

Class II Gaming Machines in San Pablo



Bingo or a Casino?



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Introduction

The Lytton Band of Pomo Indians recently announced plans to install Class II gaming machines in the Casino San Pablo cardroom, which they own and operate. There is a tremendous amount of confusion as to what these machines actually are, what their impact on the community would be, or even why the Lyttons would be allowed to install them without State approval.

The notion of Class II gaming stems from the passage of The Indian Gaming Regulatory Act (“IGRA”),¹ passed by Congress in 1988, which created the designations of Class I, II and III for legal gambling on Indian lands. Advances in gaming technology have transformed Class II games from traditional bingo into virtual replicas of Class III slot machines. Because Class II games do not require state approval, they have become popular, and legal, ways for many tribes to operate casinos in states that limit or prohibit Class III games..

The Lyttons have argued that this concession on their part should alleviate concerns about Class III gaming, and should render unnecessary any need for review of community impacts. However, if anything, the restriction of the facility to Class II gaming should raise more concerns, not lessen the existing ones.

Background

IGRA as a general rule prohibits Indian tribes from conducting gaming on lands taken into trust after the Act became law in 1988. This applies whether the tribe wants to offer Class III, Nevada-style games like slot machines, or Class II, California games like poker or bingo. IGRA does contain some exceptions, allowing gaming on after-acquired Indian lands. These are mainly situations involving a tribe’s traditional land, such as when a Tribe is merely expanding its existing reservation, having its land restored, or acquiring land within the tribe’s last recognized reservation. In every other situation the Secretary of Interior must determine that the proposed gaming would not be a detriment to the surrounding community, and the Governor of the state must concur.

In 2000, Congressman George Miller inserted a last minute provision into a Congressional bill, ordering the Secretary of the Interior to take the site of the Casino San Pablo cardclub into trust for the Lytton Band of Pomo Indians, to declare the land a

¹ Codified at 25 U.S.C. §§2701 - 2721 and 18 U.S.C. §§1166 - 1168.

reservation, and to backdate the trust status so that the land would be deemed to have been Indian land since before IGRA was passed.² The later provision was intended to exempt the proposal for a Nevada-style casino from review of community impacts.

In August 2004, during the last week of the legislative session, Governor Schwarzenegger announced that he had negotiated a compact with the Lytton Band to allow them to operate 5,000 slot machines. The location was right off Interstate 80 near Richmond, in the densely populated East Bay. This proposal would have created the largest urban casino in the world. Opposition erupted immediately. Although the proposal was quickly cut in half to 2,500 slot machines, the Legislature refused to ratify the compact. In January 2005, Senator Feinstein introduced a bill to rescind the backdating and thus reinstate the usual requirement of community impact review. In March, Congressman Miller also came out against the compact. The Lyttons announced that they would not seek approval of their compact but would, for the time being, limit play to expanded Class II games, including Class II bingo machines. The Lyttons oppose the Feinstein bill, arguing that they no longer are pursuing Class III games.

This paper will attempt to address many of the questions raised by the prospect of Class II bingo machines coming to San Pablo, including: What exactly are Class II bingo machines? How do they compare with Class III slot machines? Do they cause fewer community impacts?

I.G.R.A. and a Short History of Indian Gaming

Indian gaming has been contentious since it originated in the 1970s, because Indian tribes often seek to engage in gaming that would be illegal under state law. Historically, Indian tribes were allowed sovereignty over their lands. But, most tribes had been removed to remote locations, far from settled non-Indian land. Indian commercial activities did not usually have a major impact on non-Indians. The products and services they offered did not attract large numbers of people onto their reservations.

Indian gaming involved a new level of interaction between Indian lands and non-Indian lands, and far more impacts on non-Indian lands than had ever before occurred.

² H.R. 5528 §819. The Lytton Indians were originally from Healdsburg in Sonoma County, about 15 miles north of Santa Rosa. Opponents of the Lyttons have challenged whether the Lytton Indians are properly considered a tribe and whether the Lytton Rancheria was Indian land when created in 1927. Those issues are outside the scope of this Report.

Tribes began offering high-stakes bingo games in the late 1970's. These were games prohibited under state law, and state officials often challenged the tribes. However, the courts usually ruled in favor of the tribes. In 1979, the Seminole Tribe successfully challenged the state of Florida and won the right to operate high-stakes bingo games, free from state control.³

Dozens of other cases followed, culminating in the landmark decision by the United States Supreme Court in *California v. Cabazon Band of Mission Indians*.⁴ In *Cabazon*, the Supreme Court upheld the right of tribes to offer high-stakes bingo to players from outside the tribe's reservation, so long as the state did not have a criminal, prohibitory policy against bingo. California's penal laws against bingo were considered regulatory, not prohibitory, since the state allowed some persons to engage in the activity, and did not prohibit bingo outright.

Congress reacted to *Cabazon* by passing IGRA, signed into law by President Reagan on October 17, 1988. IGRA attempted to balance the tribes' interest in sovereignty with the interest of states in protecting themselves from the impacts Indian gaming would have on state lands and residents.

By its own terms, IGRA only applies to "Indian lands," essentially defined as lands over which an Indian tribe exercises sovereignty. Further, IGRA limits the possibility of gaming on lands acquired in trust for an Indian tribe after passage of IGRA. As noted above, as a general rule, legal gaming would not be allowed on lands acquired after passage of IGRA. The prohibition on conducting gaming on this "after-acquired" lands applies to both Class II and Class III gaming.

Differentiation between Class I, Class II, and Class III Games

IGRA divides all gambling into three classes, and provides different rules for the different classes.

Class I are low-stakes social and traditional games; these games remain entirely within the control of the tribes.

³ See, *Seminole Tribe of Florida v. Butterworth*, 658 F.2d 310 (5th Cir. 1981).

⁴ 480 U.S. 202, 107 S.Ct. 1083 (1987).

Class II is bingo, very broadly defined,⁵ and non-banking card games, like poker.

Class III is the residual class and includes all other forms of gambling, specifically slot machines, casino table games, lotteries and parimutuel wagers.

Tribes may only operate Class II or Class III forms of gambling if the state where the tribe is located permits that form of gaming. The most important difference between Class II and Class III gaming is that a tribe may only offer Class III gambling after the tribe enters into a compact with the state.

There are virtually no restrictions on Class II games under IGRA, so long as they are games “similar to bingo.” The only requirements for a federally recognized tribe in California is that it conduct the games on “Indian land,” which includes all reservations, that the tribe self-regulates its gambling, and that the games meet the statutory definition of bingo laid out in IGRA. Tribes are exempt from state laws.

As merely one dramatic example, machines that would be illegal slot machines under the California Penal Code may be legal Class II “electronic aids” for “bingo” if conducted on a reservation. There are no restrictions on the numbers of Class II machines a tribe may operate. States are free to put limits on the numbers of Class III slot machines in tribal casinos, as has been done with almost all of the tribal-state compacts signed by Governors Davis and Schwarzenegger. But IGRA does not give the state the right to put similar limits on Class II games. IGRA requires tribes to negotiate with state on ways to

⁵ Class II is defined as:

(A)(1) the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used in connection therewith)-

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are drawn or electronically determined, and

(III) in which the game is won by the first person covering a previously designated arrangement of numbers or designations on such cards, including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo...

....

(B) The term “class II gaming” does not include--

....

(ii) electronic or electromechanical facsimiles of any game of chance or slot machines of any kind.

IGRA §4(7)(A) & (B), 25 U.S.C. §2703 (A) & (B).

mitigate the impact of proposed tribal gambling operations, but only for Class III gaming. Since no compact is required, tribes may operate as many Class II machines as they want, for whatever stakes they want, whenever they want and wherever they want on their reservation.

Game Rules and Characteristics of Traditional Bingo

It seems settled that bingo developed out of the parlor board game of lotto.⁶ The board game of lotto goes back well over 200 years.⁷ The artist Charles Joshua Chaplin captured this early version of bingo in his mid-19th century painting "le jeu de lotto".⁸ A close examination of the painting reveals that the cards are divided into rows and columns. In the traditional lotto board game each card has three rows and nine columns; four of the nine squares are blacked out and act as free spaces. Column one will have three numbers selected from 1 to 10, column two from 11 to 20, etc., up to 90. No two cards are exactly alike. Numbers are chosen from a set of 90 numbered disks, and as a number is called the players cover that number if it appears on their cards. The object is to be the first player to cover all the spaces on a horizontal row on his card; thus, five numbers in a row are needed to win.

Bingo is still played in exactly this way in a number of countries. In England today bingo is played on the traditional lotto cards with three rows, nine columns and four blank squares per row.⁹ English bingo differs from lotto only in that additional winning patterns, such as cover-all, have been created. Bingo in America is characterized by the traditional pre-printed five-by-five card, with the letters B-I-N-G-O at the top and a free space in the middle.

An American entrepreneur, Edwin Lowe, a carnival side show operator, is credited with inventing the modern version of bingo out of lotto in 1929; with players covering their numbers with beans. The game was first called beano, which is still the accepted name in Massachusetts. Bingo spread quickly during the Depression of the 1930s as a means for charities to raise money. After World War II state legislatures began to

⁶ Scarne, SCARNE'S COMPLETE GUIDE TO GAMBLING 184 (1961).

⁷ Snowden, GAMBLING TIMES GUIDE TO BINGO 7 (1986).

⁸ <http://www.crgalleries.com/assets/images/Lejeudeloto.jpg> <checked 5/16/2005>

⁹ Wyrick, COMPLETE AUTHORITATIVE GUIDE TO BINGO 142 (1984).

legalize the games until today virtually every state has accepted bingo as a legal form of gambling, at least when conducted by charities.

Bingo, like lotto, involves numbers drawn at random, pre-marked cards, players attempting to cover their cards in a pre-determined pattern and to recognize the winning pattern when they have one. The game is a competitive game, i.e., there must be at least two players, but there is only one winner (although two players may both achieve winning cards at the same time). Because bingo, like lotto, derives from a social or parlor game; part of the essence of the game is the social interaction among players. The game cannot be played as a single player against the house.

In the last few decades the paper game of bingo has been modernized. The traditional game was played on the familiar five-by-five pattern on hard cardboard cards, with players covering their numbers with plastic or wooden markers. Today, the cards are mostly preprinted on thin paper sheets (called "flimsies" or "specials" when first introduced in the 1980s) which players mark with large ink daubers; players "daub" their numbers when called. Winning patterns are rarely just five down, across or diagonal. The introduction of the cover-all has allowed the creation of large jackpot games. To win a cover-all, a player must not only daub all of the numbers on his or her card but must do so when only a limited numbers of balls have been called.

The paper game of bingo is still a social game, usually played in bingo halls with long tables lined with chairs for players. Players have to be given a few seconds between balls being drawn to hear the number, daub their cards and see if they have a winning pattern. This must be repeated a number of times before there is a winner. Even modernized, the paper game of bingo is almost never offered in privately-owned commercial casinos or in Class III Indian casinos. The game is usually considered too slow, it takes up too much floor space and is played for stakes that are too small.

Electronic Aids to Bingo - State Law

The introduction of computers and other machines into the game of bingo has been controversial throughout the nation. In California, for example, the Attorney General ("A.G.") issued three formal Opinions on whether and to what extent state law permitted computer to be used in the play of the game.

In 1984, the A.G. declared that bingo could not be legally played "on a coin-operated electronic video machine which displayed a facsimile of a bingo card on its screen." This conclusion was based on analyzing the state statutory definition of "bingo"

found in Penal Code §326.5,¹⁰ which required that the game be played on a "card."¹¹ The A.G. also found a public policy reason for banning bingo played entirely on gaming devices: "bingo as conducted... with cards... is an open and simple game not easily manipulated. The operation of video game bingo would not be subject to similar scrutiny and protection."

If video bingo is not bingo, then what is it? The A.G. had no trouble declaring them to be slot machines and therefore illegal gambling devices under California's broad definitions:

Under Penal Code sections 330a, 330b and 330.1 there are three basic elements to the definition of an illegal slot machine: (1) operation by money, coin or object; (2) the element of chance; (3) something of value offered... The machine just described is activated by a coin or token, recreates the game of bingo which is legislatively defined as a game of chance, and rewards a winning player with additional plays, cash or prizes...

Three years later the A.G. added that electronic card-minders could not be substituted for paper cards. Card-minders are "an electronic system of bingo which substitutes a hand computer with stored bingo card matrices for the traditional paper or cardboard bingo cards." This, too, is not bingo under California law.¹²

It goes without saying that the handsets at issue herein do not have thereon "numbers or symbols on a card." There is no card at all. It is only through

¹⁰ "As used in this section, 'bingo' means a game of chance in which prizes are awarded on the basis of designated numbers or symbols on a card that conform to numbers or symbols selected at random. Notwithstanding Section 330c [which outlaws paper pull-tabs], as used in this section, the game of bingo includes cards having numbers or symbols that are concealed and preprinted in a manner providing for distribution of prizes. 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.' 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." Cal. Penal Code §326.5(o).

¹¹ 67 Ops. Cal. Atty. Gen. 528 (1984).

¹² 70 Ops. Cal. Atty. Gen. 304, 308 (1987).

the computer program that electronic representations of bingo cards may be called-up and displayed on the handset's screen. These representations are no more bingo cards than persons depicted on a television screen are the persons themselves.

In 1998, the A.G. was faced with a variation of the card-minder question: Is it permissible for charities to offer electronic, handheld card-minders if they also gave the players paper card copies of the cards held in the memory of the card-minders? This time, the A.G. gave his approval.

We are now asked to consider whether the use of an electronic aid in conjunction with traditional bingo cards constitutes the game of bingo as authorized in section 326.5. We conclude that it does.

....

In the present situation, each player would purchase and receive traditional bingo cards... The electronic aid would be used to notify the player of a winning card. Verification of the winning combination could thus be based upon the bingo card itself. The electronic aid would not interfere or interact with the element of chance in the game, but rather would help determine whether a winning card had been purchased by the player.¹³

It is interesting to note that this decision came ten years after passage of IGRA, which expressly allows tribes to use electronic aids in the playing of bingo. In fact, tribes had been offering card-minders to their patrons since at least the mid-1980s, and were at this time already operating bingo games played entirely on video gaming devices. California's struggles over the issues of card-minders and paper bingo cards seems almost quaint in comparison with what was occurring with Class II gaming on Indian land.

Class II Machines

IGRA defines Class II to include "electronic, computer, or other technologic aids... used in connection" with bingo. However, the same section prohibits "facsimiles of any game of chance or slot machines of any kind." These two provisions have become the center of the storm over the classification of slot-type machines. Implementation of this rule has generated a great deal of controversy. The two federal agencies charged with the control of gaming on Indian land, the National Indian Gaming Commission ("NIGC"), created by the IGRA to have some oversight of Indian gaming, and the Department of

¹³ 81 Ops. Cal. Atty. Gen. 415 (1998).

Justice, have had numerous disagreements of whether gaming devices are Class II bingo aids or Class III slot machines.

The NIGC at first adopted regulations that would have outlawed virtually all electronic and mechanical aids to Class II games.¹⁴ Tribes challenged the regulations and the regulations were struck down. The NIGC reacted to its loses by promulgating new regulations that would go further than even federal court decisions in allowing bingo and games similar to bingo to be played on linked electronic devices and still be Class II games.¹⁵

Courts and the NIGC have expressly held that a game can resemble a slot machine, in its appearance, speed of play, and stakes, and still be Class II. Video images displayed on Class II gaming devices may look identical to slot machines, including having video images of spinning reels. The Class II machines can even have a handle and real spinning mechanical wheels. The D.C. Circuit Court of Appeals ruled that the Tab Force pull-tab validation machine is a Class II electronic aid, not a Class III slot machine, despite the fact that the machine looks exactly like a slot machine, with three reels and a pull-handle.¹⁶ Similarly, Lucky Tab II, which displays pull-tab results as a slot machine, is a Class II device.¹⁷ Gaming devices which display winnings as three reels have become common as forms of Class II games, especially in tribal casinos.

Many of the cases involved MegaMania, which courts, including the Ninth Circuit, have ruled is a Class II game.¹⁸ The game has been declared to be bingo under IGRA

¹⁴ Former 25 C.F.R. §502 adopted the broad definition of “slot machine” found in the major federal anti-slot machine statute, the Johnson Act, 15 U.S.C. §1171(a).

¹⁵ See, 25 CFR §502.7 Electronic, computer or other technologic aid, 25 CFR §502.8 Electronic or electromechanical facsimile, and 25 CFR §502.9 Other games similar to bingo.

¹⁶ *Diamond Game Enterprises, Inc. v. Reno*, 230 F.3d 365 (D.C.Cir.2000).

¹⁷ *Diamond Game Enterprises, Inc. v. Reno*, 343 U.S.App.D.C. 351, 230 F.3d 365 (D.C. Cir. 2000); *United States v. Santee Sioux Tribe of Nebraska*, 174 F.Supp.2d 1001 (2001).

¹⁸ The first court to reach a final decision on MegaMania was the federal District Court in Oklahoma. *United States v. 162 MegaMania Gambling Devices*, No. 97-C-1140-K (D.Okla. October 26, 1998). The Court granted summary judgement that the game was bingo and thus a Class II game under IGRA. The decision was upheld by the Tenth Circuit Court of Appeals in a lengthy decision, *United States v. 162 MegaMania Gambling Devices*, 231 F.3d 713, 725 (10th Cir. 2000). It appears that every other court which has looked at MegaMania has reached the

because players are always playing against each other for the ultimate prize, even though they are playing against the machine for interim prizes. Play begins by players buying credits, as with a slot machines, usually by inserting coins or currency into their terminals. Players purchase up to four cards to be displayed on their video monitors, at 25 cents each. The game begins when at least 12 players have purchased a total of at least 48 cards. Three numbers are then generated by a random number generator and displayed on each terminal. Players press a “Daub Cards” button which automatically covers any of the called numbers that happen to be on their cards.

If the three numbers match either one, two or three corners of the players’ cards, the player wins a prize. It is important to note that these interim prizes are set at fixed amounts. There is no pooling of money and players are not playing against each other. The interim games are thus banking games, with the players playing against the machines, exactly as is done with conventional casino slot machines. In modern Class II machines, there are more possible winning patterns available for interim prizes and whether the players has won or lost each interim game is shown by spinning reels, identical to those on Class III slot machines.

After the first three numbers are displayed, players have eight seconds to decide if they want to continue. They have to pay an additional 25 cents for each bingo card they want to play. Three new numbers are drawn and play continues as with the first three number. This system of paying for each three numbers drawn and the paying of interim prizes continues until one of the bingo cards has a conventional bingo of five in a row. It is generally accepted that players have to press a button to declare that they have won this bingo game to claim this prize, when they are told to do so by their machine.

Class II Gaming vs. Traditional Bingo

Even the traditional card game of bingo is not the same. California law limits charity bingo to low-stakes games, with a \$250 maximum prize.¹⁹ Tribes can and do

same conclusion. *See, United States v. 103 Electronic Gambling Devices*, 1998 WL 827586 (N.D.Cal. 1998), affirmed 223 F.3d 1091 (9th Cir. 2000). The most important for California is the Ninth Circuit’s Opinion, which is binding federal law on what is allowed under IGRA as Class II on Indian land in the state.

¹⁹ The maximum prize for bingo games under California state law is \$250: “The total value of prizes awarded during the conduct of any bingo games shall not exceed two hundred fifty dollars (\$250) in cash or kind, or both, for each separate game which is held.” Cal. Penal Code §326.5(n).

offer high-stakes games, including games with guaranteed prizes of \$1 million. Charities must have paper bingo cards. Tribes can give players the choice of playing on paper cards or the same game using video screens. The California Constitution allows bingo to be played for money, "but only for charitable purposes."²⁰ Charities cannot operate unless they find enough volunteers to staff a game, since they are prohibited from paying wages or sharing profits.²¹ Tribes, running paper bingo games for profit, can and do run their games like a business. Local government often puts additional restrictions on charity games, such as limiting the number of games per session and sessions per week. The only advantage charities have is that their locations are almost always closer to major centers of population. When they are equal distance from their target markets, charity bingo halls around the country have found that they simply cannot compete against tribal bingo halls.

Class II games played on linked video gaming devices differ from most conventional paper-card bingo games in a number of significant ways:

1. Players have to pay each time a small set of numbers is called.
2. Players pay by putting money into a machine or by purchasing and using credits on the machine.
3. Winning and losing bingo cards are displayed not as covered numbers on cards but as spinning wheels with cherries, bars and other symbols.
4. Most of the play, the interim prizes, is a house banking game, with players playing against the machine and the casino, not against each other.
5. A game is played every few seconds rather than taking many minutes.
6. In traditional bingo players pay once, a set amount for a card. With machines, players have no way of knowing how much they will pay before there is a winner to the final game.
7. Players gamble more money per hour.
8. Players overall will lose more money per gambling session.
9. Machines greatly lessen the social nature of the game.
10. Machines eliminate the ability of players to see other players' cards.
11. Machines eliminate the ability of players to see all of their own cards simultaneously.
12. The banking game aspect and machine environment, making it impossible to compare one's cards with other players' during games hampers the sense of competition.

²⁰ Cal. Const., art. IV, § 19, subd. (c).

²¹ Cal. Penal Code §326.5(h).

13. Players are more isolated; even when playing against other players, the game becomes more like a video game, one against the machine.
14. Play becomes more mechanical, as with a slot machine, creating more danger of rhythmic, repetitive play.
15. Compulsive gamblers greatly prefer gaming devices to paper bingo.
16. The machine eliminates players' skill in marking their cards.
17. The machine eliminates players' skill in recognizing the existence of a winning bingo pattern on any of their cards.
18. Players cannot see how many cards are being played by other players, eliminating the skill factor involved in estimating odds of winning any particular game.
19. Machines eliminate the status of being able to play multiple cards.
20. Elimination of the skill factors leads to players buying more cards per game, if that option is available.
21. More can go wrong accidentally and go undetected with these complex mechanical/electrical devices than with paper cards.
22. Class II gaming devices can be used to create casinos; paper bingo cannot.

Similarities of Class II Machines to Slot Machines

Class II machines are clearly slot machines under present California law and cannot even be possessed, let alone used, off-reservation. However, federal courts and the NIGC have ruled that these gaming devices are not slot machines, a form of Class III gaming under IGRA, but rather merely electronic aids to bingo, and therefore Class II and legal on Indian land in a state, like California, that permits charities to run low-stakes paper bingo games.

Class II machines are intentionally designed to be as much like Class III slot machines as possible in every way. From the players' point of view, they look, sound, feel and act like the video and electromechanical slot machines they play in Nevada's commercial casinos. For example, Class II machines duplicate the themes and appearances of the most popular Class III slot machines, such as "Wheel of Fortune." There are numerous similarities between Class II bingo machines and Class III slot machines:

1. Machines are of the same size and general appearance.
2. Players need to press a button or pull a handle to start play.
3. Machines have spinning reels.
4. Machines have multiple pay lines.
5. Players have to pay prior to each round of play.
6. Players pay by putting money into a machine or by purchasing and using credits on the machine.
7. A round of the game is played every few seconds.
8. Player watches display of spinning reels and a win is displayed with familiar symbols such as cherries and bars.

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9. Players are passive, they do not have to actually participate in the play of a game.
10. Payouts are made instantly from the machine.
11. The electronic nature of the machine allows players to make large numbers of wagers per hour.
12. Players may lose large amounts of money per gambling session.
13. Machines eliminate social interaction with other players.
14. Players are isolated; even when playing against other players, the game becomes more like a video game, one against the machine.
15. Machines produce similar sounds and lights to create an atmosphere of excitement.
16. Play becomes more mechanical, creating more danger of rhythmic, repetitive play.
17. Machines eliminate players' skill. Players rely entirely on luck.
18. Machines have similar appeal to compulsive players.
19. Class II machines use many of the same themes as Class III machines.

Class II Machines Marketed as Class III Equivalents

Class II machines are advertised as slot machines by manufacturers to casino purchasers and by casino operators as slot machines to their potential and active patrons. Trade journals, like "Indian Gaming" magazine, and trade shows, like the National Indian Gaming Association convention held April 10 to 13, 2005 in San Diego, display the latest Class II gaming devices. Little mention is made of the fact that the machines are Class II. Instead, the emphasis is on their attraction to players in casinos. Taking one at random, here is part of the description for the new "Blazing Diamonds" from Rocket Gaming Systems:

This fast playing, frequent hitting game is loaded with lots of special Bonus Features and sizzling hot graphics. In addition to Rocket's legendary Progressive Jackpot, it features a Scatter Pay symbol, Wild Re-Spin, and Diamond 7's. Blazing Diamonds is a high speed linked 5 x 5 bingo card game played on a 5-reel, 9-line format with player selectable 1 through 9 lines.

Players will love the multi-denomination options of 1, 2, 5, 10 and 25 cents. Top prize is the Progressive Jackpot and can be won 9 ways with 5 Blazing Diamond Symbols on active pay line and max credits bet....²²

Notice that like a slot machines this gaming device has pay lines and spinning reels.

Class II machines are the exact duplicates of slot machines in more than just appearance. They play like slot machines. Players have to pay each time before they pull the handle or press

²² Indian Gaming: The National Magazine of the American Indian Gaming Industry p.66 (March 2005).

the button starting that round of play. If they win an interim prize on that round they are paid instantly by the machine.

The differences between Class II and III machines are usually minor, at least from the point of view of the patron. Class II games often print out paper credits to be cashed in by winning players, rather than paying off directly with coins. But commercial casinos are also trying to go coinless, since coins are the major mechanical drawback to conventional slot machines. Class II machines usually are a few seconds slower than Class III. They may require players to press an extra button or two to win a prize. But, players watch reels go around. The machines have the same sounds and lights as slot machines. They play and pay like slot machines. They give patrons the same gaming experience. They attract the same players and create the same profits and problems as traditional slot machines found in commercial casinos.

Even though the machines are technically Class II bingo aids under federal law, Indian casinos market Class II machines as slot machines. Two states, Florida and Oklahoma, have casinos consisting of only Class II games. The Creek Nation Casino near Tulsa advertises with photos of machines that appear identical to conventional video slot machines and phrases like this: “Looking for Las Vegas-style excitement? We've got it all with the best selection of fast-paced, high-stakes casino games!”²³

There are at least five Class II casinos on Indian land in Florida, but the most striking are the two Seminole Hard Rock Casinos, in Hollywood and Tampa.²⁴ Hard Rock Casinos is a large, sophisticated casino operator, with casinos in Las Vegas, London and Manchester.²⁵ Hard Rock Casinos is itself part of Rank Group, Plc., a multi-billion dollar international gaming and entertainment company.²⁶

The 90,000 and 130,000 square foot Class II casinos are among the largest casinos of any type in the country. They are also indistinguishable from “true” casinos in appearance. Even the gaming devices appear the same as those found in Las Vegas and Atlantic City casinos. For example, “Wheel of Fortune”, the most successful video slot machine, is prominently advertised

²³ <http://www.creeknationcasino.com/tulsa/video.html> <checked 5/18/05>

²⁴ <http://www.seminolehardrock.com/> <checked 5/18/2005>

²⁵ <http://hardrock.com/casinos/> <checked 5/18/2005>

²⁶ “The Rank Group Plc is one of the UK’s leading gaming and entertainment companies and is also an international provider of services to the film industry. Quoted on the London Stock Exchange and on NASDAQ, Rank has over 20,000 employees worldwide, operating primarily in North America and the UK, with activities in continental Europe and other parts of the world.” http://www.rank.com/rank_site/index.shtml <checked 5/18/2005>

in the Seminole Casino's ads. It is difficult to see this casino and accept that it is only offering poker and electronic aids to bingo. Here is how the Seminole Casino puts it:

Although electronic gaming machines look like traditional slot machines, there are significant differences. With electronic gaming machines, winners receive a ticket that must be redeemed for cash. Additionally, players play against each other as in bingo, not against the "house," like traditional slot machines. Prize levels are determined in advance and all prizes are awarded.²⁷

It appears the two casinos' 3,950 Class II machines are as profitable as conventional Class III slot machines.²⁸

Conclusion

Class II machines are much more similar to slot machines than they are to traditional bingo games. Further, players consider the machines to be slot machines. They do not care whether a machine is a Class II machine or a Class III machine, so long as it plays like a casino slot machine.

California law classifies Class II machines as slot machines and makes them illegal for all purposes at all times. Unlike state law, federal law makes a distinction between the two types of gaming devices. Significantly, however, even federal law has a difficult time drawing the line between Class II and Class III machines.

Given the similarities between the two machines, one would expect concerns about the creation of a Class III facility to apply similarly to creation of a Class II casino. The fact that the Lyttons have indicated they will operate Class II machines should not alleviate the concerns. If anything, due to the lack of regulation on the numbers of machines allowed, as well as the lack of ability of the state to require mitigation as they would with Class III gaming, the assertion that the facility will operate only Class II games should heighten concerns about adverse impacts on the surrounding, non-Indian community.

Prof. I. Nelson Rose

²⁷http://www.seminolehardrock.com/press_releases/index.cfm?task=detail&id=PR_050126_09082766_1Y
C7C <checked 5/18/05>

²⁸ "In the month of February, patrons of the two (Hard Rock)casinos and a bingo hall spent \$75.8 million, which reportedly gave the tribe \$21.4 million. Revenues are expected to reach over a billion dollars this year, and the money the slot machines make rivals any Las Vegas operation."
<http://www.casinocompendium.com/seminole.html> <checked 5/18/2005>

Appendix A – Examples of Class II games and Class II casinos

Website for the Creek Nation casino in Tulsa, OK. All games at Creek Nation are Class II machines.

Creek Nation Casino | Tulsa - Mozilla Firefox

File Edit View Go Bookmarks Tools Help

Back Forward Reload Stop Home

http://www.creeknationcasino.com/tulsa/video.html

Go

CREEK NATION Casino

Rush In And Win!

TULSA ABOUT US PROMOTIONS VIDEO GAMING VIP CLUB DIRECTIONS

Open 7 Days a Week • Complimentary Valet Parking • 81 St.& Riverside • Tulsa, Oklahoma

Late Night Concessions Available.
Got a case of the late night munchies? Our cafe is open, serving great food and drinks!

Strike it Rich in Our Video Gaming Room!

Looking for Las Vegas-style excitement? We've got it all with the best selection of fast-paced, high-stakes casino games! Check out our new, exciting casino games -- Roy D. Mercer, Congratulations, Freedom Rings and more. Enjoy complimentary non-alcoholic beverage service while playing in our clean, comfortable casino room. And get your share of the more than \$100 million we pay out each month!

Have Fun! Win Big!

PLAY TIMES
9am - 6am daily - 7 days a week

THE CREEK NATION OF OKLAHOMA WELCOMES YOU!

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CREEK NATION CASINO TULSA • 81 St.& Riverside • Tulsa, Oklahoma • Phone: (918) 299-8518 • E-mail: CNC.Tulsa@creeknationcasino.com

Done

Class II Gaming Machines in San Pablo–

© 5/24/05 Prof. I. Nelson Rose

Source: <http://www.cadillacjack.com/bingo.php>

We know Gaming

Cadillac Jack brings its experience with players, operators, and the changing framework of local rules and regulations to the Bingo and Class-II markets. From Bingo to three and five line games, we know gaming, and our customer rely on us to keep them supplied with the most entertaining and flexible games in their communities. CJ designs, sells and supports its games, this give owners the confidence that games will remain compliant, compelling, and commercially worthwhile.

Fast Paced Gaming

Our Bingo games combined the latest in fast paced play action, and frequent software upgrades, with our proprietary gaming models. The result is a three-way winner for our customers. CJ's proven multi-games systems give hall owners an affordable way to change games frequently to keep players interested and coming back. Our multi-language games make CJ the choice as an exclusive game supplier to several international venues.



Appendix B – About the Author

I. NELSON ROSE

Professor I. Nelson Rose is recognized as one of the world's leading experts on gambling law. A tenured full Professor at Whittier Law School in Costa Mesa, California, Prof. Rose is an internationally known scholar, author and public speaker.

Professor Rose is best known for his internationally syndicated column and 1986 landmark book, "GAMBLING AND THE LAW®." As co-author of the first gaming law casebook, GAMING LAW: CASES AND MATERIALS, he wrote the chapter on Indian gaming.

Harvard Law School educated, Prof. Rose is a consultant to governments and industry. He has testified as an expert witness in administrative, civil and criminal cases in the United States, Australia and New Zealand, including the first NAFTA tribunal on gaming issues, and has acted as a consultant to major law firms, international corporations, licensed casinos, Indian tribes, and local, state and national governments, including Arizona, California, Florida, Illinois, Michigan, New Jersey, Texas, the province of Ontario, and the federal governments of Canada, Mexico and the United States.

With the rising interest in gambling throughout the world, Prof. Rose has addressed such diverse groups as the National Conference of State Legislatures, Congress of State Lotteries of Europe and the National Academy of Sciences. He has taught classes on gaming law to the F.B.I., at the University of Ljubljana in Slovenia, at Sun Yat-sen University in China and as a Visiting Scholar for the University of Nevada-Reno's Institute for the Study of Gambling and Commercial Gaming. Prof. Rose has presented scholarly papers on gambling in Nevada, New Jersey, Puerto Rico, England, Australia, Antigua, Portugal, Italy, Argentina and the Czech Republic.