Inside Straight

The South Carolina Battlefield

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It is an unlikely place, but the Palmetto State is the battlefield for gaming in 1999. In South Carolina, opponents of legalized gaming may yet have perhaps their best opportunity in eight decades for turning back an established statewide gaming industry. While some gaming insiders might consider this bad news, they should instead consider it to be good news. While it would certainly not be appropriate for gaming proponents in other jurisdictions to explicitly support the South Carolina gaming opponents, they should at least be silently cheering them on.

No less than the spectacle created by unregulated Native American gaming prior to the passage of the Indian Gaming Regulatory Act of 1988, the South Carolina gaming establishment holds out very real prospects for criminal involvement, repeated law violations, unfair games, and a gaming product marketed heavily to problem gamblers. South Carolina gaming paints the kind of image that the legitimate gaming industry wants to avoid.

There are now over 30,000 video slot machines in South Carolina; they are found in every county, in 346 different municipalities, and in thousands of locations. According to reports filed by the operators, the machines have a collective win approaching $600 million each year. Calculated on a win-per-machine basis, the average South Carolina slot machine nets $20,000 per year.

South Carolina has a constitutional prohibition against lotteries. The ban on lotteries has been interpreted consistently to mean that there can be no games which require a player to wager something of value on a chance event hoping to win a prize which also has value. The voters of the state have amended the constitution to permit charitable organizations to conduct bingo games. The constitution has not been amended to permit slot machines, and several interests representing gaming opponents—including the state's attorney general and governor—are claiming that the operation of machines violates state constitutional law. While the state supreme court disagreed with a 3-2 vote, that is being appealed and the matter is not fully resolved.

Video games of various kinds appeared throughout South Carolina in the 1970s and 1980s. Like the prevalent pinball machines, many of the video games feature free replays for winning players. Gradually, video poker type machines appeared, and it was thereafter discovered that machine owners were often paying money to players in lieu of the replays they had won.

For over a decade, machine operators played "cat and mouse" with the authorities. In 1991, in a surprising decision, South Carolina courts ruled that while the machines could not give out prizes in cash (as that would make them gambling machines and therefore unconstitutional), it was not illegal for the operators to give cash to players in exchange for credited replays. Somehow, the judges reasoned that as long as the wager was accepted by a machine and the prize awarded by a person, there was no gaming.

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Freed from any hint of prohibition, the machines spread like wildfire to every county in South Carolina. Pressure on the legislature to effect a ban on the machines was futile—the machine operators had quickly created a lobby and they had accumulated a large treasury of campaign contribution money. State policy makers decided that the machines were not bad of themselves, but that they needed some regulation, and the state needed a piece of the action.

In 1993, the legislature enacted a statute requiring machine operators to pay the state an annual $2000 tax for each of their machines. Other rules prohibited operators from stimulating gambling through advertising. Each location was permitted only five machines, and no player could win more than $125 on any day at any single location. Machine revenues could not constitute the primary source of income for any location, and while persons under 21 could play, they could not receive any cash payout. Additionally, each county was authorized to vote on whether machines would be permitted to operate with cash payouts within the county. The votes were conducted during the 1994 general elections, and twelve of the state's forty-six counties voted to ban the machines. The machines were not linked to any state monitoring mechanism, but each was required to have a meter, and the operators were required to make quarterly reports to the state.

Already existing laws of the state prohibited all gambling on the premises of a business licensed to serve alcoholic beverages, while a latter day interpretation of the common law of the state held that no person could lose more than $50 to another as a result of gaming in a single day. Losses above the $50 threshold could be recovered in triplicate through court action.

The 1993 law sidestepped the constitution. The legislature completely ignored the fact that all the machines contained the elements of a lottery in their operation. They required players to advance a consideration (money) in order to play, prizes (up to $125) were awarded to winners, and the result of the game was determined essentially by chance. Those machine supporters brave enough to address the issue meekly maintain that the machines are mostly skill games. This fiction, of course, is ludicrous.

Any analysis of video poker machines reveals that the variation in prizes due to skill is very minor. Of course, this assumes that a player knows what a deck of cards is, knows what a poker hand is, and knows the relative worth of hands at poker. It also assumes that a player at a machine is literate to the extent that he can read the faces of cards, and that he has basic physical skills necessary for observing a screen, pushing buttons, and asking an operator for a payout. Persons without these abilities—attributes not normally considered "skills"—generally do not play video gaming machines repeatedly, at least not without the assistance of someone who does have these "skills." This being the case, the differential between an amateur novice player and a seasoned expert player is rarely more than 2% in terms of machine payout. If a person could play with the accuracy of a computer and make all the "correct" choices based on the probabilities, that player might increase his payout by another percentage point. The widest foreseeable variation between a typical player and an optimally skilled player is approximately 3%.

Actually, the least skillful player in South Carolina can instantly equal the skill of the most expert player by simply letting the machine play the hand. After receiving a hand, the most popular machine in the state—"The Pot of Gold" machine—recommends to the player which cards to keep and which cards to discard. By following the instructions, the player is achieving computer "perfect" play. The only ability necessary to become the best player possible is the ability to allow the machine to play the cards. When the difference between the poorest player and the most expert player approaches zero, skills should not be considered a factor in determining the results of the game. Even without the machine selection device, chance remains the major deciding factor determining whether a player wins or loses on a particular hand.

In all cases, whatever the specific game, the cards "dealt" are actually the result of a random number generator programmed into a computer chip. This random number generator is identical to the one that is used in the video poker and the reel slot machines in Nevada. The games played in South Carolina are luck
games. The games meet all elements of the definition of lotteries not withstanding the state supreme court decision. The games are in violation of the South Carolina state constitution.

The voters of twelve (of 46) South Carolina counties said "we don't want them in our counties." Yet even that did not deter the spread of the machines. The operators approached the judiciary and suggested that the election was flawed. It was flawed, they alleged, because the county electorates did not all achieve the same results. As a result, in some counties the machines were illegal, while in others, they were legal. This created a violation of the 14th Amendment's "Equal Protection" clause. The operators' argument worked: the court carefully ruled that the part of the law calling for referenda votes was void, and all counties could have the machines. There are now over 4000 machines in counties that voted against them.

The crux of the law remains in place, but it is not enforced. An administrative court upheld a ban on advertising by fining an operator who posted exterior signs proclaiming that he offered video games. That ruling has had little impact, however: as one travels through the state, one notices large signs saying "Games," "Video Games," and "Gaming Machines." I personally visited seven of the slot joints in a two-day period in October 1997.

The gaming operators are enticing—stimulating—gambling in other ways contrary to state law. Machines indicate that they pay large jackpots—indeed progressive jackpots—well in excess of $125. Several machines advertised jackpots of over five thousand dollars. All "Pot of Gold" machines I witnessed had progressive displays—and there are over 7000 Pot of Gold machines in the state. When I inquired as to how players could win such jackpots when the limit of winning was $125 a day, several operators just smiled. One was explicit: he said that he simply pays the player $125 and asks him to come back on other days to collect another $125 each day until the full prize is paid.

The restriction of having only five machines at a site is completely ignored. Many locations have more than five machines. At least one has 100 machines. Authorities in the state have allowed this violation of law to take place under the ruse that the number five applies to a single room—if the room has a separate electric meter. Slot arcades have become oddly configured buildings with as many as 20 different rooms. Each room has a separate attendant as long as players are at the machines.

I visited two slot arcades—one had 20 machines, the other 25. As each machine produces revenues in the neighborhood of $20,000 a year, the facilities earned $400,000 and $500,000 from players each year, respectively. Neither facility sold any other product in any sufficient quantity. One gave away coffee, the other sold soft drinks. Clearly, such arcades flaunt the law, which states that the machines cannot be the primary revenue of any facility. Additionally the 20 machine hall was attached to a bingo room, where games were held on weekends. They were commercial, for-profit games; no charity received a single penny from the bingo games.

There was no indication that operators actually check identifications of players to make sure they are 21. It is possible that such checks were conducted after the player won prizes. Players are supposed to sign receipts when they receive payout, but most were unsigned. A high percentage of those that were signed listed names such as Mickey Mouse—a very popular name among South Carolina machine players.

It was interesting that the operator/owners in several locations appeared to do all their bookkeeping by making transactions out of his pocket. A large roll of cash was taken out each time a player wanted to cash-out. When I asked for a demonstration of how the machines were played, the operators took money from that same pocket and put it into the machines in order to demonstrate play. If there were any other accounting systems in place, they were difficult to discern. This out-of-pocket type of accounting belied any notion that the state would be receiving accurate reports from operators. Indeed, reports published by the state indicate that there has been no independent verification of the information received. While the Pot of Gold machines were metered, it is quite doubtful that many of the older machines actually had internal meters that could be checked against the reports given to the government.
In addition to the flagrant violations of constitution, statute and regulation, the machines simply violate good public policy. These machines are strictly devices to extract money from local citizens: there is absolutely no tourist appeal to the machines. Worse, the machines are devices that extract money out of the South Carolina economy, as many of the operators and all machine-makers are from out of the state.

Even more regrettably, the machines attack the budgets of poor people and people prone to compulsive gambling behaviors. The video machine itself has been called "the crack cocaine" of gambling for good reason. The machines draw in such players and capture their undivided attention. This happens in casinos, but it is more likely to happen in places such as South Carolina where the machines are hidden away in little rooms, and the opportunity for socializing while gambling is essentially nil.

Other operator activities make machine play even more detrimental for compulsive gamblers. Several operators refuse to cash out a machine until a certain win is accomplished. One facility posted a sign saying "Must have $20 in credits to cash out." Several operators said they would not cash out for less than $10. These rules have the effect of forcing a player to stay at a machine even if the player believes he wants to quit. The policies are specifically designed to create and exploit compulsive gamblers.

The tragedy of compulsive gambling was brought home to some South Carolinians in late August last year. A child ten days old was abandoned for eight hours in mid day—left in a car with the windows rolled up. The mother went into a video machine room to play for a few minutes, and time "just got away" from her. By the time the mother returned to her car, the baby had died from dehydration.\(^1\)

While this observer could not discern whether the machines were all honest ones, it must be noted that the state is also unable to make that determination. Most machines are manufactured out of state. The machine makers are not licensed, and their plants are not inspected. There is no system for the state to inspect the computer chips inside the machines. Unregulated gambling invites problems. It invites dishonesty. It would be truly surprising if most of the machines were not rigged to alter the odds.

The legislature of South Carolina has been confronted with the issue of the legality of gambling machines. A new governor wants them regulated and controlled. Players, as well as state officials, have brought numerous cases against the machine operators. A federal court has requested that the South Carolina Supreme Court rule on the question of state constitutionality of the machines. The attack is proceeding on several fronts. If gaming has to be defeated in one state, South Carolina may be the best place for the defeat. After the machines are thrown out, the policy makers and voters of the state can then begin to deliberate upon plans to bring responsible gaming to the state.