

NE Ohio Planning & Zoning Workshop

TOPIC:
Internet Sweepstakes Cafes
June 24, 2011



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**INTERNET SWEEPSTAKES CAFES:
INTRODUCTION AND GAMBLING ISSUE**

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THE BASICS: WHO, WHAT, WHERE, WHEN AND HOW

• **WHAT?**

Generally, internet sweepstakes are consumer sales promotions that involve the use of computer-generated games following the purchase of a "game" card which entitles the purchaser to a phone card or a set amount of network access time ("NAT"). If the purchaser chooses, he or she can use the "game" cards to play online Vegas-style computer games. In playing these games the purchaser can win more Internet time and points that have no cash value (both of which are predetermined at the time the "game" card is purchased), but give them chances in sweepstakes where they can win money and/or prizes. **Unless specifically used, the NAT or phone minutes never decrease while the purchaser "plays" the computer-generated games.**

THE BASICS: WHO, WHAT, WHERE, WHEN AND HOW

• **WHERE?**

Internet sweepstakes cafes are furiously popping up across many Northeast Ohio communities – often in strip malls, coffee houses, and other suburban shopping centers.



THE BASICS: WHO, WHAT, WHERE, WHEN AND HOW

• **WHO?**

Local examples of internet sweepstakes cafes include:

- Bedford** (Internet Cafe of Bedford);
- Brunswick** (7 Star Internet Cafe);
- Garfield Heights** (Internet Escape; Lucky's Internet Cafe);
- Grafton** (Treasure Island Internet Cafe);
- Streetsboro** (Winners Circle Internet Cafe);
- Parma** (Internet Paradise);
- Parma Heights** (Pink Flamingo Internet Cafe; Sweepnet Cafe; Goodtime Charles II);
- Seven Hills** (Ohio Internet Cafe);
- Strongsville** (7 Star Internet Cafe); and
- Willowick** (Net Play Cafe).

THE BASICS: WHO, WHAT, WHERE, WHEN AND HOW

WHEN?

In recent years the number of internet cafes has dramatically increased.

HOW?

Because internet cafes don't cross the thin legal line from "gaming" into state-regulated "gambling."

THE DETAILS ON "HOW" ~ SWEEPSTAKES VS. GAMBLING

The Law:

Ohio Revised Code 2915.02 (A)(2) makes it unlawful for a person to "[e]stablish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance."

A "game of chance" is defined as "poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo." R.C. 2915.01(D) (emphasis added).

Similarly, a "scheme of chance" is defined as "a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit." R.C. 2915.01(C) (emphasis added).

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THE DETAILS ON "HOW" ~ SWEEPSTAKES VS. GAMBLING

The Application of the Law:

Essentially, there are three elements to gambling: (1) consideration; (2) risk; and (3) reward.

Without all three of these elements there is no gambling. State of Ohio v. Dabish, Lucas County Municipal Court, Case No. CRB-08-25138, citing Federal Communications Commission v. American Broadcasting Co., 347 U.S. 284 (1954).

In the internet sweepstakes cafes, the element of risk is removed from the equation: The purchaser of the "game" card can either play the computer-generated games, have the card swiped to determine whether or not he won a prize, or simply leave the premises with the phone or NAT card.

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THE DETAILS ON "HOW" ~ SWEEPSTAKES VS. GAMBLING

Recent Legal Decisions:

- State v. Rabbitt, Akron Municipal Court, Case No. 803494 (2008) - Sweepstakes cafe owner convicted of gambling (1M); violation of R.C. 2915.02 (no written opinion or findings of fact and conclusions of law).
State v. Klenfeld [sic], Summit County Court of Appeals, Case No. 24736, 2010-Ohio-1372 (March 31, 2010) - Sweepstakes cafe owner convicted of gambling in violation of R.C. 2915.02(A) (1M), operating a gambling house in violation of R.C. 2915.03(A)(1) (1M), operating or conducting an entertainment arcade without a license in violation of Akron City Code 111.03(A)(1) (3M), and failure to register an entertainment device in violation of Akron City Code 111.033(C), an unclassified misdemeanor. Conviction upheld.
State of Ohio ex. rel. Ron O'Brien v. Spinners Cafe, Franklin Municipal Court (February 9, 2011): Court ruled that "sweepstakes" machines violated Ohio law; directly contradicts State of Ohio v. Dabish (Toledo opinion).

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COMPARISON OF STATE OF OHIO V. DABISH AND STATE OF OHIO EX. REL. O'BRIEN V. SPINNERS CAFE

	State of Ohio v. Dabish	State of Ohio ex rel. O'Brien v. Spinners Cafe
Venue	Toledo (Lucas County) Municipal Court	Franklin County (Columbus) Municipal Court
Charges/Claims	Criminal charges; operation of a gambling house and gambling	Civil allegations; maintaining a statutory nuisance/public nuisance
Facts	Sale of phone cards allows purchaser to play computer-generated games; pre-determined prize associated with purchased phone card; phone card retains value regardless of whether purchaser plays games	Sale of prepaid internet time cards allows purchaser to play computer-generated games – including poker – by virtue of free sweepstakes entries provided at the time of purchase; presumed – although not explicitly stated in opinion – that internet cards retain value regardless of whether purchaser plays games
Holding	There are three elements to gambling: (1) consideration, (2) risk and (3) reward. Here, consideration was for purchase of phone cards and the element of risk absent because phone cards never in jeopardy. Therefore, not guilty of gambling.	Here, looking at the business as a whole, consideration was for purchase of participation in game, not internet time – player paid money to participate in a chance to win a prize; the internet cards are gambling devices; the computers are slot machines distributing games of chance, and the defendant is promoting schemes of chance.

COMPARISON OF STATE OF OHIO V. DABISH AND STATE OF OHIO EX. REL. O'BRIEN V. SPINNERS CAFE


	State of Ohio v. Dabish	State of Ohio ex rel. O'Brien v. Spinners Cafe
Holding (cont'd)	Not guilty of gambling beyond a reasonable doubt.	Clear and convincing evidence of devices accepting cash, directly or indirectly, for the player to conduct a scheme of chance. Guilty of maintaining a statutory nuisance.
Practical Outcome	Players Club Cafe remained open for business.	Spinners Cafe enjoined from maintaining the nuisance, possessing illegal slot machines or distributing schemes of chance.
DISTINGUISHING FACTORS	<ul style="list-style-type: none"> - Criminal Case - Standard: Beyond a Reasonable Doubt - Court UNABLE/UNWILLING to look at the "predominate purpose of machines" (<i>State Game Tech, Inc.</i>) as this was a criminal case 	<ul style="list-style-type: none"> - Civil Case - Standard: Clear and Convincing Evidence - Court ABLE to look at the "predominate purpose of the machines" (<i>State Game Tech, Inc.</i>) as this was NOT a criminal case

THE DETAILS ON "HOW" ~ SWEEPSTAKES VS. GAMBLING

THE PRIZES:

Because internet sweepstakes are not gambling, "schemes of chance," or skill-based amusement machines, R.C. 2915.01(AAA)(1) and R.C. 2915.06 are inapplicable (statutes that prohibit the exchange of cash, gift cards, etc. as a reward for playing or operating such machines). As such, *pre-determined sweepstakes points* accumulated by the purchasers can be traded for cash and prizes.





Internet Sweepstakes Cafe:
Zoning and Business Regulation


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Internet Sweepstakes Cafes

I. Internet Sweepstakes Cafes

- A. What are they?
- B. How do they operate?
- C. Is it illegal gambling?

What are they? 


How do they operate? 

Illegal? 

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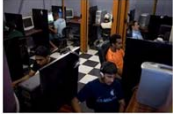
I. Zoning Regulation

- A. Moratorium: Municipalities vs. Townships
- B. Primary negative effects? Negative secondary effects? Police calls?



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- C. Prohibited use, permitted use, or conditional use?
 - Nuisance per se?
 - Exclusionary zoning.
 - Like or similar use provisions of Code



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- D. Classification of use as retail/commercial vs. entertainment/recreational use
- E. Parking
- F. Traffic Circulation issues




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- G. Setbacks from residential uses, schools, daycares, etc.
- H. Spacing between cafes due to parking and traffic issues and secondary effects
- I. Spacing of terminals/seating within cafe



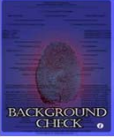
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III. Business Regulation (Municipalities only)

A. Annual licensing with fees


1. Justification for licensing is need for inspections to determine if gambling and if municipal income taxes are being avoided
2. Background checks for owners/operators and employees
3. Annual license fee and, perhaps, a fee per computer termination




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B. Forms reporting winnings to municipality

C. "Grandfathering" of pre-existing cafes **not** an impediment to business regulations going forward



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D. Hours of operation

- Not a subject of regulation for Townships (See, *Bainbridge Twp. Trustees v. Funtime, Inc.* (1990), 55 Ohio St.3d 106.)

E. Food/Beverage service

- Health Dept. issues
- Alcohol sales



F. Banning of minors



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IV. State of Ohio Legislative Initiative

- A. Proposal Advocated by Ohio Attorney General
- B. House Bill 195, introduced by Reps. Anielski and Baker, April 12, 2011
- C. Pending in House's State Government & Elections Committee – hearings held

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Highlights of House Bill 195:



1. Only 5 terminal devices in any licensed location.
2. No liquor shall be served or consumed on the premises.
3. An operator/partner/affiliate shall operate no more than 2 locations
4. Limits number of licenses for locations based on population.

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5. Licensing and regulation by new Ohio Casino Control Commission:
 - Fees
 - Accounting/audit standards
 - Inspections
 - Background checks, etc.



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C. Preemption of local regulation (not zoning)?



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QUESTIONS OR
COMMENTS?

THANK YOU
