

STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/11/2016
File #	2016-01139

In re: Petition for Declaratory Statement before the
Division of Alcoholic Beverages and Tobacco on
behalf of Silver Springs Moose Lodge No. 1199,
Loyal Order of Moose, Inc., a Florida Corporation,

Petitioner,

DS 2015-140

ORDER DENYING PETITION FOR DECLARATORY STATEMENT

This matter comes before the Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco (hereinafter "Division") pursuant to section 120.565, Florida Statutes, and chapter 28-105, Florida Administrative Code. The Petitioner, Silver Springs Moose Lodge No.1199, Loyal Order of Moose, Inc., (hereinafter "Moose Lodge"), has filed a Petition for Declaratory Statement containing a statement of facts and a discussion of relevant Florida law and administrative rules. A copy of the Petition for Declaratory Statement is attached hereto and incorporated by reference.

ISSUES PRESENTED

The Petitioner presents the following issues to the Division:

Whether Florida's Beverage Law, as defined in section 561.01(6), Florida Statutes, permits Moose Lodge to install, operate, and offer to the public a certain computerized game machine on their licensed premises. Petitioner asserts that the Moose Lodge wishes to avoid violations of the law which would subject it to the sanctions specified in 561.29(1)(a), Florida Statutes, for violating the criminal gambling provisions of sections 849.08 and 849.16, Florida Statutes, and asks specifically for a Declaratory Statement from the Division as to:

- a. Whether the specified machine constitutes a slot machine, and thus is prohibited; and,

- b. Whether the specified machine is exempt from section 546.10, Florida Statutes, because it does not meet the definition of an amusement game or machine in section 546.10(3)(a), Florida Statutes.

FINDINGS OF FACT

1. On November 18, 2015, the Division received a Petition for Declaratory Statement from Petitioner, Moose Lodge. The Division renders its Findings of Fact on the basis of the information contained in the Petition.
2. Notice of the Petition was published on November 25, 2015, in Volume 41, Issue 229 of Florida Administrative Weekly. No comments were received.
3. The conclusion of this Order Denying Petition for Declaratory Statement is based on the facts described in the Petition and the particular factual assertions described therein. All of the facts presented in the Petition were duly considered and form the basis for this Order. A summary of the facts connected with the Petition is as follows.

Petitioner, Moose Lodge, holds an active and valid alcoholic beverage license, class 11C, issued by the Division. Moose Lodge seeks a declaratory statement from the division as to the legality of installing, operating, and offering to the public a computerized video game on its business premises. The system is known as the "eXtreme Gaming System Vision."

As described by Moose Lodge, the game system is a multi-game computer system designed for non-gambling entertainment. The games contain a preview feature, which allows a player to see the game before it is played, regardless of whether the player has inserted any money into the game. According to the manufacturer's user guide, this feature removes all risk to the player. Exhibit A, page 5. The object of the game is to win points by playing a choice of "tic-tac-toe style," themed games. The player is also able to see the outcome of the game prior to

inserting any money. The game system itself awards players "loyalty rewards during play in the form of play credits." Exhibit A, page 5. Though the theme of each game is different, the screen always contains a "primary game screen" which contains the following fields: Game Name; Current Reward, Credit Balance, Jackpot Prize Amounts, Reel Window, Message Line, Buttons and Play Parameters, Next Reward Amount, Current Plays per Line, and Play Amount for next play. Exhibit A, page 9, figs. 4 and 5.

A "Collect" button prints a receipt in the amount of the player's credit balance. Exhibit A, page 6.

The Petition and the manufacturer's user guide are silent as to whether the credit receipt can be redeemed for cash or other consideration.

CONCLUSIONS OF LAW

4. Section 120.565, Florida Statutes, provides:

- (1) Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.
- (2) The petition seeking a declaratory statement shall state with particularity the petitioner's set of circumstances and shall specify the statutory provision, rule, or order that the petitioner believes may apply to the set of circumstances.

5. By holding an alcoholic beverage license, Petitioner is substantially affected by the statutory provisions cited above. Under the above stated laws, the Division finds that Petitioner, Moose Lodge, has standing to seek this Declaratory Statement.

6. Rule 28-105.001, Florida Administrative Code, provides:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders

may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

7. Rule 28-105.002, Florida Administrative Code, provides:

A petition seeking a declaratory statement shall be filed with the clerk of the agency that has the authority to interpret the statute, rule, or order at issue and shall provide the following information: [...] (4) The statutory provision(s), agency rule(s), or agency order(s) on which the declaratory statement is sought. (5) A description of how the statutes, rules, or orders may substantially affect the petitioner in the petitioner's particular set of circumstances. [...]

8. Section 120.52(16), Florida Statutes, provides as follows:

"Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

CONCLUSION

9. Petitioner, Moose Lodge, seeks a Declaratory Statement that its proposed computerized video game, eXtreme Game Systems Vision ("system"), can be operated on Petitioner's licensed premises without violating sections 849.08 and 849.16, Florida Statutes, and section 551.109(2), Florida Statutes.

10. Petitioner, Moose Lodge, also seeks a Declaratory Statement that the specified system is not a prohibited slot machine and a determination that the system is exempt from regulation under section 546.10, Florida Statutes, regulating Amusement Games or Machines.

11. Moose Lodge petitions the Division based on its authority under section 561.29(1)(a), Florida Statutes, to revoke or suspend a license under the Beverage Law upon a finding of a violation by the license holder of any law of Florida, the United States, or of any municipal ordinance or county regulation.

12. The law enforcement power of the Department of Business and Professional Regulation

("Department") and the Division is derived from sections 20.165(b)(1) & (2), Florida Statutes. Pursuant to this statute, the primary mission of the Department's law enforcement power is the investigation, enforcement, and prosecution of violations of "parts I and II of chapter 210, part VII of chapter 559, and chapters 561-569, and the rules adopted thereunder."

13. As a secondary responsibility, section 20.165(b)(2) permits the Department to enforce all other laws provided that "enforcement is incidental to exercising the officer's primary responsibility."

14. The power of an agency to answer questions or resolve controversies by a Declaratory Statement is governed by Rule 28-105.001, Florida Administrative Code, which limits Declaratory Statements to matters, "over which the agency has authority."

15. The authority of the Division is derived from section 561.02, Florida Statutes, which states that the Division, "shall supervise the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of all alcoholic beverages and shall enforce the provisions of the Beverage Law and the tobacco law and rules and regulations of the division in connection therewith."

16. The Beverage Law is defined by section 561.01(6), Florida Statutes, as chapters 561, 562, 563, 564, 565, 567, and 568, Florida Statutes.

17. Pursuant to the preceding statutory authority and under section 561.29(1)(a), Florida Statutes, the Division is authorized to enforce all violations of law incidental to the primary enforcement of the Beverage Law and the tobacco law. Though authorized with incidental enforcement authority over other violations of law, the Division lacks substantive authority to interpret the prohibitions and definitions of the criminal gambling statute or any other statutes outside the Beverage Law and the tobacco law not specifically assigned to the Division.

18. Because the investigation, enforcement, and prosecution of violations of all other laws is a secondary responsibility of the Division, incidental to its primary responsibility of enforcement of the Beverage Law and the tobacco law, the Division lacks the statutory authority to issue a Declaratory Statement making a substantive conclusion of law on statutes outside of its core authority. For example, the Division has enforcement jurisdiction to investigate, seize, arrest, and prosecute cases involving possession of synthetic marijuana, known as spice, on licensed premises, but issuance of a legally binding opinion on the precise chemical composition which constitutes spice is beyond the Division's statutory authority.

19. Petitioner, Moose Lodge, cites section 551.103, Florida Statutes, as giving the Division enforcement authority over violations of section 551.109(2), Florida Statutes, which prohibits possession of slot machines without a proper license. The Division referred to in section 551.103, Florida Statutes, is the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation. See §551.102(3), Fla. Stat.

20. The Division is also without authority to reach a substantive conclusion of law interpreting the provisions of chapter 546, Florida Statutes, to determine whether the system is subject to, or exempt from, regulation under that chapter.

21. The Division is unable to exceed the authority granted by the legislature and issue a response that amounts to a rule. Pursuant to § 120.52(16), a "rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule.

22. Based on the findings and conclusions above, the Petition for Declaratory Statement is denied.

23. This conclusion is based on the facts described in the Petitioner's Petition for Declaratory Statement and legal research conducted by the Division. Accordingly, this conclusion has no application in the event that the factual circumstances and/or relationships among the entities described herein are incorrect or change or in the event laws or rules pertinent to this Petition are modified in the future.

DONE and ORDERED in Tallahassee, Florida this 11th day of FEBRUARY, 2016.




Thomas B. Philpot, Director
Division of Alcoholic Beverages & Tobacco

RIGHT TO APPEAL

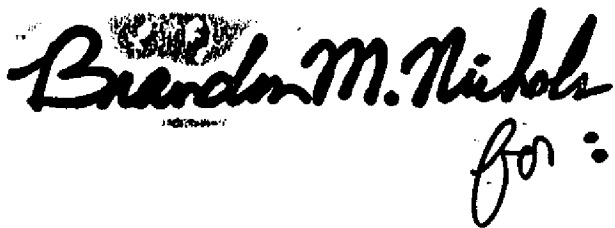
THIS DECLARATORY STATEMENT CONSTITUTES FINAL AGENCY ACTION AND MAY BE APPEALED PURSUANT TO 120.68, FLORIDA STATUTES, AND RULE 9.110, FLORIDA RULES OF APPELLATE PROCEDURE, BY FILING A NOTICE OF APPEAL CONFORMING TO THE REQUIREMENTS OF RULE 9.110(d), FLORIDA RULES OF APPELLATE PROCEDURE, BOTH WITH THE APPROPRIATE DISTRICT COURT OF APPEAL, ACCOMPANIED BY THE APPROPRIATE FILING FEE, AND WITH RONDA BRYAN, AGENCY CLERK FOR THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO, WITHIN 30 DAYS OF THE RENDITION OF THIS DECLARATORY STATEMENT.


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petitioner's Order Denying Petition for Declaratory Statement has been provided to the following addressees via U.S. and electronic mail on this 11th day of February, 2016:

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THE FLORIDA DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/18/2015
File #	

SILVER SPRINGS MOOSE LODGE
NO. 1199, LOYAL ORDER OF MOOSE,
INC.,

Petitioner,

v.

DS 2015-140

FLORIDA DEPARTMENT OF BUSINESS
AND PROFESSIONAL REGULATION
DIVISION OF ALCOHOLIC
BEVERAGES AND TOBACCO,

Respondent,

**PETITION FOR DECLARATORY STATEMENT BEFORE
THE DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO**

Petitioner, SILVER SPRINGS MOOSE LODGE NO. 1199, LOYAL ORDER OF MOOSE, INC. D/B/A SILVER SPRINGS MOOSE LODGE #1199, (hereinafter "MOOSE LODGE") by and through its undersigned counsel, and pursuant to Fla. Stat. §§ 849.08 and 849.16, hereby files its Petition for Declaratory Statement before the Division of Alcoholic Beverages and Tobacco, stating as follows:

1. Petitioner, MOOSE LODGE, holds an active and valid alcoholic beverages license issued by the Division, license type 11C, license number BEV5200657. Petitioner's business address is 7165 S.E. Maricamp Road, Ocala, Florida, 34472.

2. This Petition for a Declaratory Statement is sought regarding the Division's interpretation of Fla. Stat. §§849.08 and 849.16 as it applies to computerized video games.

3. Section 849.08, Fla. Stat., states, in pertinent part: Whoever plays or engages in any game of chance, at any place, for money or other thing of value, shall be guilty of a misdemeanor of the second degree.

4. Section 849.16, Fla. Stat., states, in pertinent part: The term “slot machine or device” means any machine or device that is adapted for use that, upon insertion of money, such device, by applications of skill or the element of chance may cause the receipt of a thing of value or secure additional chances or rights to use such machines.

5. This Petition is also sought regarding the Division’s interpretation of Fla. Stat. §561.29, which grants the Division the authority to revoke or suspend the license of any person holding a license under the Beverage Law, when it is determined or found by the Division, upon sufficient cause, that a violation of the laws of this State, or of the United States has occurred or that a violation of any rule or rules promulgated by the Division has occurred.

6. The Division, in the past, has issued warnings against licensees alleging such violations. The Division, through its authority under Fla. Stat. § 551.103 may enforce violations of Fla. Stat. § 551.109(2), which prohibits possession of slot machines without a license.

7. Fla. Stat. § 551.102 (8) defines a slot machine as any mechanical or electrical contrivance, terminal that may or may not be capable of downloading slot games from a central system, machine, or other device that, upon insertion of a coin, bill, ticket, token, or similarly object or upon payment of any consideration whatsoever, including the use of electronic payment system except a credit card or debit card, is available to play or operate, the play or operation of which, whether by reason of skill or application of the element of chance or both, may deliver or entitle the person or persons playing or operating the contrivance, terminal, machine, or other device to receive cash, billets, tickets, tokens, or electronic credits to be exchanged for cash or to receive merchandise or anything of value whatsoever, whether the payoff is made automatically

from the machine or manually. The term includes associated equipment necessary to conduct the operation of the contrivance, terminal, machine, or other device. Slot machines may use spinning reels, video displays, or both. A slot machine is not a “coin-operated amusement machine” as defined in §212.02(24).

8. Fla. Stat. §546.10(3)(a) defines the term “amusement game or machine” as a game or machine operated only for the bona fide entertainment of the general public which a person activates by inserting currency or coin or similar device and by the application of skill with no material element of chance, the person playing controls the outcome of the game.

9. Petitioner wishes to avoid any violation of the foregoing statutory authorities, which govern the right of Petitioner to possess, operate and offer to the public, computerized video games on its business premises, as identified in paragraph 1 above.

10. Petitioner seeks a declaratory statements from the Division for a specific brand of video games, to wit: eXtreme Gaming System Vision. These multi-game computer systems are designed for non-gambling entertainment. Attached hereto as Exhibit “A” is a copy of the user guide for the eXtreme Gaming System Vision.

11. Central to the games proposed by Petitioner is what is commonly known as a “preview feature.” The preview feature allows the player to see the game he/she will play before it is played, regardless of whether or not the player has deposited money into a game.

12. These games display a board arranged in a tic-tac-toe fashion, with fifteen squares arranged in three rows of five squares. Each square depicts an image or symbol relevant to the overall theme of the game.

13. The player’s objective is to accumulate points by choosing squares that will line up at least three of the same objects or images in a row. Point values increase for matching more than three objects or images. The objects may be lined up horizontally, vertically or diagonally. For

example, in the Land Of Oz game, three Tin Man squares yields a 50 point reward, while 5 Tin Man squares yields a 1,000 point reward.

14. In addition to permitting a player to see the game he/she will play before it is played, the preview feature operates to show the player the outcome of each game and allows a player to deposit or decline to deposit money accordingly and without penalty.

15. Petitioner wishes the Division to provide a declaratory statement concerning the following:

a. Whether the foregoing machines constitute a slot machine, and thus are prohibited; and

b. Whether the foregoing machines are exempt from Fla. Stat. §546.10 because they do not meet the definition as outlined in 546.10 (3)(a).

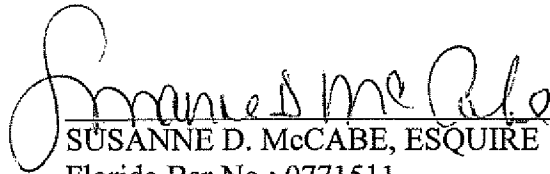
16. Petitioner wishes the Division to evaluate whether the foregoing game(s) constitute illegal gambling under the relevant statutes outlined herein, which Florida courts have consistently defined as involving a) consideration; b) the element of chance or unpredictability inherent in the machine; and c) an award of something of value.

17. While the foregoing games involve consideration and an award of something of value, Petitioner avers such games do not involve the element of chance or unpredictability. The player is able to preview the results of each and every game beforehand and the result of the “next play” is always visible in the game screen, thus the element of chance or unpredictability is completely absent.

18. Petitioner is in doubt concerning the applicability of the foregoing statutory provisions over which the Division has authority and seeks a declaratory statement from the Division prior to acquiring, installing and making such games of amusement available to the public.

WHEREFORE, Petitioner, SILVER SPRINGS MOOSE LODGE NO. 1199, LOYAL ORDER OF MOOSE, INC. D/B/A SILVER SPRINGS MOOSE LODGE #1199, respectfully requests the Division of Alcoholic Beverages and Tobacco issue a Declaratory Statement resolving Petitioner's question concerning the legality of the foregoing described computerized video games with a preview feature under the foregoing statutes over which the Division has authority.

DATED this 9th day of November, 2015.



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November 10, 2015

Department of Business and Professional Regulation
Division of Alcoholic Beverages and Tobacco
1940 North Monroe Street
Tallahassee, Florida 32399-1020

RECEIVED

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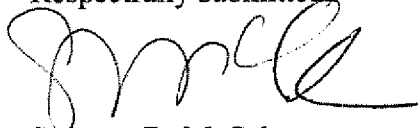
DBPR
OGC-AB&T

Re: Petition for Declaratory Statement
Division of Alcoholic Beverages and Tobacco
Our Client: Silver Springs Moose Lodge #1199

Dear Sir or Madam:

Enclosed for filing with the Department of Business and Professional Regulation please find Silver Springs Moose Lodge No. 1199, Loyal Order of Moose, Inc. d/b/a Silver Springs Moose Lodge #1199's Petition for Declaratory Statement Before the Division of Alcoholic Beverages and Tobacco.

Respectfully submitted,



Susanne D. McCabe

SDM/shh

Enclosure

cc: Silver Springs Moose Lodge No. 1199 (w/enclosure)

EXHIBIT "A"

E **TREME**
GAMING SYSTEM

Vision 1560

Release Version: 1.0

User Guide

Document: VS15-5005-1

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Chapter 1: Introduction

Overview

The Vision games from Raadius are advanced multi-game computer systems designed for NON-GAMBLING entertainment. The key to the non-gambling model is the ability of the player to have complete visibility of every possible game outcome in the exact order it will be presented during play. The view into the result sets are available at any time without any credit value being applied to the device. Therefore, a player, without depositing any money, being able to view the results in advance can make a purchase decision whether or not he/she wants to play the entertainment game. By the basic definition of gambling if the player does not have risk then it is not gambling.

The Vision games are the first and only game system that provide 100% zero risk to the players. While other systems may claim they are Two Element Games, if the player can't get access to all future plays prior to inserting money then chance is still involved because payment is required to advance beyond the hard preview limits of the device. The Vision platform allows access to all the data. There is no substitute for this model.

So why do people spend money to play a game if they know the results? Entertainment... entertainment... entertainment. People love the experience even when they know the outcome.

This manual describes the functionality of the game system and provides an overview of each game.

Features

Some of the features and advantages of the Vision games include:

- Ability to view your rewards in advance for any game
- Six games on each system
- Multiple bonus types in each game
- Review the How-to-Play rules at any time
- Help screen values dynamically adjust to selected play level
- Easy to read buttons and information
- No hidden terms and conditions

Chapter 2: The Lobby

The game lobby is the entry point to everything the game system offers the player.

Using the Lobby

At the top of the lobby screen is the current credit balance on the machine. This reflects the play amount of play you are able to use in any of the games.

The [COLLECT] button in the lower left corner of the screen will cause a receipt to be printed for the amount of your credit balance.

In the center banner of the screen are the icon/buttons that activate each of the six games included on this board version. Touching the screen in large graphic area of any icon will launch that particular game.



Figure 1 - The Lobby Screen

The [SHOW REWARDS] button below each game icon/button will open a new page that displays the future reward results for that game. You can then page through the future rewards data to view your results as shown in the Figure 2 on the next page.

The rewards viewer shows the game results for each of the 4 different play levels for a particular game. The screen layout by level is:

- Level 1 Top Left
- Level 2 Bottom Left
- Level 3 Top Right
- Level 4 Bottom Right

The exact reel positions are shown in the respective window. The play amount for the level is displayed in the lower left of each window and the reward amount is displayed in the lower right of each window

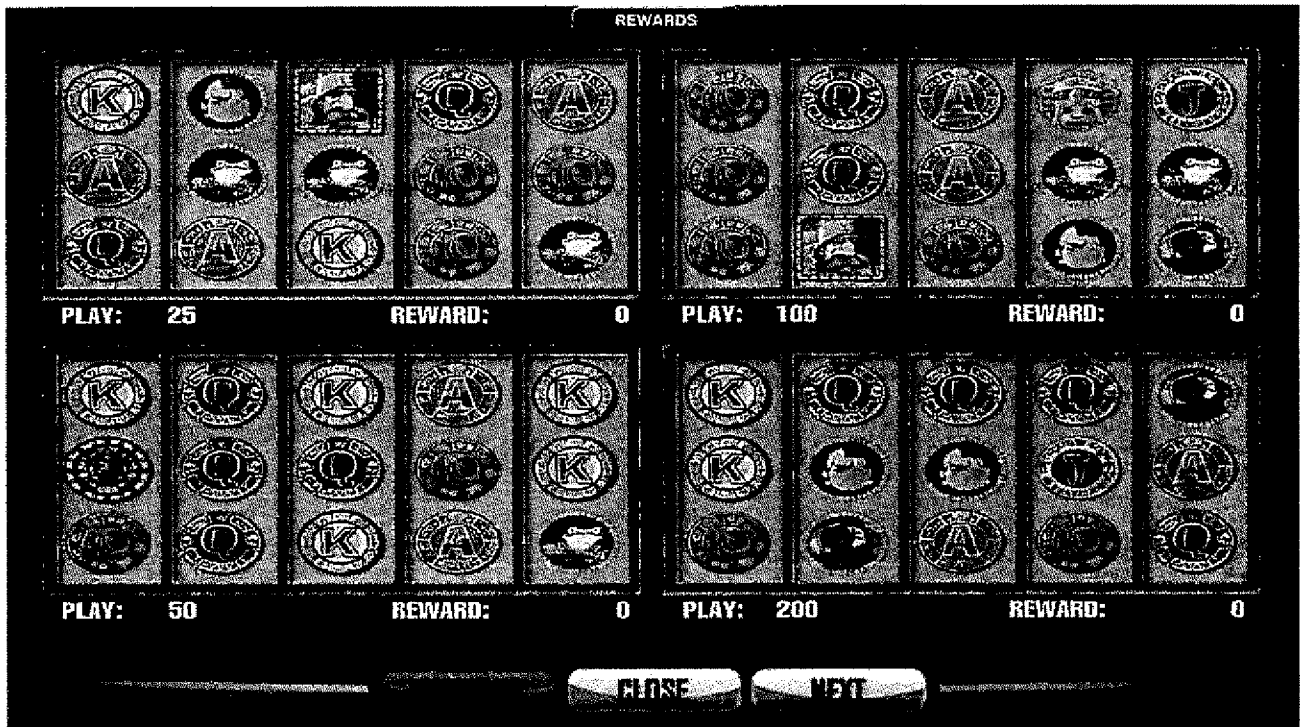


Figure 2 - Rewards Viewer Screen

The [NEXT] and [PREVIOUS] buttons at the bottom of the screen allow you to page one record at a time through the rewards data.

The [CLOSE] button will return you the game lobby.

Touching the [HOW TO] button in the lower right corner of the lobby screen will display a pop-up window with the instructions as shown in Figure 3.

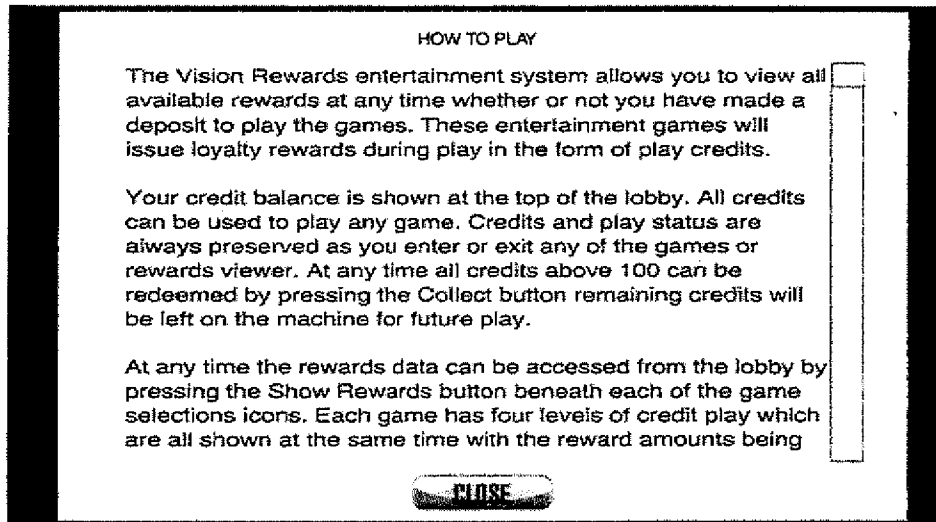


Figure 3 - How to Play Window

How to Play Window Text?

The text below is the contents of the HOW TO PLAY pop-up window on the game system:

The Vision Rewards entertainment system allows you to view entire contents of the rewards data at any time whether or not you have made a deposit to play the games. These entertainment games will issue loyalty rewards during play in the form of play credits.

Your credit balance is shown at the top of the lobby. All credits can be used to play any game. Credits and play status are always preserved as you enter or exit any of the games or rewards viewer. At any time, all credits in increments of 100 can be redeemed by pressing the Collect button, remaining credits will be left on the machine for future play.

At any time, the rewards data can be accessed from the lobby by pressing the Show Rewards button beneath each of the game selections icons. Each game has four levels of credit play which are all shown at the same time, with the reward amounts being directly proportional to the level play. Pressing the Next and Previous buttons allows the player to move forward or backwards through the entire results. Pressing the Close button will close the viewer and return to the lobby.

Enjoy the play and your rewards.

Chapter 3: The Games

The following pages show the primary game screen for each of the games on the board. All game screens follow a consistent layout style as shown in figures 4 & 5 below.

Field	Location on Screen (see Figure 5)
Game Name	Top Center of Screen
Current Reward	Top Left Corner
Credit Balance	Top Right Corner
Jackpot Prize Amounts	Below the Game Name
Reel Window	Center of Screen / Full Width
Message Line	Just below Reel Window / Center
Buttons and Play Parameters	Bottom of Screen
Next Reward Amount	Lower Left Corner
Current Plays per Line	Number above the [Plays Per Line] button
Play Amount for Next Play	Number above the [Play Max] button

Figure 4 - Screen Field Locations

All buttons are clearly labeled and easy to activate.

[EXIT] button closes game and returns to the lobby

[Help] button displays the pay-table and line detail screens for the respective game

[Start] button initiates the next play

The two game parameter buttons are [Plays per line] and [Play Max]. The plays per line button will cycle through the 4 play levels for the game. The play max choice will always activate Level-4. If you don't have enough credits to play at level 4 then the max level will be automatically adjusted to the highest level your credit balance will allow.

As a convenience the amount of the **reward for the next play** is always displayed in the lower left corner of the game screen. To view beyond the next reward you can return to the lobby using the [EXIT] button and open the rewards viewer to see as much detail as you like.



Figure 5 - Sample of Screen Style

Amazon River Safari Graphics



Figure 6 - Amazon River Safari Game Screen

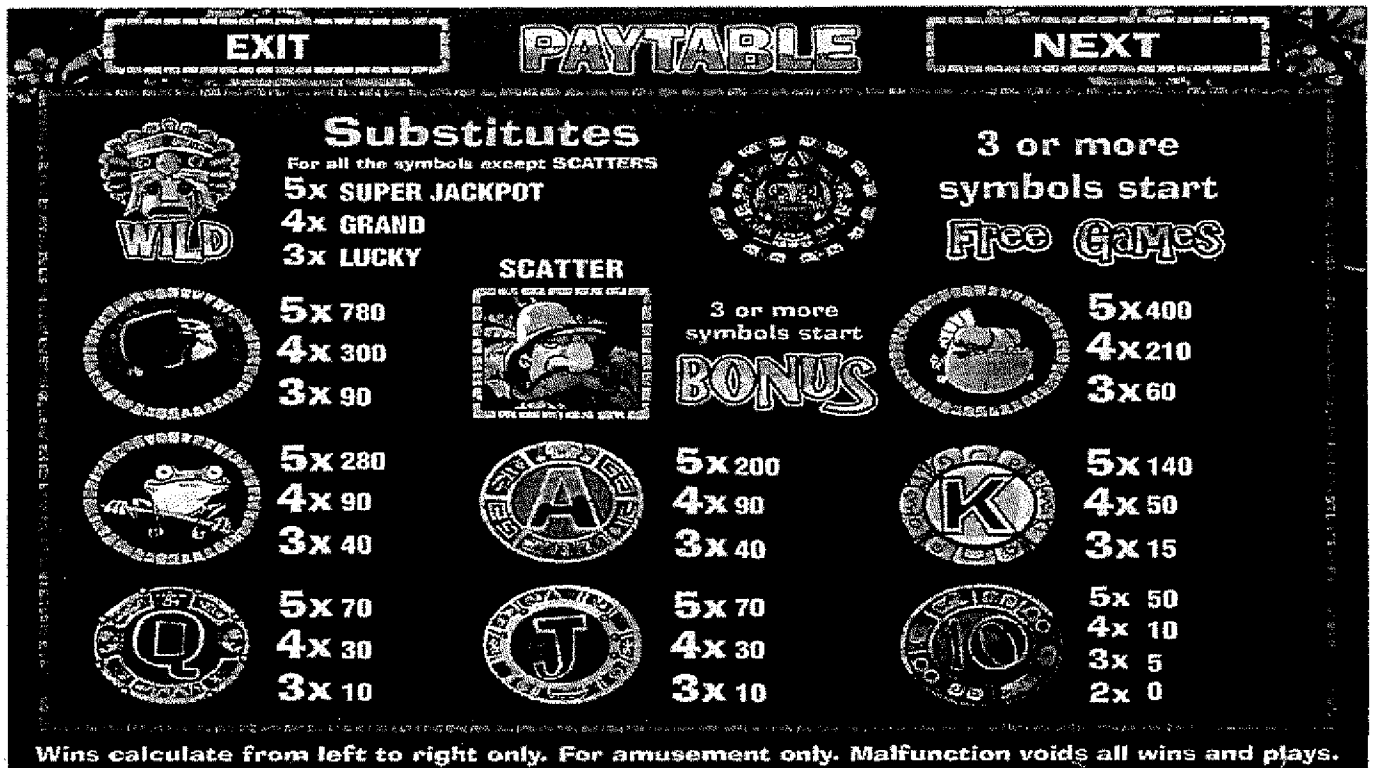


Figure 7 - Amazon River Safari Help Screen

Fat Sam Graphics



Figure 8 - Fat Sam Game Screen



Figure 9 - Fat Sam Help Screen

Fantasy Forrest Graphics



Figure 10- Fantasy Forest Game Screen

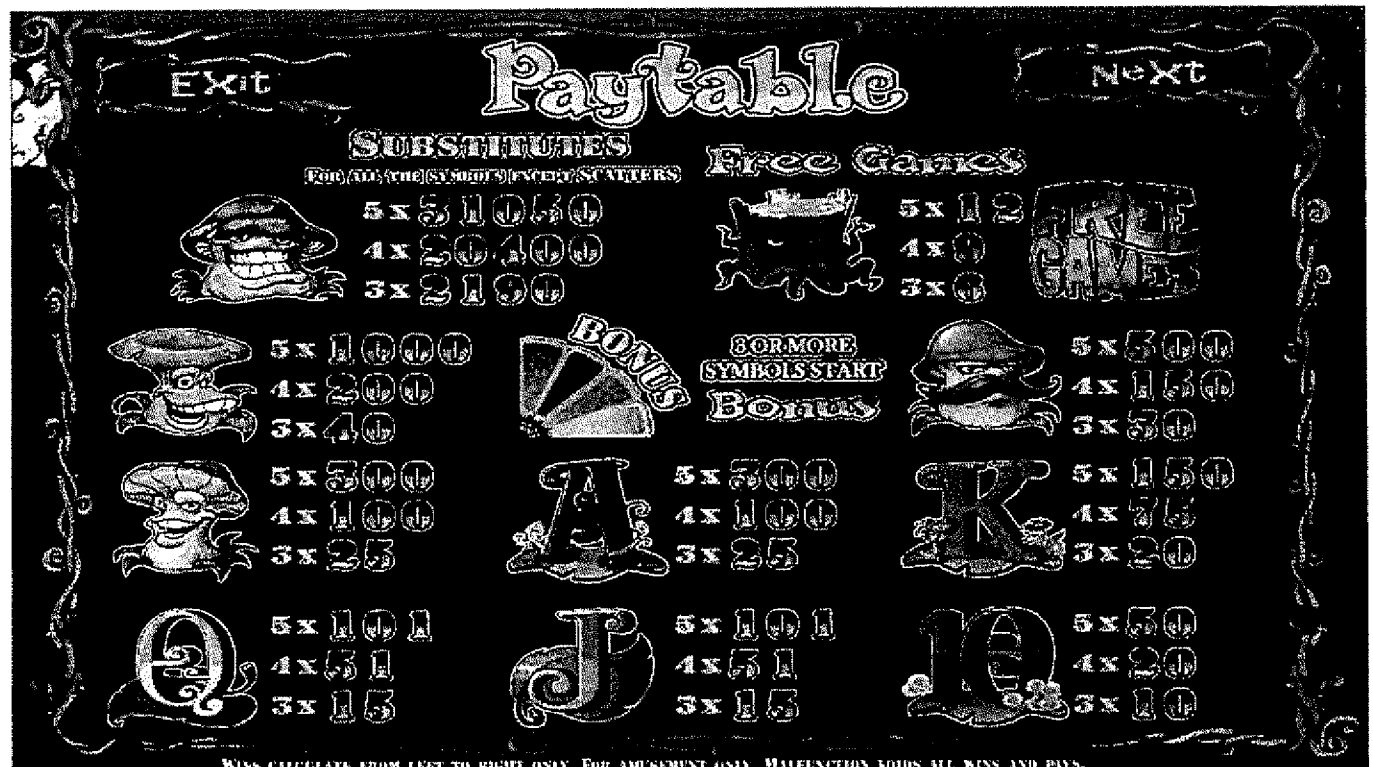


Figure 11 - Fantasy Forest Help Screen

Land of Oz Graphics



Figure 12- Land Of Oz Game Screen



Figure 13 - Land Of Oz Help Screen

Peg Leg Pete Graphics



Figure 14 - Peg Leg Pete Game Screen

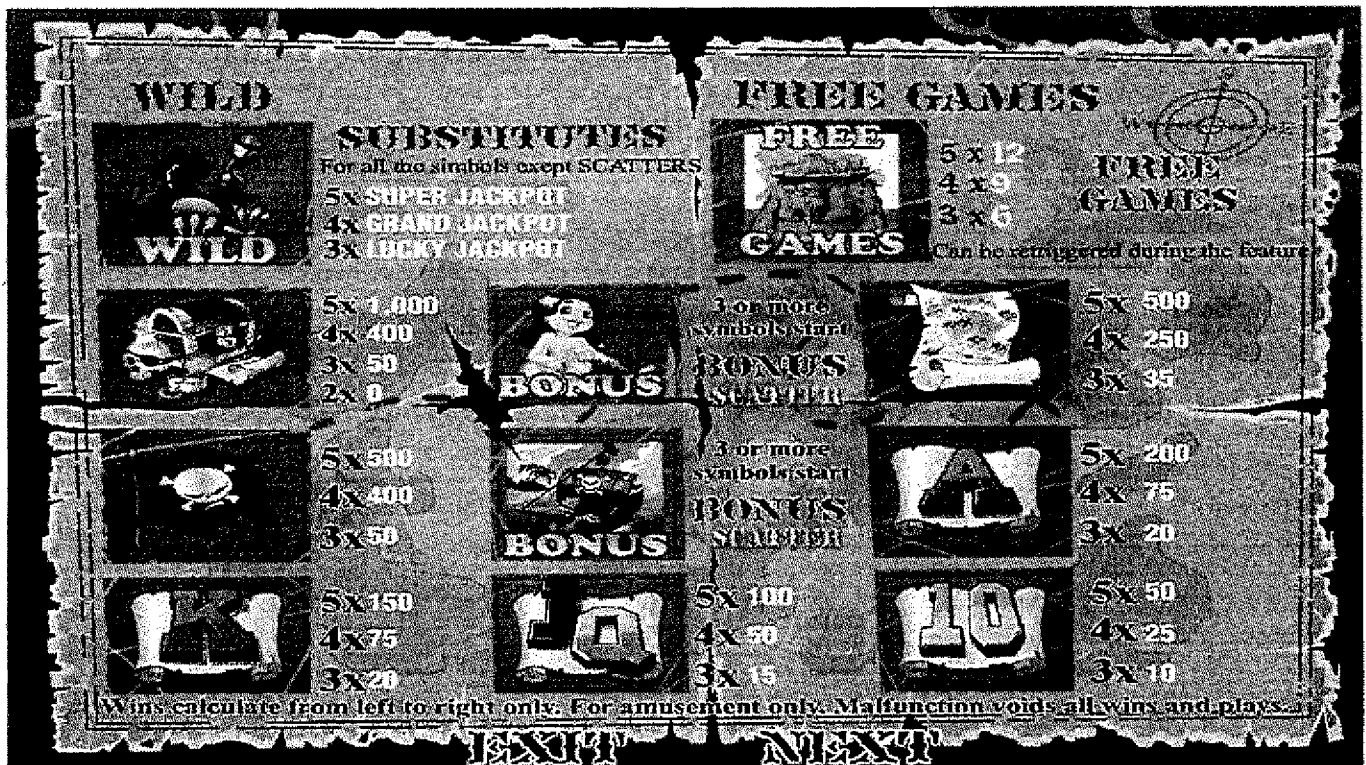


Figure 15 - Peg Leg Pete Help Screen

Vampire Vixen Graphics



Figure 16 - Vampire Vixen Game Screen

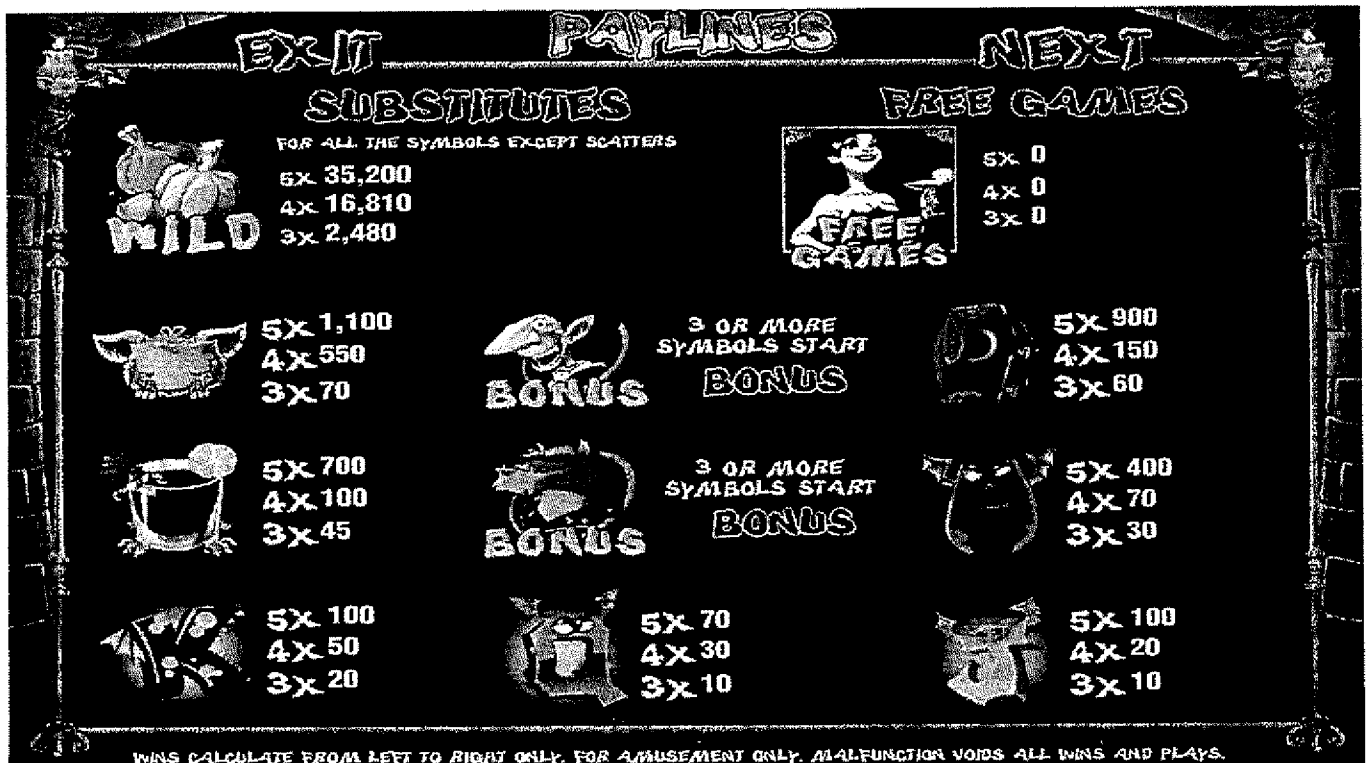


Figure 17 - Vampire Vixen Help Screen