
Coates' Canons Blog: Cyber-Sweepstakes Anyone?

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Article: <https://canons.sog.unc.edu/cyber-sweepstakes-anyone/>

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UPDATE September 2013: In December 2012 in the case of *Hest Technologies, Inc. v. State ex rel Perdue*, the North Carolina Supreme Court upheld the constitutionality of the statute that makes it a criminal offense to conduct video sweepstakes games “through the use of an entertaining display.” (G.S. 14-306.4(b)). See here for an analysis of the implications of the case for local zoning authorities.

A converted storefront or convenience mart with computer terminals at tables or in booths arranged around the room. Someone at a desk or counter selling computer time. Customers enjoying games of “Wild Berries” on their screens. Is this the new face of video gaming in North Carolina? What are we up to and how has it developed?

It was in 1993 that the North Carolina General Assembly legalized video gaming machines, ostensibly to serve as a replacement for the use of slot machines. But this legislative experiment has not been an unmitigated success. Because of growing public disenchantment and stories of business irregularities and public corruption associated with the industry, the legislature in 2006 enacted a new gaming statute (G.S. 14-306.1A). That statute generally required video gaming machines, used primarily for video poker, to be removed from the state by July 1, 2007.

Promoters, however, were not much interested in making a hasty exit. By the time the 2007 ban became effective, the gaming industry had already begun to reprogram their machines and modify their methods of operation to qualify games as a form of “sweepstakes” in order to avoid the law. The sweepstakes system typically invites patrons to purchase prepaid Internet access cards that also happen to allow them to use computer terminals with gaming software as an ancillary benefit. According to promoters, the computer games do not directly determine what a customer wins the way slot machines do; they merely simulate games of chance. The customer may claim a predetermined sweepstakes prize at the sales counter. In March 2008, Guilford County Superior Court Judge John O. Craig, III, ruled that G.S. 14-306.1A did not apply to these sweepstakes systems that were beginning to be used throughout the state.

In April of that year the North Carolina House responded by voting to broaden the “video poker” ban to include online sweepstakes operations. But the legislation became bogged down in part because of the inability to find a way to shut down sweepstakes games without also banning online sweepstakes sponsored by fast-food chains like McDonald’s or even implicating the state lottery. Eventually the 2008 General Assembly attempted to counter the gaming trend by adopting new legislation (G.S. 14-306.3) that became effective December 1, 2008. It generally banned “server-based electronic game promotions,” including anything that simulated games otherwise played on a slot machine or a video gaming machine.

By the time the 2008 server-based-gaming ban became effective, however, the manufacturers of gaming machines had already modified their method of operation once more. In late December of 2008, Judge Craig ruled that the new style of play was outside the reach of the statute because it involved neither a database that contains “pools of entries with each entry associated with a prize value” (G.S. 14-306.3(c)(1)), nor entries that are “revealed” at a point-of-sale terminal or at a game terminal (G.S. 14-306.3(c)(4)). He consequently issued a preliminary injunction against State of North Carolina law-enforcement personnel preventing them from taking criminal action under the new law against those with reconfigured gaming operations. Officers were even enjoined from saying publicly that such activities are illegal.



But the gaming industry was not through. Earlier this year, a Wake County Superior Court judge, Howard Manning, Jr., handed down a ruling (stayed pending appeal) that G.S. 14-306.3 (the same server-based electronic gaming statute) was unconstitutional as a violation of equal protection because it generally prohibited various forms of electronic gaming statewide while allowing the Eastern Band of Cherokee Indians to operate these same games. In response a bill was introduced in the 2009 session of the General Assembly reaffirming the state's interest in banning all forms of electronic gaming, but it never made it out of committee.

Is it legal today in North Carolina to sell computer time as a means of playing these sweepstakes games? No one knows for sure. When faced with the rapid spread of these cyber-sweepstakes operations, many local governments in this state have had to determine whether they are permissible under local zoning regulations. Prodded by gaming operators and news of the pending lawsuits, most local governments have treated these sweepstakes operations as permitted, legal uses. Few have attempted to exclude them through zoning. Most have viewed these new operations as similar to video-game arcades and other similar indoor amusement establishments (more common) or cyber-cafes (less common). In some communities these cyber-sweepstakes operations have been rather routinely accepted, and the biggest issue has been determining appropriate off-street parking standards and the appropriate commercial zoning districts.

In other communities, however, these operations have been more controversial. Citizens, community leaders, and law-enforcement personnel have condemned these activities as simply forms of illegal gambling that cater to those who can least afford to participate and that attract various other forms of vice. Although no alcohol is served, the secondary impacts associated with these establishments have been linked to those associated with night clubs, adult establishments, and casinos. Operators typically want to stay open as late as they can. Premises are generally open only to adults. So, it is alleged, the lure of money to be made and spent and the possibility of skirting the law can attract unsavory characters and even encourage petty crime. Some ordinances today treat cyber-sweepstakes operations as legal, but less than desirable, uses that need to be separated from residences, schools, churches, day-care centers, and other protected land uses. These separation requirements may also be applied to sexually oriented businesses and other electronic gaming establishments to prevent their undue concentration.

What will the future hold? Waiting for definitive appellate court decisions regarding the rulings of Judge Craig and Judge Manning may take some time. It seems unlikely that the General Assembly will adopt significant legislation on this topic in the 2010 short session. In the meantime the number of gaming establishments continues to multiply throughout the state. The sweepstakes are growing in a battle that promises to be hotly contested.

Links

- appellate.nccourts.org/opinions/?c=1&pdf=MjAxMi8xNjIjBMTEtMi5wZGY=
- www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=14-306.4