuit Court reached the correct decision in finding that the gaming devices seized were illegal slot machines subject to confiscation by law enforcement.

On or about September 12, 2007, the State filed charges in the Justice Court of Clay County, Mississippi, against Ronnie Moore, for his ownership and involvement with Paradise Isle Internet Café in West Point, Mississippi, and against Jeff Moore, for his involvement in running Paradise Isle Internet Café. [R. 050, 051]. In connection with these charges, the State seized approximately forty-one (41) illegal gaming machines, including thirty-nine (39) computer terminals, a computer server, point of sale system, digital recorder and other items. [R. 057-058]. Trial in the Justice Court of Clay County was scheduled for October 18, 2007, for both defendants.

After the machines were seized but prior to trial, the State asked the CyberCrime Unit of the Mississippi Attorney General's Office to analyze the machines to determine if specific information was contained on those machines sufficient to charge Ronnie Moore and/or Jeff Moore with felony offenses. With a backlog of child pornography cases to analyze, the CyberCrime Unit informed counsel for the State that it would take several weeks and possibly even months to have the machines analyzed by the CyberCrime Unit.

As such, counsel for the State contacted the local prosecutor to ask that the charges against Ronnie Moore and Jeff Moore [hereafter "the Moores"] be dismissed without prejudice until such time as the computers could adequately be analyzed. Make no mistake, there was sufficient evidence to render these machines illegal and proceed with the misdemeanors as charged. The State, however, felt it important, if not imperative, to analyze the machines in depth to determine if more serious charges were indeed warranted. In fact, the Moores make much of the lack of pending criminal charges throughout their appeal. Notwithstanding, aside from the prosecutorial considerations of dual actions and other concerns briefly touched upon above, there is simply no legal requirement that criminal charges be pursued against an individual in order to seize illegal gambling machines.

As a result of the State's request, the local county prosecutor, the Justice Court Judge and defense counsel met in chambers on October 16, 2007. The county prosecutor requested the charges be dismissed without prejudice but counsel for the Moores adamantly and inexplicably objected to dismissal of criminal charges against his clients. After some discussion, the Judge apparently informed all parties that the charges would ultimately be dismissed without prejudice, instructed the county prosecutor to draft an order for his signature, but nonetheless ordered the county prosecutor to inform counsel for the State to be present in his courtroom on October 18, 2007.

Not knowing why their presence had been requested, on October 18, 2007, counsel for the State arrived at the Clay County Justice Court per the Judge's request. When the docket was called, the county prosecutor submitted a draft Order of Dismissal for signature to the Judge who initially refused to sign it. After much discussion and argument by the county prosecutor, the Judge signed the Order of Dismissal on October 18, 2007, even though the Order submitted in the record before this Court is type-dated October 16, 2007. [R. 298].

While the Justice Court is not a court of record, the Moores nonetheless hired a court reporter to be present on October 18, 2007. Suspiciously, however, the transcribed portion of the hearing submitted by the Moores starts half-way through the hearing, contains no portion of the country prosecutor's argument, does not include the Judge's dismissal of the charges, and does not contain arguments made prior to defense counsel orally asking for return of the machines. [R. 075-088]. The transcription is also void of the Judge's final comments that a subsequent hearing would occur at the next court setting on November 15, 2007. [R. 075-088].

The Justice Court Order, dated October 16, 2007, but signed at the hearing on October 18, 2007, dismissed the charges against the Moores without prejudice but reserved ruling on whether the illegal gaming machines should be returned. [R. 298]. Nonetheless, for reasons unknown, the State received an Order on November 13, 2007, without notice or otherwise, dated November 1, 2007, wherein the Justice Court ordered return of the

items to both defendants by November 8, 2007. [R. 299]. It is from this Order, that the State filed its Notice of Appeal in the Circuit Court of Clay County, Mississippi, on November 30, 2007. [R. 010].

Both parties submitted Memorandums of Law to the Circuit Court prior to oral arguments. [R. 034, 044]. Oral arguments in the above appeal were held before the Circuit Court of Clay County, Mississippi, on or about January 14, 2008. Although the issues appealed by the State included allegations that the Justice Court lacked jurisdiction to order return of the machines, the Circuit Court assumed jurisdiction and conducted an evidentiary hearing on whether the machines were, in fact, illegal slot machines rendering the machines contraband per se. [T. 1-94]. At the conclusion of the hearing and at the request of the Moores, the Circuit Court ordered both parties brief the issue of whether the machines seized were illegal gaming devices and submit those briefs to the Court. [T. 92]. Upon various motions made by both the Moores and the State, several extensions were granted by the Court before both parties submitted their respective briefs. [R. 108, 269-330].

On January 6, 2009, after an evidentiary hearing and full briefing, the Circuit Court of Clay County entered an Order and Opinion finding that the machines seized were contraband per se subject to confiscation. [R. 415-420]. The Court additionally found that the Circuit Court, rather than the Justice Court, had jurisdiction over the matter and that *Treasured Arts* was inapplicable because it dealt with lottery statues and not slot machines.

It is from the Clay County Circuit Court Order that the Moores now appeal. [R. 421, R.E.

1].

SUMMARY OF THE ARGUMENT

The appeal before this Court is not a criminal appeal. The brief submitted by the Moores argues points under theories of criminal law and attempts to portray this case as an appeal of a criminal conviction. There was no criminal trial. The criminal charges were dismissed without prejudice. [R. 298]. Despite the Moores continued efforts to turn a simple civil issue into a needlessly confusing factual scenario and procedural nightmare for all parties involved, the resonating issue before this Court on appeal is simply whether the devices seized are illegal slot machines.

Pursuant to Mississippi case law, statutory authority, the Gaming Control Act and persuasive case law from sister states and jurisdictions that have examined similar factual scenarios, there is no question that the devices seized are, in fact, illegal slot machines. In order for a device to be a slot machine, three conditions must be met:

1. Its play or operation requires the insertion of money, tokens or similar objects, or payment of consideration; and
2. As a result of playing or operating the device, the player or operator has the potential to win a reward in the form of cash, premiums, merchandise, token, or anything of value; and
3. The winning of some part or all of the potential reward is dependent in substantial part on an element of chance.

Mississippi Gaming Comm'n v. Henson, 800 So. 2d 110, 113 (¶10)(Miss. 2001). As will be discussed in detail below, all three elements are *clearly met* with regard to the machines seized. Though the Moores attempt to utilize case law relating to lotteries in their analysis and spend countless pages degrading law enforcement officers and discussing search warrant issues that are not even the subject of the present appeal, it is important to note that the one true issue before this Court is simply whether the machines seized are illegal slot machines. And while the "internet café" disguise may be a configuration of slot machines not yet specifically addressed by this Court in prior slot machine decisions, there is no question that the devices seized nonetheless fall squarely within the three elements of a slot machine as outlined by this Court in prior decisions.

The Legislature drafted the Gaming Control Act with its primary focus being upon maintaining public trust and confidence in gaming operations and insuring that gaming is conducted honestly and competitively in this State. Miss. Code Ann. § 75-76-3(3)(a)(b). These "internet cafes" are simply just one of the latest schemes by unscrupulous entrepreneurs seeking to bilk large profits while sidestepping the strict oversight of legal gaming operations that the legislature has so inexorably required under the provisions of the Gaming Control Act.

ARGUMENT

I. THE CIRCUIT COURT CORRECTLY HELD THAT THE MACHINES SEIZED WERE ILLEGAL SLOT MACHINES

When a trial judge sits without a jury, the standard of review requires that the appellate Court regard his findings with the same deference as those made by a chancellor. *Harbin v. Chase Manhattan Bank*, 871 So. 2d 764, 766 (¶5)(Miss. Ct. App. 2004), citing *Par Industries, Inc. v. Target Container Co.*, 708 So. 2d 44(¶4)(Miss. 1998). An appellate Court will not disturb a trial judge's factual determinations where there is substantial evidence in the record to support those findings. *Id.* Substantial evidence means more than a scintilla or a suspicion. *St. Dominic-Jackson Mem'l Hosp. v. Miss. State Dep't of Health*, 910 So. 2d 1077, 1082 (¶13)(Miss. 2005). "This Court must examine the entire record and accept that evidence which supports or reasonably tends to support the findings of fact made below, together with all reasonable inferences which may be drawn therefrom and which favor the lower court's findings of fact." *Id.*, citing *Ezell v. Williams*, 724 So. 2d 396(¶4)(Miss. 1998).¹

The machines in question are slot machines as defined under Mississippi law. Under the applicable statute as affirmed on multiple occasions by the Courts of Mississippi, illegal gaming devices are "contraband per se", meaning mere possession of the device is

¹

The State submits that the standard of review applied by the Moores in their brief before this Court is incorrect. Despite the Moores assertions in their brief that this is a criminal appeal, the issues before this Court are civil in nature and the *clearly erroneous* standard is inapplicable to questions involving review of a trial judge's factual determinations.

unlawful. Miss. Code Ann. § 97-33-7(1). "Among those articles the mere possession of which has been declared to be illegal per se, and the seizure of which is not within the constitutional guaranty, are ... gambling devices." *Prueitt v. State*, 261 So. 2d 119, 125 (Miss. 1972). Mississippi Code Annotated § 97-33-7(1) makes it "unlawful for any person or persons, firm, copartnership, or corporation to have in its possession, own, control, display or operate any cane rack, knife rack, artful dodger, punch board, roll down, merchandise wheel, slot machine, pinball machine, or similar device or devices."

(emphasis added).² Mississippi Code Annotated § 97-33-7(2) additionally provides:

No property right shall exist in any person, natural or artificial, or be vested in such person, in any or all of the devices described herein that are not exempted from the provisions of this section; and all such devices are hereby declared to be at all times subject to confiscation and destruction, and their possession shall be unlawful, except when in the possession of officers carrying out the provisions of this section. It shall be the duty of all law-enforcing officers to seize and immediately destroy all such machines and devices.

(emphasis added). In *Clark v. Holden*, 2 So.2d 570, 571-72 (1941), the Mississippi Supreme Court held that this Section (at that time Chapter 353, Laws of 1938) "was enacted in the

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The Statute does create some exceptions. In 1990, § 97-33-7 was amended simultaneously with the enactment of the Gaming Control Act, Miss. Code Ann. §§ 75-76-1 et. seq, to provide an exemption to the provisions of § 97-33-7 when the devices described in Subsection (1) are located on cruise vessels in certain coastal waters within the State and on vessels in the Mississippi river or navigable waters within counties bordering on the Mississippi River, provided the registered voters of the county in which the port was located have not voted to prohibit gaming. See Subsection (4) of § 97-33-7. Additionally, in 1992 an amendment also added the exemption for antique coin machines as defined in Miss. Code Ann. § 27-27-12. Neither of these exemptions are applicable in this case.

proper exercise of the police power of the state,” and further, that “as to these slot machines, the legislature does have the power to render their possession or ownership unlawful, and to provide for their seizure and destruction, without violating the due process clause of the Fourteenth Amendment to the Constitution of the United States.” More recently, the Mississippi Supreme Court has again affirmed the position that mere possession of an illegal gaming device, such as a slot machine, is enough for violation of § 97-33-7(1). *Henson*, 800 So. 2d at 112(¶9), citing *Stevens v. State*, 225 Miss. 48, 82 So. 2d 645 (1955); *Clark*, 2 So. 2d at 570. In order to better determine whether a device is a slot machine, Mississippi Courts have previously looked to the Gaming Control Act for guidance. Mississippi Code Annotated § 75-76-5(ff) defines “slot machine” as follows:

[A]ny mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application or the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other matter.

The Mississippi Supreme Court has further held that a gaming device “is clearly a slot machine of the type prohibited under Section 97-33-7” if three conditions are met:

1. Its play or operation requires the insertion of money, tokens or similar objects, or payment of consideration; and

2. As a result of playing or operating the device, the player or operator has the potential to win a reward in the form of cash, premiums, merchandise, token, or anything of value; and
3. The winning of some part or all of the potential reward is dependent in substantial part on an element of chance.

Henson at 113(¶10). In the present case, all three (3) conditions are met and the machines seized fall squarely within the confines of § 75-76-5(ff).

In order to thoroughly address this issue, we must first discuss the machines seized and the process by which the Moores operated Paradise Isle Internet Café. Appellant, Ronnie Moore, owned and operated Paradise Isle Internet Café in West Point, Mississippi.³ This unmarked business was located in a strip mall at 411 D East Main Street under a sign reading "One Step Shoes". [R. 300]. Upon entry into the facility, a cash register (Point of Sale system)⁴ was to the left and one computer terminal was to the right with a sign above the terminal reading "Internet \$3.95 an hour + tax". [R. Clerk's Papers Evidence 009, 013, T. 32]. Interestingly enough, this computer was the only computer that did not have a card

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It remains the position of the State that Appellant, Jeff Moore, has no ownership interest in the gaming machines and that the Clay County Justice Court erred by ordering return of said machines to Jeff Moore. It is the understanding of the State that Jeff Moore's involvement was limited only to management of Paradise Isle Café. Despite there being criminal charges filed separately against Ronnie Moore (Clay County Justice Court Number 97-0915) and Jeff Moore (Clay County Justice Court Number 97-0914), those charges were dismissed on October 18, 2007. By Order dated November 1, 2007, the Justice Court ordered return of the machines seized to both Jeff Moore & Ronnie Moore though no cause number is listed on the Order. [R. 299]. At the time the Order was entered, the criminal charges had already been dismissed against the Moores in their respective cases, no civil replevin action had been filed, and no valid underlying case was even in existence from which to enter said Order. In other words, the Justice Court entered an Order in a non-existent cause of action.

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The Point of Sale terminal was a computer terminal set up to allow customers to purchase phone cards, to obtain sweepstakes points for play and to allow redemption of win points for cash.

reader.⁵ In the back area of the café, there were thirty-nine (39) computer terminals set up and running. [R.E. 4, T. 30]. Each of these terminals had a card reader attached to the front of the monitor where patrons scanned their "phone cards" upon sitting down to play the games.⁶ Though internet access was technically available on these 39 computers in the back of the store, such access was not readily apparent to a lay user.⁷ [T. 30]. In the back room or office, law enforcement officers seized a computer which was utilized as the server for this network.

Upon setting up this café, Ronnie Moore entered into an agreement with Tel-Sweeps, Inc. out of Ontario, Canada, to conduct what both the Moores & Tel-Sweeps refer to as a "calling card sweepstakes".⁸ The Moores contend that the game operates by awarding sweepstakes entries when a customer purchases long distance phone time on a phone-sweeps phone card [labeled "Tel-Connect"] or by completing a free entry form and

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Card readers are the mechanisms whereby the attendant or patron swipes the phone card through the device to activate the card, load the card, play the games or redeem any winning points for cash.

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Though keyboards were attached to each computer, most were located either above the monitors or underneath the tables allowing for the mouse to be the only means by which to operate the monitor.

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Pictures taken at the time of the raid show that the computers are setup to load Visual Basic Scripts which will determine what the computer loads at start up. These scripts restricted the computers to loading the "sweepstakes" starting screen and restricted the user from using the computer normally. The string open_exec("e:/telsweeps/autostart.exe") indicates that the computer was running the program from a mapped drive from a server across the network. This server could be on location or an offsite location "unknown". The picture of the start menu demonstrates that the script has restricted everything except that which the script was designed to load and what the Operating System would not allow to be blocked from loading on startup of the computer. [R.301-302].

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Tel-sweeps rules and regulations can be found at www.telsweeps.com

submitting it based upon the rules of entry.⁹ For each dollar spent on the services, the customer receives 100 "sweepstakes points" which can be redeemed to play the "sweepstakes games". [T. 67]. The customer may purchase additional "time" at the same rate.

For example, according to the Moores, if a patron entered the Paradise Isle Café he or she would approach the cash register [point of sale]. [T. 32-33]. If the patron handed the attendant a \$5 bill, the attendant would then provide and activate a "phone card" valued at \$4.67 of "phone time" and the patron would receive 467 sweepstakes points for that purchase.¹⁰ Additionally, the patron will receive 100 points for each dollar purchased [100 points x \$5 = 500 points] plus 160 free sweepstakes points given to all patrons. In other words, if a patron entered Paradise Isle Café and paid the attendant \$5, he or she would receive \$4.67 in phone time along with 1127 (467 + 500 + 160) "sweepstakes points".¹¹ Once the patron is given the activated "phone card", he or she proceeds to a computer terminal

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Numerous boxes of sweepstakes entry forms were confiscated from the back office during the raid which never had been submitted or mailed in after completion and submission by various patrons.

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\$4.67 represents the \$5 tendered less .33 cents in sales tax. According to the Moores, the first \$5 purchase of a phone card is taxable but anything over \$5 is not taxable because it is an internet sale. According to the sign posted in the café, "any phone time purchased over \$5.00 will require you to complete your purchase on the validation computers by clicking on the 'buy \$1.00 phone time' button." Accordingly, a patron would not be allowed to purchase more than \$5.00 of phone time without playing the terminal games. [R. Clerk's Papers Evidence 014].

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The alleged value of the phone time received on September 11-12, 2007, was at a usage rate of .05 cents per minute. [R. Clerk's Papers Evidence 016]. Shortly thereafter, the value of the phone time was at a usage rate of .03 cents per minute beginning September 17, 2007.

where he or she scans the card to begin playing casino-type games. The games are displayed on interactive computer terminals where the object of the "game" is to line up various symbols and characters on simulated reels in a winning combination. [T. 32, 57-60, R. Clerk's Papers Evidence, 007-008, 010-011, R. 070]. Each contains a configuration of three (3) to twenty-five (25) symbols with winning combinations entitling the customer to money prizes ranging in value from \$1.00 to \$1,000.00.¹² [R. Clerk's Evidence Papers, 007-008, 010-011, R. 070]. Each terminal communicates with a central server which causes the terminal's screens to display whether the participant has won any "win credits". Win credits can be amassed or redeemed for cash or prizes and thus have a distinct cash value. [R. Clerk's Papers Evidence 017].

According to Tel-Sweeps own website, whether a customer wins "is determined by the server by randomly selecting the next ticket from the predetermined pool of tickets" and "the terminal's only purpose is to display the outcome in an entertaining way." Interestingly enough, this is the identical theory of operation to a casino slot machine where a random number generator determines whether a win occurs and the reels are simply an entertaining display of the outcome.

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It should be noted that while the Tel-Sweeps rules provide that pay-outs cannot exceed \$1,000.00, that a patron can, in fact, receive payouts greatly in excess of \$1,000.00 by continuing to play on the machines and buying additional "sweepstakes points" with their win points. During its raid, the Mississippi Gaming Commission seized documents indicating pay-outs of \$10,000 or more.

As part of their argument, the Moores further contend that a patron could have chosen to not play on the computer terminals but instead “quick redeem” their possible winnings. [Moores Brief 10]. According to the Moores, the attendant could have simply scanned the “phone card” as soon as it was purchased to determine whether the patron was a winner. The Moores assert that the actual playing of the games on the computer in no way effects the outcome of the win or loss but instead insist that the actual win or loss is determined upon activation of the card itself. Thus, the Moores argue, that patrons playing the games in the café are simply playing for entertainment purposes and that their actual play does not effect the outcome of the game. This argument fails. It does not matter whether the win or loss is determined at the point of sale or via the terminal because the patron does not know if he or she is a winner or loser until some part of the system indicates such.

When a patron is playing a game at the computer terminal and uses all of his or her “sweepstakes points”, the patron is given the option of to “buy \$1 more time” in order to continue playing the machine.¹³ To buy the additional “time”, the patron simply clicks on an icon to buy additional time and points are removed from their “win points” and placed into the “sweepstakes minutes” category to allow the patron to continue playing the machine. These additional sweepstakes points are also “predetermined”, meaning that

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Appellees contend that the “buy \$1 more time” is what enables the patron to buy additional phone time at the machine once the patron has used up all of his or her sweepstakes points and wishes to continue play on the machine.

although the patron continues to play, the amount he or she will ultimately win was determined at the time they actually purchased the additional "time" and their continued play has no effect on the outcome of the ultimate win or loss. If a patron has no win points and wishes to continue play, the patron must exit the game and go back to the cash register attendant to buy more "time".

In *Mississippi Gaming Comm'n v. Six Electronic Video Gambling Devices and Gullick*, 792 So.2d 321 (Miss.Ct. App. 2001)(cert. denied Aug. 16, 2001), the Mississippi Gaming Commission brought an action seeking destruction of six illegal gaming machines seized following a raid of Gene's Truck Center in the Circuit Court of Union County, Mississippi. *Id.* at 323(¶2). The owner of five of the six machines conceded that the machines were illegal gaming devices but one machine, the "Lucky Shamrock," was contested by intervener and truck stop owner, Gene Gullick. *Id.* Gullick contended that the "Lucky Shamrock" machine was not a gambling device but simply an emergency telephone card vending machine. *Id.*

In *Six Electronic*, the operation of the "Luck Shamrock" slot machine was described as follows:

For one dollar, the Lucky Shamrock dispenses a two minute emergency long distance calling card, good only for one call no matter the time actually used. With each card, the purchaser also receives a game piece. This has a bar code on the back which is read by the machine as the card is being dispensed. The display on the machine then simulates a slot machine by spinning nine squares. After a few moments the display shows the same combination of squares as on the game piece. Again simulating a slot machine, the machine

lights up and plays music if the patron is a winner. A cashier at the store verifies the amount of the card. This clerk then pays the prize money that can be in the amount of one dollar up to five hundred dollars.

Id. at 323(¶3). After reviewing the evidence submitted, the Mississippi Court of Appeals ultimately held that the Lucky Shamrock machine was an illegal slot machine and further found that “by chance unknown in advance to the user, the machine would occasionally deliver something ‘of value in varying quantities in addition to merchandise.’” *Id.* at 327(¶22)(emphasis added), citing Miss. Code Ann. § 97-33-7(1). It is important to note that it is the user or patron’s perception that is important. Sadly enough, accepting the Moores’ argument would mean that a “rigged” slot machine also falls outside the statutory prohibition since the owner of that machine has “predetermined” it to be a loser. The *Six Electronic* Court went on to find that:

Slot machines have long been prohibited independently of the ban on lotteries. The slot machine “experience” has been legislatively identified as deserving of criminal sanction, so have lotteries and an array of other forms of gambling. Not all award of prizes are lotteries. However, machines that dispense prizes varying from zero to five hundred dollars upon the insertion of a coin, the existence and value of the prizes dependent upon chance, are slot machines.

Id. 327(¶23). Again, in order for a machine to be a slot machine, the following factors must be present: (1) its play or operation requires the insertion of money, tokens or similar objects, or payment of consideration; and (2) as a result of playing or operating the device, the player or operator has the potential to win a reward in the form of cash, premiums, merchandise, token, or anything of value; and (3) the winning of some part or all of the

potential reward is dependent in substantial part on an element of chance. *Henson* at 113(¶10). In the present case, all three elements are clearly met.

A. THE PLAY OR OPERATION REQUIRES THE PAYMENT OF CONSIDERATION

As stated previously, the player, upon entering the café, approaches the counter and proceeds to purchase a “phone card” with sweepstakes points that is scanned at the cash register [Point of Sale]. The player then proceeds to a computer terminal where he or she again scans the “phone card” through the reader and begins playing games on the computer terminal. [T. 56]. The Moores argue that “the proposed sweepstakes system does not require consideration to operate the readers” because “every player is entitled to a free sweepstakes entry by mail or in the store”. This argument, however, fails. The mere appearance or possibility that there exists a legal way to play does not negate that the operation at Paradise Isle was illegal. As *Six Electronic* held, the sale of potentially legal sweepstakes cards nonetheless made the entire process illegal where done through use of machines. *Six Electronic* at 328(¶25).

In *Barber v. Jefferson County Racing Assoc., Inc.*, 960 So.2d 599 (Ala. Sup. Ct. 2006), the Alabama Supreme Court addressed a remarkably similar scenario. *See also Florida A.G. Opinion No. 2007-48*. [R.E. 2,3]. An internet café and digital communications center was opened like Paradise Isle Café in West Point except the Alabama café sold cybertime instead of phone time. Like the Moores, the Appellant in *Barber* argued that element of

consideration was absent in the operation of the MegaSweeps system. The Alabama Supreme Court rejected this argument finding that consideration “of the substance of the transaction, rather than its form” was necessary. *Id.* at 611. In so doing, the Alabama Supreme Court referenced the following general principles:

A slot machine which, in return for a coin deposited therein, dispenses merchandise represented to be of the value of such coin, accompanied at occasional and uncertain intervals by a varying amount of money ..., or more broadly, one which provides an element of chance is a gambling device. Thus, “[w]here the return of the player is ... dependent on an element of chance, a slot machine is a gambling device, even though the player is assured of his money’s worth of some commodity and hence cannot lose.” 38 Am Jur.2d Gambling § 104 (1999). (emphasis added).

Id. Though the Appellant in *Barber* argues that consideration is paid for the cybertime and, consequently, that the MegaSweeps entries are free, the Alabama Supreme Court rejected this argument finding, “consumers are paying for the entries, in whole or part, regardless of the cybertime acquired in conjunction with those entries.” *Id.* “In other words, if the [patron] is paying to play the readers rather than to acquire, or in addition to acquiring, cybertime, the element of consideration ... is satisfied.” *Id.*

The Alabama Court noted that “few customers were using the internet kiosks” but that customers “were lined up at all hours to use the readers”. Additionally, the Alabama Court took note that there were 11 times more readers [computer terminals with scanners] than internet kiosks which suggests “an expectation that the readers would be the major attraction”. *Id.* The same is true in the present case. There was only one internet kiosk

set up at Paradise Isle Internet Café, while there were 39 computer terminals with card readers set up in the back of the café. In addition, there was no bank of public phones on which to use the thousands of minutes of “phone time” being purchased. Obviously, with no evidence of any public phones readily available for use, the purpose of the Paradise Isle Internet Café was to promote the play and usage of the back terminals for the play of games based upon purchase of a “phone card”. An internet café with only one computer readily available for accessing the internet is not an internet café either. [T. 30].

Additionally, the *Barber* Court pointed out that the consumers indeed continued to purchase more cybertime even though they had large quantities of unused cybercrime on their accounts and pointed to the fact that at the point of sale system users were apprised only of the number of sweepstakes entries posted to their account and not the amount of cybertime they had accumulated. Again, the same is true in the present case. The patrons that frequented this location either had no idea they were even buying “phone time” or never used the phone time that was allegedly purchased. During the course of the undercover operation, the amount of “phone time” on the card was never mentioned to the officers who played the machines. [T. 56]. In fact, “phone time” was never mentioned at all. [T. 56, 62]. Instead, the only discussions that took place were how to pay to play and what was won as a result of that play. Cards that were left on the tables were confiscated.

The less the “phone cards” are used, the more the Moores profit.¹⁴ Clearly, the purchase of the “phone card” more than fulfills the element of consideration.

Moreover, the Moores agree that the sweepstakes points that are allegedly received “free” after purchase of a “phone card” can be used to accumulate win points. [R. Clerk’s Papers Evidence 017, ¶2]. The win points can be used to buy “more time” for continuation of play on the machines. [R. Clerk’s Papers Evidence 017, ¶12]. Certainly, the win points (whether redeemed for cash or used to buy “more time”) have monetary value and constitute consideration.

Finally, in response to the Moores assertion that no consideration is paid because minimum quantities of free “sweepstakes” entries can be redeemed by mail, there exist factual and legal elements to negate. Aside from the fact that the Moores never mailed in the forms for obtaining the free entries on behalf of those patrons who entered the business, the availability of free chances is not necessarily dispositive of whether a game is a gambling scheme. *Henson* at 115(¶19); *Barber* at 612. The *Barber* Court in addressing this specific concern stated:

That the prize may go to some one who has paid nothing *does not negative the fact that many have paid for their chance. Because some have not been drawn into the gambling phase does not render it any the less a lottery*, with whatever of evil it engenders, as to the public who have paid.

¹⁴

The phone service provider was Pulsar. The Moores paid Pulsar based upon the amount of “phone time” actually used by patrons and not by the total amount of “phone time” actually sold. “Phone time” on the cards also expired within ninety (90) days of purchase.

Barber at 613 (citations omitted)(emphasis in original). The Court went on to state, "that the opportunity for free plays does not a negate the element of consideration, or obviate an inquiry into the purpose and effect of the operation as 'the final proof of ... consideration.'" *Id.*; see also *Henson* at 115 (¶19) (holding "other jurisdictions considering the issue have also held that credits for free games constitute something of value"); *Midwestern Enterprises, Inc. v. Stenehjuem*, 625 N.W.2d 234 (N.D. 2001)(holding that limited availability of free play did not negate presence of consideration); *Pre-Paid Solutions, Inc. v. City of Little Rock*, 34 S.W.3d 360 (Ark. 2001)(holding that consideration is present regardless of whether patron is allowed to play the game for free); *F.A.C.E. Trading v. Carter*, 821 N.E.2d 38, 42 (Ind. Ct. App. 2005)(holding that the element of consideration is not eliminated merely because of the "no purchase necessary" print on the coupon side of the Ad-Tab).

The Moores also briefly touch upon their previous argument that their Internet café is no different than other sweepstakes games or "sales promotions", i.e., the Monopoly game at McDonald's or buying a Coca-Cola and winning a free prize. [Moores Brief 33]. First and foremost, the sweepstakes promotion or "sales promotion" found at Paradise Isle was a permanent, high-stakes game. Unlike the McDonald's or similar promotions, the purpose of the "sweepstakes system" was not actually to sell "phone time". Unlike McDonald's where the patron enters the building for the actual purpose of obtaining food with the limited possibility of obtaining a prize, patrons entered Paradise Isle to play

casino-type games for the potential of winning a cash reward. The real enticement is the game in which patrons may win up to several thousand dollars, not the purchase of phone time. In *F.A.C.E.*, the Indiana Court of Appeals addressed this same issue and, in reiterating what the trial court found, stated:

A distinction exists between promotion of a primary business of selling a meal or a drink for valuable consideration together with a chance to win a business related prize, in kind a car, albeit, as a sweepstakes prize which attracts sales, and promotion of a non-primary business related and incidental activity for valuable consideration together with a chance to win a prize unrelated to either the primary business activity or attraction of sales. The difference in the distinction is in the essence of the product, e.g., food, while the latter promotes the prize and the product (coupon) is unrelated to the primary business purpose or the promoter, of the distributor, or of FACE. The court fails to discern any claim that FACE is engaged in the primary business of marketing for the businesses which advertise in the Ad-Tabs, or that FACE's primary source of revenue is from those businesses as opposed to the sale of Ad-Tabs.

821 N.E.2d at 43; see also *Six Electronic*, 792 So. 2d at 328(¶26-27). As so distinctly put by the *Barber* Court, "gratuitous entries obtained by mail or at the race track do not legitimize the high-stakes MegaSweeps any more than some opportunity for free plays could render innocuous a conventional slot machine." *Barber* at 615. In other words, it is not important here how the sweepstakes functions overall but how this establishment functioned. The element of consideration is clearly met.

B. THE PLAYER HAS THE POTENTIAL TO WIN A REWARD

Although the Moores do not take issue with the presence of this element, it is nonetheless important to show that all elements are met. As stated in Tel-Sweeps own literature, "each ticket contains a configuration of three (3) to twenty-five (25) symbols with winning combinations entitling the customer to money prizes ranging in value from \$1.00 to \$1,000.00." Clearly, as a result of paying for "phone time", the patron has the potential to win a reward in the form of cash. [R. Clerk's Evidence Papers 017, ¶12]. The Moores cannot distinguish one aspect of the "sweepstakes system" from another in an attempt to claim that no possibility of reward exists. In *Six Electronic*, the Mississippi Court of Appeals stated:

In effect, we are being asked whether these statutes require or at least permit a device to be dismantled and various parts labeled as contraband while others maintain their innocence ... the device is a slot machine because it delivers something "of value in varying quantities ... in addition to merchandise." *This makes the phone cards an integral and not just incidental factor in deciding that this is a slot machine.*

792 So. 2d at 328 (¶25)(citations omitted)(emphasis added). Additionally, the Alabama Supreme Court in *Barber* stated:

The flaw in Innovative's approach is that the elements are not "missing" from the mechanics of the scheme. They are simply *dispersed* throughout the various units and processes of the integrated network ... in the computer age, the fact that *chance* takes place at the point of sale rather than at the readers themselves is simply inconsequential.

960 So.2d at 614-615 (emphasis in original). The "sweepstakes system" and all aspects of the network that makes the system run together as a whole cannot be broken down into minute aspects for purposes of attempting to create a legal loophole for the Moores to jump through. Simply put, the Moores, by virtue of their own advertisement, admit that the potential for reward is present upon purchase of a phone card. "In fact, there is no practical difference between a credit awarded to a player and a token dispensed from a machine." *Henson*, 800 So. 2d at 115(¶18). Here, in a winning situation, the award of "sweepstakes points" upon purchase of a "phone card" which are ultimately converted into "win points" which are then redeemed for a cash prize or used to buy more "phone time" is nothing more than an attempt to convolute the system, confuse players and evade the prohibition against illegal gaming. "It is axiomatic that one may not lawfully do indirectly what is unlawful to be done directly." *Barber* at 609. There is no question that a patron has the opportunity to win more money than what he or she paid to purchase the card. No matter how many dots you are required to connect to ascertain how the "sweepstakes system" operates, the potential for reward element clearly exists.

C. THE WINNING OF SOME PART OR ALL OF THE POTENTIAL REWARD IS DEPENDANT IN SUBSTANTIAL PART UPON AN ELEMENT OF CHANCE

Again, Tel-sweeps own literature states, "whether the participant wins is determined by the server randomly selecting the next ticket from the predetermined pool of tickets." In this case, the winning of a cash prize is determined by an element of chance,

meaning whether a patron wins is totally outside the control of the patron operating the machine. Although every patron who enters the building and pays money to the attendant receives some "phone time", not every player receives a winning cash reward. It does not matter if the server or seller knows who will win. Chance is in the eyes of the patron/user. *Six Electronic* at 327(¶22). The patron has no control over whether or not he or she receives a winning ticket or how much the cash prize will be in the event a winning ticket occurs. Just as in the present case, the undercover law enforcement officer lost money the first day he played and won money the second day he played. [T. 63-64]. It does not matter where the chance occurs or at what point in the process the chance occurs. *What matters is that there is an undisputed randomness in which an individual card awards a patron a "win"*. The clerk cannot un-activate a card any more than a patron walking through the door can be guaranteed to become a winner. Thus, the element of chance is satisfied.

II. MISSISSIPPI GAMING COMMISSION V. TREASURED ARTS IS INAPPLICABLE TO THE FACTS BEFORE THIS COURT AS SUCH PRECEDENT DISCUSSES LOTTERIES AND NOT ILLEGAL SLOT MACHINES

Secondly, the Moores cite *Mississippi Gaming Comm'n v. Treasured Arts*, 792 So.2d 321 (Miss. 1997) and discuss the case at length in their brief. *Treasured Arts* is inapplicable to the present case and the Moores' analysis of it in relation to the instant case is misplaced and should be disregarded.

The instant case involves the issue of whether the machines seized at Paradise Isle were slot machines and the Moores analyzation of *Treasured Arts* simply confuses the real issue at hand. *Treasured Arts* addresses the issue of whether a business selling telephone calling cards that also gave the potential for a varying prize were legal under Mississippi's *lottery* statutes. *Id.* at 937; see *Six Electronic*, 792 So. 2d at 326 (¶17). It has always been and remains the State's position in the present case that the machines seized were *slot machines* within the confines of Miss. Code Ann. § 75-76-5(ff) and Miss. Code Ann. § 97-33-7(1). The issue of illegal *slot machines* was not discussed in *Treasured Arts*. While the State acknowledges that both cases on their face involve issues related to gambling and "phone time", the issues in the instant case versus those addressed in *Treasured Arts* are completely distinguishable.

The question before this Court is whether the machines are illegal slot machines and the most applicable case is *Six Electronic*, a case focused on the discussion of slot machines. The Moores argument that *Treasured Arts* is somehow applicable is likening comparing arson to burglary. It is undisputed that both arson and burglary are crimes against property. Nonetheless, both crimes involve different statutes and elements which make up those offenses. Just because *Treasured Arts* deals with a particular gambling offense, it is not applicable to all gambling crimes. *Treasured Arts* deals with a lottery. *Six Electronic* deals with slot machines. As so clearly stated by the Mississippi Court of Appeals, "*Treasured Arts* is irrelevant, though, because reasoning based on whether the *risk* to win is a lottery

avoids the entirely different issue of whether the *means* to win is by a slot machine.” *Six Electronics*, 792 So. 2d at 326 (¶24)(emphasis in original).

Interestingly enough, the Moores readily acknowledged in their circuit brief that their “sweepstakes system” could not be construed as a lottery. [R. 118, ¶3]. Nonetheless, in their brief before this Court, the Moores argue at length that *Treasured Arts* is unquestionably applicable. Even, assuming *arguendo*, that the cards themselves are legal, the Moores argument still fails to negate the illegality of the operation as a whole. *Six Electronic* clearly held that where the phone cards are used in a machine, the entire activity is nonetheless rendered illegal. *Id.* at 328 (¶25-28). As such, the Circuit Court correctly held that *Treasured Arts* was inapplicable to this case.

III. THE CIRCUIT COURT CORRECTLY HELD THAT THE CLAY COUNTY JUSTICE COURT DID NOT RETAIN JURISDICTION OVER THE SEIZED ITEMS

Questions relating to jurisdiction or statutory construction are questions of law which appellate Courts review de novo. *Loveless v. City of Booneville*, 972 So. 2d 723, 731 (¶21)(Miss. Ct. App. 2007), citing *Jensen v. State*, 798 So. 2d 383, 384 (¶6)(Miss. 2001).

Although this issue is largely moot since the Circuit Court ruled on the underlying jurisdictional issue after a hearing and full briefing, the State will nonetheless briefly discuss this issue. In its appeal from the Clay County Justice Court to the Clay County Circuit Court, the State argued that the Justice Court erred in several respects. The State argued that the Justice Court had no jurisdiction to order return of the machines for several

reasons. First, the State argued that the Justice court erred by ordering return of the machines seized to Jeff Moore, a defendant who had no ownership interest in the machines. Second, the State argued that the Justice Court erred by ordering machines returned where no proper underlying cause of action existed before the Court for entering such an order. Third, the State argued that the Justice Court erred in not requiring the Moores to properly file a replevin action, as such an action would have required them to file a complaint setting forth the value of the items they wish to recover. Thus, it was likely that jurisdiction and venue alike were improper. And finally, the State argued the Justice Court erred by not recognizing that the illegal gaming machines are contraband per se, subject to immediate confiscation and destruction with or without pending criminal charges.

In its Order, the Clay County Circuit Court agreed that the amount in controversy clearly would have exceeded the statutory limit of \$2500 for the Justice Court to have proper jurisdiction and found that proper jurisdiction would have been found in the Circuit Court. [R.E. 1]. The Circuit Court nonetheless found the jurisdictional issue to be moot, holding that it had jurisdiction to entertain the appeal and that what happened in the Justice Court was of no legal consequence.

The State agrees that the Circuit Court correctly ruled that the Clay County Justice Court did not have jurisdiction to Order return of the machines. It seems that the Circuit Court, for purposes of judicial economy, simply went forward with addressing the underlying issue of the illegality of the slot machines even though the Moores had failed

to follow proper procedures for seeking recovery of property seized. The State does not question the Circuit Court's diligent efforts to address the issues before it, no matter how procedurally flawed the arrival may have been before the Circuit Court. Nonetheless, for purposes of responding to the Moores' brief, the State must again briefly reiterate its position that Ronnie Moore failed to pursue the proper legal and statutory avenues for recovering property (i.e., through a separately filed replevin action).

Throughout their brief, the Moores continually attempt to make this appeal a criminal matter when, in fact, it is a civil appeal. The confusion arises out of the Justice Court where the Moores made an oral motion for return of the machines in a case that had already been dismissed. Though it was argued by the State and the Justice Court orally ruled that a replevin action must be filed [R. 086, line 14], a proper replevin action was never submitted by the Moores in either Justice Court or Circuit Court. Instead, the State received an Order, a month later, without a cause number or any notice of hearing, from the Justice Court instructing it to return the machines to the Moores. The State appealed the Justice Court's decision ordering return of property, a matter which is clearly civil in nature.

In order for an individual to recover property, a formal complaint setting forth description, value and entitlement must be submitted. The Moores simply skipped this vital step and failed to comply with Mississippi Code Annotated § 11-37-101, which provides the statutory authority and direction for commencement of a replevin action.

Because the Moores never filed a separate complaint for replevin as required pursuant to Mississippi Code Annotated § 11-37-101, the Clay County Justice Court had no authority to order return of the seized items and the State was never given the opportunity to establish proper jurisdiction or venue. Had the Moores properly filed a replevin action, then the Court would have required plaintiffs (Moores) to post a bond and the State would have been entitled to at least five (5) days notice before such replevin matter could be heard or tried. The Moores did none of this in the lower Court. The Justice Court erred by not requiring the Moores to file a separate replevin action. Though the Moores attempt to argue in their brief that the Justice Court retains jurisdiction over any items seized simply because it issued the initial search warrant, such argument is without any basis in law. The issuance by the justice court of a search warrant in a criminal case does not establish proper jurisdiction when the underlying criminal case is no longer in existence and the items seized are contraband per se.

Because the Moores failed to properly file a complaint for replevin as statutorily required, they have not filed any documentation showing the alleged value of the property seized. The State, however, presumes, as did the Circuit Court, that the value of the machines and items seized would have been an amount well in excess of two-thousand-five hundred dollars (\$2,500.00). Mississippi Code Annotated § 9-11-9 provides that the "justice court judges shall have jurisdiction of all actions for the recovery of debts or damages or personal property, where the principal of the debt, the amount of the demand,

or the value of the property sought to be recovered shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00)."¹⁵ The State seized at least forty (40) computer terminals, a server, digital recording equipment and other items during its raid of Paradise Isle Internet Café. Accordingly, the Circuit Court correctly ruled that the Clay County Justice Court was without jurisdiction to order return of the illegal gaming machines as the value of machines unquestionably exceeds the two-thousand-five-hundred dollar (\$2,500.00) jurisdictional limit mandated by statute.¹⁶

Lastly, just because the State had temporarily dismissed charges against the Moores did not make the seized items any less illegal. As repeatedly affirmed by the appellate courts, no prosecution is required to seize and destroy illegal gaming machines, as no property interest in illegal machines even exists. See *Trainer v. State*, 930 So. 2d 373 (Miss. 2006)(the Mississippi Supreme Court recently held that defendants have no property

¹⁵

This statute was amended in 2008 to increase the jurisdictional limits of justice court to \$3500.

¹⁶

The Clay County Circuit Court did not address the venue issue in its Order and for purposes of judicial economy, the State submits that it is harmless error at this point and will only mention the venue issue in this limited footnote. The State maintains that even if the Moores had properly filed a replevin action, that the Clay County Justice Court would not have been the proper venue since such actions must be filed in the county where the items are being kept or in the county where the defendant may be found. Pursuant to Mississippi Code Annotated § 11-37-07, "the action of replevin may be instituted in the circuit or county court of a county or in the justice court of a county in which the defendant, or one (1) of several defendants, or property, or some of the property, may be found, and all proper process may be issued to other counties." Since the Mississippi Gaming Commission would be the defendant if Ronnie Moore or Jeff Moore had properly filed a replevin action, proper venue for such an action would have been in Hinds County instead of Clay County where both the MGC and the items seized were located.

interest in illegal machines); see also *Lawton v. Steele*, 152 U.S. 133, 14 S.Ct. 499 (U.S. Sup. Ct. 1894)(where its destruction is necessary to effect the object of a certain statute, we think it is within the power of the legislature to order its summary abatement ... the object of the law is undoubtedly a beneficent one, and the state ought not to be hampered in its enforcement by the application of the constitutional provisions which are intended for the protection of substantial rights of the property ... many articles-such as ... cards, dice, and other articles used for gambling purposes ... by being put into an illegal use, and in such cases fall within the ban of the law, and may be summarily destroyed). Illegal gaming machines are contraband per se, meaning mere possession is illegal. Miss. Code Ann. § 97-33-7(1)&(2); see also *Henson* at 112(¶9), *Prueitt* at 125; *Clark* at 571. Illegal gaming machines are no different than cocaine or any other illegal narcotic. Even if charges are not filed immediately in a narcotics case, it defies logic that the State would be required to return the cocaine to its owner and such a request would likely be laughed at by a Court. Sadly, the Justice Court in this case erred in so ruling and the Circuit Court correctly found that, even absent a proper cause of action to bring it before its Court, the machines seized were illegal slot machines and contraband per se subject to immediate confiscation by the State.

IV. PUBLIC POLICY AND LEGISLATIVE MANDATE DEMAND THE CIRCUIT COURT ORDER BE AFFIRMED

Under the Gaming Control Act, the Executive Director of the Commission may hire individuals with law enforcement backgrounds for the Enforcement Division and the Investigative Division. Miss. Code Ann. § 75-76-17(1) & (2). Through the Act, the Executive Director and his agents have the authority to inspect and seize equipment from "premises wherein gaming is conducted" and investigate gaming activities. Miss. Code Ann. § 75-76-27. Miss. Code Ann. 75-76-3(3) sets forth the public policy regarding gaming in Mississippi. § 75-76-3(3)(c) specifically states:

All establishments where gaming is conducted and where gambling devices are operated, and manufacturers, sellers and distributors of certain gambling devices and equipment must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the state.

States have long recognized the perils that accompany gaming operations. In light of that awareness, the Legislature for the State of Mississippi crafted the Gaming Control Act with an eye toward strict oversight of all gambling operations and strict compliance with gaming regulations, with the primary focus being upon maintaining public trust and confidence in gaming operations and insuring that gaming is conducted honestly and competitively. Miss. Code Ann. § 75-76-3(3)(a)(b).

In the instant case, various states have previously examined similar and identical "sweepstakes systems" and deemed them to be illegal. Any other ruling on the part of the

Court could render Mississippi a haven for all types of machines, even though the law is stricter than some of the other jurisdictions that have already found these type of machines and systems to be illegal. Even more important is the patron. The average patron who enters a store, pays money, watches reels spin and gets paid for "winning" believes they are gambling but without the protection of the Gaming Control Act, public confidence in the gaming industry will cease.

CONCLUSION

The State submits that while the facts of this case initially appear complicated and confusing, they are actually quite simple. The machines seized as a result of the "phone-card sweepstakes" that the Moores were running at Paradise Isle Internet Café are slot machines within the confines of Mississippi law. The elements of consideration, potential to win cash, and chance are all present. Perhaps the Alabama Supreme Court has best summarized this illegal system:

In the final analysis, Innovative created a system compose of what were formerly slot machines, which look like, sound like, and attract the same class of customers as conventional slot machines, and, when integrated with the servers, essentially the same function as did the slot machines. In a carefully planned venture, Innovative transferred the element of chance from the readers to a server, merged the MegaSweeps entries with cybertime, and staked the success of its venture on the legal efficacy of the transfer and merger. The owners have identified neither statutory law nor case law suggesting that such displacement and merger are legally significant. Having "take[n] the risk that" their venture "may cross the line," it is not "unfair to require" that the owners bear the consequences of failure.

Barber at 616. The Moores readily acknowledge their "reader machines are designed in a way that has the look and feel of a slot machine." (Moores Circuit Court Brief, page 12 , ¶1). Unfortunately for the Moores, the "slot machine experience" has long been identified as deserving of criminal sanction. *Six Electronic*, 792 So. 2d at 327(¶6).

WHEREFORE PREMISES CONSIDERED, the State respectfully requests that the Supreme Court affirm the January 6, 2009, Order of the Circuit Court of Clay County finding the machines seized to be contraband per se subject to immediate confiscation and destruction.

RESPECTFULLY SUBMITTED, this the 1st day of October, 2009.

STATE OF MISSISSIPPI and
MISSISSIPPI GAMING COMMISSION

BY: JIM HOOD, ATTORNEY GENERAL

THOMAS H. MUELLER, MSB NO [REDACTED]
SPECIAL ASSISTANT ATTORNEY GENERAL


DEANNE B. SALTZMAN, MSB NO [REDACTED]
SPECIAL ASSISTANT ATTORNEY GENERAL

THOMAS H. MUELLER, MSB NO [REDACTED]
DEANNE B. SALTZMAN, MSB NO [REDACTED]
STATE OF MISSISSIPPI
OFFICE OF THE ATTORNEY GENERAL
Post Office Box 23577
Jackson, Mississippi 39225-3577
Counsel for the Mississippi Gaming Commission

CERTIFICATE OF SERVICE

I, Deanne Saltzman, Special Assistant Attorney General for the State of Mississippi,
do hereby certify that I have this date faxed and caused to be mailed, via U.S. Postal
Service, postage prepaid, a true and correct copy of the above **BRIEF OF APPELLEE**:


Jeffrey Hosford
ROSS, KELLEY & HOSFORD, PLLC
115-A South Lafayette Street
Starkville, Mississippi 39759
Attorney for Appellants, Ronnie Moore & Jeff Moore

John P. Scanlon
Jerry L. Mills
PYLE, MILLS, DYE & PITTMAN
800 Avery Blvd. Suite 101
Ridgeland, Mississippi 39158
Attorneys for Appellants, Ronnie Moore & Jeff Moore

The Honorable James T. Kitchens, Jr.
Judge, Clay County Circuit Court
Post Office Box 1387
Columbus, Mississippi 39703

The Honorable Joe M. Taggart
Judge, Clay County Justice Court
Post Office Box 674
West Point, Mississippi 39773

THIS the 1st day of October, 2009.


DEANNE B. SALTZMAN
Special Assistant Attorney General

APPENDUM



MS ST § 9-11-9
Miss. Code Ann. § 9-11-9

Page 1

West's Annotated Mississippi Code Currentness
Title 9. Courts
Chapter 11. Justice Courts

→ § 9-11-9. Civil jurisdiction; monetary interest

Justice court judges shall have jurisdiction of all actions for the recovery of debts or damages or personal property, where the principal of the debt, the amount of the demand, or the value of the property sought to be recovered shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).

The justice court judges shall have no pecuniary interest in the outcome of any action once suit has been filed.

CREDIT(S)

Laws 1964, Ch. 333, § 1; Laws 1977, Ch. 308, § 1; Laws 1981, Ch. 471, § 4; Laws 1985, Ch. 478, § 1; Laws 1986, Ch. 365, § 1; Laws 1995, Ch. 573, § 1, eff. July 1, 1995.

HISTORICAL AND STATUTORY NOTES

Derivation:

Code 1930, § 2071; Code 1942, § 1805.

CROSS REFERENCES

Civil practice and procedure, justice court, see § 11-9-101 et seq.

Criminal actions, see § 99-33-1.

Debtor-creditor relationship, liens, proceedings, see § 85-7-265.

Debtors, remedy of attachment, see § 11-33-1 et seq.

Garnishment, see § 11-35-1 et seq.

Liens, see § 85-7-265.

Marine conservation commission cases, see § 49-15-65.

Partition of personal property, see § 11-21-73.

Replevin, see § 11-37-101 et seq.

Restitution to crime victims, see § 99-37-3.

Right of property, see § 11-23-25 et seq.

Salvage, see § 89-17-21.

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Title 11. Civil Practice and Procedure

Chapter 37. Replevin

→ § 11-37-101. Commencement of replevin

If any person, his agent or attorney, shall file a complaint under oath setting forth:

- (a) A description of any personal property;
- (b) The value thereof, giving the value of each separate article and the value of the total of all articles;
- (c) The plaintiff is entitled to the immediate possession thereof, setting forth all facts and circumstances upon which the plaintiff relies for his claim, and exhibiting all contracts and documents evidencing his claim;
- (d) That the property is in the possession of the defendant; and
- (e) That the defendant wrongfully took and detains or wrongfully detains the same; and shall present such pleadings to a justice of the Supreme Court, a judge of the circuit court, a chancellor, a county judge, a justice court judge or other duly elected judge, such justice or judge may issue an order directing the clerk of such court to issue a writ of replevin for the seizure of the property described in said complaint, upon the plaintiff posting a good and valid replevin bond in favor of the defendant, for double the value of the property as alleged in the complaint, conditioned to pay any damages which may arise from the wrongful seizure of said property by the plaintiff. The said writ shall be directed to the sheriff or other lawful officer, returnable as a summons before the proper circuit or county court where the value of the property, as alleged in the complaint, exceeds the jurisdictional amount of the justice court, or to the circuit or county court or the proper justice court if the value shall not exceed such amount. The complaint along with the order of the court, the writ of replevin with the officer's return thereon, and the bond of the plaintiff shall be filed in the proper court at once. Writs of replevin may be made returnable to the proper court of another county where the property may be found.

CREDIT(S)

Laws 1975, Ch. 508, § 1; Laws 1990, Ch. 344, § 1, eff. July 1, 1990.

HISTORICAL AND STATUTORY NOTES

Comparative Laws:

Ill.--735 ILCS 5/19-101 et seq.

Ind.--West's A.I.C. 34-1-9.1-1.

Ohio--Baldwin's ORC § 2737.01 et seq.

Miss. Code Ann. § 11-37-101, MS ST § 11-37-101

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Title 27. Taxation and Finance

Chapter 27. Vending and Amusement Machine Taxes

Article 1. Amusement Devices

→ § 27-27-12. Regulation of antique coin machines

(1) The purpose of this section is to protect and foster the collection and restoration of antique coin machines not used for gambling purposes, due to their aesthetic value and significance in Mississippi history.

(2) An "antique coin machine" is defined as any mechanical device or contrivance that is twenty-five (25) or more years old and that is operated, played, worked, manipulated or used by inserting or depositing any coin, slug, token, or thing of value, in which any game may be played or in which may be seen any picture or heard any music or any form of diversion had, including, but not limited to, an antique slot machine, antique gambling device or antique gaming machine.

(3) An antique coin machine may be owned and possessed in this state and shall not be subject to confiscation or destruction without a judgment of court as provided for in this section, but may be seized as evidence when operated for unlawful gambling purposes.

(4) An antique coin machine seized as evidence in connection with unlawful gambling shall not be destroyed, altered or sold until the owner has been afforded a reasonable opportunity to present testimony and other evidence in court that the machine was not operated for unlawful gambling. If the court determines by a final and definitive judgment that such machine was operated for unlawful gambling, the court shall order the destruction of such machine, but if the judgment is in favor of the owner, such machine shall be returned to its owner.

(5) An antique coin machine may be displayed only in private dwellings or while being offered for sale by a licensed retail dealer other than one licensed to sell alcoholic beverages. Such machine must be clearly marked by placard or otherwise that indicates that it is an antique and is not to be used for gambling purposes. If an antique coin machine is displayed in any other manner, it shall not be subject to the provisions of subsections (3) and (4) of this section.

CREDIT(S)

Laws 1992, Ch. 371, § 1, eff. July 1, 1992.

Miss. Code Ann. § 27-27-12, MS ST § 27-27-12

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Title 75. Regulation of Trade, Commerce and Investments (Refs & Annos)

Chapter 76. Mississippi Gaming Control Act

General Provisions (Refs & Annos)

→ § 75-76-3. Construction; legislative findings

(1) The provisions of this chapter shall not be construed to legalize any form of gaming which is prohibited under the Mississippi Constitution or the laws of this state. All legal gaming which is conducted in this state and which is otherwise authorized by law shall be regulated and licensed pursuant to the provisions of this chapter, unless the Legislature specifically provides otherwise. Nothing in this chapter shall be construed as encouraging the legalization of gambling in this state.

(2) The Legislature hereby finds and declares that lotteries and gaming both consist of the material element of chance. The Legislature is prohibited from legislating upon lotteries and permitted by virtue of its inherent powers to legislate upon gaming as the occasion arises. The Legislature derives its power to legislate upon gaming or gambling devices from its inherent authority over the morals and policy of the people and such power shall not be considered to conflict with the constitutional prohibition of lotteries.

(3) The Legislature hereby finds, and declares it to be the public policy of this state, that:

(a) Regulation of licensed gaming is important in order that licensed gaming is conducted honestly and competitively, that the rights of the creditors of licensees are protected and that gaming is free from criminal and corruptive elements.

(b) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the operation of licensed gaming establishments and the manufacture or distribution of gambling devices and equipment.

(c) All establishments where gaming is conducted and where gambling devices are operated, and manufacturers, sellers and distributors of certain gambling devices and equipment must therefore be licensed, controlled and assisted to protect the public health, safety, morals, good order and general welfare of the inhabitants of the state.

(4) It is the intent of the Legislature that gaming licensees, to the extent practicable, employ residents of Mississippi as gaming employees and other employees in the operation of their gaming establishments located in this state.

(5) No applicant for a license or other affirmative commission approval has any right to a license or the granting of the approval sought. Any license issued or other commission approval granted pursuant to the provisions of this chapter is a revocable privilege, and no holder acquires any vested right therein or thereunder.

(6) The Legislature recognizes that Section 98 of the Mississippi Constitution of 1890 prohibits the conducting of any lottery in this state and that, while not defining the term "lottery," Section 98 clearly contemplates, as in-

dictated by specific language contained therein, that a lottery involves the sale of tickets and a drawing in order to determine the winner. The Legislature also recognizes that Section 98 of the Mississippi Constitution of 1890 directs the Legislature to provide by law for the enforcement of its provisions. Therefore, in carrying out its duties under the Constitution and effectuating the intent of Section 98, the Legislature hereby finds that a lottery, as prohibited by the Constitution, does not include all forms of gambling but means any activity in which:

- (a) The player or players pay or agree to pay something of value for chances, represented and differentiated by tickets, slips of paper or other physical and tangible documentation upon which appear numbers, symbols, characters or other distinctive marks used to identify and designate the winner or winners; and
- (b) The winning chance or chances are to be determined by a drawing or similar selection method based predominately upon the element of chance or random selection rather than upon the skill or judgment of the player or players; and
- (c) The holder or holders of the winning chance or chances are to receive a prize or something of valuable consideration; and
- (d) The activity is conducted and participated in without regard to geographical location, with the player or players not being required to be present upon any particular premises or at any particular location in order to participate or to win.

CREDIT(S)

Laws 1990, 1st Ex. Sess., Ch. 45, § 2, eff. from and after passage (approved June 29, 1990).

HISTORICAL AND STATUTORY NOTES

Section 8 of Laws 2005, Fifth Extraordinary Session, Ch. 16, (§§ 1 to 7 of which amended §§ 87-1-5, 95-3-25, 97-33-1, 97-33-7, 97-33-17, 97-33-25 and 97-33-27 as regards gaming establishment shore structures) provides:

"Every entity possessing a gaming license, as defined in Section 75-76-5, that reconstructs, constructs, repairs or renovates properties affected by Hurricane Katrina is urged and encouraged to set aside at least twenty percent (20%) of such reconstruction, construction, repair or renovation contracts for expenditure with small business concerns owned and controlled by socially and economically disadvantaged individuals, and is urged and encouraged to set aside at least thirty percent (30%) of such contracts for expenditure with other Mississippi domiciled businesses. The term 'socially and economically disadvantaged individuals' shall have the meaning ascribed to such term under Section 8(d) of the Small Business Act (15 USCS, Section 637(d)) and relevant subcontracting regulations promulgated pursuant thereto; except that women shall be presumed to be socially and economically disadvantaged individuals for the purposes of this section."

Miss. Code Ann. § 75-76-3, MS ST § 75-76-3

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Title 75. Regulation of Trade, Commerce and Investments (Refs & Annos)

Chapter 76. Mississippi Gaming Control Act

General Provisions (Refs & Annos)

→ § 75-76-5. Definitions

As used in this chapter, unless the context requires otherwise:

(a) "Applicant" means any person who has applied for or is about to apply for a state gaming license, registration or finding of suitability under the provisions of this chapter or approval of any act or transaction for which approval is required or permitted under the provisions of this chapter.

(b) "Application" means a request for the issuance of a state gaming license, registration or finding of suitability under the provisions of this chapter or for approval of any act or transaction for which approval is required or permitted under the provisions of this chapter but does not include any supplemental forms or information that may be required with the application.

(c) "Associated equipment" means any equipment or mechanical, electromechanical or electronic contrivance, component or machine used remotely or directly in connection with gaming or with any game, race book or sports pool that would not otherwise be classified as a gaming device, including dice, playing cards, links which connect to progressive slot machines, equipment which affects the proper reporting of gross revenue, computerized systems of betting at a race book or sports pool, computerized systems for monitoring slot machines, and devices for weighing or counting money.

(d) "Chairman," through September 30, 1993, means the Chairman of the State Tax Commission, and thereafter means the Chairman of the Mississippi Gaming Commission.

(e) "Commission" or "Mississippi Gaming Commission," through September 30, 1993, means the State Tax Commission, and thereafter means the Mississippi Gaming Commission.

(f) "Commission member," through September 30, 1993, means a member of the State Tax Commission, and thereafter means a member of the Mississippi Gaming Commission.

(g) "Credit instrument" means a writing which evidences a gaming debt owed to a person who holds a license at the time the debt is created, and includes any writing taken in consolidation, redemption or payment of a prior credit instrument.

(h) "Enforcement division" means a particular division supervised by the executive director that provides enforcement functions.

(i) "Establishment" means any premises wherein or whereon any gaming is done.

(j) "Executive director," through September 30, 1993, means the director appointed by the State Tax Commission pursuant to Section 75-76-15(1), and thereafter means the Executive Director of the Mississippi Gaming Commission.

(k) Except as otherwise provided by law, "game," or "gambling game" means any banking or percentage game played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for money, property, checks, credit or any representative of value, including, without limiting the generality of the foregoing, faro, monte, roulette, keno, fan-tan, twenty-one, blackjack, seven-and-a-half, big injun, klondike, craps, poker, chuck-a-luck (dai shu), wheel of fortune, chemin de fer, baccarat, pai gow, beat the banker, panguingui, slot machine, or any other game or device approved by the commission. However, "game" or "gambling game" shall not include bingo games or raffles which are held pursuant to the provisions of Section 97-33-51.

The commission shall not be required to recognize any game hereunder with respect to which the commission determines it does not have sufficient experience or expertise.

(l) "Gaming" or "gambling" means to deal, operate, carry on, conduct, maintain or expose for play any game as defined in this chapter.

(m) "Gaming device" means any mechanical, electromechanical or electronic contrivance, component or machine used in connection with gaming or any game which affects the result of a wager by determining win or loss. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game. The term does not include a system or device which affects a game solely by stopping its operation so that the outcome remains undetermined, and does not include any antique coin machine as defined in Section 27-27-12.

(n) "Gaming employee" means any person connected directly with the operation of a gaming establishment licensed to conduct any game, including:

- (i) Boxmen;
- (ii) Cashiers;
- (iii) Change personnel;
- (iv) Counting room personnel;
- (v) Dealers;
- (vi) Floormen;
- (vii) Hosts or other persons empowered to extend credit or complimentary services;
- (viii) Keno runners;
- (ix) Keno writers;
- (x) Machine mechanics;

- (xi) Security personnel;
- (xii) Shift or pit bosses;
- (xiii) Shills;
- (xiv) Supervisors or managers; and
- (xv) Ticket writers.

The term "gaming employee" also includes employees of manufacturers or distributors of gaming equipment within this state whose duties are directly involved with the manufacture, repair or distribution of gaming equipment.

"Gaming employee" does not include bartenders, cocktail waitresses or other persons engaged in preparing or serving food or beverages unless acting in some other capacity.

(o) "Gaming license" means any license issued by the state which authorizes the person named therein to engage in gaming.

(p) "Gross revenue" means the total of all of the following, less the total of all cash paid out as losses to patrons and those amounts paid to purchase annuities to fund losses paid to patrons over several years by independent financial institutions:

- (i) Cash received as winnings;
- (ii) Cash received in payment for credit extended by a licensee to a patron for purposes of gaming; and
- (iii) Compensation received for conducting any game in which the licensee is not party to a wager.

For the purposes of this definition, cash or the value of noncash prizes awarded to patrons in a contest or tournament are not losses.

The term does not include:

- (i) Counterfeit money or tokens;
 - (ii) Coins of other countries which are received in gaming devices;
 - (iii) Cash taken in fraudulent acts perpetrated against a licensee for which the licensee is not reimbursed; or
 - (iv) Cash received as entry fees for contests or tournaments in which the patrons compete for prizes.
- (q) "Hearing examiner" means a member of the Mississippi Gaming Commission or other person authorized by the commission to conduct hearings.
- (r) "Investigation division" means a particular division supervised by the executive director that provides investigative functions.
- (s) "License" means a gaming license or a manufacturer's, seller's or distributor's license.

- (t) "Licensee" means any person to whom a valid license has been issued.
- (u) "License fees" means monies required by law to be paid to obtain or continue a gaming license or a manufacturer's, seller's or distributor's license.
- (v) "Licensed gaming establishment" means any premises licensed pursuant to the provisions of this chapter wherein or whereon gaming is done.
- (w) "Manufacturer's," "seller's" or "distributor's" license means a license issued pursuant to Section 75-76-79.
- (x) "Navigable waters" shall have the meaning ascribed to such term under Section 27-109-1.
- (y) "Operation" means the conduct of gaming.
- (z) "Party" means the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding before the commission; or the Mississippi Gaming Commission and any licensee or other person appearing of record in any proceeding for judicial review of any action, decision or order of the commission.
- (aa) "Person" includes any association, corporation, firm, partnership, trust or other form of business association as well as a natural person.
- (bb) "Premises" means land, together with all buildings, improvements and personal property located thereon, and includes all parts of any vessel or cruise vessel.
- (cc) "Race book" means the business of accepting wagers upon the outcome of any event held at a track which uses the pari-mutuel system of wagering.
- (dd) "Regulation" means a rule, standard, directive or statement of general applicability which effectuates law or policy or which describes the procedure or requirements for practicing before the commission. The term includes a proposed regulation and the amendment or repeal of a prior regulation but does not include:
 - (i) A statement concerning only the internal management of the commission and not affecting the rights or procedures available to any licensee or other person;
 - (ii) A declaratory ruling;
 - (iii) An interagency memorandum;
 - (iv) The commission's decision in a contested case or relating to an application for a license; or
 - (v) Any notice concerning the fees to be charged which are necessary for the administration of this chapter.
- (ee) "Respondent" means any licensee or other person against whom a complaint has been filed with the commission.
- (ff) "Slot machine" means any mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object, or upon payment of any consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of

Miss. Code Ann. § 75-76-5

chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens or anything of value, whether the payoff is made automatically from the machine or in any other manner. The term does not include any antique coin machine as defined in Section 27-27-12.

(gg) "Sports pool" means the business of accepting wagers on sporting events, except for athletic events, by any system or method of wagering other than the system known as the "pari-mutuel method of wagering."

(hh) "Temporary work permit" means a work permit which is valid only for a period not to exceed ninety (90) days from its date of issue and which is not renewable.

(ii) "Vessel" or "cruise vessel" shall have the meanings ascribed to such terms under Section 27-109-1.

(jj) "Work permit" means any card, certificate or permit issued by the commission, whether denominated as a work permit, registration card or otherwise, authorizing the employment of the holder as a gaming employee. A document issued by any governmental authority for any employment other than gaming is not a valid work permit for the purposes of this chapter.

(kk) "School or training institution" means any school or training institution which is licensed by the commission to teach or train gaming employees pursuant to Section 75-76-34.

(ll) "Cheat" means to alter the selection of criteria that determine:

(i) The rules of a game; or

(ii) The amount or frequency of payment in a game.

CREDIT(S)

Laws 1990, 1st Ex. Sess., Ch. 45, § 3; Laws 1991, Ch. 543, § 2; Laws 1992, Ch. 371, § 4; Laws 1993, Ch. 488, § 1, eff. from and after passage (approved April 20, 1993).

Miss. Code Ann. § 75-76-5, MS ST § 75-76-5

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Title 97. Crimes

Chapter 33. Gambling and Lotteries

In General

→ § 97-33-7. Possession, confiscation and destruction of certain gambling devices

(1) It shall be unlawful for any person or persons, firm, copartnership or corporation to have in possession, own, control, display, or operate any cane rack, knife rack, artful dodger, punch board, roll down, merchandise wheel, slot machine, pinball machine, or similar device or devices. Provided, however, that this section shall not be so construed as to make unlawful the ownership, possession, control, display or operation of any antique coin machine as defined in Section 27-27-12, or any music machine or bona fide automatic vending machine where the purchaser receives exactly the same quantity of merchandise on each operation of said machine. Any slot machine other than an antique coin machine as defined in Section 27-27-12 which delivers, or is so constructed as that by operation thereof it will deliver to the operator thereof anything of value in varying quantities, in addition to the merchandise received, and any slot machine other than an antique coin machine as defined in Section 27-27-12 that is constructed in such manner as that slugs, tokens, coins or similar devices are, or may be, used and delivered to the operator thereof in addition to merchandise of any sort contained in such machine, is hereby declared to be a gambling device, and shall be deemed unlawful under the provisions of this section. Provided, however, that pinball machines which do not return to the operator or player thereof anything but free additional games or plays shall not be deemed to be gambling devices, and neither this section nor any other law shall be construed to prohibit same.

(2) No property right shall exist in any person, natural or artificial, or be vested in such person, in any or all of the devices described herein that are not exempted from the provisions of this section; and all such devices are hereby declared to be at all times subject to confiscation and destruction, and their possession shall be unlawful, except when in the possession of officers carrying out the provisions of this section. It shall be the duty of all law-enforcing officers to seize and immediately destroy all such machines and devices.

(3) A first violation of the provisions of this section shall be deemed a misdemeanor, and the party offending shall, upon conviction, be fined in any sum not exceeding Five Hundred Dollars (\$500.00), or imprisoned not exceeding three (3) months, or both, in the discretion of the court. In the event of a second conviction for a violation of any of the provisions of this section, the party offending shall be subject to a sentence of not less than six (6) months in the county jail, nor more than two (2) years in the State Penitentiary, in the discretion of the trial court.

(4) Notwithstanding any provision of this section to the contrary, it shall not be unlawful to operate any equipment or device described in subsection (1) of this section or any gaming, gambling or similar device or devices by whatever name called while:

(a) On a cruise vessel as defined in Section 27-109-1 whenever such vessel is in the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting,

gaming or wagering on cruise vessels as provided in Section 19-3-79;

(b) In a structure located in whole or in part on shore in any of the three (3) most southern counties in the State of Mississippi in which the registered voters of the county have voted to allow such betting, gaming or wagering on cruise vessels as provided in Section 19-3-79, if:

(i) The structure is owned, leased or controlled by a person possessing a gaming license, as defined in Section 75-76-5, to conduct legal gaming on a cruise vessel under paragraph (a) of this subsection;

(ii) The part of the structure in which licensed gaming activities are conducted is located entirely in an area which is located no more than eight hundred (800) feet from the mean high-water line (as defined in Section 29-15-1) of the waters within the State of Mississippi, which lie adjacent to the State of Mississippi south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay, or, with regard to Harrison County only, no farther north than the southern boundary of the right-of-way for U.S. Highway 90, whichever is greater; and

(iii) In the case of a structure that is located in whole or part on shore, the part of the structure in which licensed gaming activities are conducted shall lie adjacent to state waters south of the three (3) most southern counties in the State of Mississippi, including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pascagoula Bay. When the site upon which the structure is located consists of a parcel of real property, easements and rights-of-way for public streets and highways shall not be construed to interrupt the contiguous nature of the parcel, nor shall the footage contained within the easements and rights-of-way be counted in the calculation of the distances specified in subparagraph (ii).

(c) On a vessel as defined in Section 27-109-1 whenever such vessel is on the Mississippi River or navigable waters within any county bordering on the Mississippi River, and in which the registered voters of the county in which the port is located have not voted to prohibit such betting, gaming or wagering on vessels as provided in Section 19-3-79; or

(d) That is legal under the laws of the State of Mississippi.

(5) Notwithstanding any provision of this section to the contrary, it shall not be unlawful (a) to own, possess, repair or control any gambling device, machine or equipment in a licensed gaming establishment or on the business premises appurtenant to any such licensed gaming establishment during any period of time in which such licensed gaming establishment is being constructed, repaired, maintained or operated in this state; (b) to install any gambling device, machine or equipment in any licensed gaming establishment; (c) to possess or control any gambling device, machine or equipment during the process of procuring or transporting such device, machine or equipment for installation on any such licensed gaming establishment; or (d) to store in a warehouse or other storage facility any gambling device, machine, equipment, or part thereof, regardless of whether the county or municipality in which the warehouse or storage facility is located has approved gaming aboard cruise vessels or vessels, provided that such device, machine or equipment is operated only in a county or municipality that has approved gaming aboard cruise vessels or vessels. Any gambling device, machine or equipment that is owned, possessed, controlled, installed, procured, repaired, transported or stored in accordance with this subsection shall not be subject to confiscation, seizure or destruction, and any person, firm, partnership or corporation which owns, possesses, controls, installs, procures, repairs, transports or stores any gambling device, machine or equipment in accordance with this subsection shall not be subject to any prosecution or penalty under this section. Any person constructing or repairing such cruise vessels or vessels within a municipality shall comply with all

municipal ordinances protecting the general health or safety of the residents of the municipality.

CREDIT(S)

Laws 1938, Ch. 353, §§ 1 to 3; Laws 1950, Ch. 357, § 1; Laws 1990, Ch. 573, § 10; Laws 1990, 1st Ex. Sess., Ch. 45, § 149; Laws 1992, Ch. 371, § 5, eff. July 1, 1992; Laws 1994, Ch. 530, § 1, eff. July 1, 1994. Amended by Laws 2005, 5th Ex.Sess., Ch. 16, § 4, eff. from and after passage (approved October 17, 2005).

HISTORICAL AND STATUTORY NOTES

The 2005 amendment by Laws 2005, Fifth Extraordinary Session, Ch. 16, inserted, in par. (4)(a), "including the Mississippi Sound, St. Louis Bay, Biloxi Bay and Pasacgoula Bay;" following "most southern counties in the State of Mississippi"; inserted par. (4)(b) relating to shore structures; renumbered former pars. (4)(b) and (4)(c) as pars. (4)(c) and (4)(d); and in subsec. (5) inserted language relating to "licensed gaming establishments" throughout the first sentence.

Derivation:

Code 1930, § 821; Code 1942, § 2047.

Miss. Code Ann. § 97-33-7, MS ST § 97-33-7

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