

Warren Tribune Chronicle

Are cafes criminal?

As gambling debate goes on, senator takes action

March 18, 2012

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When Robert Dabish's criminal gambling case goes forward in Warren Municipal Court, likely sometime in May, he and six others accused of running three illegal Internet cafes will set local criminal precedent in a new and constantly changing issue that already has caused a flurry of litigation around the state.

The gambling cases will be the first in Trumbull County in which operators of a public Internet cafe business have been charged with a crime.

There have been few cases statewide, including a case out of Toledo Municipal Court, in which Dabish was acquitted of all criminal charges.

An estimated 20 to 30 Internet cafes exist in Trumbull and Mahoning counties. The difference between illegal establishments and legal ones, prosecutors say, is the amount of cash prizes a customer can win from playing the "sweepstakes" games offered by the businesses and if the games they provide are games of chance, rather than skill-based games.

Cafe owners have argued they offer phone cards that give customers Internet time and can use the computer to surf the Web as they wish. They say the sweepstakes part of the experience is simply a marketing tool.

Ohio Attorney General Mike DeWine has been directly involved in most of the criminal cases around the state, including one in Akron in which a cafe owner was convicted of gambling charges, as well as working with legislators to regulate an industry that critics say is illegal and predatory and that takes advantage of low-income and elderly customers.

There is no Ohio law against Internet cafes, and Trumbull County Prosecutor Dennis Watkins said there are few regulations.

"It's tougher to set up a bingo game for a local church than to set up an Internet cafe," Watkins said. "There are more regulations in the Ohio Revised Code for bingo games, than for Internet cafes."

Legislation planned

The lack of legislation puts the cafes' legality in a legal gray area. A bill proposed in April in the state House of Representatives stalled. But a local state legislator said he will introduce new legislation he believes clarifies other lawmakers' concerns.

State Senator Joe Schiavoni, D-Canfield, said he will finish polishing legislation and will propose a bill in the coming weeks that takes a more comprehensive approach to regulating Internet cafes. He said he crafted the legislation after reaching out to citizens, cafe owners and the attorney general.

"Honestly, this is a very complicated and difficult-to-navigate issue," Schiavoni said. "People don't fully understand what these actually are. They don't know (if) it's actually gambling, and they don't understand if there's regulation on them or what their chances of winning are."

Schiavoni said he noticed cafes in the area popping up at an alarming rate. Schiavoni said the attorney general believes the Mahoning Valley has the most cafes in the state.

Schiavoni said his legislation would require the casino commission to inspect and regulate the games provided to the Internet cafes by software companies and require cafes to post the odds of winning inside their building.

The legislation would also leave leeway for local governments to decide for themselves if they wanted to ban Internet cafes or make them pay extra fees.

As far as specifically criminalizing Internet sweepstakes, Schiavoni said it's not possible. He said other states have tried and failed or ended up being successfully sued.

"I think it's gambling," Schiavoni said. "You aren't going in there to buy their product, you're getting one out of it anyway, but that's not why people are in there."

Of the seven Internet cafes with listed numbers in Trumbull and Mahoning counties, three did not return multiple messages and four said they had no interest in commenting.

Few gambling cases have been brought against cafe owners, but it's believed Dabish, of Warren, Mich., is the first to face two charges.

Warren charges

In the Warren case, Dabish and David L. Miner, of 2296 Parkman Road, were charged with first-degree misdemeanor operating a gambling house for owning and operating the Player's Club, formerly located at 2700 Mahoning Ave. They and five others charged with owning and operating Lot\$-A-Loot, 2004 North Road S.E., and Lucky Charms, 2001 Southern Blvd., face up to six months in jail and a \$1,000 fine.

Five people for Lot\$-A-Loot and Lucky Charms had their trial, scheduled for Monday, postponed, likely until May.

About a year ago, on March 25, 2011, agents from the Trumbull County Sheriff's Office, Warren City police, and state Attorney General's office raided the three cafes and seized equipment. The raids were the culmination of investigations started in the fall of 2010.

Affidavits state that undercover officers visited and played machines at the businesses. The undercover officer said in the affidavit that the machines are games of chance, and called the Lot\$-A-Loot "Mountaineer North," in reference to the Mountaineer Resort in West Virginia, where gambling is legal.

Dabish's attorney, during his arraignment, Dennis DiMartino, said Dabish was always up front with the city, who approved their business.

"The law is pretty clear cut," DiMartino said after the hearing in August. "Our clients had fully disclosed their course of actions and their operations and from the beginning made things crystal clear. The city approved the business after they put hundreds of thousands of dollars into it."

Dabish was acquitted during a 2009 bench trial by Toledo Municipal Court Judge Francis X. Gorman on charges of operating a gambling house and another gambling-related charge. Gorman, who has since retired, found that Dabish's sweepstakes operation was legal.

Another of Dabish's cafes in Fremont, called the Player's Club like its Warren counterpart, was raided in January. Authorities, including the attorney general's office seized thousands of dollars in computer equipment and cash.

No criminal charges have been filed against Robert Dabish, but Marvin Dabish, of Oregon, Ohio, is facing gambling and possessing criminal tools charges filed against him in February.

Federal lawsuit

Robert Dabish, however, filed a federal lawsuit against Fremont, city officials there and DeWine. The lawsuit alleges the raid was "politically motivated, ill-conceived and illegal." Dabish is seeking his property returned, to permanently stop the raids on his businesses and additional penalties.

The lawsuit claims the Fremont Players Club uses the sweepstakes as a marketing device. Once someone buys Internet time, they are given sweepstakes points which the player can either immediately tell if they won, or use their computers, termed "validation terminals," to "reveal" the sweepstakes entries. The computers, Dabish's attorney wrote, "uses entertaining sounds, graphics and animations."

"Just as prizes in McDonald's Monopoly game are pre-determined, the results of the Player's Club Sweepstakes are pre-determined," the lawsuit states. "Validation occurs through a computer that accesses the results generated sequentially by a pre-determined finite pool on a central computer server."

Predatory?

The cafes, however, provide no real-life difference to some with gambling addictions, according to several compulsive gambling support groups.

"Internet cafes are a big problem," said Gam-anon group leader Sondra Boyd. "There are an increasing number of people coming into Gam-anon that say they have went to Internet cafes."

Greg Hogan, an activist with Washington, D.C.-based group Stop Predatory Gambling, cited studies that show Internet cafes typically attract low-income customers. He said the average yearly income for an Internet cafe customer is \$26,000 and that they eventually lose about \$36,000 there.

"Low-income people are more likely to go because they think gambling is the quick fix," he said. "They are a form of convenient gambling. It's predatory on those who can least afford it. They sit down at a computer there and it's like they're playing a slot machine."

Warren Law Director Greg Hicks said if the businesses gave away prizes valued at less than \$10, they never would have brought the case against the three cafes. Some cafes have skill-based games, such as Whack-A-Mole, that pay cash prizes of more than \$10, he said.

"The thing about Internet cafes is that they claim they sell phone cards and Internet time and that the sweepstakes is just a bonus," he said. "Unfortunately, it doesn't seem to work that way when we investigated."

Hicks said he wasn't worried that Dabish had been acquitted of similar charges in Toledo. He cited an Akron Municipal Court case in which the Ninth District Court of Appeals upheld the conviction of Erika F. Kleinfeld.

Kleinfeld, 44, was sentenced to serve 20 days in jail and forfeit \$6,200 and 52 computers seized from her business. She was convicted of two counts of gambling, operating an entertainment arcade without a valid license and failing to register an entertainment device with the city, according to court records.

Hicks also said he was not concerned with being sued, like Dabish sued Fremont.

"First of all, anyone can file a lawsuit," he said. "I have no fear of that whatsoever. We've built solid cases. They're clear violations. It's the law."