
LEGAL UPDATE

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

ELECTRONIC GAME DEVICES

Filed by the Iowa Supreme Court

October 12, 2018

Banilla Games, Inc., v. Iowa Department of Inspections and Appeals

No. 17-1300

www.iowacourts.gov/courtcases/3039/embed/SupremeCourtOpinion

Background and Procedure. Banilla Games, Inc. (Banilla), a manufacturer and seller of electronic game devices, filed a petition for declaratory order with the Department of Inspections and Appeals (DIA) seeking an order permitting Banilla to distribute certain games in Iowa without the requirement that the games be registered under Iowa Code section 99B.53.

There are two main categories of games that Banilla seeks to distribute in Iowa. One is a nudge game and the other is a hot swap game. Nudge-style games consist of three electronic reels featuring different icons that spin when a player pushes the play button and stop after a short time. Players then determine whether a potential winning combination of two or more icons is present and choose one of the wheels to move up or down (i.e., nudge) in order to complete the winning pattern. Hot swap-style games are similar in that after three spinning wheels stop, a player determines whether a potential winning combination of icons is present. However, unlike nudge games, there is one icon missing. As a result, a player must decide which icon to choose from a variety of icons in order to complete the winning pattern. In addition, for each type of game, the owner can configure the device to allow a certain payout percentage and the game chooses the screens that appear to players and dictates whether they can win a prize from a pool of game outcomes.

DIA denied the petition and determined that the games in question were required to be registered under Iowa Code section 99B.53. Iowa Code section 99B.53 provides that electrical or mechanical amusement devices are required to be registered if the game “awards a prize where the outcome is not primarily determined by skill or knowledge of the operator.” Upon judicial review, the district court affirmed the DIA decision and Banilla appealed. Banilla claimed the DIA erroneously interpreted Iowa Code chapter 99B (regulation of social and charitable gambling) and committed an unreasonable or arbitrary abuse of discretion in requiring the games to be registered, arguing that the registration requirements of Iowa Code section 99B.53 do not apply to its machines because the outcome of the devices is “primarily determined by skill or knowledge.”

Issue. Whether the electrical or mechanical games Banilla sought to distribute in Iowa were required to be registered pursuant to Iowa Code section 99B.53.

Holding. The Court held that DIA properly interpreted the relevant statutes in determining that the electrical or mechanical games Banilla sought to distribute in Iowa were required to be registered. As a

result, the Court further held that DIA's decision requiring Banilla to register the games in question did not prejudice the substantial rights of Banilla and was not an irrational, illogical, or wholly unjustifiable application of the law to the facts of this case.

Analysis. Iowa Code section 99B.53 provides that an electrical or mechanical amusement device "that awards a prize where the outcome is not primarily determined by skill or knowledge of the operator" must be registered with the state. In interpreting this Iowa Code section, the Court examined the meaning of the words "primarily," "outcome," and "knowledge."

The Court agreed with DIA and Banilla that "primarily" should be interpreted under a dominant-factor doctrine for measuring chance against skill and knowledge. Under this dominant-factor doctrine, the Court found that "primarily" requires the fact finder to determine whether skill, knowledge, or chance dominates the outcome. If chance dominates the outcome, the device must be registered.

Concerning the word "outcome," DIA and the district court interpreted the word to mean "actually winning a prize." Banilla argued, however, that in the context of the statute, the term means any number of results, including winning a prize, failing to win a prize, playing to win a predetermined prize, choosing to play a different game or to play the same game at a different increment, or some other result, including for the amusement of game play itself without regard to prize. While the Court agreed with Banilla that the plain meaning of the word does not require a prize, the Court found it clear from the context of the statute and Iowa Code chapter 99B that the purpose of these provisions is to differentiate between devices that must be registered and those which need not be registered, based on the prize or award to be won. The Court noted that interpreting "outcome" to mean results other than winning a prize as suggested by Banilla does not make sense in the context of the statute and does not further its legislative purpose. The Court concluded that DIA correctly determined that "outcome" meant whether a person wins a prize or fails to win a prize.

The word "knowledge" was interpreted by DIA to mean that a player of a game must be capable of controlling or directing the game's result, not just of informing the player's own decisions while playing. Banilla argued that "knowledge" includes the ability of payers to view the possible reward before deciding to play the game. The Court found it absurd that the legislature intended that if a person has knowledge of what prize the person may win before playing a game, the element of chance is eliminated from the game. The Court noted that the knowledge aspect of the statute refers to electrical or mechanical amusement devices that actually test a person's knowledge, such as trivia games. Accordingly, the Court agreed with DIA's interpretation of "knowledge" as meaning the type of knowledge that assists in a player's game play.

Having agreed with DIA's interpretation of Iowa Code section 99B.53, the Court then resolved the question of whether DIA properly applied the statute to the facts of this case in finding that the games were subject to registration. Banilla argued skill plays more of a role than chance because players must complete a skill task, either nudging or swapping, to play the game. However, the Court noted that because the maximum payout for each game played on a machine can be set at less than 100 percent, a player, even with perfect skill and knowledge, cannot win every time. The Court then concluded that there was "ample" support in the record to support DIA's findings that whether a player wins a game relies primarily more on chance than on skill or knowledge. As a result, the Court found that DIA properly determined Banilla was required to register their games pursuant to Iowa Code section 99B.53.

LSA Monitor: Ed Cook, Legal Services, 515.281.3994