

MAY 26 2016

OTC

E-FILED  
SUPERIOR COURT  
THURSTON CO., WA  
May 25, 2016  
Linda Myhre Enlow  
Thurston County Clerk

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

AMUSEMENT DEVICE OPERATORS  
OF WASHINGTON, an association,  
  
Petitioner,  
  
v.  
  
THE WASHINGTON STATE  
GAMBLING COMMISSION,  
  
Respondent.

NO. 16-2-02134-34

**SUMMONS** [20 days]

To: The Washington State Gambling Commission, Respondent.

A lawsuit has been started against you in Thurston County Superior Court by Petitioner, Amusement Device Operators of Washington, ("ADOW"). This lawsuit was filed with the court on May 25, 2016. The Petitioners' claim is stated in the written Complaint, a copy of which is served upon you with this Summons.

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SUMMONS - 1

ORIGINAL

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2  
3 In order to defend against this lawsuit, you must respond to the Complaint by stating your  
4 defense in writing, and by serving a copy upon the undersigned attorney for petitioners within  
5 twenty (20) days after the service of this Summons, excluding the day of service, or a default  
6 judgment may be entered against you without notice. A default judgment is one where the  
7 petitioners are entitled to what they ask for because you have not responded. If you serve a  
8 notice of appearance on the undersigned attorney, you are entitled to notice before a default  
9 judgment may be entered.  
10  
11

12 If you wish to seek the advice of an attorney in this matter, you should do so  
13 promptly so that your written response, if any, may be served on time.  
14

15 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State  
16 of Washington.  
17

18  
19 Respectfully submitted this 25th day of May, 2016, at Fircrest, Washington.

20 III Branches Law, PLLC

21  
22 

23  
24 Joan K. Mell, WSBA #21319  
25 Attorney for ADOW  
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WSGC

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v.

THE WASHINGTON STATE  
GAMBLING COMMISSION,

Respondent.

NO. 16-2-02134-34

PETITION FOR DECLARATORY  
JUDGMENT PURSUANT TO  
WASHINGTON'S ADMINISTRATIVE  
PROCEDURE ACT ("APA"), RCW  
34.05.570(2) - REVIEW OF RULES

Amusement Device Operators of Washington ("ADOW") petitions for declaratory judgment against the Washington State Gambling Commission ("WSGC") pursuant to ADOW's right to such relief under the provisions of Washington's Administrative Procedure Act ("APA"), RCW 34.05.570 as follows:

I. JURISDICTION AND VENUE

1.1 Jurisdiction. The Court has jurisdiction over the subject matter and parties to this action.

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PETITION FOR DECLARATORY JUDGMENT - 1

ORIGINAL

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3 1.2 Venue. Venue is proper in Thurston County under RCW 9.46.095 and  
4 RCW 34.05.570(2)(b)(i).  
5

6 II. PARTIES

7 Petitioner

8 2.1 ADOW. Amusement Device Operators of Washington (“ADOW”) is an association of  
9 stakeholder businesses and licensees aggrieved that the Washington State Gambling Commission  
10 has attempted to promulgate unconstitutional rules outside the scope of its statutory authority  
11 that are arbitrary and capricious and are otherwise void and unenforceable in contravention to the  
12 APA.  
13  
14

15 Defendant

16 2.4 WSGC. The Washington State Gambling Commission (“WSGC”) is an “agency” under  
17 the APA, RCW 34.05.010(2) that must comply with the APA when adopting rules.  
18

19 III. FACTS

20 3.1 On or about April 15, 2016, the WSGC purported to make the following changes to WAC  
21 230-13-005 a rule authorizing amusement games:  
22

23 AMENDATORY SECTION (Amending WSR 15-15-063, filed  
24 7/10/15, effective 8/10/15)

25 WAC 230-13-005 Amusement games authorized. field:

26  
27 (1) We authorize the approved groups of amusement games set  
28 forth in this chapter. Operators must only operate  
29 amusement games that meet the standards of at least one of  
30 the authorized groups.

1  
2  
3 (2) Commercial businesses or nonprofit or charitable  
4 organizations may apply for licenses for amusement games.

5 (3) Charitable or nonprofit organizations also may conduct  
6 group 1 through 11 amusement games without a license when  
7 authorized to do so under RCW 9.46.0321 and 9.46.0331.

8 (4) Operators must operate amusement games as either:

9 (a) An attended amusement game.

10 (i) An "attended amusement game" means an amusement game  
11 that requires the presence or assistance of a person  
12 (attendant) in the regular operation of the game; and

13 (ii) These games must award a merchandise prize to players  
14 if players achieve the objective with one cost of play; and

15 (iii) An attendant accepts cash, check, tickets or scrip to  
16 play the amusement game. The tickets and scrip are not  
17 redeemable for cash and must show the name of the operator  
18 or sponsor; or

19 (b) A coin or token activated amusement game.

20 (i) A "coin or token activated amusement game" means an  
21 amusement game that uses a mechanical, electronic, or  
22 electro-mechanical machine to allow the player to activate  
23 the game by inserting coins ((~~€~~)), cash, tokens, or tokens  
24 on an electronic token card; and

25 (ii) These games may dispense merchandise prizes, or  
26 coupons, tickets, ((~~€~~)) tokens, or tokens onto an  
27 electronic token card redeemable for merchandise prizes.

28 (5) Amusement games must not:

29 (a) Award additional plays as prizes; or

30 (b) Allow coupons, tickets, tokens or tokens on electronic  
31 token cards that are awarded to be replayed; or

32 (c) Result in any cash payment being awarded.

33 (6) Amusement games must only award merchandise prizes.

34 (a) Merchandise prizes mean noncash prizes including toys,  
novelties, retail items such as electronic goods, clothing,  
accessories, as well as food, beverages and other items  
sold by the operator as a normal part of their business in  
compliance with all other state laws and regulations,  
except as provided in (b) of this subsection.

(b) Pull-tabs and other gambling activities, gift  
certificates or gift cards do not constitute merchandise  
prizes.

(7) Electronic token card means a card issued by the  
operator that stores purchased credits available to play  
the amusement game separate from the coupons, tickets, or

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3 tokens awarded or dispensed as prizes from the play of the  
4 amusement game. Coupons, tickets, or tokens awarded as  
5 prizes cannot be used to play amusement games and must only  
6 be redeemed for merchandise prizes.

7 3.2 On or about July 10, 2015, the WSGC adopted a new rule authorizing Group 12  
8 amusement games, and amended the existing amusement game rule as follows:  
9

10 AMENDATORY SECTION

11 WAC 230-13-005 Amusement games authorized. (1) We authorize the ((eleven))  
12 approved groups of amusement games set forth in this chapter. Operators must  
13 only operate amusement games that meet the standards of at least one of the  
14 authorized groups.

15 (2) Commercial businesses or nonprofit or charitable organizations may apply for  
16 licenses for amusement games.

17 (3) Charitable or nonprofit organizations also may conduct amusement games  
18 without a license when authorized to do so under RCW 9.46.0321 and  
19 9.46.0331.

20 (4) Operators must operate amusement games as either:

21 (a) An attended amusement game.

22 (i) An "attended amusement game" means an amusement game that requires the  
23 presence or assistance of a person (attendant) in the regular operation of the  
24 game; and

25 (ii) These games must award a merchandise prize to players if players achieve  
26 the objective with one cost of play; or

27 (b) A coin or token activated amusement game.

28 (i) A "coin or token activated amusement game" means an amusement game that  
29 uses a mechanical, electronic, or electro-mechanical machine to allow the player  
30 to activate the game by inserting coins or tokens; and

31 (ii) These games may dispense merchandise prizes, or coupons, tickets, or  
32 tokens redeemable for merchandise prizes.

33 (5) Amusement games must not award additional plays as prizes.

34 [Statutory Authority: RCW 9.46.070. WSR 07-15-064 (Order 612), § 230-13-005,  
filed 7/16/07, effective 1/1/08.]

NEW SECTION

WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game  
standards. In Group 12 games, players must correctly solve a puzzle to win a  
prize, which is viewable by the player before each puzzle is presented.

(1) The game must allow the player to view the prize that is available before each  
play of the game without the insertion of money or any other thing of value; and

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3 (2) Prizes are awarded based upon the player's skill in correctly discerning a  
4 pattern and completing that pattern; and  
5 (3) When a game presents a potential winning pattern, the puzzle must be  
6 capable of completion within the predetermined time period; and  
7 (4) Group 12 amusement games are for adults over the age of twenty-one only  
and may only be operated by licensees where persons under the age of twenty-  
one are prohibited from entering.

8 3.3 Upon adoption of the rules set forth in paragraph 3.2, ADOW's members relied upon  
9 these rules to put Group 12 amusement games in play. Their financial investments were  
10 significant.  
11

12 3.4 Group 12 amusement games were successful.

13 3.5 With the success of the technology, tribes complained and exerted their political influence  
14 to shut down the technology.  
15

16 3.6 Ex officio Gambling Commissioners who do not vote on rule changes and other  
17 politicians pressured the Gambling Commissioners to change the rules or alternatively ban the  
18 technology.  
19

20 3.7 The Gambling Commissioners are appointed by the Governor with the consent of the  
21 Senate. The Gambling Commissioners who voted to change the rules have not been approved by  
22 the Senate.  
23

24 3.8 The Gambling Commission amended WAC 230-13-005 to effectively ban the technology  
25 without any regulatory rationale for the amendment.  
26

27 3.9 The amendment authorizes the use of "electronic token cards".

28 3.10 Electronic token cards are "gift certificates" under RCW 19.240.010.  
29

30 ///

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3 3.11 Electronic token cards must be redeemed for cash in accordance with  
4 RCW 19.240.020(3).  
5

6 3.12 The Gambling Commission does not agree that electronic token cards are “gift  
7 certificates” under the statute.  
8

9 3.13 The Gambling Commission lacks authority to interpret its rules in violation of state laws.  
10 The Gambling Commission may not enforce its rules in violation of state law.

11 3.14 The Gambling Commission should be enjoined from interpreting its amendment of WAC  
12 230-13-005 in violation of state law.  
13

14 3.15 Alternatively, WAC 230-13-005 is void and unenforceable because it is unconstitutionally  
15 vague and ambiguous.

16 3.16 WAC 230-13-005 as amended is vague and ambiguous because it authorizes activation by  
17 inserting coins, cash, tokens, or tokens on an electronic token card while also prohibiting replay  
18 of tokens or tokens on an electronic token card, and further prohibits tokens awarded as prizes to  
19 be used to play amusement games. The amendment is commonly misunderstood by users and  
20 the regulators who are disparately enforcing the rule as amended. The amendment relies upon  
21 various terms that are undefined and have different meaning to stakeholders than regulators.  
22

23 3.16 Alternatively, WAC 230-13-005 is void and unenforceable because it is arbitrary and  
24 capricious.  
25

26 3.17 WAC 230-13-005 as amended is arbitrary and capricious because it creates two distinct  
27 regulatory schemes for the same technology. There is no rationale basis for treating Group 1-11  
28 games disparately from Group 12 games. In fact, the Gambling Commissioners who voted for  
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3 the amendment provide a pretextual rationale that Group 12 games should operate in a  
4 functionally equivalent manner to other amusement games previously authorized.  
5

6 3.18 WAC 230-13-005 as amended is arbitrary and capricious because there is no regulatory  
7 rationale to prohibit coupons, tickets, tokens or tokens on electronic token cards that are awarded  
8 to be replayed. Amusements games may continue to be played for amusement as authorized  
9 under RCW 9.46.010 and 9.46.0331.  
10

11 3.19 WAC 230-13-005 as amended is arbitrary and capricious because it prohibits the use of  
12 gift certificates as prizes when gift certificates have been prizes for years with amusement games  
13 and gambling equipment without harming the public. Gift certificates and the associated  
14 technology that accompanies stored value cards improve the regulatory control over the  
15 amusement game activity. Gift certificates do not interfere with the regulatory control over the  
16 activity. Gift certificates allow the locations to store the value of any prize balance for use at the  
17 location on future purchases, maximizing the commercial stimulant benefits for the location.  
18  
19

20 3.20 WAC 230-13-005 as amended is arbitrary and capricious because the rule purports to  
21 define merchandise prizes in a restrictive manner that requires operators to stock penny prizes.  
22 Also, the merchandize restrictions without justification restrict pull-tabs or other gambling  
23 activities as prizes when those activities are approved social pastimes or commercial stimulants  
24 for the locations.  
25  
26

27 3.21 In addition to amending WAC 230-13-005, the WSGC amended the following rules that  
28 are arbitrary and capricious because the rules treat Group 12 games disparately from Group 1-11  
29 games without any rational basis for the distinctions: 1) WAC 230-13-135(2), that sets maximum  
30

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3 wagers of five dollars and maximum prize cost of one thousand dollars; 2) WAC 230-13-010,  
4 that sets distinct criteria for Group 1-11 games from Group 12 games to include submission costs  
5 that are taxes not fees; 3) WAC 230-06-110, regarding restrictions on sale or lease to licensed  
6 manufacturers or distributors; 4) WAC 230-05-030, regarding fees that amount to unfair  
7 taxation; 5) WAC 230-05-030(11), regarding identification stamp costs of \$250.00 when other  
8 games are \$29.00; 6) WAC 230-03-190(1), requiring Group 12 distributors to be licensed;  
9  
10 7) WAC 230-03-185 (1)(c), requiring Group 12 manufacturers to be licensed; and 8) WAC  
11 230-13-080(4) restricting the number of games.  
12

13  
14 3.22 The WSGC's above rules and its threatened application of its rules and enforcement  
15 activities interferes with and impairs the legal rights and privileges of ADOW's members.

16  
17 3.23 The WSGC has interfered with and is threatening to interfere with the liberty and  
18 property interests of the ADOW members.

19  
20 3.24 The WSGC's interferences with the constitutional interests of the ADOW members will  
21 cause irreparable harm.

22  
23 3.25 A declaratory judgment and decree will terminate the controversy or remove the  
24 uncertainty as to the enforceability of the rules.

25  
26 3.26 ADOW requests injunctive relief under RCW 7.24.080 precluded enforcement action by  
27 the WSGC under these rules as amended.

28  
29 3.27 ADOW requests costs and other expenses under RCW 7.24.100.

30  
31 3.28 The WSGC is the only indispensable party to these proceedings.

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3 3.29 ADOW members qualify for an award of attorney’s fees and costs under the Equal  
4 Access to Justice Act (“EAJA”).  
5

6 IV. CAUSES OF ACTION

7 The above factual allegations are hereby incorporated into the following cause of action:

8 (Declaratory Judgment)

9  
10 4.1 ADOW seeks a declaratory judgment under the APA and Uniform Declaratory Judgments  
11 Act (“USDJA”). ADOW’s members have rights and interests under WSGC rules and state  
12 statute that present a question of construction and validity. ADOW seeks a declaration of its  
13 members rights, status, and other legal relations under the constitution, statutes, and ordinances  
14 as amended by the WSGC.  
15

16 4.2 ADOW request a jury trial of any factual disputes.  
17

18 4.3 ADOW requests an order staying enforcement of the above referenced rules as amended  
19 pending the outcome of these proceedings.

20 4.4 ADOW requests an order voiding the above referenced amendments.  
21

22 4.5 In the alternative, ADOW requests an order declaring an electronic token card a gift  
23 certificate under the statute.

24 IV. PRAYER FOR RELIEF

25 ADOW, and its representatives, pray for the following relief:

- 26  
27 1. Declaratory judgment;  
28 2. An award of costs;  
29 3. An award of attorney’s fees and costs under the Equal Access to Justice Act;

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3. For such other and further relief as the Court shall deem just and equitable.

Respectfully submitted this 25th day of May, 2016, at Fircrest, Washington.

III Branches Law, PLLC



Joan K. Mell, WSBA #21319  
Attorney for ADOW

ADOW, through its undersigned representatives, having read the above petition and affirms it to be true and correct.

\_\_\_\_\_  
Jay Gerow  
ZDI Gaming, Inc

Dated: \_\_\_\_\_

\_\_\_\_\_  
Patrick Tompkins  
Sound Amusement

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael McWilliams  
Specialty Coins

Dated: \_\_\_\_\_

\_\_\_\_\_  
Carl Magnuson  
C and L Amusement

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary Rouse  
RJB Amusement

Dated: \_\_\_\_\_

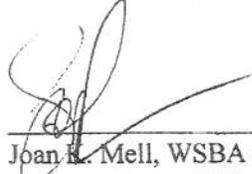
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*Richard Illian*

Richard Illian  
Apogee Pub and Eatery

Dated: 5/25/16

Charlie Stewart  
Dino's Pub

Dated: \_\_\_\_\_

Geoff Ward  
Washington Skill Games

Dated: \_\_\_\_\_

Jesse Stiltner  
Masters of Money

Dated: \_\_\_\_\_

David Ruthruff  
Digital Music Systems, Inc.

Dated: \_\_\_\_\_

PETITION FOR DECLARATORY JUDGMENT - 11

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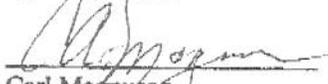
  
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Dated: 5/25/2016

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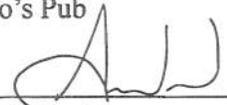
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Apogee Pub and Eatery

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Charlie Stewart  
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Geoff Ward  
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Jesse Stiltner  
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*By: Jesse Stiltner*  
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Jesse Stiltner  
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Dated: 5/25/2016

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David Ruthruff  
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