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Rollins v. State, 354 So. 2d 61 (Fla. 1978)

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Constitutional Law—EQUAL PROTECTION—STATUTE DISTINGUISHING BETWEEN TYPES OF ESTABLISHMENTS IN WHICH BILLIARD TABLES ARE LOCATED HELD UNCONSTITUTIONAL—*Rollins v. State*, 354 So. 2d 61 (Fla. 1978).

Leon James Rollins owns and operates an establishment in Miami, Florida, known as South Florida Billiards. On September 1, 1976, Rollins was arrested for allowing minors in his billiards establishment in violation of section 849.06, Florida Statutes,[1] which makes it unlawful to permit anyone under the age of eighteen to visit, frequent or play in any billiard parlor in the state.

Rollins filed a motion to dismiss in the Dade County Court, arguing that the statute was arbitrary and discriminatory upon its face and violative of equal protection.[2] Upon denial of the motion, he pleaded nolo contendere, specifically reserving his right to appeal.[3] The court accepted the plea and fined Rollins fifty dollars.[4] On a direct appeal,[5] the Florida Supreme Court unanimously reversed the lower court and held that the statute contravened the fourteenth amendment to the United States Constitution and article 1, section 2 of the Florida Constitution.[6]

I. THE DECISION

Section 849.06 of the Florida Statutes is divided into four subsections.[7] Subsection (1) prohibits persons from allowing minors to either visit or play in any billiards establishment. Excepted from this provision are military personnel, married minors, minors whose parent or guardian has filed a signed and notarized permit with a specific billiards establishment, and minors accompanied by a parent or guardian. No such written permit is valid in any establishment where alcoholic beverages are sold or consumed.[8]

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1. (1977).
2. Rollins v. State, 354 So. 2d 61, 62 (Fla. 1978).
3. FLA. R. APP. P. 9.140 (b) (1). *See also* State v. Ashby, 245 So. 2d 225 (Fla. 1971).
4. 354 So. 2d at 63.
5. FLA. CONST. art. V, § 3 (b) (1).
6. 354 So. 2d 61.

The equal protection clause of the fourteenth amendment to the United States Constitution states that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

Article I, § 2 of the Florida Constitution states:

> Basic rights—All natural persons are equal before the law and have inalienable rights, among which are the right to enjoy and defend life and liberty, to pursue happiness, to be rewarded for industry, and to acquire, possess and protect property . . . . No person shall be deprived of any right because of race, religion or physical handicap.

7. (1977).
8. FLA. STAT. § 849.06(1) (1977) provides:

The second subsection of the statute excludes bowling establishments of at least twelve lanes from the proscriptions of subsection (1).[9] Subsection (3) provides for the development of parental approval forms,[10] and subsection (4) makes violation of the statute a first degree misdemeanor.[11] Rollins did not contest the validity of subsections (1), (3), or (4), but rather argued that the exemption for bowling alleys established in subsection (2) was arbitrary and deprived him of equal protection under the law.[12]

In examining the constitutionality of the statute, the Florida Supreme Court focused on the reasonableness of the classification.[13] Relying on two decisions by the United States Supreme Court, *McLaughlin v. Florida*[14] and *Royster Guano Co. v. Virginia*,[15] the court stated a general rule: "For a statutory classification to satisfy the equal protection clauses found in our organic documents, it must rest on some difference that bears a just and reasonable relation to the statute in respect to which the classification is proposed."[16] In applying this rule to the billiards statute, the court chose two Florida cases, *Moore v. Thompson*[17] and *Mikell v. Henderson*,[18] as examples of statutory classifications that bore no such reasonable relation.[19]

It is unlawful for any person, his servant or employee to permit anyone under the age of 18 years to visit or frequent or play in any billiard parlor in the state; provided, however, this shall not apply to any person on active duty in the Armed Services of the United States, or who has a written permit or card signed and notarized by his parent or guardian and filed in the establishment to which the permit or card is given by the parent or guardian of the minor involved, or a married minor, or when accompanied by parent or guardian. The said permit card shall be valid only in the establishment to which it is issued, and such permit card may be revoked at any time by the parent or guardian, or by the operator of said billiard parlor by returning the card to the parent or guardian, or by any law enforcement officer upon conviction of the party or parties of a crime. No written permit shall be valid in any establishment which sells or permits consumption on its premises of intoxicating or alcoholic beverages.

9. *Id.* § 849.06(2) provides: "Persons playing billiards in bona fide bowling establishments and persons frequenting such establishments are exempt from the provisions contained in subsection (1). For the purposes of this section a 'bona fide bowling establishment' shall be one consisting of 12 lanes or more."

10. *Id.* § 849.06(3) provides: "The Division of Beverage of the Department of Business Regulation shall be responsible for developing and issuing the parental approval permit prescribed in subsection (1)."

11. *Id.* § 849.06(4) provides: "Violation of this law shall be a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083."

12. Brief of Appellant at 5.

13. 354 So. 2d at 63.

14. 379 U.S. 184 (1964).

15. 253 U.S. 412 (1920).

16. 354 So. 2d at 63.

17. 126 So. 2d 543 (Fla. 1960).

18. 63 So. 2d 508 (Fla. 1953).

19. 354 So. 2d at 63-64.

Moore v. Thompson involved a Sunday closing law which applied only to used car dealers.[20] In *Moore,* the Florida Supreme Court held that the " 'valid and substantial reason' yardstick" had not been met because there was no sufficient reason for the law to apply to some, and not all, businesses.[21] The court reasoned that there must be some rational basis for treating used car dealers differently from other businesses in order for the legislature to subject only the used car dealers to a statutory restriction.[22]

The facts in *Mikell v. Henderson* make that case particularly relevant to *Rollins.* In *Mikell,* the validity of a cruelty to animals statute which forbade the raising, training, or fighting of gamecocks was challenged.[23] These statutory proscriptions, however, did not apply to cockfights on steamboats or other craft. Plaintiffs were gamecock breeders who conducted cockfights on land to determine the strongest birds for breeding purposes. In their request for a declaratory judgment, they argued that the different statutory treatment accorded to cockfighting on water craft violated the constitutional guarantee of equal protection under the laws.

The Florida Supreme Court agreed, noting that if a person's gamecocks happened to get into a fight on land, the breeder would be subject to arrest for cruelty to animals, but that same person would be within the law if the same cockfight occurred on any type of craft on the waters.[24] The court held that the statute violated both the federal and the Florida equal protection clauses because there was no reasonable basis for the difference in classification between cockfights on land and cockfights on water.[25]

The *Rollins* court felt that there was no difference between playing billiards in a billiards establishment or in a bowling alley sufficient to justify a special classification. As Justice Alan Sundberg observed for the *Rollins* court, "[j]ust as there is no difference between the fighting of roosters on a steamboat and the fighting of roosters on land, there is no rational distinction between playing billiards in a billiard parlor or shooting pool in a bowling alley."[26] The court noted that many bowling alleys serve alcoholic beverages. As written, the statute allowed minors to frequent bowling alleys

20. Ch. 59-295, 1959 Fla. Laws 1005 (repealed 1977).

21. 126 So. 2d at 551.

22. *Id.* at 549. Decisions are split on Sunday closing laws which apply only to billiards establishments. *See e.g.,* State v. Greenwood, 187 S.E.2d 8 (N.C. 1972) (ordinance held unconstitutional); Wilder v. State, 207 S.E.2d 38 (Ga. 1974) (statute held constitutional).

23. FLA. STAT. §§ 828.02, .12, .15 (1977).

24. 63 So. 2d at 509.

25. *Id.*

26. 354 So. 2d at 64.

containing pool rooms and bars but prohibited minors from entering "dry" billiards establishments. This hardly achieved the supposed statutory intent to protect minors from unsavory influences, as undesirables were as likely to patronize the former as they were the latter.[27]

To the state's argument that the legislature had concluded that minors should be protected from the likelihood of encountering gambling in billiards establishments, the court replied that such a conclusion was indeterminate at best and that statutory classifications had to rest on clearly enunciated purposes, not judicial hypotheses.[28] Courts will not countenance speculative probing when dealing with statutory classifications.[29] Moreover, as the court pointed out, the fact that some minors were allowed into these establishments by virtue of the exceptions enumerated in the statute itself belied the ostensible intent of the legislature. The court reasoned that since the legislature was surely as concerned for the welfare of minors with parental consent as it was for minors in general, this concern could not have been the rationale behind the statute.[30] Accordingly, the court declared section 849.06 of the Florida Statutes invalid as a violation of appellant's right to equal protection under the law.[31]

II. THE STATUTE

The history of section 849.06 of the Florida Statutes, and a discussion of other relevant Florida statutes, may provide some insight into the political and philosophical bases underlying the statute. The basic prohibition was enacted in 1913 when all minors were forbidden admittance to all billiards establishments.[32] In 1963, the legislature recast the statute in basically the same form as the present subsection (1).[33] The new statute provided for minors' admittance to billiard parlors with written parental consent and allowed parents to designate which particular establishment their children

27. *Id.* at 63.

28. *Id.* at 64.

29. *Id.* (citing McGinnis v. Royster, 410 U.S. 263 (1973)). In *McGinnis*, the Court held that a rational basis existed for § 230(3) of the New York Correction Law, which denied good-time credit toward parole eligibility for state prisoners' presentence county jail incarceration, but provided good-time credit for prisoners released on bail prior to sentencing, so that equal protection was not denied.

30. 354 So. 2d at 64.

31. *Id.*

32. Ch. 6489, § 1, 1913 Fla. Laws 310. There are no reported decisions challenging the statute in this form.

33. Ch. 63-303, §§ 1-2, 1963 Fla. Laws 836.

could attend.[34] The statute remained basically the same[35] until 1974 when subsection (2) was added, excluding bowling alleys from the proscriptions of subsection (1).[36]

While gambling per se is not prohibited by the Florida Constitution,[37] it is regulated extensively by the legislature. For example, the keeping of gambling houses is punishable as a felony,[38] and, it is a misdemeanor for the licensed operator of a billiard table to permit gambling on any form of billiards.[39] Another section of the chapter on gambling specifies that: "whoever plays or engages in any game at cards, keno, roulette, faro, or other game of chance, at any place, by any device whatever, . . . shall be guilty of a misdemeanor . . . ."[40] Yet another statute provides that a proprietor, owner or keeper of an establishment kept for the purpose of betting who willfully and knowingly permits a minor to gamble in the establishment is guilty of a felony.[41]

All gambling, however, is not proscribed. Charitable, nonprofit organizations are allowed to conduct bingo games, with some limitations,[42] and twenty-three recognized gambling games are allowed at public fairs and expositions, again with various limitations.[43]

III. OTHER STATES' STATUTES

Most states have a statute addressed to the issue of minors in billiards establishments. Although these statutes are varied, there are five basic methods by which states treat this issue: (1) eleven states bar minors from all billiards establishments;[44] (2) fourteen

34. *Id.*

35. The age of majority was reduced from 21 to 18 in Florida in 1973. This was applied prospectively to all relevant statutes. Ch. 73-21, 1973 Fla. Laws 59 (codified at FLA. STAT. § 743.07 (1977)).

36. Ch. 74-97, 1974 Fla. Laws 132. The bill was introduced into the senate on April 19, 1974, as SB 727. The house amended and passed it on May 16, 1974. FLA. H. R. JOUR. 736, 737 (Reg. Sess. 1974). It passed the senate, with amendments, on May 17, 1974. FLA. S. JOUR. 428 (Reg. Sess. 1974). It became law without the Governor's signature on May 29, 1974. FLA. S. JOUR. 636 (Reg. Sess. 1974).

37. Lamkin v. Faircloth, 204 So. 2d 747 (Fla. 2d Dist. Ct. App. 1968). FLA. CONST. art. X, § 7 provides: "Lotteries, other than the types of pari-mutual pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."

38. FLA. STAT. § 849.01 (1977).

39. *Id.* § 849.07.

40. *Id.* § 849.08.

41. *Id.* § 849.04.

42. *Id.* § 849.093.

43. *Id.* § 616.091.

44. Alabama, ALA. CODE tit. 34, § 6-10 (1975); California, CAL. PENAL CODE §§ 273(f), 336 (West 1970) (taken together, these two sections appear to effectuate the same purposes); Idaho, IDAHO CODE § 18-1203 (1948) (repealed); Iowa, IOWA CODE ANN. § 726.9 (West 1950); Mississippi, MISS. CODE ANN. § 97-5-11 (1972); Montana, MONT. REV. CODES ANN. § 94-1002

states allow admittance of minors only with some form of parental consent;[45] (3) eight states expressly leave the decision to the discretion of local governments;[46] (4) seven states have repealed previously enacted statutes;[47] and (5) nine states have no statute on this subject.[48]

Two states, Mississippi[49] and South Carolina,[50] make a classification similar to that made by Florida's section 849.06, distinguishing between establishments in which billiards is the "primary" or "principal" business and those where billiards is not the major source of revenue—in other words, bowling alleys containing billiard rooms.

The Mississippi statute strictly forbids minors' admittance to billiards establishments. Rather than expressly excepting bowling alleys from the proscriptions, Mississippi defines a billiards establishment as a business where billiards is the "primary" activity or where revenues from billiards constitute fifteen percent of the business receipts.

(1949); New Jersey, N.J. STAT. ANN. § 9:5-3 (West 1976); Pennsylvania, 18 PA. CONS. STAT. ANN. § 7105 (Purdon 1973); Rhode Island, R.I. GEN. LAWS § 5-2-13 (1976); Washington, WASH. REV. CODE ANN. § 26.28.080 (1977); Wyoming, WYO. STAT. § 33-6-108 (1977).

45. Connecticut, CONN. GEN. STAT. ANN. § 53-281 (West 1960); Georgia, GA. CODE ANN. § 84-1611 (1975); Hawaii, HAW. REV. STAT. § 25-445-52 (1976); Kentucky, KY. REV. STAT. § 436.320 (1975); Maine, ME. REV. STAT. tit. 8, § 3 (1964) (if a parent objects, no minors admitted); Massachusetts, MASS. GEN. LAWS. ANN. ch. 140, § 179 (West 1974); Missouri, MO. ANN. STAT. § 318.090 (Vernon 1963); New Mexico, N.M. STAT. ANN. § 40A-20-6 (1975); New York, N.Y. PENAL LAW § 260.20 (McKinney 1967); North Carolina, N.C. GEN. STAT. § 14-317 (1969) (if a parent objects, no minors admitted); Oklahoma, OKLA. STAT. ANN. tit. 21, § 1103 (West 1958); South Carolina, S.C. CODE § 52-11-130 (1976); South Dakota, S.D. CODIFIED LAWS § 26-10-8 (1978) (consent is required when low point beer is available on the premises); Tennessee, TENN. CODE ANN. § 39-1006 (1975).

46. Illinois, ILL. ANN. STAT. ch. 24, § 11-42-2 (Smith-Hurd 1962); Michigan, MICH. COMP. LAWS ANN. § 750.141 (1978); Nebraska, Neb. Rev. Stat. § 14-102 (1977); Nevada, NEV. REV. STAT. §§ 244.345, 269.170(1)(a)(8) (1973); New Hampshire, N.H. REV. STAT. ANN. § 286:6 (1977); Utah, UTAH CODE ANN. § 10-8-40 (1973); Virginia, VA. CODE § 18.2-432 (1975); Wisconsin, WIS. STAT. ANN. § 60.29(15) (West 1957).

47. Arkansas, ARK. STAT. ANN. §§ 84-2501, -2519 (1960) (allowed with consent—repealed by 1971 Ark. Acts, no. 648, § 1); Indiana, IND. CODE §§ 35-1-104, 113-115 (1971) (no minors allowed in divers places, including billiards establishments—amended in 1973 to delete billiards establishments from the proscriptions—repealed by 1976 Ind. Acts, P.L. 148, § 24); Louisiana, LA. REV. STAT. ANN. § 14.283 (West 1974) (no minors allowed—repealed by 1972 La. Acts, no. 155, § 1); Minnesota, MINN. STAT. ANN. §§ 617.61-.63 (West 1964) (no minors allowed—repealed by 1963 Minn. Laws, ch. 753, art. II, § 17); North Dakota, N.D. CENT. CODE § 53-05-08 (1974) (no minors allowed—repealed by 1973 N.D. Sess. Laws, ch. 402, § 1); Texas, TEX. PENAL CODE ANN. tit. 11, § 653 (Vernon Appendix 1974) (regulation was left to local governments—repealed by 1963 Tex. Gen. Laws, ch. 65, § 3); Vermont, VT. STAT. ANN. tit. 31, § 510 (1970) (allowed with consent—repealed by 1959 Vt. Acts, no. 262, § 37).

48. Alaska, Arizona, Colorado, Delaware, Kansas, Maryland, Ohio, Oregon, and West Virginia.

49. MISS. CODE ANN. § 97-5-11 (1972).

50. S.C. CODE § 52-11-130 (1976).

The South Carolina statute varies from the Mississippi statute in that minors are allowed into billiards establishments if they are accompanied by their parents or have written consent. Although the statute itself does not include a classification similar to Florida's and Mississippi's, the South Carolina Supreme Court appears to have engrafted such a classification on the statute.[51] The court implied that the statute applies only to establishments where billiards is the "principal" business.[52]

The result of the Mississippi and South Carolina classifications is the same as that of section 849.06 of the Florida Statutes: minors may be admitted to bowling establishments which contain pool rooms but not to "pure" billiards establishments.[53] There is no reported litigation on either the Mississippi or South Carolina statute. There is, however, no real difference between these statutes and the Florida statute which was stricken in *Rollins*. Given the reasoning of the Florida court, the Mississippi and South Carolina statutes also should be held unconstitutional.

IV. CONCLUSION

The court's decision in *Rollins v. State* is just and rational. Initially, it might appear that playing billiards in a billiards establishment is different in fact from playing billiards in a bowling alley. And courts do not require that things different in fact be treated in law as though they were the same.[54] Nonetheless, even if playing billiards in billiards parlors and in bowling alleys were sufficiently different to justify different treatment by the courts, equal protection requires that differences resulting in legislative classifications must relate to the matter to be regulated.[55] This was not the case in *Rollins*.

The only necessary difference in playing billiards in the two different locations is just that — the location. In *Mikell v. Henderson*, the court quite reasonably felt that a cockfight was a cockfight, whether it occurred on land or water. Similarly, billiards is billiards, whether played in a billiards establishment or bowling alley. Is there any valid reason to believe that gambling is more prevalent in billiards establishments, or that the atmosphere of a billiards establishment is somehow more conducive to disturbance? Are undesira-

51. Melody Music Co. v. McLeod, 151 S.E.2d 749 (S.C. 1966).

51. *Id.* at 751.

53. Presumably, few bowling alleys would be susceptible to a charge that billiards was their primary or principal purpose, and it would be rare to find one in which billiards constituted more than fifteen percent of revenues.

54. Ridaught v. Division of Fla. Highway Patrol, 314 So. 2d 140 (Fla. 1975).

55. Harper v. Galloway, 51 So. 226 (Fla. 1910).

ble characters more likely to frequent billiards establishments serving no alcohol than bowling alleys with pool rooms and bars? Which is more deleterious, if at all, to the welfare of a minor, a pool room in a bowling alley or a billiards establishment? In the absence of any legislative answers for these questions, the Florida Supreme Court logically concluded that neither is worse than the other.

Since there is no practical difference between playing billiards in a billiards establishment or in a bowling alley, the court decided that the classification could have no reasonable relation to the statute.[56] In a case decided in 1965, the Florida Supreme Court quoted from a 1913 Florida decision to the effect that: "[t]he inhibition that no state shall deprive any person . . . of the equal protection of the laws was designed to prevent any person, or class of persons, from being singled out as a special subject for arbitrary and unjust discrimination . . . ."[57] With this in mind, the court reasoned that the statute in question created an arbitrary, unjust discrimination, and so declared it unconstitutional.

Although Rollins contended that only the second subsection of section 849.06 violated his constitutional rights, the Florida Supreme Court overturned the entire statute. Rollins had argued tangentially that subsection (1) of the statute was anachronistic and should, consequently, be stricken.[58] The court apparently agreed. It most likely recognized the fact that times have changed, minors are generally more sophisticated today than they were in 1913, and billiards establishments are in many instances not the unwholesome places they were at the turn of the century. It has been said that "a statute which is valid when enacted may become invalid by changes in the conditions to which it applies."[59] Perhaps the *Rollins* court realized that this proposition applied to the regulation of billiards and, consequently, concluded that the whole statute should be overturned.

WILLIAM TARR

56. 354 So. 2d at 63; *see* Davis v. Florida Power Co., 60 So. 759 (Fla. 1913); Jordan Chapel Freewill Baptist Church v. Dade County, 334 So. 2d 661, 669 (Fla. 3d Dist. Ct. App. 1976).

57. Georgia S. & Fla. Ry. v. Seven-up Bottling Co., 175 So. 2d 39, 40 (Fla. 1965) (quoting Davis v. Florida Power Co., 60 So. 759 (Fla. 1913)).

58. Brief of Appellant at 8-9.

59. Georgia S. & Fla. Ry., 175 So. 2d at 40.