

OPINION NO. 2006-046**Syllabus:**

1. For purposes of R.C. 2915.01(AAA)(1)(c), the “outcome of play” of an amusement machine game simply means the result or consequence of the course of the game from the activation of the game until the game can no longer be played without payment of additional consideration.
 2. If an amusement machine employs a “governor” feature that controls the value of the cash prizes that may be awarded to players throughout the play of the game boards available on a game cartridge and that guarantees the owner or operator of the machine a minimum rate of return on all moneys wagered by the players of the game boards on that cartridge, and if the machine has other features that control the number of points a player may earn and thus the cash prize a player may win on each game board played, the outcome of play during the game is controlled by one or more
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persons not actively participating in the game for purposes of R.C. 2915.01(AAA)(1)(c), and the amusement machine is not a "skill-based amusement machine" for purposes of R.C. Chapter 2915.

To: Kenneth L. Morckel, Director, Ohio Department of Public Safety, Columbus, Ohio

By: Jim Petro, Attorney General, October 31, 2006

You have requested an opinion concerning several portions of the definition of "skill-based amusement machine," as that term is used in R.C. Chapter 2915. By way of background, you state that: "Recently, the State of Ohio has seen a proliferation of amusement machines claimed by the manufacturers and distributors of said machines to be 'skill-based amusement machines.'" Your concern is whether the use of a "governor" feature on such a machine, as explained below, affects such a machine's qualification as a "skill-based amusement machine" for purposes of R.C. Chapter 2915.

Background

You first explain the basic operation of these machines, as follows:

[A] player inserts money into the machine and places a monetary wager on the outcome of the next game board shown by the machine. Once the wager has been placed, the machine presents a screen with nine squares organized in [a] box of horizontal and vertical rows and columns (similar to the board used in the common game of tic-tac-toe); within the nine squares are placed a seemingly random pattern of fruit shapes and other symbols. The player is then given a limited amount of time to touch one of the squares so as to replace the symbol in one of the boxes with a "Wild" symbol. In doing this, the player is attempting to create a pattern of three matching symbols in a row, column, diagonal, or a combination of multiple three-in-a-row lines.

Each ... game board has at least one possible three-in-a-row winning line, allowing players to achieve a complete win by placing the "Wild" symbol so as to create the maximum number of winning lines, a partial win by creating only some of the possible winning lines, or no win by creating zero winning lines. A prize is awarded based on the number of winning lines achieved by the player and the value designated to the symbols included in the winning lines; the prize is exhibited on the game screen as "points," however these points have a monetary value and can be redeemed by the player once he or she finishes play of the machine. While many game boards award a maximum prize value that is significantly less than the amount of money wagered, a player does have a chance of receiving a game board that would award significantly more than the original wager.

You further state that each of these machines “uses a ‘governor’ to control the amount of money paid out by the machine throughout the life of each game cartridge (a game cartridge contains thirty thousand game boards and can be used to supply game boards to multiple . . . machines).” As explained in your letter:

This governor provides the percentage of money wagered that will be returned to players throughout the thirty thousand games included in the cartridge and also controls the frequency with which particular types of game boards and maximum possible prize amounts are presented to players

Additionally, the governor controls the frequency of and prize value associated with the bonus features presented during play. These features are activated when a player creates a line of three “Spin!” or “Flip” icons. The player then engages in a task that appears to involve skill in order to uncover a multiplier; the original prize value is multiplied by this number creating the player’s “bonus” prize. While the task in which the player participates seems to involve skill, the multiplier is actually predetermined by the governor on the machine, and the player has no control over the designation of this number or the amount of the bonus prize awarded. The governor bases its designation of the multiplier on the prize amounts previously awarded to players so as to ultimately return [to the game’s owner or operator] the correct programmed percentage of prizes paid.

Based upon these facts, you specifically ask:

1. What is meant by the term “outcome of play,” as used in R.C. 2915.01(AAA)(1)(c)?
2. When an amusement machine employs a “governor” feature . . . , is the outcome of play during a game controlled by a person not actively participating in the game, thus excluding such machines from the definition of “skill-based amusement machines”?

Prohibition Against Schemes of Chance

As also explained in your opinion request, R.C. 2915.02(A)(2) states: “No person shall do any of the following: ... [e]stablish, promote, or operate or knowingly engage in conduct that facilitates any game of chance conducted for profit or any scheme of chance.” As used in R.C. 2915.02, the term “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.” R.C. 2915.01(C) (emphasis added). Your first question concerns the exception from the definition of “scheme of chance” for a “skill-based amusement machine.”

“Skill-based amusement machine”

R.C. 2915.01(AAA)(1) defines the term “skill-based amusement machine,” in pertinent part, as follows:

a skill-based amusement device, such as a mechanical, electronic, video, or digital device, or machine, whether or not the skill-based amusement machine requires payment for use through a coin or bill validator or other payment of consideration or value to participate in the machine's offering or to activate the machine, provided that *all of the following apply*:

(a) The machine involves a task, game, play, contest, competition, or tournament in which the *player actively participates* in the task, game, play, contest, competition, or tournament.

(b) The *outcome of an individual's play* and participation is *not determined largely or wholly by chance*.

(c) The *outcome of play* during a game is *not controlled by a person not actively participating in the game*. (Emphasis added.)

Thus, in order to constitute a skill-based amusement machine, an amusement machine that requires payment for use to participate in the play of a game for a chance to win a prize must possess all three characteristics described in R.C. 2915.01(AAA)(1)(a)-(c): 1) the player must actively participate in the play of the game, 2) the outcome of the play and participation in the game is not determined largely or wholly by chance, and 3) the outcome of the play during a game "is not controlled by a person not actively participating in the game."

Your first question asks what is meant by the phrase "outcome of play," as used in R.C. 2915.01(AAA)(1)(c). The General Assembly has not defined the phrase "outcome of play" for purposes of R.C. 2915.01(AAA)(1)(c). It is well established, however, that words and phrases that are not defined by statute must be read and understood according to their common meanings. R.C. 1.42. As defined in *Merriam-Webster's Collegiate Dictionary* 880 (11th ed. 2005), the word "outcome" means, "something that follows as a result or consequence <a surprising ~>." Concerning the meaning of the word "play," R.C. 2915.01(AAA)(2)(a) states:

As used in this section, "task," "game," and "*play*" mean one event from the initial activation of the machine until the results of play are determined without payment of additional consideration. An individual utilizing a machine that involves a single task, game, play, contest, competition, or tournament may be awarded prizes based on the results of play. (Emphasis added.)

See generally *Merriam-Webster's Collegiate Dictionary* at 950 (defining the noun "play" as meaning, in part, "the conduct, course, or action of a game"). Thus, for purposes of R.C. 2915.01(AAA)(1)(c), the "outcome of play" of an amusement machine game simply means the result or consequence of the course of the game from the activation of the game until the game can no longer be played without payment of additional consideration.

In the situation you describe, the player must pay a fee in order to be able to activate the amusement machine. Once a player activates the machine and presses a

button, his objective is to earn as many points as he can by creating winning lines, *i.e.*, rows in which all three icons match, and, if available on a particular game board, activating its bonus features—the greater the number of points a player earns during the play of a game board, the larger the cash prize awarded to the player at the end of the game. The “outcome of play” during the game you describe, therefore, is the cash prize awarded, if any, to the player by the amusement machine on the basis of the number of points earned by the player during the game.

R.C. 2915.01(AAA)(1)(c)

Your second question asks whether the outcome of play during a game played on an amusement machine that employs a “governor” feature, as described above, is “controlled by a person not actively participating in the game,” as that language is used in R.C. 2915.01(AAA)(1)(c). We must, therefore, examine how the “outcome of play during a game” played on an amusement machine such as you describe is determined.

As explained above, an amusement machine is not a “skill-based amusement machine,” as defined in R.C. 2915.01(AAA)(1), if, among other things, the “outcome of play *during* a game” is controlled by a person not actively participating in the game, R.C. 2915.01(AAA)(1)(c) (emphasis added). In ordinary usage, the word “during” means “1 : throughout the duration of <swims every day ~ the summer> 2 : at a point in the course of <was offered a job ~ a visit to the capital>.” *Merriam-Webster’s Collegiate Dictionary* at 388. See generally R.C. 1.42 (when a word is left undefined by the General Assembly, it is to be accorded its common, everyday meaning).

Additional information provided to us about the design and operation of this amusement machine indicates that the “governor” feature is used to guarantee to the operator or owner of the machine a certain return of the total amount wagered in the course of the thirty thousand game boards on each cartridge. For example, if a machine is programmed to guarantee the owner or operator of the machine forty percent of the total amount wagered by the players of the thirty thousand game boards on the machine, only sixty percent of that amount is returned to the players overall during the play of those thirty thousand game boards, thus resulting in a return to the owner or operator of forty percent of all amounts wagered.

In order to achieve this guaranteed return for the owner or operator, the “governor” regulates the number of points that a player may earn in the bonus round, a feature that is available with only certain game boards. By controlling the number of points available in the bonus round of a particular game board, the “governor” also controls the cash prize available as the outcome of play during the game. Thus, if a particular game board has a bonus round, as described above, the “governor” feature of the game controls the “outcome of play during [the] game.” In those instances in which the “governor” feature determines the number of points awarded and thus the amount of the cash prize awarded to a player of a game board, the outcome of play during the game is controlled by one or more persons not actively participating in the game for purposes of R.C. 2915.01(AAA)(1)(c).

We must also note, however, that the “governor” feature of the game you

describe is not the only feature of the game that controls “the outcome of play during a game” for purposes of R.C. 2915.01(AAA)(1). For example, the game cartridge’s software selects for the player a game board that has a predetermined number of potential winning lines, as well as a maximum number of points that a player may earn during the play of the game. As a result, when a player places a wager and activates the amusement machine, the game cartridge determines the “outcome of play,” in part, by selecting a game board that has a fixed maximum number of points that determine the amount of the cash prize, if any, the player may win. In those instances in which a game board offers bonus play, the “governor” further controls the “outcome of play” during the game. In any case, the game cartridge controls the outcome of play during every game board played on these machines. For purposes of R.C. 2915.01(AAA)(1)(c), therefore, if an amusement machine employs a “governor” feature that controls the value of the cash prizes that may be awarded to players throughout the play of the game boards available on a game cartridge and that guarantees the owner or operator of the machine a minimum rate of return on all moneys wagered by the players of the game boards on that cartridge, and if the machine has other features that control the number of points a player may earn and thus the cash prize a player may win on each game board played, the outcome of play during the game is controlled by one or more persons not actively participating in the game.

In answer to your second question, we conclude that, if an amusement machine employs a “governor” feature that controls the value of the cash prizes that may be awarded to players throughout the play of the game boards available on a game cartridge and that guarantees the owner or operator of the machine a minimum rate of return on all moneys wagered by the players of the game boards on that cartridge, and if the machine has other features that control the number of points a player may earn and thus the cash prize a player may win on each game board played, the outcome of play during the game is controlled by one or more persons not actively participating in the game for purposes of R.C. 2915.01(AAA)(1)(c), and the amusement machine is not a “skill-based amusement machine” for purposes of R.C. Chapter 2915.

Conclusions

Based upon the foregoing, it is my opinion, and you are hereby advised, that:

1. For purposes of R.C. 2915.01(AAA)(1)(c), the “outcome of play” of an amusement machine game simply means the result or consequence of the course of the game from the activation of the game until the game can no longer be played without payment of additional consideration.
2. If an amusement machine employs a “governor” feature that controls the value of the cash prizes that may be awarded to players throughout the play of the game boards available on a game cartridge and that guarantees the owner or operator of the machine a minimum rate of return on all moneys wagered by the players of the

game boards on that cartridge, and if the machine has other features that control the number of points a player may earn and thus the cash prize a player may win on each game board played, the outcome of play during the game is controlled by one or more persons not actively participating in the game for purposes of R.C. 2915.01(AAA)(1)(c), and the amusement machine is not a “skill-based amusement machine” for purposes of R.C. Chapter 2915.