

INTERNET SWEEPSTAKES CAFÉ SYSTEM

Sweepstakes Entries

- Pool of finite sweepstakes entries
- Randomly selected
- Replenished once exhausted

How Does a Customer Participate in the Sweepstakes System?

- Purchase of network time through the Cashier (POS) terminal, operated by employee;
- Receipt of free sweepstakes points upon request at the Cashier (POS) terminal;
- Purchase of additional network time at the Game Terminal using sweepstakes winnings; and
- Receipt of free entries by mail request.

Two Methods of Revealing Sweepstakes Entries:

- Cashier Terminal-

- Game Terminal-

ARE INTERNET SWEEPSTAKES CAFÉ'S LEGAL?

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- [2915.02 Gambling.](#)

- (A) No person shall do any of the following:

- (2) **Establish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance;**

ARE INTERNET SWEEPSTAKES CAFÉ'S LEGAL?

- [2915.01 Gambling definitions.](#)

- As used in this chapter:

- (C) **“Scheme of chance” means 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.

Slot Machine

- (VV)(1) **“Slot machine” means either of the** following:

- (b) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.

- (2) “Slot machine” does not include a skill-based amusement machine or an instant bingo ticket dispenser.

Game of Chance

■(D) “Game of chance” means 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.

Skill Based Amusement & Merchandise Prize

■(AAA)(1) “Skill-based amusement machine” means a mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided that with respect to rewards for playing the game all of the following apply:

■(BBB) “Merchandise prize” means any item of value, but shall not include any of the following:

■(1) Cash, gift cards, or any equivalent thereof;

Summary of ORC

■2915.02 Gambling = “Scheme of Chance”

■2915.02 (C) “Scheme of Chance” means a “slot machine”

–(VV)(1)(b) Any mechanical, electronic, video, or digital device that is **capable of accepting anything of value, directly or indirectly**, from or on behalf of a player to conduct bingo or a scheme or game of chance

–(2) “Slot machine” **does not include** a skill-based amusement machine or an instant bingo ticket dispenser.

Or

Sweepstakes Computer=Slot Machine=scheme of chance=GAMBLING

Supporting Case Law

■*Westerhous Co. v. Cincinnati* (1956), 165 Ohio St 327 (holding that even the mere granting of a free replay on a mechanical device was sufficient value to create a prize and therefore constituted gambling).

■*Kroger Co. v. Cook* (1970), 24 Ohio St. 2d 170 (holding that one individual’s purchase of a chance or giving value was not necessary to constitute consideration for the purpose of gambling and specifically determined that giving a free entry to some players did not negate consideration).

■*Flare Game Technology, Inc. and Mid-Ohio Vending v. the Ohio Department of Public Safety* (2003), 10th App. Dist. No. 02AP-748 (holding that the fact that a machine has an innocent use in dispensing phone cards does not prevent a trial court from concluding that the appellant’s intention is to operate an illegal gambling device).

Supporting Legislative Intent

■Ohio Legislative Service Commission (1974), Legislative notes: “Schemes of chance” and “games of chance” are defined substantially in terms of existing case law. See e.g. *Kroger Co. v. Cook* (1970), 24 Ohio St. 2d 170 (1956), 165 Ohio St 327; *Kroger Co. v. Cook* (1970), 24 Ohio St. 2d 170.

- *124th General Assembly, Amended Substitute House Bill Number 512:*
- Added the term “slot machine” for the first time to legislation.
- “Slot machine” was moved from being a “game of chance” to a “scheme of chance.”
- The requirement for proof of “profit” was removed from the prohibition on “schemes of chance.”
- Note: charities are not permitted to use “slot machines” in their legal fundraising activities. *See* 2915.02 (D).

RECENT CASES

State v. Dabish (2008), Lucas County Municipal Court Case No. *CRB-08-25138*
“The Toledo Case”

- Defendant was charged with two violations of Ohio law, Operating a Gambling House, a violation of Ohio Revised Code Section 2915.03(A)(1), and Gambling, a violation of Ohio Revised Code Section 2915(A)(2).
- Court found no crime and held:
 - The element of consideration was for the purchase of the phone card only and that such consideration is never in jeopardy.
 - The element of risk is absent inasmuch as the purchaser of the phone card risks nothing, reasoning that if that “[i]f the purchaser does not win a prize, he still retains the full purchase price of his phone card”
 - That there does exist a “chance or a prize or reward in playing the game.”
 - The “predominate purpose” test, (*FLARE 2003*) should be rejected because the predominate purpose was not a criminal element of the crime charged.

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Recent Cases

- ***State v. Rabbitt, Akron Municipal Court (2008)*- sweepstakes café owner convicted (no written opinion or findings of fact and conclusions of law).**
- ***State v. Klenfeld, 9th Dist. Ct. App, (March 31, 2010)* – upholding the conviction of the owner of a sweepstakes Café for operating a gambling house in violation of RC. 2915.03(A)(1), a misdemeanor of the first degree.**
- **July 9, 2010 – Cleveland shuts down Black Hawk Café on suspicion of gambling.**

■ *State of Ohio ex. Rel Ron O'Brien v. Spinners Café, Franklin Municipal Court* (February 9, 2011) – Court held that Sweepstakes Café was a public nuisance in that said premises in or upon which violations of Ohio Revised Code Section 2915.02, .03, .04, have occurred or may occur in the future.

■ There are other pending City of Cleveland and Cuyahoga County cases, the outcome of which could substantially affect the criminality of sweepstakes cafes.

Internet Sweepstakes Cafés - Zoning Options

■ Find typically permitted

■ Moratorium

■ Completely prohibit as nuisance *per se*

Internet Sweepstakes Cafés - Zoning Options

■ Find that Internet Sweepstakes Cafés are similar to other **typically permitted** uses and charge the appropriate fee within a given district (recreational or commercial – typically \$175).

Moratorium

■ Declare a **moratorium** to allow time to define what exactly the use is and to allow the zoning commission to draft appropriate legislation.

– Charge the same

– Institute **additional fees**–

Charge the Same

■ Zoning commission would draft new zoning for Sweepstakes Cafés and put through the approval process.

■ Restrictions could be placed on:

– Age minimums

– Zoning district

– Hours of operation

– Traffic

– Setbacks

– Spacing Between cafés

Additional Fees

■ With this option comes the necessity to justify the increased administrative cost of the establishment.

– U.S. Constitution - The rational basis review tests whether a governmental action is a reasonable means to an end that may be legitimately pursued by the government. This test requires that the governmental action be “rationally related” to a “legitimate” government interest.

Administrative Burdens

■Increases in:

- Robbery
- Gambling addiction
- Larceny-theft
- Drug/weapon violations
- Underage gambling
- Fraud
- Assault/murder
- Money Laundering

Problems with Additional Fees being charged

- Many of the proffered “additional burdens” would fall upon the Sheriff’s department. Worst case – additional fees are charged and create a hindrance to eventual, effective prosecution, and after these establishments are shut down a class action suit is brought to recover the additional fees as an illegal excise tax.
- Argument that sweepstakes cafés do not produce any more burden than a bar.

■Potentially – Civil Nuisance (Franklin County)