

VOLUME NO. 36**Opinion No. 7**

CRIMES AND CRIMINAL PROCEDURES — Gambling, bingo and keno; CRIMES AND CRIMINAL PROCEDURE — Slot machines, unlawful; CRIMES AND CRIMINAL PROCEDURE — Electronic bingo and keno machines, unlawful; GAMBLING — Authorized games, bingo and keno; GAMBLING — Authorized games, others unlawful; GAMBLING — Bingo and keno, imitations not authorized; GAMBLING — Slot machines, unlawful; GAMBLING — Electronic bingo and keno machines, unlawful. Article III, Section 9, Constitution of Montana, 1972; Sections 62-715 through 62-726, 94-8-401, 94-8-404, 94-8-429, Revised Codes of Montana, 1947; Section 463.0127 Revised Statutes of Nevada; 35 Opinions of the Attorney General No. 86.

HELD: The electronic machines currently distributed by Treasure State Games, Inc., which purport to duplicate the games of bingo and keno, constitute gambling games which are not authorized by the "Bingo and Raffles Law".

June 23, 1975

Mr. Thomas F. Dowling
County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Mr. Dowling:

Since I have had no response from your office to my last letter regarding your request for an opinion as to the legality of electronic bingo and keno machines I have found it necessary to obtain the requested information from the Nevada Gaming Commission. I am now, however, in receipt of sufficient information to answer your request for an opinion on the following question:

Whether electronic devices, currently being distributed and operated in Lewis and Clark County, which purport to duplicate the games of bingo and keno are gambling games which are authorized by the "Bingo and Raffles Law" sections 62-715 through 62-726, Revised Codes of Montana 1947?

The distributors of these machines contend that the similarity of operation of these machines to the live games places them within the letter and spirit of the "Bingo and Raffles Law". It is my opinion that the machines are within neither the letter nor the spirit of that law. While the machines are called "Bingo" and "Keno", they duplicate the live games in name only. The distribution of these machines is a deliberate attempt to circumvent the prohibition against the possession or use of slot machines and similar devices in this state.

The machines in question, unlike pinball machines which are played for amusement only, do constitute gambling devices since each of the elements of gambling are present: chance, consideration, and prize. Only those forms of gambling which are specifically authorized in Chapter 7, Title 62, R.C.M. 1947, are legal. All other forms of gambling, other than pari-mutuel horse racing, are prohibited by 94-8-401 through 94-8-431, R.C.M. 1947. The games authorized in Title 62 are exceptions to the prohibitions of the Criminal Code as permitted by Article III, Section 9, Constitution of Montana 1972. Therefore, unless the devices in question fall squarely within the definition of one of the expressly authorized games, the machines must be considered unauthorized forms of gambling.

The game of bingo is an authorized form of gambling by virtue of sections 62-715 through 62-726, R.C.M. 1947. In my opinion in Vol. 35 Opinions of the Attorney General No. 86 I held that the game of keno is included by the definition of bingo in section 62-716, R.C.M. 1947, as an authorized form of gambling.

The devices to which your letter refers and to which this opinion is addressed are intended by their distributor and manufacturer to duplicate the ordinary, live games of bingo and keno. It is necessary then to examine whether these machines do in fact duplicate the live games which are authorized.

It is clear from observation that the machines **do not** duplicate the live games. Several significant differences exist of which the following are most obvious:

1. **Number of players.** In the ordinary game of bingo it is possible for a large number of people to play the game at the same time. In fact, the profitability of the game to its operators depends on having a large crowd of people to play. While the ordinary game of keno can more readily be played by a single player as a practical matter this game also is normally played by a group of people.

The electronic devices at issue here can be played by no more than one player at a time although the bingo machines do allow the individual to play more than one card at a time.

2. **Method of selection of numbers.** Various methods have been used for the selection of numbers in both bingo and keno. The method of selection may be manual, drawn by hand from a pool of numbers in a container, or the selection may be mechanical, usually through the use of numbered ping-pong balls forced out of their container by means of a blower system.

With respect to electronic bingo and keno machines, the numbers are randomly selected by means of an electronic scanning process. The device, when activated, scans the sample of numbers available, selecting numbers at regular intervals until a bingo is achieved on one of the cards shown on the screen. Once the machine is activated all action is performed by the machine itself.

3. **Speed of play.** The electronic games of bingo and keno are substantially faster games than the ordinary, live games. The selection of numbers is completed within just a few moments in the electronic games, while the live games may take from five to fifteen minutes varying from one game to the next in time consumed. Naturally the faster the game is played the sooner the next game may begin so that an individual may contribute a great deal of money to the game in a shorter period of time than is possible in the live games.

4. In addition to the above-mentioned differences, of primary significance is the fact that the very nature of the devices in question provides the inherent distinction of playing against a machine rather than against other contestants. In my opinion it is the competition among contestants which is the very essence of the live game of bingo. Since the machines to which this opinion refers do not and cannot duplicate that feature then I can see these machines only as an attempt to expand, without legislative or popular approval as required by the Montana Constitution, the number and type of authorized forms of gambling.

5. Of further consideration also is the definition of bingo equipment contained in section 62-716(2) (a), R.C.M. 1947, which states:

- (2) "Equipment" means
(a) with respect to bingo, the receptacle and numbered objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers of other designations to be covered and the objects used to cover them, the boards or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct and playing of bingo; ...

To contend that electronic bingo and keno machines fall within the above definition would clearly be an exercise of poetic license. Even to say that technical compliance with the statute has been achieved would stretch the plain meaning of the words used to an untenable degree. Certainly such application was beyond the intent of the legislature in enacting section 62-716. There can be no other reason for the inclusion of a definition of the equipment to be used other than as a limitation to be placed on the form and method of play of the game of bingo.

From another standpoint, it is important to consider the fact that these machines have been transported to the state of Montana from the state of Nevada where they were approved and licensed for operation in that state as slot machines. The devices have been converted from coin operated slot machines to non-coin operated machines. The definition of slot machines in section 463.0127, Revised Statutes of Nevada is somewhat different from the Montana definition in section 94-8-429, R.C.M. 1947, both of which statutes are attached to this opinion as appendices "A" and "B" respectively. The primary difference between the two definitions is that the Nevada statute does not limit the meaning to coin or token operated machines or to machines which automatically payoff. Montana also does not require that the machine itself makes the payoff but does require that the machine be operated by inserting a "coin, token, chip or trade check". As a result of the conversion to non-coin-operation, however, the devices no longer fall strictly within the definition of slot machines as defined by Montana statute although they would apparently continue to be considered as slot machines under Nevada law. It is not as slot machines that these devices constitute unlawful gambling games, however, but rather under sections 94-8-401 and 94-8-404, R.C.M. 1947, which read in pertinent part:

94-8-401. Every person who deals, or carries on, opens or causes to be opened, or who conducts, or causes to be conducted, operates or runs, either as principal, agent, owner or employee, whether for hire, or not; any game of ... or any device whatsoever, ... or who runs or conducts or causes to be run or conducted, or keep any slot machine, punchboard, or other similar device, or permits the same to be conducted for money, checks, credits, or any representative of value ... (Emphasis supplied)

94-8-404. Any person who has in his possession, or under his control, or who permits to be placed, maintained or kept in any room,

space, inclosure or building, owned, leased or occupied by him, or under his management or control, any faro box, faro layout, roulette wheel, roulette table, crap table, slot machine, **or any machine or apparatus of the kind mentioned in the preceding section of this act,...** .
(Emphasis supplied)

The compiler's note states that the preceding section referred to is section 94-8-401.

This opinion is not intended to infer that these machines, as presently constructed, constitute slot machines but rather that their similarity to slot machines places them within the intended application of the term "or other similar machine or device" as used in section 98-8-401. It is fundamental that one cannot do indirectly what one cannot do directly. Further, it is clear that that is the exact nature of these machines.

The legislature, in enacting Title 62, Chapter 7, authorized certain forms of gambling as exceptions to Title 94. In limiting legal gambling to those authorized forms the legislature clearly intended to carefully scrutinize any and all attempts to remove other forms of gambling from the list of prohibited games. This reluctance to further expand gambling in the state of Montana was demonstrated in the 1975 legislature by the failure of that body to act affirmatively to any of the proposals to amend the laws currently in effect. I believe that the legitimization of the machines in question would thwart the demonstrated intent of both the legislature in enacting Title 62, Chapter 7 and of the voters of this state who approved Article III, Section 9, Constitution of Montana 1972.

The electronic devices which purport to duplicate the games of bingo and keno and which are currently in operation in a number of locations in Lewis and Clark County do not constitute the authorized games of bingo and keno as contemplated by the "Bingo and Raffles Law". Such devices are in fact "hybrid" forms of gambling, much closer in appearance and operation to slot machines than to bingo.

Further, such devices must necessarily fall within the phrase, "... slot machine, punchboard, or other similar device, ..." as stated in the prohibition of 94-8-401.

THEREFORE, IT IS MY OPINION:

The electronic machines currently distributed by Treasure State Games, Inc., which purport to duplicate the games of bingo and keno, constitute gambling games which are not authorized by the "Bingo and Raffles Law".

Very truly yours,
ROBERT L. WOODAHL
Attorney General