



# Game Over: Municipal Strategies to Shut Down 8- Liners in Texas

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## Eight Liners

- “Eight-liners generally operate like a video slot machine,” with “nine electronic symbols arranged in three columns and three rows.” *Rylie II*, 602 S.W.3d at 462.

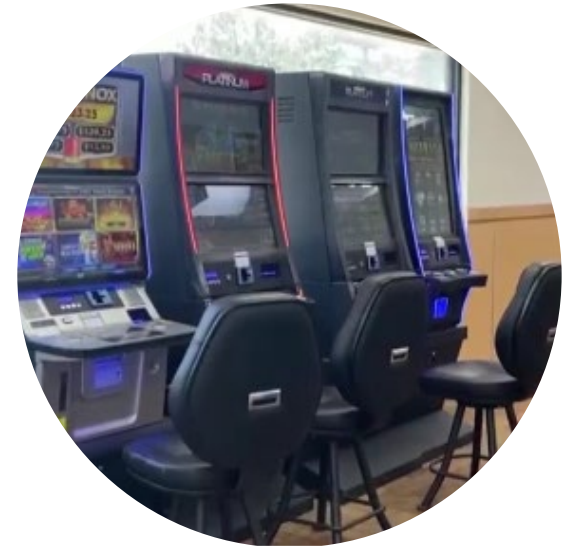
# The March Toward Ordinance Amendments

- In 2013-2014, the Fort Worth citizenry demanded that the City do something about the game rooms, eight liners, and the crime around them.
- Citizens complained of secondary-criminal activity around game rooms as well as the gambling that was blatantly occurring.



# Two Kinds of Game Rooms

1. Knock-Knock: mini-casinos
2. Convenience Stores, Gas Stations, Bars, Restaurants that may only have a few amusement-redemption machines.





# Fuzzy-Animal Exception

- In 1995, the Texas Legislature created the Fuzzy-Animal Exception by adding Section 47.01 (4)(B) to the Penal Code.
- From the Bill Analysis: SB 522 would clear up a gray area in the law by exempting bona fide amusement games such as the kind that allow persons to use skill to win fuzzy animals.
- This caused a proliferation of eight liners.



# Fuzzy-Animal Exception

- Under the Fuzzy-Animal Exception, Gambling Device, “...**does not include** any electronic, electromechanical, or mechanical contrivance designed, made, and adapted **solely for bona fide amusement purposes** if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value from a single play of the game or device of **not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.**”

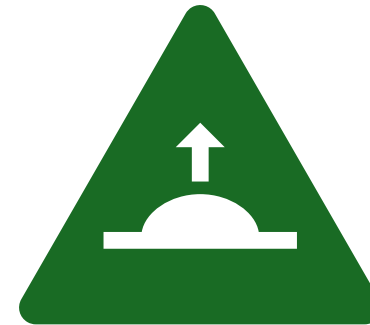
# Fort Worth Game Room Zoning and Licensing Ordinances

- Game rooms to be in industrial zones
- Approved as a Planned Development (PD) District
- Transparent glass in at least one exterior game room window
- License to operate
- Payment of occupation tax
- Annual inspection and license fee
- Be greater than 1,000 feet of a residential use or district, church, school, hospital, or from any other game room
- Compliance with signage requirements
- Must be a TABC licensed facility to serve alcohol
- No more than 30 gaming machines
- Operate only Monday-Thursday 8:30-11:00 and Friday-Sunday 8:30-12:00 a.m.

# Lawsuits



Upon the effective date of the ordinance, the City was sued in three separate cases.



Because the issues were so similar, two of the cases were abated while the Rylie case moved forward.



# Lawsuits-Plaintiffs' Claims

- Preemption—Under Occupation Code 2153:
  - 2153.001: The purpose of this chapter is **to provide comprehensive and uniform statewide regulation** of music and skill or pleasure coin-operated machines.
  - 2153.452: (a) For purposes of zoning, a political subdivision of this state shall treat the exhibition of a music or skill or pleasure coin-operated machine in the same manner as the political subdivision treats the principal use of the property where the machine is exhibited.
    - (b) Subsection (a) **does not prohibit a municipality from restricting the exhibition of a coin-operated amusement machine within 300 feet of a church, school, or hospital.**

# Lawsuits-Plaintiffs' Claims

## Occupations Code 2153.401:

- (a) An occupation tax is imposed on each coin-operated machine that an owner exhibits, displays, or permits to be exhibited or displayed in this state.
- (b) The tax rate is \$60 per year.

## Occupations Code 2153.102:

Except for information specifically designated as a public record, information derived from a book, record, report, or application required to be made available under this chapter to the comptroller or the attorney general:

- (1) is confidential; and
- (2) may be used only to enforce this chapter.

# Lawsuit-Plaintiffs' Claims

Preemption under  
the Texas Alcoholic  
Beverage Code

Claimed a taking

Sought an  
Injunction

# City's Position— Occupations Code Exception

- Occupations Code Excepts Unconstitutional and Illegal Machines:
  - 2153.003: This chapter does not authorize or permit the keeping, exhibition, operation, display, or maintenance of a machine, device, or table **prohibited by the constitution of this state or the Penal Code.**



# City's Position—Texas Constitution Prohibition of Lotteries

- Tex. Constitution has prohibited lotteries:
  - 1845: No lottery shall be authorized by this State; and the buying or selling of lottery tickets within this State, is prohibited.
  - 1861: No lottery shall be authorized by this Sate; and the buying or selling of lottery tickets within this State is prohibited.
  - 1866: No lottery shall be authorized by this Sate; and the buying or selling of lottery tickets within this State is prohibited.
  - 1869: The Legislature shall not authorize any lottery and shall prohibit the sale of lottery tickets. No lottery shall be authorized by this Sate; and the buying or selling of lottery tickets within this State is prohibited.
  - 2021: The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other Sates.



# City's Position— Gambling Requires a Constitutional Amendment

- “Beginning in 1980, Texas ratified a series of constitutional amendments to allow certain types of lotteries, including the state lottery and charitable bingo and raffles.” See Tex. Const. Art. III, §47 (b), (c), (d), (e). *Rylie II*
- In 1973 in *Tussey v. State*, the court of criminal appeals held that the legislature had exceeded its authority in passing a 1971 Penal Code amendment that excepted from prosecution churches, religious societies, veterans’ organizations, and other nonprofit charitable organizations that conducted lotteries.

# City's Position: Is the Fuzzy-Animal Exception Legal?

- The Texas citizenry should have the opportunity to vote in a referendum on a constitutional amendment to allow gambling with eight liners and other lotteries.
- The Texas Constitution's injunction "The Legislature shall not authorize any lottery" calls into question the legality of the Fuzzy-Animal Exception.
- The City counter-sued on the legality of the Fuzzy-Animal Exception.



# What is a lottery?

Texas Supreme Court: “Contrary to the term’s popular understanding, a “lottery” includes not just contests involving scratch-off stickers and numbered ping-pong balls, but a wide array of activities that involve, at a minimum, **(1) the payment of “consideration” (2) for a “chance” (3) to win a “prize”**. *Rylie II*, 602 S.W.3d at 460-61 citing *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 698 (Tex. 1936).



So—to be a lottery, you need the elements of:

Consideration,

Chance, and

Prize

# What is a lottery?

- Texas caselaw has reflected this broad understanding as far back as 1874, shortly before Texas citizens approved the 1876 constitution.
- The activities name “makes not the slightest difference”; it is a lottery when the element of chance is connected with it. *Randle v. State*, 42 Tex. 580, 589 (1874).
- The “ingredient of chance” is the “evil principle which the law denounces and will eradicate, however it may be clothed, or however it may conceal itself in a fair exterior” *City of Wink*, 100 S.W.2d 695, 701.

# What is a lottery?

- “Every constitution of our State from 1845 down, has contained provisions against lotteries similar to those in our present constitution. And it is true that no other form of gambling has been thus singled out and expressly denounced...**[O]ne of the chief characteristics of lotteries is that they infest the whole community, reach every class, prey upon the hard-earned savings of the poor, and plunder the ignorant and simple,** whereas, in comparison, other forms of gambling affect only a few individuals.” *State v. Robb & Rowley United, Inc.*, 118 S.W.2d 917, 921 (Tex.App.—Galveston 1938, no writ.)(op. on reh’g).



# Stipulation

- The plaintiffs stipulated that their eight-liners are all “played solely or predominantly by chance, involving little or no skill on the part of the player” and that “[the] player has no control over the odds of winning.” *Rylie III*, 649 S.W.3d 246, 251, n. 5
- The stipulation did not require the Court to consider the ration of skill to chance in the game in the litigation.
- Court of Appeals: “We do note that a sister court has considered (and rejected) in connection with a void-for-vagueness challenge, holding that something is indeed a ‘gambling device’ if it incorporates ‘**any element of chance**, even if the exercise of skill also influences the outcome.’” *State v. Gambling Device*, 859 S.W.2d 519, 523 (Tex. App.—Houston [1<sup>st</sup> Dist.] 1993, writ denied)(emphasis added).

# Litigation

- District Court:

The Court found that the City was preempted with respect to:

- Restriction to industrial zones
- Restriction to limit game rooms to one per lot, building, or strip center
- Prohibition against game rooms within 1,000 feet of a residential use or district, church, school, hospital, or from any other game room
- The trial Court also denied the City's counter-petition for a declaration that Texas Penal Code Section 47.01 (4)(B) is unconstitutional

# Litigation

## Court of Appeals First Opinion:

- Upheld the District Court
- Found that City is preempted by the TABC from regulating alcohol
- Found that City is preempted in its regulations even if the gaming machines are unconstitutional or illegal

# Texas Supreme Court

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“We think section 2153.003’s plain language makes it clear that chapter 2153 does not apply to unconstitutional or illegal machines.”

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“The next question is whether the Operator’s machines are unconstitutional or illegal”

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The Court remanded for these questions.

# Court of Appeals—Round 2

- The game rooms argued that because “lottery” was not defined in the statute, the legislature may define, within reason.
  - Game rooms argued that the fuzzy-animal exception is a proper legislative exercise.
- Court of Appeals: This approach is not how to construe the constitution.
  - “In undertaking such a task, we consider ‘the intent of the people who adopted it,’ looking to ‘the history of the times out of which it grew and to which it may be rationally supposed to have direct relationship, the evils intended to be remedied and the good to be accomplished.” *Edgewood ISD v. Kirby*, 777 S.W.2d 391, 394 (Tex. 1989)
  - Because discerning ancient intent is difficult, must rely on the plain language of the constitution.



# Court of Appeals—Round 2

- Court of Appeals:
  - “Certainly by 1876, a lottery was understood to involve the elements of chance, consideration, and prize.”
  - This is reinforced by the 1874 *Randle* decision which recognized these elements.
  - “The legislature simply can’t ‘change or ignore the meaning of the constitution's text.’”
  - **“Because the Operators stipulated that their eight-liners award prizes by chance and for consideration, the machines are lotteries, and the legislature cannot define around that fact.”**

# Court of Appeals—Round 2

- “In sum, the Operators’ eight-liners are lotteries, and they are unconstitutional. Accordingly, because Occupations Code Section 2153.003 provides that Chapter 2153 does not ‘authorize’ or ‘permit’ unconstitutional machines, the Code’s preemptive effect—argued by the Operators as a way to avoid the City’s ordinances—falls by the wayside.

# Texas Supreme Court — Round 2

The Game Rooms filed a petition for review in the Texas Supreme Court, after extensive briefing requested by the Court, the Court denied Petitioners' request.

A motion for rehearing was also denied.

# Amended Ordinances

- “Left open is what happens now with those ordinances. As the supreme court noted, ‘Of course, a finding that the machines are unconstitutional or illegal would also lead to the question whether the City could license, regulate, and tax them the City’s ordinances.’” *Rylie III*, n.20
- The City banned eight liners, amusement redemption machines, in 2024.

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# Enforcement



# Enforcement

## Revised Ordinance Prohibiting the Gambling Devices

- As mentioned, the City passed a revision of our code of ordinances to prohibit the machines.
- We chose to place the prohibition in our zoning ordinance under “License and Miscellaneous Business Regulations”, “Amusements,” “Game Rooms and Amusement Redemption Machines”
- We provided appropriate definitions.

# Enforcement Section:

## c) Enforcement.

- 1) In addition to prohibiting certain conduct by individuals, it is the intent of this section to hold a corporation or association criminally responsible for prohibited conduct performed by an agent acting on behalf of a corporation or association and within the scope of the agent's office or employment.
- 2) The City of Fort Worth Municipal Court shall have the power to issue to the City Official or their designee search warrants, or other process allowed by law, where necessary to aid in enforcing this section.
- 3) A person who violates any provision of this section is guilty of a separate offense for each day or portion of a day during which the violation is continued. Each offense is punishable by a fine in accordance with applicable law.
- 4) This section may be enforced by civil court action as provided by state and federal law.
- 5) In addition to the criminal offenses and penalties prescribed in this section, the City may pursue other remedies such as abatement of nuisances, injunctive relief, administrative adjudication and revocation of licenses or permits. Any person found guilty of violating the provisions of this section shall become liable to the City for any expense, loss, or damage incurred by the City by reason of remediating such violation.



- Although we do have some game rooms there are quite a few convenience stores, gas stations and bars that have one to four machines like in this photo.

# Steps for Seizure:

- The legal team decided that using **warrants** to seize the machines was the best way to proceed. The warrant provides some protection for the City. (A sample warrant is attached)





The city was interested in the destruction of the machines rather than seizing and selling them. There was some history with the same machines ending up back at a game room in our jurisdiction.





## Notice:

After passing the ordinance, the City wanted to make sure the businesses were aware of the changes and provided notice so that there would be no surprises. The city had a list of all previously registered businesses and we sent a letter to over 200 businesses providing 45 days before enforcement to allow the business to remove the machines. (Copy of our letter is attached)

## Notice:

- After the deadline in the letter, we enlisted the help of community officers that specifically function to work within neighborhoods and engage with businesses and residents.
- The neighborhood officers approached each business on our list and any other businesses they knew to have machines.
- If the neighborhood officers found there to be the illegal gambling devices present, they provided a second warning letter which gave the owner an additional seven days to comply. (Our letter is attached)

# Next Steps

- We had a lengthy delay at this point due to vendor issues (I will discuss) However, the intent was that the neighborhood officers would return and if the business was still not in compliance, an incident report was created stating their observations and providing body camera footage.
- These reports were sent to our Vice Unit who obtained the warrant, served the warrant and seized the machines with its contents.
- Each of these machines has a locking mechanism and most often the key is not easily available. Any forced entry causes damage to the machine so we decided to seize the machine with the contents.
- If the owner happened to be present at the time of seizure we would allow them to remove the cash; however, the officers were not going to wait for someone to arrive later to open the machines.

# Next Steps

- After the machines were seized a request for a property disposition hearing was submitted to our Municipal Court.
- The city was interested in destruction of the machines rather than seizing and selling them. There was some history with the same machines ending up back at a game room in our jurisdiction.
- At the property disposition hearing, the City is asking for the award of the machines and its contents with the intent to destroy the machine and seize the funds.

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# The Process

- We needed the “buy-in” from law enforcement.
- We needed space to store the machines.
- Because of how heavy the machines are, we needed a vendor to move the machines from the business to our storage location.
- The storage location needed to be secure as per our general orders for storing items of value.



# The Process

- We have had multiple issues with trying to use a vendor. We ended up piggybacking on a vendor's contract for another department; however, that contract was ending soon so this was short-lived.
- We also needed a vendor for the destruction process; however, that was not immediate since we would not destroy the machines until 30 days after the property disposition hearing to allow for an appeal.

# The Process

- We have already had some push back from the industry stating that they now have machines that are ‘skill’ based.
- The Texas law and our ordinance states:  
“**Gambling device** means any electronic electromechanical, or mechanical contrivance that for a consideration affords the player an opportunity to obtain anything of value, the **award of which is determined solely or partially by chance...**”



# “Skill” Games

The Skill games operated by Skillcade Operations at this location are legal games of skill. As such, these games are not gambling devices under Texas law.

A customer can, with proper skill, win on each play of these games. First, the customer can place funds in the game and utilize the nudge feature; the customer can line up three of the same symbols to win; in order to do so, the customer utilizes skill to recognize the winning pattern and nudge the proper row to gain a winning play. Even if the customer does not win, the customer can utilize the second feature of “following the banana” to recognize the pattern necessary to successfully play this portion of the game. Upon doing so, the customer can and will win at least 104 percent of the cost of the customer’s entry to that game. There is a Help screen in these games to guide the customer on how to play and win these games.

There is no random generator in this game to determine whether a customer can win (or lose) on any play of the game. The skillful customer will always be able to win more than it cost to play a game, unlike a traditional slot or 8 Liner game. There is no retention ratio or “hold” in this game to ensure the game operator will be guaranteed a particular return. We have times when the customer wins much more than he/she loses by utilizing the skill features of this game. In other words, the skillful customer will win every time the game is played.







CAUSE NUMBER: CV-23-46347  
INRE: FIVE "LONESTAR SKILL MACHINES"  
IN THE DISTRICT COURT 336th JUDICIAL DISTRICT, FANNIN COUNTY, TEXAS

- “The standard urged by the State during the hearing-whether chance played any role in the operation of the game-is not the applicable legal standard. As Movants' expert, Dr. Olaf Vancura, explained, chance in the configuration of the puzzle presented to the player actually enhances the skill required to win the game. If the tic-tac-toe board presented to the player (or the sequence of colored dots presented in Follow Me) were always the same, or if the Player could choose the puzzle that would be presented, there would be far less skill required to accurately solve the puzzle.”

**2025 WL 1257268**

**This case went to an appeals court in Texarkana where it was affirmed in April, 2025.**

**Future of 8 Liners?**



# 18 U.S.C. 1955 Federal Illegal Gambling

- **Offense:** Operating, financing, managing, or owning an illegal gambling enterprise involving  $\geq 5$  persons for profit
- **“Illegal” Criteria:** Violates state/local law; runs continuously  $> 30$  days OR earns  $\geq \$2,000$  in one day
- **Key Elements:**  $\geq 5$  participants, “regular way of livelihood,” no lawful authorization
- **Penalties:** Up to 2 years’ prison (5 years if post-drug felony) and fines up to \$5,000 or twice the enterprise’s gross gains

# Federal Prosecution

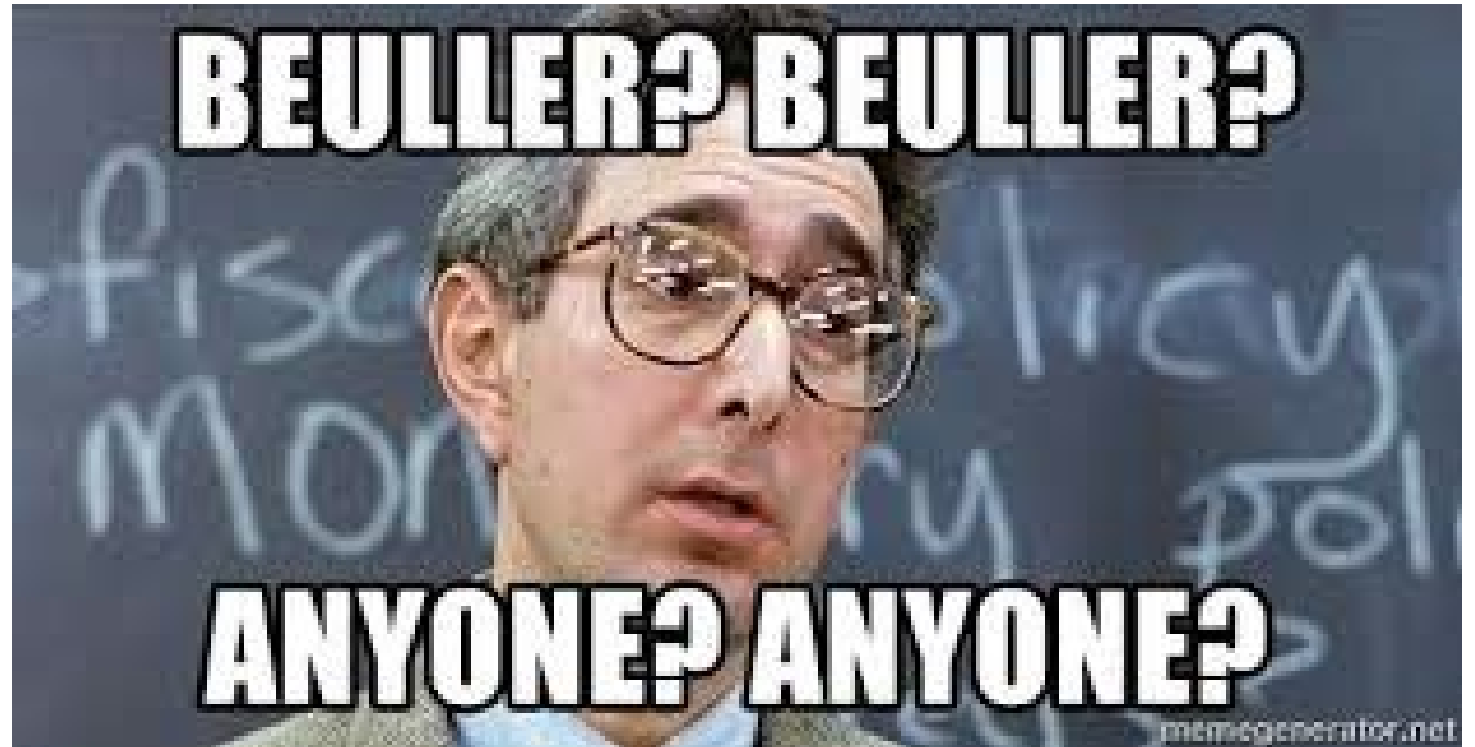
# What did this case involve?

- Thousands of 8-liners operating illegally or better known in the valley as “maquintas” in and around Lyford, Texas, Willacy County.
- Where was the County and local elected officials?
- Proceeds of a specified unlawful activity
- ATM's
- 8300's
- Silver Pellet scheme

# Why did the Federal Government get involved?

- Money laundering is just as DANGEROUS as any other crime
- Nexus with banking system
- Potential for violence better known as “Rips”

What to do if  
your local  
government  
or County is  
not acting?





QUESTIONS?