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**THE ATTORNEY GENERAL OF MARYLAND  
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY**

March 10, 2008

The Honorable Thomas V. Mike Miller  
H-107 State House  
Annapolis, Maryland 21401-1991

Dear Senator Miller:

You have asked for advice concerning the use of instant bingo machines in St. Mary's County.<sup>1</sup> Specifically, you have asked whether certain types of machines, which operate differently than the machines at issue in the *Chesapeake Amusements* case, are prohibited slot machines under Criminal Law Article § 12-302. You have also asked whether a qualified organization<sup>2</sup> permitted to conduct gaming under Criminal Law Article, Title 13, Subtitle 2 could place pull tab dispensing machines in a restaurant or bar. You have further asked whether a qualified organization may pay a percentage of the proceeds from an instant bingo machine to a restaurant or bar where it is located. In addition, you have asked whether gaming could be legal under Title 13, Subtitle 2 if the restaurant or bar obtains the instant bingo machines and operates them on behalf of a qualified organization, paying them a

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<sup>1</sup> In this letter I use "instant bingo machines" to describe all of the machines currently coming into the State under claims that they are of the type held not to be a slot machine in the *Chesapeake Amusement* case. These machines are sometimes called pull-tab machines in the cases. I use "pull tab dispensing machine" to refer to machines of the same type as the Lucky Tab II, which was involved in *Chesapeake Amusements*. That is, machines that sell preprinted pull tab tickets or instant bingo tickets in order off of a roll installed in the machine. I generally refer to the objects dispensed by these machines as "tickets," though their nature varies.

<sup>2</sup> A "qualified organization" is a volunteer fire company or a bona fide religious organization, fraternal organization, civic organization, war veterans' organization or charitable organization. CR §§ 13-201(c) and 13-2101(e).

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percentage of the proceeds. Finally, you have asked whether a restaurant or bar could have more than five instant bingo machines.

It is my view that an instant bingo machine is legal under *Chesapeake Amusements* only if it dispenses a preprinted ticket or pull-tab in a predetermined order. Moreover, a machine does not become a slot machine simply because it compiles information about a series of plays and prints that information out for the player. It is also my view that current law would not prohibit qualified organizations from conducting gaming using pull tab dispensing machines in restaurants and bars. However, a qualified organization may not pay a percentage of the proceeds to a bar or restaurant where it operates pull tab dispensing machines, and may not participate in an arrangement in which a restaurant or bar manages these machines and pays the qualified organization the proceeds. Finally, while the application of the five device rule is not completely clear in this context, it is my view that a single bar or restaurant could not legally have sixty pull tab dispensing machines.

***Distinguishing Machines that are Permitted from those that are not***

*Chesapeake Amusements, Inc. v. Riddle*, 363 Md. 16 (2001) addressed the issue of whether a commercial establishment in Calvert County that was permitted to have instant bingo, or pull-tabs, could sell pull-tabs through a “dispensing machine with a video screen that displays the contents of the tickets that it dispenses and emits a musical tone that signifies when a winning ticket is being dispensed.” *Id.* at 18. The key issue was whether the dispensing machine in question was an illegal “slot machine” as that term was defined in the predecessor to Criminal Law Article § 12-301.

The Court described the machine in question as follows:

Turning to the Lucky Tab II, it is an electrically operated machine that dispenses paper pull-tab tickets from a roll of preprinted paper pull-tabs inserted in the machine by a Chesapeake Amusements employee. Like the tickets that are sold manually or dispensed by the Play & Win machine, each ticket dispensed by the Lucky Tab II is part of a particular deal of outwardly identical tickets, in which the total number of tickets, as well as the number of winning tickets, were determined when the deal was constructed and printed. A deal of the Lucky Tab II pull-tab tickets consists of four rolls of tickets containing seven thousand five hundred tickets each, for a total of thirty thousand tickets in the deal, each having printed on it for accounting and control purposes, the serial number of that deal and a roll number and ticket number. The tickets dispensed consist of two strips of paper sealed together by the manufacturer when the ticket is printed. When the two strips are separated, certain symbols appear on the inside of the ticket and certain combinations of those symbols entitle the purchaser to a prize, the amount of which is also

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determined by those symbols. The front of the ticket indicates to the purchaser where to pull it open. A winning ticket is labeled as such on the inside. In addition, the combinations of symbols that entitle the customer to a prize and the amount of the prize associated with each winning combination are listed on the front of the Lucky Tab II machine.

*Id.* at 21. The Court further explained:

While a customer who purchases a pull-tab ticket from the Lucky Tab II may open the ticket manually and/or refer to the image on the machine's video screen to view the symbols on the inside of the ticket, the parties agree that it is only on the basis of the symbols that appear on the inside of the paper ticket that a winning ticket is determined. Thus, the symbols that are displayed on the video screen are not used to determine whether the customer is entitled to a prize. Moreover, the Lucky Tab II machine does not make any payment to or record any credit on behalf of a customer as a result of a winning ticket. As is true with respect to manually sold tickets and those purchased from a Win and Play machine, a customer must take what he or she believes to be a winning ticket purchased from the Lucky Tab II to a Chesapeake Amusements employee to have the winning combination of symbols and the genuineness of the ticket verified before the prize associated with the symbols on the ticket may be awarded and paid.

*Id.* at 22-23. The Court held that for a machine to be a slot machine as defined in the statute, "its operation must be characterized by an element of chance, as a result of which the user of the machine apparatus or device may receive or become entitled to receive a prize or reward." *Id.* at 29. "In other words, there must be consideration supplied by the user on the possibility that he or she will receive a prize "by reason of" the unpredictable operation of the machine." *Id.* at 30. Because the machine in question did not dispense tickets randomly, but sold them off a roll that was inserted in the machine in a predetermined order, the Court held that this test was not met. Specifically, the Court held that the element of chance was in the pull-tabs, and was the same whether they were dispensed manually by a cashier or by the machine.

#### *Cartridge Machines*

You have first asked whether a machine that prints tickets from information on a cartridge or similar item rather than dispensing preprinted tickets would be a slot machine. You do not say whether the machine prints the tickets from the cartridge in a predetermined

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order or whether they are chosen randomly.<sup>3</sup> If the latter, the machine is clearly a slot machine. If not, more analysis is necessary.

In the *Chesapeake Amusements* case, the Court of Appeals made the point that, with the Lucky Tab II, the paper ticket, dispensed in sequence from the “deal,” determined the outcome of the game, and it was the paper ticket, when sold, that triggered the other, “player enhancement” features of the game. *Id.* at 30-31. Thus, it was with the paper pull tabs that the game was played, *id.* at 31, and the element of chance was in the pull-tabs, not in the machine, *id.* at 41. In contrast, as I understand the machines about which you are inquiring, the machine prints cards from a cartridge and is not simply dispensing tickets, but rather manufacturing them. While the tickets may be manufactured based on a predetermined “deal” from the cartridge, the cartridge is itself a part of the machine, without which the machine cannot function. This cartridge, as part of the machine, must, of necessity, keep track of the tickets that have been dispensed and which ones are still available. And, while the tickets can be physically removed from a pull tab dispensing machine and sold manually, this is not the case with the machine described in your request for advice. Once the cartridge is in place, the machine “contains an interior computer that generates the game.” *Id.* at 40. For that reason, it is my view that it is a slot machine.

#### *Machine that Electronically Tabulates Winnings*

You have also sought advice about whether an instant bingo game that electronically tabulates wins and losses, and prints a final receipt of wins and losses that the player may present to the cashier to collect winnings, making it unnecessary to look at any of the individual tickets that are printed, either to determine whether a person has won or lost or to collect winnings, is a slot machine. As a preliminary matter, it seems clear that a machine that does not produce a paper ticket at all, but simply produces an entirely electronic version of the pull-tab game, would be a slot machine. The lower court in the *Chesapeake Amusements* case reached this very conclusion with respect to the “Oasis” machine, which the lower court characterized as “‘exactly the type of machine that the Legislature has sought to prohibit,’ noting that it is ‘entirely electronic’ with a ‘number of player enhancement[s]’ and a choice of games and concluding that the Oasis machine, rather than a pull-tab dispenser, was a machine which tracks a player’s winnings and losses through ‘an internal credit system,’ such that the player is not responsible for identifying a winning ticket.” *Id.* at 21. The determination that the Oasis machine was a slot machine was not before the Court of Appeals. However, the Court twice distinguished the workings of the Lucky Tab II

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<sup>3</sup> Because the question does not reference a specific machine, it is also not clear whether the machine actually turns out tickets that are two strips of paper sealed together that are opened by the player, as was the case in *Chesapeake Amusements*, or whether it simply prints a piece of paper with the symbols that show a win or loss.

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dispenser from those of the Oasis in making its determination that the Lucky Tab II was not a slot machine. *Id.* at 21, 23, 39. Other authorities have reached similar conclusions with respect to entirely electronic versions of pull-tab games. *Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535 (9<sup>th</sup> Cir. 1994) *cert. denied*, 516 U.S. 912 (1995) (completely electronic pull-tab game a Class III device under Indian Gaming Regulatory Act); *Cabazon Band of Mission Indians v. National Indian Gaming Commission*, 14 F.3d 633 (D.C.Cir.), *cert. denied*, 512 U.S. 1221 (1994) (same); *Opinion of the Virginia Attorney General*, No. 06-093, 2007 WL 1958941 (June 20, 2007 Va.A.G.) (completely electronic version of pull-tabs dispensing only a receipt and not tickets or cards not included in authorization of “instant bingo” or “pull tabs.”); *Opinion of the Texas Attorney General*, Op. GA-0541, 2007 WL 1189841 (Tex.A.G. April 19, 2007) (completely electronic pull-tab game not “bingo” within Constitution); *Opinion of the Washington Attorney General* 1999 No. 7, 1999 WL 551334 (Wash.A.G., July 21, 1999) (physical card or ticket an essential element of pull-tab).

If the machine does dispense a ticket in addition to the receipt, the analysis is again different. In the *Chesapeake Amusements* case the Court noted that, with the Lucky Tab II, the printed ticket was necessary to collect winnings, and distinguished that machine from the Oasis machine, which tracked a player’s winnings and losses through an internal credit system, “such that the player is not responsible for identifying a winning ticket.” *Chesapeake Amusements*, 363 at 21, 23; *see also United States v. Santee Sioux Tribe of Nebraska*, 324 F.3d 607, 614 (8<sup>th</sup> Cir. 2003) *cert. denied* 540 U.S. 1229 (2004); *Seneca-Cayuga Tribe of Oklahoma v. National Indian Gaming Com'n*, 327 F.3d 1019, 1040 (10<sup>th</sup> Cir. 2003); *Diamond Game Enterprises, Inc. v. Reno*, 230 F.3d 365, 370 (C.A.D.C. 2000). The Court also noted that the machine did not calculate odds, *id.* at 30, *citing State v. 158 Gaming Devices*, 304 Md.404, 432 (1985), which held that a free play amusement machine was not a slot machine unless it was equipped with gambling features such as “odds mechanisms, a meter for recording the number of free plays released, or other recognized indicia of a gambling device.”

If the machine in question is a true dispensing device, where the chance is in the ticket or pull-tab and any function of the machine is only in reaction to what is printed on a ticket or pull-tab that is dispensed from a roll in a predetermined order, it is my view that the fact that a machine can also print a receipt summarizing the tickets sold and tally any resulting winnings as part of the overall transaction with a single player does not make it into a slot machine. While the ability to keep similar records was deemed evidence that an otherwise legal free play machine was a slot machine in the *Gaming Devices* case, that case involved the issue of whether machines allegedly used only for amusement and not for gaming were in fact adapted for use as gaming devices. In this case, it is clear that gaming is taking place. Thus, additional features of the machine using the ability of the machine to read the tickets as they are dispensed would not render the machine a slot machine any more than the “player enhancement” features at issue in *Chesapeake Amusements* did. If the machine is not a true dispensing device, however, it would be a slot machine for the reasons discussed above.

***Location of Machines in Restaurants and Bars***

Title 13, Subtitle 2 of the Criminal Law Article permits a qualified organization in any of 15 counties, including St. Mary's, to conduct a gaming event for the exclusive benefit of a qualified organization if an individual or group of individuals does not benefit financially from the gaming event, or receive any of the proceeds from the gaming event for personal use or benefit. CR § 13-203. The Subtitle further provides that a qualified organization that conducts a gaming event under this subtitle shall manage the gaming event personally through its members. CR § 13-205. A "gaming event" is defined as a "carnival, bazaar or raffle." CR §§ 13-201(b); 13-2101(d). The terms carnival, bazaar and raffle are not defined. However, it seems rather clear that none of them take place on a daily basis in a restaurant or bar. Nor can putting a roomful of machines in an otherwise normally functioning restaurant or bar be deemed to create a carnival, bazaar or raffle.<sup>4</sup>

Criminal Law Article, Title 13, Subtitle 21, applicable in St. Mary's County, provides that a qualified organization may hold a gaming event and may operate a gaming device if an individual or group of individuals does not benefit financially from the operation of the gaming device, or receive from the operation of the gaming device any proceeds for personal use or benefit. This authorization also requires that members of the qualified organization personally manage the operation of the gaming device. CR § 13-2112. It further states that all proceeds from a gaming device shall be used solely for the legitimate charitable, benevolent, or tax-exempt purposes of the qualified organization and that the proceeds may not be used to benefit personally any member of the qualified organization. A gaming event is defined as a carnival, bazaar or raffle, just as in Subtitle 2. CR §§ 13-201(b); 13-2101(d). However, the Subtitle does contemplate daily operation of gaming devices, as it provides, at § CR 13-2113, that "[i]f a qualified organization uses a gaming device on a daily basis," it may not operate more than five gaming devices and the premises in which the gaming devices are operated may not contain more than five gaming devices.

It is not clear how to reconcile the limitation of the use of gaming devices to gaming events, which would ordinarily indicate that they cannot be conducted on a regular basis, with the provision of Subtitle 21 that clearly contemplates daily operation of gaming devices. It is my belief that the General Assembly would have contemplated daily use in the confines of the qualified organization's own premises or premises rented for that purpose. However, that limitation does not appear in the language of the Subtitle. In an unpublished opinion issued in 1988, Attorney General Curran opined that, in the absence of a statutory provision to the contrary, a fire department authorized to operate tip jars could place tip jars in a bingo

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<sup>4</sup> This office has generally held that the carnival, bazaar or raffle language contemplates events on an occasional and non-recurring basis. 91 *Opinions of the Attorney General* 64 (2006).

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parlor if the tip jar was managed by members of the fire department and the bingo parlor was not compensated for the use of their premises. Opinion No. 88-016 (March 11, 1988) (unpublished). The opinion went on to say, in a footnote, that its conclusions would “apply in the same way to all commercial enterprises, regardless of the nature of the business.” Under the rationale of this opinion, an organization permitted to conduct gaming on a daily basis under CR § 21-2113 could do so in a place such as a bar or restaurant as long as the devices are personally managed by members of the qualified organization.

***Payment of a Percentage of the Proceeds to a Restaurant or Bar Where the Machine is Located***

You have also asked whether a qualified organization could pay a percentage of the proceeds from pull tab dispensing machines to a restaurant or bar as payment for the space in the restaurant or bar. It is my view that it could not.

In an unpublished opinion issued in 1985, Attorney General Sachs opined on an arrangement under which qualified organizations would conduct bingo on premises leased from a profit-making corporation, with all of the necessary equipment being supplied by the corporation, and the proceeds being divided between the qualified organizations after substantial payments to the corporation for rent. Opinion No. 85-001 (January 15, 1985) (unpublished). The opinion involved a for profit corporation that had leased a vacant building with the intent of subleasing it to various qualified organizations to conduct bingo games. Under the subleases, each organization would be entitled to exclusive use of the premises on particular evenings and would be guaranteed \$300 from the bingo proceeds on each night it used the premises. The remainder of the proceeds would be placed in a common account, which would be used to pay \$1,150 rent per night of use to the for profit corporation as basic rent, plus additional rent for operating expenses, including bingo supplies and related expenses. To the extent that basic and additional rent could not be covered by current proceeds, it would encumber future proceeds. Any excess proceeds would be divided over the qualified organizations on a pro rata basis each month. The opinion concludes that the sharing of proceeds with the for profit corporation violated the prohibition against any individual or group of individuals receiving the proceeds of a gaming event for personal use or benefit. The opinion continued:

To be sure, these statutory restrictions on the use of proceeds do not necessarily mean that a nonprofit organization may not purchase supplies or prizes for its bingo games from a disinterested third party or, if necessary, lease from such a third party a place in which to hold its games. And certainly, to that extent, the third party may be said to benefit indirectly from the bingo games. However, the clearly evident intent of the section is that the sponsoring organization be the primary, and the sole direct, beneficiary of the bingo games. At a minimum, any proceeds not inuring to the sponsoring

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organization may only be used, in our view, to pay reasonable and necessary expenses of conducting the games. Put another way, any profit to a third party must solely derive from the reasonable and necessary expenses that the nonprofit organization incurs in operating its games. The arrangement at issue here, however, appears to go far beyond that - and, indeed, effectively makes [the for profit corporation] rather than the 'sponsoring' organizations, the primary beneficiary of the contemplated bingo games.

In a subsequent unpublished opinion, discussed above, Attorney General Curran opined that a fire department could operate a tip jar in a commercial bingo parlor, but could not compensate the bingo parlor for the use of its premises. Opinion No. 88-016 (March 11, 1988) (unpublished). That opinion further stated that any increased business for the bingo parlor that resulted from the presence of the tip jar would not violate the prohibition on personal use or benefit of the proceeds from the conduct of gaming by qualified organizations. This opinion distinguished the statements in the earlier opinion concerning payment of rent on the ground that "the payment of compensation to the bingo parlor by the fire department would not be a necessary expense of operating the tip jar, as leasing space for bingo games may be."

Recent articles in the Washington Post have reflected that bars and restaurants are being paid a percentage of the proceeds from the operation of instant bingo machines. You state that in some cases the qualifying organization is collecting as little as 20%, with the remainder going to the bar or restaurant where the machines are located and to the owner of the machines for rent. This arrangement is similar to that found invalid in Opinion No. 85-001. It is clear that the qualified organizations involved in this practice are far from its primary, much less, its exclusive beneficiaries. Moreover, it is my view that the payment of a percentage of the proceeds for rental of either space or machines cannot be deemed a reasonable or necessary expense that would take the payment out of the restriction against the use of the proceeds for the personal use or benefit of an individual or group of individuals. Therefore, it is my view that an arrangement under which a large percentage of the proceeds is paid to the premises where machines are located and not to the qualified organization violates the law and gaming conducted in this way is illegal gaming.<sup>5</sup>

### ***Operation of Gaming by For Profit Organizations***

You have also asked about arrangements in which a restaurant or bar obtains machines and operates them on behalf of qualified organizations, paying them a percentage of the

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<sup>5</sup> It is at least arguable that any amount of rent paid to a bar or restaurant beyond the increased traffic that the machines might draw would be impermissible under the tip jar opinion.

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proceeds. As discussed above, CR § 13-203 permits a qualified organization to conduct gaming, but CR § 13-205 requires that the qualifying organization that conducts a gaming event “manage the gaming event personally through its members.” In addition, CR § 13-2111 permits a qualifying organization to operate a gaming device, but CR § 13-2112 requires that members of the qualifying organization manage the operation of the gaming device.

In Opinion No. 85-001 (January 15, 1985) (unpublished), discussed above, the Attorney General found that an additional problem with the leases in question was that a for profit organization was supplying the location and equipment for gaming and recruiting qualified organizations to engage in it, with the result that the for profit organization would be the de facto manager of the gaming, and that the gaming would not be “managed and operated only by members of [the sponsoring] group of organizations personally” as required by the applicable law. Similarly, a letter to the Honorable George H. Littrell dated March 3, 1988 states that the person who makes the arrangements for the holding of a fundraising activity and oversees its conduct is “managing” the activity. And in Opinion No. 88-016 (March 11, 1988) (unpublished), it was said that while a tip jar could be placed in a bingo parlor, “the bingo parlor may not manage a volunteer fire department’s tip jar for the fire department.”

Clearly, a restaurant or bar that obtained pull tab dispensing machines, placed them on its premises and recruited one or more qualified organizations to be the “beneficiaries” would be both conducting and managing the gaming in violation of the above mentioned provisions.

### ***Number of Machines***

You have also asked about reports that some bars or restaurants have as many as sixty instant bingo machines on their premises. Criminal Law Article § 13-2113 provides that a qualified organization that uses a gaming device on a daily basis may not operate more than five gaming devices and that the premises where the qualified organization operates the gaming device may contain no more than five gaming devices.

An issue that arises in interpreting this provision is to identify the “gaming device.” Under *Chesapeake Amusements*, the chance, and thus the gaming, occurs in the ticket or pull-tab. And it is agreed that pull-tab cards are gaming devices. *See. e.g., Virginia Alcoholic Beverage Control Bd. v. VFW Ocean View Post-3160*, 390 S.E.2d 202 (Va.App. 1990). However, it seems clear that the General Assembly would not have intended to limit an organization to the “operation” of five pull tab cards. Thus, some other measure must be found. While it is tempting, in this context, to count each pull tab dispensing machine as a gaming device, this does not provide a rule for situations where instant bingo or pull-tabs are sold manually. It would appear that the most logical unit would be the “deal,” that is the

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group of instant bingo or pull-tab cards that look the same and are part of a preset group.<sup>6</sup> A deal for the machine discussed in *Chesapeake Amusements* was spread over four rolls. Thus, even assuming that the statute would permit all four rolls to be in play at once, the statute would permit the operation of a maximum of twenty machines (four rolls times five deals). Moreover, it could be argued that the deals must be played serially, not concurrently, with the result that there could be only five machines.<sup>7</sup> However it is calculated, there cannot be sixty machines in a single location.

Sincerely,

Kathryn M. Rowe  
Assistant Attorney General

KMR/kmr  
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<sup>6</sup> As described in *Chesapeake Amusements*, when playing instant bingo, “[a] customer purchases one or more instant bingo/pull tabs from a ‘game’ or ‘deal’ of such tickets. All the tickets in a given deal are identical in their outward appearance; some entitled the persons who purchase them to receive prizes of specified value.” *Id.* at 20. Where the tickets are dispensed by machine, “[l]ike the tickets that are sold manually ... each ticket dispensed by the Lucky Tab II is part of a particular deal of outwardly identical tickets, in which the total number of tickets, as well as the number of winning tickets, were determined when the deal was constructed and printed. A deal of the Lucky Tab II pull-tab tickets consists of four rolls of tickets containing seven thousand five hundred tickets each, for a total of thirty thousand tickets in the deal, each having printed on it for accounting and control purposes, the serial number of that deal and a roll number and ticket number.” *Id.* at 21.

<sup>7</sup> I am not familiar with the practice with respect to pull-tab tickets that are sold manually, which would provide guidance for the application of this limitation with respect to sale by dispensing machines.