



CITY OF SOMERVILLE, MASSACHUSETTS
LAW DEPARTMENT

MEMORANDUM

To: The Honorable Board of Aldermen
Fr: Matthew Buckley, Assistant City Solicitor *mgB*
cc: Frank Wright, Acting City Solicitor
Matthew Dias, Mayoral Aide
Re: Automatic Amusement Device License – 1123 Broadway
Da: March 24, 2010

You have asked for a review of the ordinance pertaining to automatic amusement devices and a legal opinion regarding the application for an automatic amusement device license by Game Underground, a business located at 1123 Broadway. In my opinion, the current ordinance prohibits the proposed use with no language authorizing the issuance of a permit because the devices are not coin or token operated.

I have reviewed the application and I have spoken to the owner of Game Underground, Ashish Shrestha, to determine the particulars of the gaming device that he intends to install. My understanding is that he plans to install and operate computers that play video games for a fee based on time. However the computers will not be coin or token operated.

The Somerville Code of Ordinances, Section 8-15, specifically prohibits any mechanical or electronic automatic amusement device to be kept or operated on premises without a license. Exemptions to the ordinance are clearly set forth including private use within a residential dwelling, juke boxes, etc. None of the exemptions apply to the application under review here. It should be noted that the ordinance prohibits such devices to be kept or operated on business premises “... *whether or not coin operated*. . . .” Somerville Code of Ordinances, Section 8-15 (a).

While it is clear that Game Underground proposes to operate electronic gaming devices to which the ordinance applies pursuant to sub-section (a), sub-section (b) authorizes the Board of Aldermen to “issue, subject to Mayoral approval, licenses for the installation and operation of *coin or token operated amusement devices*, including electronic amusement devices. . . .” There is no provision for issuing licenses to amusement devices that are not coin or token operated.

It is my opinion that under the current ordinance, Game Underground is prohibited from installing and operating the device as proposed and has no legal means to obtain a license to do so.

That opinion, however, in no way passes on the legality of distinguishing between coin or token operated devices and those devices that are not so operated. It is simply a report on how the ordinance is currently worded. It would be difficult to establish a legal or rational basis for such a distinction, however.

It is my further opinion that the Board of Aldermen would be able to legally issue licenses, in its discretion, to premises proposing non-coin operated amusement devices by amending sub-section (b) of Section 8-15 by deleting the words "coin or token operated."

If I may be of any further assistance please do not hesitate to contact me.