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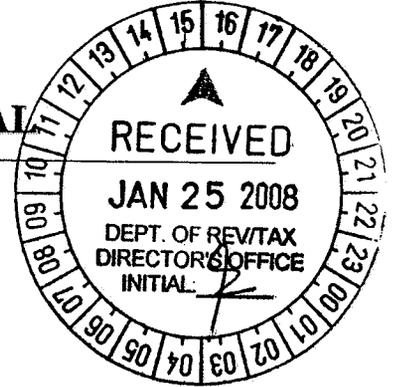
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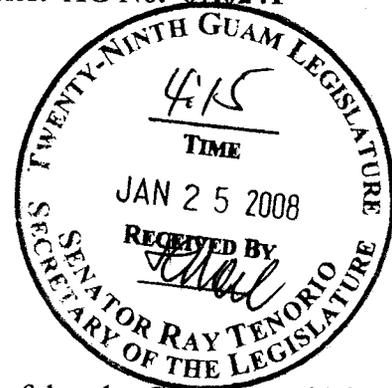
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Ref: AG No. 07.0241

OPINION

To: Director, Department of Revenue and Taxation
From: Attorney General *AG*
Re: Bingo



QUESTION PRESENTED

Is electronic bingo, often called "speed bingo," or "instant bingo" lawful under Guam law which permits the operation of bingo as an exception to its general prohibition on gambling?

ANSWER

The name of a game is less important than its characteristics of play in deciding whether it is lawful under Guam law. If a game is not played in a manner which resembles traditional bingo as it exists and has been commonly understood, it is not bingo. It is illegal gambling and is not lawful.

APPLICABLE LAW

9 GCA Sec 64.70

(f) As used in this Section:

(1) Bingo Games means a specific game of chance, commonly known as bingo, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.

DISCUSSION

Being able to call a game "bingo" is a valuable marketing right for several reasons. Bingo may be one of the most widely legalized gambling games in the United States so if a game can be promoted successfully under that name, its promoter will enjoy instant access to an astoundingly

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broad range of markets. Given the Guam policy against gambling in general, the legality of a game cannot depend on what its promoters or players choose to call it. "The law is not required to be blind to, and ineffective against the ceaseless efforts and ingenuity of persons to circumvent the Gambling Device Act. When we ascend the bench we do not discard the ordinary commonsense observations, experiences, and intelligence of common men." *Fraternal Order of Eagles Sheridan Aerie No. 786 v. State ex rel. Forward*, 126 P.3d 847, 859 (Wyoming 2006). Further, in preparing a legal opinion on the legality of various types of "bingo", names mean very little because names will be changed to suit the marketing and legal strategies adopted by their promoters. Legal opinions must be based on specific descriptions of the way a game actually operates rather than generalizations such as "instant bingo" or "speed bingo". Again, these names will change.

The original written request from the Department of Revenue & Taxation did not refer to the specific operating properties of any machines. Fortunately, Department of Revenue & Taxation personnel from the Compliance Branch have supplemented the Department's letter. The machines at issue appear to be identical to those observed by Attorney General's staff during inspections of bingo operations, as well as the machines condemned by the courts of other jurisdictions as not falling into the bingo exception to their gambling statutes.

This opinion is restricted to the machines which operate in the manner that we will describe below, and not to any others.

Machines with the following characteristics and manner of operation are not bingo. In the counterfeit bingo game, the winning number is chosen at the start of the day or perhaps the week. The player pays for a code number which is used to activate his machine. When his machine is activated, the screen displays "cards" or more correctly electronic representations of cards. The player selects a card and the machine plays for him by immediately filling in the card. If the machine selects numbers which match the pre-selected winning number for the day, the player wins. Otherwise, he loses. After he has won, he may continue to play and win or lose as chance dictates, or he can elect to cash out by pressing a button on the machine and taking his printout to the counter. He is paid at the counter. He plays against a machine, not other players and his success or failure does not affect others.

This process is clearly gambling because it is dependent on pure chance. The question is, whether or not it is bingo. The game described above is clearly not bingo and therefore is not legal under Guam law.

Guam law looks to commonsense in deciding whether a game is approved bingo or an invasive illegal counterfeit of bingo. It is appropriate, when the Supreme Court of Guam has not resolved a matter, to look to the courts of other jurisdictions particularly those whose laws are similar to ours. A very similar issue has arisen in the courts of Wyoming and we may look there. Several district attorneys expressed skepticism about the legality of several different machines which were being promoted as a new kind of bingo and various operators took the step of suing for declaratory and injunctive relief in various courts around the State. They were unsuccessful in

the trial courts and in time the *Fraternal Order of Eagles* case reached the Wyoming Supreme Court. The issue before the Wyoming Supreme Court was whether so-called Bonanza Bingo and Quick Shot Bingo were "bingo" within the meaning of their statute. The court reviewed the history of how bingo is played. It made clear that because of the strong public policy against gambling, it had a duty to construe any exception to the gambling laws narrowly. *Fraternal Order of Eagles* supra at 857. The court pointed out the distinguishing features of a bingo game which both of the new Wyoming varieties of "bingo" lacked. Bingo is a group game, in which there is one winner with the game lasting for more than a few seconds. *Fraternal Order of Eagles* supra at 860. The court's discussion of this point is lengthy and its most important passage is also lengthy but it captured the elements that we must look at to determine if the new innovations in our game rooms are the "specific game" traditionally known as bingo.

As of 1971, bingo was played simultaneously by a number of people all of whom watched and waited as numbers were called one-by-one as drawn, and all of whom were attempting to beat each other to "bingo". When someone obtained the winning pattern, he or she shouted "bingo" and was awarded the common prize sought by all players. That game was then over. Contrast that with a game where a lone player sits down to face a machine. Winning numbers have been pre-drawn for the day, or the week, and electronic game cards are simply compared to those numbers. Available games left to play are characterized as credits on the machine. Such credits may be played or paid. While all the players' monitors are networked to the organization's terminal, the players are playing in isolation, and if a player wins, that does not end the game for the other players. Wins and losses are instantaneous, and it only takes a few seconds to play a game. Andrew Burns, who designed Double Up Bingo for Helping Hand, testified that, in electronic bingo, the game-that is, the matching of the cards against the numbers-takes place within the server, not even within the player's terminal. In session bingo, of course, the matching takes place on the player's card.

Fast Action Bingo simply does not bear even a remote resemblance to traditional bingo, the game of bingo envisioned by the legislature in 1971.

Fraternal Order of Eagles supra at 860-61.

The court concluded, "In fact instant bingo has characteristics far more similar slot machines, pull cards and other forms of gaming rather than to bingo-type games." *Fraternal Order of Eagles* supra at 861.

Without being misled by the name by which a particular marketer has placed on a game, it is apparent that the game described by the Supreme Court of Wyoming is essentially the same as that observed by the investigators of the Office of the Attorney General, and described to us by the Department of Revenue & Taxation.

OPINION

To Dir, Department of Revenue and Taxation

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1/16/08

Page 4 of 4

CONCLUSION

Single player games lasting a few seconds where a player competes against a machine instead of other players and which proceeds independently of any other players is not the specific game traditionally known as bingo, is not lawful under Guam law, and all of the available remedies against illegal gambling may be used to suppress it.

for 
DAVID CHARLES SULLIVAN
Assistant Attorney General