



# DIVISION OF GAMBLING CONTROL

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LAW ENFORCEMENT ADVISORY

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## “ELECTRONIC BINGO”

The Division of Gambling Control is providing this advisory to law enforcement agencies to address bingo games played with electronic devices, as offered by authorized organizations under Penal Code section 326.5. The Division considers electronic systems of bingo that substitute computers with stored bingo matrices, in lieu of paper or cardboard bingo cards, to be unauthorized by Penal Code section 326.5. Such bingo games constitute unlawful lotteries under California law (Pen. Code, § 319) and the conduct of such a game is a misdemeanor (Pen. Code, § 320). The Division, however, does not consider bingo games in which players purchase and receive paper or cardboard bingo cards to be rendered unlawful by the use of an electronic aid that notifies the player of a winning card, where the combined use of the electronic aid and the traditional cards allow the player to meet the requirements of Penal Code section 326.5, subdivision (o).

California law prohibits the conduct of lotteries (Cal. const., art. IV, § 19, subd. (a); Pen. Code, § 320) other than by the California State Lottery (Cal. Const., art. IV, § 19, subd. (d)). An exception to this general prohibition exists for bingo games that are conducted for charitable purposes under local ordinances authorized by the Legislature under article IV, section 19, subdivision (c) of the California Constitution.

Penal Code section 326.5 permits bingo games to be conducted “by organizations exempted from the payment of the bank and corporation tax by Sections 23701a, 23701b, 23701d, 23701e, 23701f, 23701g, and 23701/ of the Revenue and Taxation Code and by mobilehome park associations and senior citizens organizations,” if the proceeds are used only for charitable purposes and the games are conducted in a city, county, or city and county pursuant to an ordinance enacted under the constitutional provision. (Pen. Code, § 326.5, subd. (a).)

Section 326.5 specifies precisely what the game of bingo is that is permitted under these conditions. Subdivision (o) of Penal Code section 326.5 provides:

(o) 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, 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.

In 1987, the Attorney General addressed, in a formal opinion, the question whether an electronic system of bingo that substitutes a hand computer with stored bingo "card" matrices for the traditional paper or cardboard cards qualifies as bingo within the meaning of Penal Code section 326.5, subdivision (o). (70 Ops.Cal.Atty.Gen.304 (1987).) The Attorney General observed, "The only difference between the manner in which traditional bingo and the system of electronic bingo is played is that the handset with pre-programmed cards is used instead of the usual paper or cardboard bingo cards. Is this distinction a critical distinction for purposes of section 326.5? We believe that it is." (*Id.*, at p. 306.) The Attorney General explained:

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 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.

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In our view, [the electronic bingo system] just does not fall within the meaning of section 326.5, subdivision (o), so as to qualify it for use in "charitable bingo." In our opinion, the question whether this type of electronic bingo, *or any type of electronic bingo*, should be used for "charitable bingo" is a matter to be addressed to the Legislature.

(*Id.*, at p. 308; italics in original.)

During the 20-year period which has followed the Attorney General's opinion quoted above, the Legislature has amended Penal Code section 326.5 twice, but it has not amended the section to authorize electronic bingo. It has, however, amended subdivision (o), containing the definition of bingo, but notably, it has made no change to the elements of the definition itself. Accordingly, subdivision (o) of section 326.5, as quoted above, continues to prescribe the elements of the game that is permissible as bingo, conducted by organizations authorized by section 326.5, subdivision (a).<sup>1</sup>

The Attorney General, however, has subsequently concluded that in games in which players purchase and receive traditional bingo cards, the use of an electronic aid to notify the player of a winning card is not prohibited. The Attorney General concluded that under these

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<sup>1</sup> Approval by the National Indian Gaming Commission of electronic bingo games or devices as "class II" gaming is applicable to bingo conducted by federally-recognized Indian tribes only. (25 U.S.C. §§ 2703(7)(A)(i); 2706(b); 2710(b); 25 C.F.R. § 501.2,(a).) Such approval does not render such games or devices permissible to authorized organizations under Penal Code section 326.5. Any game of bingo offered by such an organization must comply with the definition of bingo in subdivision (o) of section 326.5.

circumstances, “the combined use of the electronic aid *and* traditional cards will allow each player to meet the requirements of subdivision (o), since the ‘designated numbers or symbols’ are ‘on a card’ as well as being programmed into the electronic aid.” (81 Ops.Cal.Atty.Gen 415, at p. 417 (1998).)

Accordingly, electronic systems of bingo that substitute computers with stored bingo matrices, in lieu of paper or cardboard bingo cards, are unauthorized by Penal Code section 326.5 and are prohibited. (Pen. Code, §§ 319, 320.) Bingo games in which players purchase and receive paper or cardboard bingo cards are not rendered unlawful by the use of an electronic aid that notifies the player of a winning card, where the combined use of the electronic aid and the traditional cards allow the player to meet the requirements of Penal Code, subdivision (o).

Copies of the Attorney General’s opinions referred to in this law enforcement advisory are attached for ease of reference.

*For more information regarding this advisory, contact the California Department of Justice,  
Division of Gambling Control, at (916) 263-3408.*