



BUREAU OF GAMBLING CONTROL  
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April 15, 2010

TO: ALL POLICE CHIEFS, SHERIFFS AND DISTRICT ATTORNEYS

RE: CHARITABLE BINGO UNDER PENAL CODE SECTIONS 326.3-326.6  
RECENT DEVELOPMENTS IN LITIGATION

With the onslaught of computer-based gaming technology, for the last several years many charitable bingo establishments have been using slot machine-like electronic gaming devices to purportedly play bingo under the state's charitable bingo law. As early as June 7, 2004, the California Department of Justice, Bureau of Gambling Control (the "Bureau," then known as the Division of Gambling Control) issued a law enforcement advisory that certain types of gambling devices being operated as so-called "electronic bingo machines" violated the state's gambling statutes prohibiting gambling devices and slot machines. (See attached Law Enforcement Advisory, No. 6.) Still, the use of these illegal electronic gambling devices continued and proliferated.

On August 10, 2007, the Bureau issued another law enforcement advisory entitled "Electronic Bingo" again notifying law enforcement and the charitable bingo establishments that electronic gambling devices could not be used for playing charitable bingo. (See attached Law Enforcement Advisory, No. 9.) Unfortunately, bingo parlors continued to use slot machine-like electronic gambling devices for fund-raising. After years of trying to obtain voluntary compliance with the law, in May 2008, the Bureau inspected various bingo parlors and found that they were continuing to use electronic gambling devices in the play of bingo. As a result, the Bureau issued cease and desist letters to the bingo operators that were still violating the law. This led several device manufacturers, charities, and individuals to bring an action against the state in federal district court to enjoin enforcement of state gambling laws under the Americans with Disabilities Act (ADA), and additionally claiming that their electronic bingo machines complied with state law.

On September 30, 2008, the Governor signed Senate Bill Number 1369 (SB 1369), amending the California Penal Code to permit multi-site remote caller bingo, but also making clear that the electronic bingo machines at issue in the federal lawsuit were not in compliance

with the state charitable bingo statute. SB 1369 amended the Penal Code in two ways: (1) it specifically outlawed most electronic bingo machines (Pen. Code, § 326.5, subd. (o)), and (2) it specifically allowed certain electronic accommodations for the play of live call bingo (Pen. Code, § 326.5, subd. (p)). The amended statute further clarified that the only permissible electronic devices to be used for charitable bingo are card-minding devices, as further described below.

After losing two appeals to the Ninth Circuit of Appeals, on February 22, 2010, the various manufacturers and distributors of so-called electronic bingo machines, charities, and individual plaintiffs dismissed with prejudice their legal challenge under the ADA to the state charitable bingo statutes as modified by SB 1369. (See attached Stipulation and Order Re Dismissal of Action, *Video Gaming Technologies, et al. v. Bureau of Gambling Control, et al.*, Case No. 2:08-CV-01241 JAM EFB.) Based upon this dismissal, there are no pending legal challenges to the state's charitable bingo statutes of which the Bureau of Gambling Control is aware.

Several provisions of the charitable bingo statutes address the use of electronic devices in the play of charitable bingo, some of which are set forth below.

Penal Code section 326.3, subdivision (a)(8) states:

Legislation is also needed to clarify that existing law requires that all charitable bingo must be played using a tangible card and that *the only permissible electronic devices to be used by charitable bingo players are card-minding devices.*

(Italics added.)

Penal Code section 326.4, subdivision (a) states in part:

Consistent with the Legislature's finding that card-minding devices, as described in subdivision (p) of Section 326.5, are the only permissible electronic devices to be used by charity bingo players . . . .

Penal Code section 326.5, subdivision (o) states

As used in this section, "bingo" means a game of chance in which prizes are awarded on the basis of designated numbers or symbols that are marked or covered by the player on a tangible card in the player's possession and that conform to numbers or symbols, selected at random and announced by a live caller. Notwithstanding Section 330c, as used in this section, the game of

bingo includes tangible cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes. *Electronics or video displays shall not be used in connection with the game of bingo, except in connection with the caller's drawing of numbers or symbols and the public display of that drawing, and except as provided in subdivision (p).* The winning cards shall not be known prior to the game by any person participating in the playing or operation of the bingo game. All preprinted cards shall bear the legend, "for sale or use only in a bingo game authorized under California law and pursuant to local ordinance." Only a covered or marked tangible card possessed by a player and presented to an attendant may be used to claim a prize. It is the intention of the Legislature that bingo as defined in this subdivision applies exclusively to this section and shall not be applied in the construction or enforcement of any other provision of law.

(Italics added.)

Penal Code section 326.5, subdivision (p)(2) states:

(2) A card-minding device shall perform no functions involving the play of the game other than those described in paragraph (1). *Card-minding devices shall not do any of the following:*

(A) Be capable of accepting or dispensing any coins, currency, or other representative of value or on which value has been encoded.

(B) Be capable of monitoring any bingo card face other than the faces of the tangible bingo card or cards purchased by the player for that game.

(C) *Display or represent the game result through any means, including, but not limited to, video or mechanical reels or other slot machine or casino game themes, other than highlighting the winning numbers or symbols marked or covered on the tangible bingo cards or giving an audio alert that the player's card has a prize-winning pattern.*

(D) Determine the outcome of any game or be physically or electronically connected to any component that

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determines the outcome of a game or to any other bingo equipment, including, but not limited to, the ball call station, or to any other card-minding device. *No other player-operated or player-activated electronic or electromechanical device or equipment is permitted to be used in connection with a bingo game.*

(Italics added.)

You may also want to review the regulations of the California Gambling Control Commission regarding charitable bingo at title 4, California Code of Regulations, sections 12480 through 12514.

The Bureau of Gambling Control hopes the above information will be of assistance to your agency in assessing the lawfulness of the play of bingo under your local charitable bingo ordinance. (See Pen. Code, § 326.5, subd. (a).) Please contact Assistant Chief Martin Horan, Jr., at the above address or phone number, if you have any questions or comments regarding the above.

Sincerely,



JACOB A. APPELSMITH  
Bureau Chief

For EDMUND G. BROWN JR.  
Attorney General

Attachments