

CITY OF CAMBRIDGE

CITY HALL, CAMBRIDGE, MASSACHUSETTS 02139

(617) 498-9020

LAW DEPARTMENT

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LEGAL COUNSEL

April 26, 1982

Mr. Robert W. Healy
City Manager
City Hall
Cambridge, MA

Re: License Fees for Automatic Amusement Devices

Dear Mr. Healy:

Councillor Duehay has requested my opinion regarding the legality of a proposed amendment to §12-12(g) of the General Ordinances, which provides that an applicant having four or more automatic amusement devices shall pay an annual license fee of \$100/device, whereas an applicant having fewer than four devices shall pay \$20/device.

The governing statute, G.L. c. 140, §177A(4), as amended by St. 1981, c. 351, §83, provides:

The annual fee for a license under this section for any automatic amusement device licensed hereunder...shall be twenty dollars, unless otherwise established... in a city by city council action... by adoption of appropriate...ordinances to set such fees, but in no event shall any such fee be greater than one hundred dollars.

At the outset, I doubt that the Legislature intended to authorize cities to charge different fees depending on the number of devices in the establishment. Before the 1981 amendment, §177A(4) authorized a flat fee of \$20/device, and it seems to me that the intent of St. 1981, c. 351, §83 was merely

to authorize municipalities to establish a flat fee within the range of \$20-\$100. If the Legislature had intended to authorize the kind of fee schedule proposed here, it seems to me that they would have made their intention clear.

If it is argued that the proposed ordinance is authorized by G.L. c. 140, §177A(4), the remaining question is whether it is constitutional.

Where, under the police power, a license is required and a license fee charged for a place of amusement, the license fee must be nondiscriminatory, and must be limited to a charge which is reasonably related to the expense of issuing the license and the reasonable cost of supervision, regulation, and inspection. 4 Am. Jur. 2d, Amusements and Exhibitions, §32 (1962).

The Constitution does not require that exactly the same sum be charged everyone obtaining a license. Distinctions, however, "must not be arbitrary, but must be based on some reason or practical necessity...." 51 Am. Jur. 2d, Licenses and Permits, §39. According to McQuillin:

Classifications embodied in municipal licensing legislation must be based upon intrinsic, natural and reasonable distinctions germane to the police or revenue purpose of the law. The difference between the subjects need not be great; and if any reasonable distinction can be found to exist, the classification imposed by the licensing laws will be sustained. The classification may reasonably distinguish between business or trades or between subclasses of businesses, or between different methods of conducting the same general character of business or trade, but ordinarily not between persons engaged in the same trade or pursuit....

9 McQuillin, Municipal Corporations, §26.60 (1978).

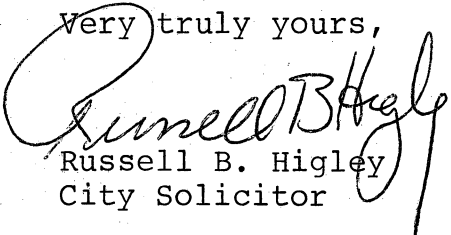
One reason for setting different fees might be a difference in the amount of police supervision required. 51 Am. Jur. 2d, Licenses and Permits, §39 (1970). Thus, the difference could be supported if it could be shown that establishments with four or more devices require more supervision.

April 26, 1982

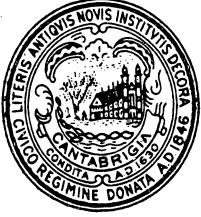
Further, regarding "activities that, though tolerated, are recognized as being hurtful to public morals, productive of disorder, or injurious to the public, the courts have indicated that the amount exacted may be such as to effect a reasonable restriction or restraint or a practical prohibition of the activities." Id., §40. If automatic amusement devices fall within this category, the classification could be defended on the ground of encouraging establishments to have fewer than four devices.

If the fee in question is a license fee imposed under the police power for the purpose of regulation (as seems likely), as opposed to a tax for revenue (see McQuillin, op. cit., §26.15), then the reason for the classification would have to be related to the regulatory purpose. See McQuillin, op. cit., §26.60, p. 131: "When a city taxes only for police supervision of a class of business, that business must be classified on the basis of the necessity of police supervision, and it is not due process to use any other basis."

Very truly yours,


Russell B. Higley
City Solicitor

RBH:jl



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Tel. 498-9011

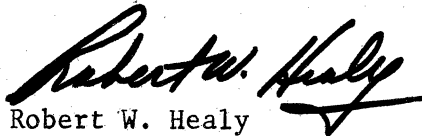
EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

May 3, 1982

To the Honorable, the City Council:

I transmit herewith communication from Russell B.
Higley, City Solicitor, relative to License Fees for
Automatic Amusement Devices.

Very truly yours,


Robert W. Healy
City Manager

RWH/b

Agenda Item Number Two

S-397

Re: opinion from the City Solicitor regarding license fees for Automatic Amusement Devices.

In City Council,

May 3, 1982

Placed on File -