

IN RE:

**DECLARATORY RULING
BY THE SOUTH DAKOTA
LOTTERY COMMISSION**

**RULING 90-6
ARSD 48:02:11:02(3)
Guideline for Determining
Separate and Distinct Facilities**

RULING: A "licensed establishment" is defined in SDCL 42-7A-1(9) as "any establishment owned or managed by an individual, partnership, corporation or association licensed to sell alcoholic beverages for consumption upon the premises where sold." SDCL 42-7A-44 states that no more than ten video lottery machines may be placed in any licensed establishment. "The placement of video lottery machines in licensed establishments shall be subject to the rules of the commission promulgated pursuant to chapter 1-26."

The rules promulgated by the Commission for machine location and placement within a licensed establishment is contained in ARSD Chapter 48:02:11. The rules are concomitant with the legislative intent that restricts a licensed establishment to no more than ten machines within the same legally described premises licensed for the on-sale consumption of alcoholic beverages. The rules are also consistent with the legislative intent to prohibit a "casino-type" atmosphere by the imposition of the ten machine limit for each licensed establishment.

The commission has been requested to further define what constitutes "separate and distinct physical facilities" pursuant to ARSD 48:02:11:02(3), for purposes of granting an establishment license. As used in ARSD 48:02:11:02(3) the term facility is commensurate with the term building. Persons who hold multiple on-sale alcoholic beverage licenses within a single physical structure may not be issued two or more establishment licenses for machine placement unless the businesses are operated within separate and distinct buildings or facilities. Webster's New Collegiate Dictionary 150th Anniversary Edition (1981) defines building as a "roofed and walled structure built for permanent use (as for a dwelling)." The Commission issues this guideline that includes, but is not limited to the following factors that will be considered in determining a "separate and distinct facility" for purposes of granting an establishment license:

1. A structure that shares a common wall or roof does not disqualify it from being two or more separate buildings;
2. In order for a building or facility to qualify as "separate and distinct," each building or facility licensed as an establishment must have its own separate exits and entrances. Two (2) or more buildings or facilities can be created from one (1) building by use of an area separation wall. If two buildings are adjacent and share a common or party wall, there can be no inner public access between the two. The only way the public has access to the other building is by leaving the confines of that building or facility. This does not prohibit access to separate buildings or facilities through a common area or atrium, the premises of which is not a licensed establishment and contains no video lottery machines.
3. The alcoholic beverage license for each building or facility must contain a separate description for each establishment premise; each establishment must be identified under a separate business name and address; and sales tax remittances must be identified separately under the alcoholic beverage license of that establishment.
4. The Commission will recognize the State Gaming Commission's definition of a building under its rules, and grant establishment licenses in accordance with its determination of a building regarding those locations in the City of Deadwood.
5. All existing buildings, new construction, and remodeling of existing buildings must comply with the Life Safety Code as adopted by the city or county where the building is located. Floor plans for new construction or any proposed alteration or subdivision of an existing building may be submitted to the Lottery for the purpose of receiving an opinion on whether the structure meets the requirements of a separate and distinct facility for the issuance of an establishment license under the video lottery rules and regulations. An applicant has the right to appeal the Lottery's decision to the Lottery Commission pursuant to ARSD Chapter 48:02:03.

Dated this 9th day of April, 1990.

Jack Theeler, Chairman