



COMMONWEALTH of VIRGINIA
Office of the Attorney General

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MEMORANDUM

TO: Members of the Virginia Association of Commonwealth's Attorneys
Virginia Association of Chiefs of Police
Virginia Sheriffs' Association

FROM: Attorney General Jason S. Miyares

DATE: September 26, 2024

RE: Legality of new QVS2 devices under Virginia's illegal gambling/skill games law

Recently, there have been news reports about new gaming devices called "QVS2," manufactured by Pace-O-Matic/Queen of Virginia Skill, which appear to have been specifically designed to attempt to evade Virginia's ban on skill games under Va. Code § 18.2-325. An investigative team from my office has observed the QVS2 games at multiple Virginia establishments and analyzed the language of Virginia's skill games ban. For the reasons set forth in this memorandum, it is my opinion that the QVS2 gaming device is an illegal "skill game" and therefore, an illegal "gambling device," under Virginia law. Manufacturers and operators who choose to possess illegal devices are advised that there are criminal and civil penalties for participating in illegal gambling, including a \$25,000.00 civil penalty *per device*. Moreover, manufacturers and operators should also remember that the opinions of retained private attorneys are not determinative of the legality of these devices. I trust that my analysis will be helpful to your members as they enforce compliance with Virginia's gambling laws and end any attempts to circumvent the law.

I. FACTUAL BACKGROUND

In a recent news article,¹ Pace-O-Matic ("POM"), the largest "skill game" company operating in Virginia, celebrated its new gaming device which it touted as being a "new, legally

¹ Graham Moomaw, *Exclusive: Top skill game company putting new machines in Richmond area despite attempted ban*, Virginia Mercury, Sept. 12, 2024,

compliant skill game technology.” Pace-O-Matic believes that it has found a loophole in Va. Code § 18.2-325, the illegal gambling statute. According to POM, its new QVS2 device is ***not*** a banned “skill game.”

To support this theory, POM sent an August 2024 letter to a law firm asserting that the QVS2 device was compliant with Virginia law and asking the law firm to confirm POM’s theory.² One week later, the law firm produced a letter affirming POM’s theory of legality.³

POM’s letter to the outside law firm reveals that the only material difference between POM’s original, banned QVS machines and the new, purportedly compliant QVS2 machines, is that POM has removed a physical bill collection slot from the QVS2 machines.

Pace-O-Matic, Inc. (“POM”) has developed a new version of its popular Queen of Virginia skill game (“QVS2”) **which fully complies with the current laws of the Commonwealth of Virginia**. As described herein, **the new QVS2 game is not an illegal chance-based gambling device because it is a game of skill, not chance**. Moreover, **it does not qualify as an illegal “skill game” under the skill game ban** that was enacted in 2020 and amended in 2022 because, unlike the original QVS game, **the new QVS2 game does not “require[] the insertion of any coin, currency, ticket, token, or similar object to operate, activate, or play the game.” Va. Code§ 18.2-325(6)**. Instead, the QVS2 game is activated and credits loaded onto the game through a touchscreen point of sale (“POS”) system located behind the cashier counter, which itself does not require the insertion of any coin, currency, ticket, token or similar object to operate or activate.⁴

Importantly, the banned QVS skill games contain the same type of games featured on the new QVS2 device. POM admits that there is no material difference in gameplay between the original, banned QVS skill games and the new QVS2 machines: “The rest of the QVS2 game is similar to the original QVS game. The games that are available for play have been updated, the graphics have improved, and some of the game themes have changed, but the mechanics of game play are substantially similar to the original QVS game.”⁵ In short, to create the QVS2 device, POM replicated the gameplay and functionality of the original, banned QVS device and removed the money deposit slot.

The only real difference between the banned QVS device and the new QVS2 device is the way the player pays to play the game. To use the QVS2 device, instead of putting money directly into the machine, the player gives the money to a cashier, who puts the money in a

<https://www.richmonder.org/exclusive-top-skill-game-company-putting-new-machines-in-richmond-area-despite-attempted-ban/> (last visited Sept. 20, 2024).

² August 22, 2024 letter from Queen of Virginia Skill to Womble Bond Dickinson, LLP, at 1 (emphasis added).

³ August 29, 2024 letter from Womble Bond Dickinson, LLP to Queen of Virginia Skill.

⁴ August 22, 2024 letter from Queen of Virginia Skill to Womble Bond Dickinson, LLP, Aug. 22, 2024, at 1.

⁵ *Id.* at 4.

receptacle and presses buttons on a touchscreen interface which communicates with the QVS2 machine to tell it how much credit the player has purchased. **This slight alteration of the payment method appears to be designed to evade enforcement, and it does not change the fact that the QVS2 device is still likely an illegal “skill game” under Va. Code § 18.2-325.**

II. ANALYSIS

Under Virginia law, “skill games” are “illegal gambling” devices.⁶ The Code defines “skill game” as follows:

“Skill game” means an electronic, computerized, or mechanical contrivance, terminal, machine, or other device that requires the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game, the outcome of which is determined by any element of skill of the player and that may deliver or entitle the person playing or operating the device to receive cash or cash equivalents, gift cards, vouchers, billets, tickets, tokens, or electronic credits to be exchanged for cash or cash equivalents whether the payoff is made automatically from the device or manually.⁷

Under the “plain meaning” rule of statutory construction, unambiguous statutory language must be given its plain meaning so that the General Assembly’s intent is given effect—unless a literal interpretation of the language would result in a “manifest absurdity.”⁸ And although the illegal gambling/skill games ban statute is a penal statute that must be strictly construed against the Commonwealth, courts “will not apply an unreasonably restrictive interpretation of the statute that would subvert the legislative intent expressed therein.”⁹

The General Assembly’s skill games ban¹⁰ was a valid exercise of the police power to regulate illegal gambling. The Supreme Court of Virginia agreed, upholding the ban in litigation brought by the same law firm now opining that the QVS2 devices are legal.¹¹ The QVS2 device offers the same type of banned “skill games” as its predecessors. The operative question is whether the QVS2 device’s new payment processing system requires “the insertion of a coin, currency, ticket, token, or similar object to operate, activate, or play a game.” My opinion is that it does.

POM asserts that because players no longer physically deposit money into the new QVS2 device, the QVS2 device is not a “skill game” because no money is “inserted” into the machine. This argument creates a “manifest absurdity” of the General Assembly’s clearly expressed intent to ban the type of skill games found on the QVS2 device.

⁶ Va. Code § 18.2-326(1).

⁷ Va. Code § 18.2-326(6).

⁸ *Bland-Henderson v. Commonwealth*, 303 Va. 211, 218 (2024) (citation omitted).

⁹ *Alger v. Commonwealth*, 267 Va. 255, 259 (2004) (citation omitted).

¹⁰ 2020 Va. Acts of Assembly cc. 1217, 1277.

¹¹ *Commonwealth v. Sadler Bros. Oil Co.*, No. 230610 (unpublished order) (S. Ct. Va. Oct. 13, 2023).

POM asserts that the QVS2 device does not require the “insertion” of money. This argument fails, because the QVS2 machine does not activate unless and until a “token or similar object” representing the player’s money is inserted into the device. To play the QVS2 device, the following steps ensue:

1. The player presents the cashier with an amount of cash representing the desired amount of playing credits they want to apply to the QVS2 game.
2. The cashier inserts the player’s cash into a dedicated, secure bag that only contains money players use to play the QVS2 game.
3. The cashier presses buttons on a touchscreen computer that is connected by an ethernet cable to the QVS2 game. The buttons indicate how much cash the player has deposited.
4. The touchscreen computer inserts lines of computer code into the QVS2 machine representing the amount of credit the player has purchased.
5. The player plays the QVS2 games until their prepaid credit is exhausted, or until they decide to quit.

Said more succinctly, the player gives cash to the cashier, the cashier inserts the cash in a bag, and the cashier inserts a line of code into the QVS2 game corresponding to the amount of cash the payer just paid. The General Assembly anticipated, and intended to prohibit, this “tokenization” of currency for use in illegal skill games.¹² Indeed, our understanding of the term “token” has expanded in the last ten years to include cryptocurrency tokens, which are not a physical, tangible asset, but rather, an intangible digital representation of value.

The fact that payment is applied to the QVS2 machine by the cashier instead of the player does not matter, because the definition of banned “skill games” includes any insertion of payment by any person.¹³ Neither does the removal of the deposit slot from the device itself change the scenario, because a banned “skill game” broadly requires insertion of money into any receptacle for the purpose of “operating, activating, or playing” the game.¹⁴

The legal arguments in favor of POM’s new QVS2 device create a straw man of the intent behind the General Assembly’s skill games ban. Virginia’s skill games ban focuses on the type of games offered, not the method of payment. Currency, whether by bill, coin, token, or digital transfer by ethernet cable, is what activates the QVS2 device, and that is what makes the QVS2 a banned skill game.

¹² When an unambiguous term such as “token” or “object” is used in a statute but not specifically defined, Virginia courts “consult general-purpose dictionaries. *Tomlin v. Commonwealth*, 302 Va. 356, 372 (2023). “Token” means “something serving to represent or indicate some fact, event, feeling, etc.; sign.” (<https://www.dictionary.com/browse/token>) “Token” also means something intangible like “a unit of a cryptocurrency.” (<https://www.merriam-webster.com/dictionary/token>). “Object” includes “any item that can be individually selected or manipulated, as a picture, data file, or piece of text” or “a self-contained entity that consists of both data and operations to manipulate the data.” (<https://www.dictionary.com/browse/object>)

¹³ Va. Code § 18.2-325(6).

¹⁴ *Id.* § 18.2-325(6).

III. CONCLUSION

The General Assembly banned “skill games” as illegal “gambling devices” in 2020, and this ban applied to POM’s original “QVS” skill games. The QVS2 device offers skill games that are virtually identical to the prior banned version. The fact that the new QVS2 device has a different payment system does not change the fact that players are presenting money for the sole purpose of digitally inserting the money, or a representative token thereof, into the QVS2 machine. The QVS2 device therefore is a “skill game,” meaning that it is a banned “gambling device” under Va. Code § 18.2-325.

As such, it is my opinion that individuals who play QVS2 skill games in Virginia are subject to provisions of § 18.2-326. Furthermore, businesses offering QVS2 skill games to the public are subject to the provisions of §§ 18.2-328, 18.2-329, 18.2-330, 18.2-331, 18.2-331.1, 18.2-338, 18.2-339, and any applicable and duly enacted local codes or ordinances. Finally, manufacturers of illegal gambling devices such as the QVS2 are subject to the provisions of §§ 18.2-330 and 18.2-331.