

**COMMITTEE ON ADMINISTRATION/
INFORMATION SYSTEMS**

March 11, 1997

5:30 PM

Chairman Pariseau called the meeting to order.

The Clerk called the roll.

Present: Aldermen Pariseau, Sysyn, Shea, Hirschmann

Absent: Alderman Elise

TABLED ITEM

On motion on Alderman Shea, duly seconded by Alderman Hirschmann, it was voted to remove the following item from the table for discussion.

Chairman Pariseau addressed item 3 of the agenda:

Communication from the Chief of Police relative to Alderman Robert's proposal to ban video poker machines within the City of Manchester.
(Tabled 2/18/97)

Chief Driscoll stated I think that the members of the Committee are fairly well versed in this issue, we asked the full Board some time ago to allow us to be heard before them, and made a presentation that touched some of the bases that were of interest to you at that time, and I would just refresh your memory on those issues. We talked about the effects of gambling on the community, the laws and ordinances, the problems the Police Department has with prosecution, enforcement issues, money involved and spent on these machines by citizens, the revenue issue, Manchester v. other communities, the fact that it is not a victimless crime, it is intertwined with a number of other areas that are very hard to deal with in our community. At that time we asked the full Board to conclude a couple of things, we asked them to conclude that the machines are not used for amusement only, that they are in fact gambling machines, and that gambling machines are unlawful. If you make those three conclusions, and I think we presented a very good case, we then presented what we believe is the appropriate alternative, being

to ban them. We presented at that time an amendment to the ordinance, and asked the Board to look at it, it was then referred back to this committee and we find ourselves here tonight. I have spoken with Tom Arnold and drafted that ordinance and have provided the committee with a copy. The change to the ordinance takes out the word "electronic video poker machines" from the definition, deletes the \$1,000 licensing fee, and changes 111.49, and the substance of that change is on the second page, updating it to state that:

It is hereby found and determined that those devices known as electronic video poker machines are gambling devices, and as such they may not be licensed nor shall any person possess for use a video gambling machine in a public or private place and their use is prohibited within the City of Manchester.

Sections C and D are also new, mentioning \$1,000 fine, the Board brought it to my attention that the new ordinance did not have a fine, but it would bring a \$1,000 fine for possession or violation of this section, and that fine would be for every day of violation as opposed to one violation. The other thing it does is in section D it allows the police department to destroy any of these machines that are confiscated or seized in violation of this ordinance and to be destroyed to prevent and re-use. I realize that there is a compromise proposal submitted by Attorney Kelley, I think it is unacceptable, in the eyes of the police department. That compromise proposal in fact authorizes or legitimizes gambling, it would allow the social clubs to have the machines in there. In my heart know that the only reason they are there is to gamble with. For us to condone or support the video gambling machines in the clubs would be wrong, it would be wrong for the community, and would send the wrong message and I hope the committee does not support that. When you weigh the pros and cons of the issue I think you will believe that this ordinance is a positive thing for the community and I hope you will support it.

Chairman Pariseau stated we recognize, and your own investigation has said that these video poker machines are in Nashua and Concord and other localities. They are not banned. I guess my problem is, if you are aware that there is gambling is going on, why aren't you doing something about it?

Chief Driscoll answered we have done it in the past, arrested people. Basically what happens is we will take someone into custody, the person is the one working for \$5.00 an hour baby-sitting five machines, that person is arrested and goes to court, the person that owns the machines will pay the fine and attorneys fees, that person doesn't talk to us. What we have done is put the little fire out while spending a huge amount of resources to do that. I remember explaining to this

committee that we potentially spend as much as ten times the revenue that we would use for a gambling investigation to do drug investigations. We can do ten drug investigations for the same resources for one two-count gambling investigation. It is so manpower intensive, there is no reward at the end. Chairman Pariseau stated if we were to accept the compromise where these machines would only be available in licensed liquor facilities, the liquor commission would be the enforcement arm that would take care of that, wouldn't it?

Chief Driscoll answered the Manchester Police Department has the full authority and responsibility to enforce laws within our community. We would just be turning a blind eye to the problem and condoning the problem.

Brief discussion ensued regarding what the City may have previously done regarding limiting video poker machines.

Asst. Chief Robinson stated we have worked with the liquor inspectors in the past, and if through our investigation we can prove that there is gambling in the clubs, then at that point the liquor commission will take administrative action against their license. The liquor inspectors do not do the gambling investigations. If they come across evidence of that, as they have in the past, they will turn it over to us. One of the things the Chief said, and I know because I was in the investigative division at the time, is how manpower intensive those investigations are. We have to prove that each and every machine was used illegally, it is extremely difficult, it is not cost effective, we are not spending the tax dollars of the citizens wisely by trying to do those investigations. We have already proven that in the past, not only did the police department take a large black eye, but all of the work we did, the most you could get out of it was a misdemeanor, and these places were back in operation the next day. If we do spend our money to look at the other crimes such as drugs, we have a better result. What we are going to do if we go with the Kelley amendment is Manchester will probably have one of the highest ratios of social clubs in the city.

Chairman Pariseau stated wouldn't that assist you to eliminate the mom and pop locations?

Chief Driscoll stated no, in fact it would hurt us. We are welcome in the mom and pop stores, we are welcome in the doughnut shops and the dress shops and all of these other places, but we don't normally go into the social clubs unless we are invited in or unless they call with a problem

Asst. Chief Robinson stated they are private so we do not have a right to walk in to any private club unless we are called for a service.

Alderman Sysyn stated that was what the liquor license was supposed to do locally, and it was not effective, that is why I don't like doing it now. When we did the liquor license law into effect, and I remember fighting with it, and nobody backs us with it. The State won't come and tell us to ban the machines either.

Chief Driscoll stated there has been a written communication to the Attorney General's Office, and Jeff Howard, although he is no longer there, told the Mayor that he would get back to him. I know we have requested a written opinion but haven't received it yet. However I think that unofficially they stand behind their position which was given to the Union Leader a couple of weeks ago. They don't feel that it is appropriate for them to advise a municipality on what they should do.

Alderman Sysyn stated the State never said we could ban the machines and they never stood behind us when the liquor license law went into effect.

Alderman Shea asked of Mr. Arnold, do you anticipate any problems if the machines are banned in terms of enforcing an ordinance such as this?

Mr. Arnold stated if you are asking me for an opinion as to the ability of the City to enact such an ordinance and enforce it I would suggest you go into recess to meet with counsel.

Alderman Shea stated another thing we have to consider here is that those people that are using these machines for purposes other than entertainment are breaking the law. We have to pay income taxes on what we earn, but they are not paying income tax on what they earn because of the illegitimacy of the operation. So basically those people...

Chairman Pariseau stated we don't know, we assume that there is gambling going on, but the police have not arrested anyone associated with gambling on those machines in the last four or five years.

Chief Driscoll stated less than that. With all due respect, anyone present who does not believe or accept the fact that these are used for gambling are fooling themselves.

Alderman Sysyn stated yes but I don't think we can go after them.

Chairman Pariseau stated regardless of what happens here tonight, unless we have a change, I wanted to get this to the full Board, and no matter who makes what motion, I anticipate that it would be a two/two vote, and things would die right here in committee. So, we neither ban the machines nor approve them. I would make the suggestion that we forward this item to the full Board for reference without an opinion.

Mr. Girard stated it is within the committee's purview to send it to the full Board without recommendations, but before you do that I would like to note that the committee on Administration, as the committee's are set up now, is the policy committee that has jurisdiction in this matter, so if the committee decides not to offer a recommendation as to ban or not to ban, then it would lie with the full Board to determine the policy and then for ordinance purposes, after the full Board makes that determination, to send it to Bills on Second Reading, then it would be up to Bills on Second Reading To do what the Board enacted as policy. I have a letter for the Committee that was hand delivered to the Attorney General from the Mayor's office reiterating the request for a written opinion. It would be appropriate for me to reiterate that the Mayor is in support of the ban and also for that reason, he does not support the compromise offered by Attorney Kelley. Among other things, he feels that all it would do is legitimize the fact that they are being used for illegal purposes and does not believe that removing some places where the machines are would only cause greater activity where the machines remain, and cause new establishments to get machines and will concentrate criminal activity in particular areas and neighborhoods that really don't need the help with more crime.

Chairman Pariseau stated can I get a clarification on somebody who knows, if there is a two/two vote whether to ban or approve, what happens, does banning die?

Deputy Clerk Bergeron stated if it is a two/two vote without tabling, without anything, it in essence dies. The committee has the option of referring it to the Board without recommendation, it could table it.

Chairman Pariseau asked would those of us that support not banning the machines accept the vote as two/two?

Asst. Solicitor Arnold stated there could be two reports, I presume that if it were a two/two vote, there would be a report to the Board that there was a two/two vote. If there is not a majority of this committee to make a re

Chairman Pariseau stated a two/two vote would kill whatever purpose this meeting was.

Mr. Girard answered no. Whichever motion is made...

Mr. Arnold answered as Mr. Girard points out, it is a parliamentary question, rather than a legal question. If there is not a majority of this committee to make a recommendation one way or the other, there would be no recommendation from the committee. But I presume the committee's action or vote would be conveyed to the full Board and the full Board could then act as it sees appropriate.

Alderman Shea stated I would prefer if the whole Board was allowed to vote on this matter, either for banning them or not banning them. I would make a motion that we ban the machines. I would refer the matter to the full Board with the recommendation that we ban the machines.

Mr. Girard stated you are looking, it seems, at a two/two situation, if there is a motion to ban, and that motion goes two/two, that motion fails. If you have a motion to accept the compromise, and that goes two/two, that motion fails. The item stays on the table undisposed, at that time if the committee wants to send it to the Board without recommendation, a motion to move to the Board without recommendation would be appropriate or, the only other appropriate manner would be to table it here at committee because there is not a majority vote one way or the other. The item does not die, it just does not have a majority to carry it one way or the other.

On motion of Alderman Shea, duly seconded by Alderman Hirschmann, it was voted to table the item.

OTHER BUSINESS

Chairman Pariseau addressed item 4 of the agenda:

Communication from Robert McKechnie indicating his concerns relative to the business licensing fees assessed to his establishment.

Mr. Bergeron stated the situation involves two craft shops located on Second Street in the Mallard Pond mall. I'll try to give the history in a nutshell and then Mr. McKechnie can explain his situation, and Mr. Normand is here with all the

details, and if there are questions, he can respond to them. From our office's perspective, the license was issued to Thelma Hodgdon for unit #7 at the Mallard Pond location for a craft shop and poker machine license. Thelma Hodgdon moved that business, from what we understand, all the assets and inventory and video poker machines that were in unit #7 over to unit #12. By doing that, they moved the location of that business, and therefore we required that they get new licensing. Mr. McKechnie opened up a business, same type of business from what we can tell, a craft shop with video poker machines, at unit #7. Mr. McKechnie is currently operating under the name New England Crafts. Although Mr. McKechnie went into the location that Hodgdon used to be at, we required him to get a new license, arguing that it was a new business. Mr. McKechnie is arguing that it was always his business in the first place, but Hodgdon had moved out and he is continuing the business that the Hodgdon's were operating for him.

Chairman Pariseau asked is Hodgdon still running a business at #12?

Mr. Bergeron answered yes. From our perspective, there was a business at unit #7 that moved to #12, requiring a new license, a new business came in to #7, requiring a new license.

Alderman Shea asked how much is the license?

Mr. Bergeron answered about \$1,262.50 because there were five poker machines, pro-rated.

Chairman Pariseau asked what does he run? An arts and crafts shop with five poker machines?

Mr. McKechnie stated unfortunately Mr. Bergeron left out a few important details. I can show you by the lease that was signed on the property back in May of 1996, shows Robert McKechnie d/b/a/ Mallard Pond Crafts. Unfortunately I got burnt by a person who I thought was going to be a good manager which was W.D. Hodgdon, or Bill Hodgdon. Now Thelma Hodgdon never had anything to do with it and you can see that the building permit was taken out by W.D. Hodgdon, and the license Mr. Bergeron is speaking about was taken out by Thelma Hodgdon. So they sold me a bill of goods and put the screw into me bad on this one. I opened up Mallard Pond Crafts and Consignments on Second Street, that was my business, I hired William Hodgdon to manage it and get it operating for me. He came to the City to get the proper permits like I asked him, not realizing he was taking the permits under a different name. I was blinded by this one, but as you can see by my original lease, it shows Robert McKechnie d/b/a/ Mallard Pond Crafts at #7 Mallard Pond Plaza. Now when I threw Mr. Hodgdon out and put a

new manager in, he in turn went to the State, where I thought I had registered the trade name, and registered it himself and took it from me. All my bills, everything, come under Mallard Pond Crafts in my name, but because he registered the trade name, I had to lose it. Therefore I had to register the trade name of New England Crafts. I am still there, in unit #7, I have always been there, I just changed management. When I threw Mr. Hodgdon out, he moved into another unit in the same plaza.

Chairman Pariseau stated it appears that the Business License Application has been altered as to the Applicant, Wilfred had been scratched off, and then it has Thelma written above, and various other scratchings.

Mr. McKechnie stated that was where he blindsided me by filing a illegitimate permit.

Chairman Pariseau stated on page four it states the sole proprietor owner is Thelma Hodgdon, but then it looks as though it is signed by Wilfred Hodgdon.

Mr. McKechnie stated that permit should never have been issued because of that.

Chairman Pariseau stated that signature is not even close to Thelma. Anyway, what you are saying is that Hodgdon should be the one to come in and get the new license.

Mr. McKechnie stated they charged him for it, they are double dipping here, they charged him for his permit and they are charging me for mine.

Chairman Pariseau stated the business was registered to #7, the owner of the business, Hodgdon, moved to #12, I suspect that the license would be transferred over to #12?

Mr. Bergeron answered we can't transfer the license, so when the Hodgdon's moved, and took with them all of the assets of the business, they took the trade name, themselves...

Alderman Hirschmann asked what triggered Mr. McKechnie to come in on 2/4 and fill out this paperwork? The application for a license.

Mr. McKechnie answered that was when I found out that they had registered the trade name, so I came to the City Department to make sure I was legit, and everything was right, and because they stole my name I had to give you the different name.

Alderman Hirschmann stated you don't have any evidence that you paid for the original permit, there is no receipts, nothing.

Mr. McKechnie stated I can get receipts but I don't have them with me. If you look at the lease the original business was under my name d/b/a/ Mallard Pond Crafts, all the bills were in my name.

Alderman Hirschmann stated except for the business license.

Mr. McKechnie stated I know, but this lease here shows myself...

Alderman Hirschmann stated my name is on a few leases around town too.

Chairman Pariseau stated I know what you are saying, and we are not lawyers but I suspect that you need one. We are going with what we have, and I would say you have to pay those license fees.

Alderman Hirschmann stated there is nothing to substantiate your claim.

Mr. Normand stated when Mr. McKechnie originally came in, he did show me the lease and that was why a permit was changed as you see on page 6. Mr. McKechnie came in, he stated exactly what he said here, that he recognized on the license that Thelma Hodgdon was listed and that was not the correct owner. I asked him what he had to show, he showed me the lease agreement and I took that at face value. Now since that occurred, you should have in front of you, with the top page being the building permit. Number one is the building permit, that is in Mr. Hodgdon's name, page two is the checks that Mr. Hodgdon paid for the Sunday license and the video poker machines, page three is a credit memo from McKechnie Property Services to Mallard Pond Consignments, and these represent rent payments made by Mr. Hodgdon to Mr. McKechnie, for the business. Page four is McKechnie Service's bill to Mallard Pond Consignments for utility payments for the space.

Mr. McKechnie stated I have to document this for my accountant. These are all McKechnie Property Services which is what this business has fallen under.

Mr. Normand stated pages five, six and seven are all canceled checks which I reflected on the itemized statement on the first three pages and the last two pages are an agreement with Coffee Pause, a company that provides a coffee service to Mallard Pond Crafts. On the last page is correspondence from I am assuming Mr. McKechnie who claims that this account is renting from him and he wants

equipment picked up. They are leaving as of 2/1/97, he is getting new tenants. Based on this information, this entire packet, we felt, in conversation with the Solicitor's office, myself and Mr. Bergeron, felt that this evidence far outweighed the lease agreement, and we were unsure what the lease agreement proved.

Chairman Pariseau stated I think we will take this under advisement, and you should contact the City Solicitor's office in a day or two. I would say that McKechnie has no alternative, that it is a lesson learned and he must pay the license fees.

On motion of Alderman Shea, duly seconded by Alderman Hirschmann it was voted that Mr. McKechnie must pay the license fees.

NEW BUSINESS

Chairman Pariseau advised that under New Business there was a memo relative to approval for a Circus license for the Bektash Shrine Temple.

On motion of Alderman Sysyn, duly seconded by Alderman Shea, it was voted to approve the license request.

There being no further business to come before the Committee, on motion of Alderman Sysyn, duly seconded by Alderman Shea, it was voted to adjourn.

A True Record. Attest.

Clerk of Committee