**IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO**
**CIVIL DIVISION**

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| State, Ex rel. Ronald J. O'Brien,<br>Prosecuting Attorney, | : | |
| Plaintiff, | : | CASE NO. 00CVH-08-7275<br>Judge Travis |
| v. | : | |
| Masticpoint Field Station and United<br>Churches International, Inc. et al., | : | |
| Defendants, | : | AND |
| State, Ex rel. Ronald J. O'Brien,<br>Prosecuting Attorney | : | |
| Plaintiff, | : | CASE NO. 00CVH-08-7276 |
| v. | : | |
| Pathfinder Service Association, et al., | : | |
| Defendants. | : | |

**DECISION**

**Rendered this 31st day of August, 2000.**

These consolidated cases came before the court on August 21, 2000 on the complaint of Relator, Ronald J. O'Brien, Prosecuting Attorney for Franklin County, Ohio. Each case is in an action for nuisance abatement brought pursuant to Ohio Revised Code Section 2915.03 and Chapter 3767 of the Ohio Revised Code. The actions are brought against Masticpoint Field Station and United Churches International, Inc., ("MASTICPOINT"), and Pathfinder Service Association, Inc., ("PATHFINDER"), as well as other defendants. In each case, relator states that the defendants have conducted and continue to conduct illegal gambling or public gaming and therefore are guilty of

maintaining a nuisance. See R.C. 2915.04 and 3767.03, Relator asks that both preliminary and permanent injunctions issue against the several defendants, to abate the nuisances and to perpetually enjoin the defendants from further maintaining the nuisances.

**FACTS AND BACKGROUND**

The court heard testimony and took evidence over a period of two days. Much of the evidence is uncontroverted. Masticpoint and Pathfinder are the owners of certain electronic gaming machines marketed and operated under the names "TreasueQuest", "Real Sevens", "Wildfire Multi-Tab" and "Poker Pull-Tab". Each machine contains both mechanical and electronic parts and systems. Each machine is fitted with an entry slot where a coin or currency is inserted by the player. Insertion of the coin or currency causes the video display terminal to light up. The displays differ with each machine, but all purport to provide some form of game to play. Depending upon the machine, the video display may appear in the form of spinning wheels covered with lemons, cherries and other symbols commonly associated with a mechanical slot machine or similar combinations such as a "Tic-Tac-Toe" like board or other grid or matrix. The number of games or plays varies, but in general, each play is for fifty cents or a dollar.[1]

After inserting money into the machine, the bettor pushes a button to begin the game. In the case of a machine with reels, the reels appear to spin as in the case of a mechanical slot machine. As the wheels spin, the player may choose to push a stop or brake button for each wheel in sequence. Use of the stop or brake button appears to stop

[1]For example, a $5.00 bill may result in 10 "plays" or "games" for the bettor.

the wheel from spinning. In reality, the button has no effect upon the "spinning" wheels. The electronic display operates independently of the stop button.

With other games, playing cards appear in the form of poker hands or a series of numbers or symbols appear on the screen. In some, cardboard tokens or paper strips with various combinations printed on them are expelled by the machine.[2] Winning combinations of poker hands, numbers or symbols are listed on the face of the machine. If a winning combination of symbols or cards is displayed, the machine registers a win for the player.

Depending on the machine, the bettor may "cash out" his winnings by obtaining a printed receipt. Other machines provide printed cardboard tickets which indicate the winning or losing plays. In both cases, the receipt or cardboard token is redeemed by a clerk at the betting kiosk for payment. Other machines do not provide a "cash out" button or cardboard token but may give "free plays". In the case of free plays, no cash out is provided. Instead, the bettor continues to play the machine without inserting any additional money until the free plays are used up. If the bettor leaves the machine for a predetermined amount of time, the machine automatically "plays" the bettor's winnings until all free plays are exhausted.

Each machine has a predetermined number of winning combinations. The predetermined, winning combinations are either in the form of an electronic program contained on a "CD-ROM" computer disc, or in the form of cardboard tokens loaded into the machine during servicing. Each coin or paper currency inserted provides the player with the chance to recover one or more of the finite number of winning combinations

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[2]The "Poker Pull-Tab" and "Multifire Pull-Tab" machines operate in this manner.

contained in the machine. Other than the randomness of a particular bettor's approach to a machine, the chance of receiving winning combinations during machine play is predetermined by the program under which the machine operates.

Relator states that the machines are "games of chance" as defined in R.C. 2915.01(D) and are "slot machines". Therefore, the day-to-day operation and use of these machines by Masticpoint and Pathfinder constitutes illegal gambling in violation of Section 2915.02 of the Ohio Revised Code. Masticpoint and Pathfinder dispute relator's position and assert that the machines are not "games of chance" or "slot machines", but are "schemes of chance" as defined in R.C. 2915.01(C). Defendants contend that the continued use and operation of the machines is not unlawful due to their status as charitable organizations. See R.C. 2915.02(D).

**DISCUSSION**

Gambling has long been considered a proper subject of the police powers of the state. Prior to the revision of the criminal code which took place on January 1, 1974, all forms of gambling were prohibited in Ohio. Gambling for money, whether conducted as a business, for pleasure or to raise money for charity was prohibited.

With the adoption of the 1974 revision of the code, prohibitions were directed at the business of gambling. That which is considered private conduct for pleasure is not prohibited unless the gambling is for financial profit or gain.

> The fundamental thrust of new Chapter 2915 is to prohibit the business of gambling without forbidding gambling carried on for pleasure rather than profit. Under the chapter, all forms of gambling and activities in aid of it are illegal if carried on as a business, or for personal profit, or as a significant source of income or livelihood. Otherwise, no form of gambling is illegal. Gambling in public is prohibited to avoid enforcement problems, and this represents a partial exception to the general rule in the chapter.

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> Schemes and games if chance conducted for profit, as well as bookmaking, are expressly forbidden. These prohibitions reach not only the bookie, the casino operator, and the manager of a floating crap game, but also the clerk of the handbook, the dealer, and the person who places a bet with a bookie or plays an illicit game or scheme. The penny-ante poker game in one's own home with friends, the dime-a-hole Saturday golf match, and the office football pool are not prohibited, unless some profit is taken other than the gain accruing to a winner. If a nominal charge is made for admission or for a seat in the game, or a small percentage of the pot or pool is taken, or the house takes an edge in the odds, then profit enters the picture.
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> 1974 Committee Comment to H 511.

In sum, Chapter 2915 prohibits the business of gambling. In that regard, House Bill 511 changed nothing. The changes which were enacted deal with private, non-commercial gambling and with the use of certain forms of gambling as a fund-raising tool for charitable organizations.

Prior to House Bill 511, an obvious dichotomy had existed in the enforcement of gambling laws. Relatively minor infractions were prosecuted in certain cases while others were routinely and studiously ignored.[3] With the enactment of HB 511, specifically Chapter 2915, the General Assembly determined to carve out an exception for certain forms of gambling used by bona fide charitable organizations to raise funds for charity. Thus, when conducted under strict scrutiny, limited forms of gambling by charitable organizations are exempt from the general rule that prohibits gambling for money. However, H.B. 511 did not make all forms of gambling available to charitable organizations. Instead, gambling is classified into two categories, "schemes of change" and "games of chance". R.C. 2915.01(C) and (D).

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[3] For example, "Bingo Nights" conducted by church groups were effectively ignored by law enforcement even though Chapter 2915 contained no exception to the prohibitions therein for religious organizations. At the same time, similar activities in secular establishments were prosecuted under R.C. 2915.02.

The category within which a particular form of gambling falls determines if, when, and under what circumstances the charitable organization is permitted to conduct gambling to raise funds. Charitable organizations are permitted to operate "schemes of chance" to raise funds at any time, provided certain financial rules and requirements are followed.[4] Pursuant to subsection 2915.02(C)(1), a charitable organization may operate "schemes of chance" as fund raising tools if the charitable organization is:

> . . . . exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code, provided that all of the money or assets received from the scheme of chance after deduction only of prizes paid out during the conduct of scheme of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code . . . . (and) . . . the scheme of chance is not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only pursuant to section 2915.02 of the Revised Code.

Thus, conducting a "scheme of chance" is not restricted by time or place except as it may affect a bingo game conducted for amusement only.

In contrast, operation of "games of chance" by a charitable organization is much more closely restricted and in the case of certain games, is totally prohibited. "Games of chance" may be operated by a charitable organization only if the organization complies with all of the requirements of R.C. 2915.02(D)(2). The requirements are:

> (a) The games of chance are not craps for money, roulette for money, or slot machines;
>
> (b) The games of chance are conducted by a charitable organization that is, and has received from the internal revenue service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

[4] "Charitable organization" is defined in R.C. 2915.01(H). For purposes of this preliminary injunction hearing, no issue has been raised or is before the court as to the defendants' compliance with the requirement that they be bona fide charitable organizations.

(c) The games of chance are conducted at festivals of the organization that are conducted either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days not more than once a year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization for a period of no less than one year immediately preceding t he conducting of the games of chance.

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(d) All of the money or assets received from the games of chance after deduction of prizes paid out during the conduct of the games of chance are used by, or given, donated, or otherwise transferred to, any organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

(e) The games of chance are not conducted during or within ten hours of a bingo game conducted for amusement purposes only pursuant to section 2915.02 of the Revised Code.

It is clear that the General Assembly intended to maintain greater control over the use of "games of chance". That distinction is well within the province of the General Assembly.

The terms "schemes of chance" and "games of chance" are defined in R.C. 2915.01 as follows:

(C) "Schemes of chance" means a lottery, numbers game, pool, or other scheme in which a participant give a valuable consideration for a chance to win a prize.

(D) "Games of chance" means poker, craps, roulette, a slot machine, a punch board, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely or wholly by chance.

While each subsection employs somewhat different wording and syntax, and each provides different examples of what constitutes a scheme of chance or a game of chance, both subsections rely on the long-standing definition of the elements of gambling: the payment of a price for the

chance to win a prize. "In general, the elements of gambling are payment of a price for a chance to win a prize". Westerhaus v. City of Cincinnati (1956), 165 Ohio St. 327, syllabus par. Five; The Kroger Co. v. Cook, Dir. Dept. of Liquor Control (1970), 24 Ohio St.2d 170. In that respect, both definitional subparagraphs of R.C. 2915.01 are the same. Whether a "scheme" or a "game" is involved, the gist of each definition involves payment of a price for a chance to win a prize. That is gambling. Westerhaus, supra. The definitions differ only in the legislative attempt to distinguish the two through example. If the machines seized are "schemes of chance", they may be operated by the defendants on a daily basis if in compliance with the charitable organization exemption. If the machines are "games of chance", they are subject to the stricter requirements of R.C. 2915.02(D)(2).

The legislative power of this state is vested in the General Assembly, Art. II, Section 1, of the Ohio Constitution. It is the province of the General Assembly to enact laws, to define crime and provide for punishment. As noted, unless it falls within a statutory exception, all gambling for profit or gain is illegal. Only a gain or profit realized by a charitable organization for a charitable purpose is exempt from the general prohibition.

By definition, all forms of gambling have the same elements: "payment of a price for the chance to gain a prize." Westerhaus v. Cincinnati, supra, syllabus par. 5. H.B. 511 did not alter that definition.[5] It is only the manner in which the gambling occurs, the system by which the elements of price, chance and prize are delivered to the bettor, which may differ. It does not matter whether the element of chance is created by the flip of a coin, t he toss of dice, the spin of a wheel, the result of a sporting event, stock market close, a card game, office pool or any other form. Gambling is gambling.

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[5] See 1974 Committee Comment following R.C. 2915.01.

The legislature did not simply enact a broad, charitable organization exception to the prohibition against gambling for profit. Instead, the legislature chose to enact exceptions with different temporal and geographic conditions. The determination of which exception applies to the general prohibition against gambling for profit depends entirely upon the form which the gambling takes; the form in which the elements of price, chance and prize are delivered. The determination to classify one form of gambling differently from another is the province of the legislative branch of government.

In this case, the court is called upon to determine whether the machines in question are "schemes of chance" or "games of chance" and if the games are "slot machines". If a statute is ambiguous, a court may determine legislative intent by applying basic rules of statutory construction. State v. Sidell (1972), 30 Ohio St.2d 45. See R.C. 1.49. The definitions set forth in R.C. 2915.01(C) and (D) are not ambiguous in the traditional sense. However, the two definition subsections employ the same underlying definition of gambling to each category, and attempt to distinguish a "scheme of chance" from a "game of chance" by listing examples of each. Recalling that all gambling is made up of the same elements, (price, chance and prize), and only the form in which those elements are delivered to the bettor may differ, the basis upon which the legislature chose to differentiate the form of gambling into two categories is susceptible of analysis.

In enacting H.B. 511, the legislature maintained the historic prohibition against the business of gambling.[6] Ohio has repeatedly rejected the business of gambling, such as casino style gambling. Historically, "schemes of chance" are not normally associated with casino style gambling. Lotteries, pools, numbers games and the like have never been a part of casino style

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[6] 1974 Committee Comment following R.C. 2915.02.

gambling.[7] Card games, poker, roulette, craps and slot machines are generally associated with the business of gambling.[8] Accordingly, it is apparent that in distinguishing between gambling by means of schemes of chance and gambling by means of games of chance, the legislature chose to classify gambling by the system or manner in which price, chance and prize is delivered. Those forms of delivery of the elements of price, chance and prize which are not generally associated with the business of gambling were placed in one category, while those forms of delivery of the same elements of price, chance and prize which are generally associated with the business of gambling were placed in another category. That categorization I s within the province of the legislature, not the courts.

APPLICATION OF THE LAW TO THE FACTS

It is without dispute that the machines are operated in the same basic fashion. A player or bettor inserts money into a slot, then uses a button to start the operation of the machines and receives a prize or loses his money strictly by chance. Each machine was demonstrated in the courtroom. Each performed in the same general way. In appearance, each appears to be a form of "slot machine".

Defendants contend that some form of randomness in winning or losing is required before a particular type of gambling apparatus may be categorized as a "game of chance".

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[7] Ironically, the illegal forms of gambling known as "The Numbers" and generally operated by organized crime, has been taken over by the State of Ohio in the form of the Ohio Lottery. Oh. Const. Art. XV, Section 6.

[8] The court is mindful that the Saturday night, penny ante, poker game is not considered a business, at least as long as the stakes are kept reasonably low and the house does not take a percentage of the pots wagered. However, poker, blackjack and similar games are played as a business in casinos. In enacting a statute, perfection is not required and where the general intent of the legislature can be reasonably discerned, the statute must be upheld.

Defendants argue that because there is no random selection of the winning or losing combinations as each game is being played, that the machines fall within the definition of "schemes of chance" rather than "game of chance". In defendants' view, because the owners of the machine control the number of wins and loses which each game provides, whether a player wins or loses depends only upon whether the next game has been programmed as a win or loss. Therefore, even though the machines appear to permit wagering with a random selection of winners and losers, in fact, that appearance is false. The winners and losers have been selected in advance by the operators of the gambling device.

The court concludes that random determination of whether a particular play or game results in a win or loss is not a prerequisite to a device being classified as a "game". Whether a particular form of gambling falls within the definition of "scheme of chance" or "game of chance" is not dependent upon some measure of control by the player.

The defendants rely heavily upon language contained in State v. Beane (1977), 52 O.Misc. 115. Beane involved so-called "Instant Bingo". In "Instant Bingo", a cardboard card with five concealing flaps is purchased. When the flags are raised, hidden numbers or symbols appear which are compared with winning combinations printed on the reverse side. If they compare favorably, the purchaser wins a prize or money. In Beane, the Franklin County Municipal Court concluded that Bingo is a scheme of chance and may be used by charitable organizations for fund raising purposes under R.C. 2915.02(D)(1). In so finding, the court reasoned that a distinction between a scheme of chance and a game of chance is that in a game of chance, the outcome may be affected by the actions of the bettor while in a scheme of chance, the outcome is wholly by chance. Superficially viewed, that analysis can prove to be true. However, it is also true that the statute provides that a game of chance may be determined

“largely or wholly by chance”. Therefore, to hold that the distinction between scheme and game is based on a measure of control exerted by the player ignores the very wording of the statute. The General Assembly does not engage in vain acts. There would be no basis to define a game of chance to require a degree of control or input by the player when by statutory definition, the outcome of the game may be determined “wholly by chance”, totally without any control or input by the player.

With due respect to the Franklin County Municipal Court in Beane, this court rejects the Beane analysis. Even Beane acknowledges that the so-called “control” factor is nebulous. Further, the example of a punch board allowing “control” of which hole to punch strains the concept of control to the proverbial filament. Moreover, what “control” does the punch board player have when only one hole is left on the board: the decision to wage or not? Bettors using defendants’ machines have that much “control”. Finally, as seen from the statutory construction employed herein, the court finds that the intent of the legislature is distinguishing schemes of chance from games of chance was far different than Beane or the defendants suggest.

From the legislative history of those statutes which control gambling, including the limitations on when and where schemes of chance versus games of chance may be used for charitable fund raising, it is clear that the legislature intended to exert control over the manner in which gambling is delivered. The forms of gambling associated with casinos are subject to more tightly drawn legislative controls than their non-casino counterparts. Both deliver the identical elements of gambling: price, chance and prize, yet are treated differently. Therefore, it seems clear that the legislature was concerned with the manner in which gambling is made available. See R.C. 2915.01(C) and (D) and R.C. 2915.02(D)(1) and (2).

As to the machines in question, whether or not randomness affects the result of the individual game, the machines in question are clearly games of some sort.[9] Whether the player wins or loses is determined by the sequence of wins and losses programmed into the machine. The player cannot affect that sequence. Therefore, the player wins or loses "wholly by chance". R.C. 2915.01(D). Accordingly, the court finds that each of the machines falls within the definition of "games of chance" as defined in R.C. 2915.01(D).

As "games of chance", the machines may be employed to raise funds by a charitable organization only if they meet all of the criteria of R.C. 2915.02(D)(2). If the machines meet those criteria, they are subject to the time and place limitations in subparagraph (2)(c) of that section. However, the machines cannot be "craps", "roulette" or "slot machines". R.C. 2915.02(D)(2)(a).

Relator argues that the machines are "slot machines". As previously noted, there is no statutory definition of "slot machine". Where a term in a statute is not defined by the legislature, a court will look to the common, everyday usage of the words employed. See generally, State ex rel. Antonucci v. Youngstown City School Dist. Bd. Of Edn. (2000), 87 Ohio St.3d 564, 566. The court has reviewed earlier decisions which have referred to "slot machines". Generally, the decisions dealt with whether a "slot machine" was a "gambling device" for purposes of criminal prosecution. None deals with the precise question presented herein. However, they are helpful when defining the term using the ordinary, everyday usage of the words.

The Ohio Supreme Court has described a "slot machine" as follows:

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[9]In some cases, the games are cleverly disguised so that they appear to operate as a "traditional" or mechanical form of slot machine. Lighted buttons purport to allow the "player" to slow or stop the spinning of a wheel when in reality, the braking effect of is purely illusory created by special video effects. In reality, the winning or losing combinations are selected by the computer program or sequence in which the cardboard tabs fall into place.

> A boxlike contrivance with machinery inside and a lever to operate it, which is "played" by dropping coins in a slot and pulling the lever, the person playing it winning or not, depending on the manner in which the inside mechanism performs, and which is designed for the purpose of gambling is "a gambling device or machine" per se and comes within the purview of Section 13066 General Code. See Kraus v. City of Cleveland, 135 Ohio St. 43, 45.
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> State v. Shaffer (1951), 156 Ohio St. 153, 155.

In Shaffer, the court described testimony and evidence presented in support of the state's claim that the machine was a gambling device.

> (The player) . . . put two nickels in there . . . . there was four nickels come out on what was right there, that bell and two cherries.
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> * * * * *
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> The prosecuting attorney proceeded to demonstrate to the court the working of the machine. He received two nickels on the first play and then inserted 19 nickels without securing any return.
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> * * * * *

The court concluded:

> It is apparent that the device in issue is the conventional type of slot machine designed solely for gambling. The player inserts a nickel in the slot and then pulls a lever on the outside of the instrument. This causes the mechanism on the inside to operate. If the player is "lucky" he takes from an opening in the machine more nickels than he inserts; if he is "unlucky", he loses his money.
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> State v. Shaffer, supra, 156 Ohio St. 153 (Emphasis added.)

While Shaffer involved the application of the term "gambling device" to certain facts, the description of the "slot machine" and the evidence presented is illustrative.

As in Shaffer, the machines in this case are "played" by inserting a quantity of money, (coin or currency), into an opening or slot. As in Shaffer, the bettor begins the process, not by pulling a mechanical lever, but by pushing a button. As in Shaffer, if the bettor is "lucky", he

wins money, a token or is allowed to play further without payment.[10] As in Shaffer, if he is "unlucky", he loses his money. Both the device in Shaffer and the games herein involve the chance to win a prize for a price.

In addition to the foregoing descriptions, "slot machine" is defined in various dictionaries.

Ballentine's Law Dictionary, 3d Ed. Lawyers Co-op Pub. Co.:

> A coin-operated machine so operated that small amounts are put at hazard to win a larger amount. 34 Am. J.1st. Lot. An automatic vending machine; any machine requiring the deposit of money or metal chips therein before operating. 33 Am. J.1st Lic Sec. 11.

Fund and Wagnalls New International Dictionary:

> A vending machine or gambling machine having a slot in which a coin is dropped to cause operation.

The American Heritage Dictionary, 1987:

> A vending or gambling machine having a slot or slots through which coins are inserted in order to operate it;

None of the definitions require that randomness of the actual selection of winning and losing combinations while the game is played or operated. Clearly, each machine in this case fits the above definitions of "slot machine".

Defendants argued that if the definition does not include randomness of the selection of winning and losing numbers, that any machine which dispenses a product could be considered a slot machine. While a broad definition would so permit, it must be remembered that the duty of

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[10] Amusement in the form of free plays is a prize or gain for purposes of the gambling statutes. Stillmaker v. Department of Liquor Control (1969), 18 Ohio St.2d 200, approving and following Kraus v. Cleveland, supra.

this court is to determine the intent of the legislature in enacting a specific statute. In doing so, the court applies those tools of statutory construction historically used to determine legislative intent; tools which have, in part, been codified by the legislature itself. See R.C. 1.49. Those tools include:

(A) The subject sought to be obtained
(B) The circumstances under which the statute was enacted;
(C) The legislative history;
(D) The common law or former statutory provisions, including laws upon the same or similar subjects;
(E) The administrative construction of the statute.

The purpose behind the enactment of Chapter 2915 was not to control the manner in which products are sold. Chapter 2915 was enacted to control gambling.

Defendants argue that the definition will include soft-drink vending machines. Defendants state that because soft-drink vendors periodically engage in promotions which offer the purchaser a chance to win something in return for purchasing the product, soft-drink vending machines could be considered illegal slot machines.[11] That may be true, however, that result is still within the power of the legislature. See The Kroger Company v. Cook, Dir. Dept. O f Liquor Control, supra. In Kroger Company v. Cook, Kroger and PepsiCo promoted their products through "Race to Riches" (Kroger) and "Pepsi-Cola Give-Away-Program". The Kroger promotion involved a card with pre-printed numbers which indicated whether the patron won or lost the game. Pepsi-Cola inserted playing card symbols under the bottle cap liners. Employing the "price, chance and prize" analysis of Westerhaus v. Cincinnati, the Ohio Supreme Court found both promotional schemes to be gaming, schemes of chance. Where the store which

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[11] For example, it is not uncommon for a national brand such as Coca-Cola or Pepsi-Cola to promote their product by placing winning symbols under a limited number of bottle caps or a similar form of delivery. A purchaser of the product would place money in a slot to buy the product and coincidentally receive a chance to win a prize.

vended the products also sold beer and wine, the gambling devices were in violation of Liquor Control Commission, Regulation 53. As stated in syllabus par. 1 of that case, Regulation 53 prohibits "gaming on a game of skill or chance on the premises of a liquor permit holder . . ." While R.C. 2915.01 and 2915.02 were not involved in that decision and the facts of the case do not indicate that the sale of products was through vending machines, it is inescapable that the Ohio Supreme Court concluded that the regulation of granting in conjunction with a vended product is within the state's police powers. If the definition of slot machine operates to include so-called "gumball" machines, as defendants decry, that is also a matter for legislative, not judicial determination. Id.

Defendants argued that the machines are but robots, providing the same service that a human operator of a gambling room would provide. The "pull tab" machines product the same cardboard tokens which, if sold by an individual rather than being provided in a machine, would not be classified as "games of chance". Superficially viewed, the defendants' argument appears to have merit. Upon closer inspection, the court finds that the argument fails.

By enacting different standards under which charitable organizations may employ different forms of gambling, it is clear that the intent of the legislature was to discriminate between the several ways that gambling are made available. That is a legislative decision. Different industries can present different societal concerns. Different industries may require different legislative controls. For example, although in general, the sale of cigarettes is not prohibited in this state, the sale of cigarettes through vending machines is strictly controlled and limited. R.C. 2927.02. Intoxicating liquors must be sold from licensed permit premises; not from vending machines on the street corner as soft drinks and similar items are sold. The obvious concern of the legislature, ready access to harmful substances by juveniles.

In like manner, controlling access by juveniles to gambling is a legitimate legislative concern. It is within the police power of the state to control the manner and place of delivery of gambling in the same manner that the state controls the manner and place of delivery of alcohol and tobacco. Delivery of those items by a human vender is preferred over delivery by a machine because delivery by a human vendor allow for discrimination between adult and juvenile purchasers. Because gambling for gain has always been subject to strict regulation by the state, the same analysis applies. It is well within the province of the legislature to determine that the "product" of gambling should not be distributed by machines.

CONCLUSION

Prior to H.B. 511 and the amendment of Chapter 2915 of the Revised Code, all gambling for money was prohibited by law, whether the gambling was conducted as a business, by individuals among themselves or by religious or other charitable organizations. The 1974 amendment of Chapter 2915 de-criminalized gambling by individuals where the wagering is not conducted for gain. H.B. 511 further permits some forms of gambling to be used to raise money for religious and charitable organizations. Gambling as a business remains a prohibited activity.

The General Assembly did not create a sweeping exception for charitable organizations. The charitable organization exception to the general prohibition against gambling for gain exists under strict legislative control. Moreover, not all forms of gambling may be used by charitable organizations to raise funds. Schemes of chance, those forms of gambling not generally associated with casino-style gambling, may be used by charitable organizations with only minor temporal and geographic controls. R.C. 2915.02(D)(1). However, even for charitable use of games of chance, normally associated with casino-style gambling, was severely restricted by the legislature. R.C. 2915.02(D)(2). Finally, no one, whether individual, charitable organization or

business entity, may operate those forms of gambling know as "craps for money, roulette for money or slot machines." R.C. 2915.02(D)(2)(a).

These are legislative decisions. To some, it may appear inconsistent that the state engages in gambling for gain, (the state lottery), while the state prohibits individuals and businesses from operating a lottery for gain. However, those decisions fall within the framework of the Constitution of Ohio and are within the discretion of the General Assembly. The decision to restrict gambling conducted by religious and charitable organizations to certain forms at certain times is a legislative decision. The legislature has the constitutional power to prohibit all gambling under all circumstances by all persons and entities, religious or not. It certainly can differentiate among the types of gambling which are excepted from the general prohibition against gambling for gain.

The legislative history of Chapter 2915 shows that the State of Ohio has consistently opposed gambling as a business. Constitutional amendments to authorized Casino-style gambling have been rejected by the voters on several occasions. The determination to control those forms of gambling normally associated with casinos or professional gambling operations is a legislative decision.

The definition of "games of chance" includes those gambling activities where the outcome is determined largely or wholly by chance. The outcome of the several games in evidence is not controllable in any fashion by the player, it is a matter of chance. The outcome of a "game of chance" may be determined "wholly by chance". R.C. 2915.01(D).

It is within the power of the legislature to control how, when, and where gambling is permitted. Just as in the case of cigarettes and liquor, the legislature has the power to control

delivery of gambling, including the power to require that certain forms of gambling not be made available by machine.

Using the normal rules for statutory construction, the court finds that the machines in question are "games of chance" as defined in R.C. 2915.01(D). In addition, the court finds that the machines are "slot machines". Accordingly, the use or operation of the machines for the purpose of gambling for money, prizes, free plays or any other thing of value is unlawful and constitutes a nuisance. Relator is entitled to a preliminary injunction as provided by statute to abate the nuisance.[12] Respondents, Masticpoint and Pathfinder, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of this order, are hereby restrained and enjoined from maintaining, operating, employing, using, or displaying the video slot machines in question for the purpose of gambling for money, profit, or gain.

Because the hearing before the court was to determine whether a preliminary injunction should issue, this decision does not encompass Relator's full request for relief. However, the parties have advised the court that no further evidence would be presented on the question of whether the machines are properly categorized as "schemes of chance" or "games of chance" and whether the machines are "slot machines".

Pursuant to Local Rule 25.01, counsel for Relator is requested to prepare and circulate an appropriate journal entry which reflects this decision.

[12] R.C. 3767.04 refers to a "temporary" injunction while Civil Rule 65 refers to a "preliminary" injunction. The difference is purely a matter of semantics.

So Ordered.

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Alan C. Travis, Judge

Appearances:

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