

Stand Up For California!

“Citizens making a difference”

standupca.org

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May 21, 2007

Honorable Jerry Brown
Attorney General State of California
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Sacramento, CA. 95852-6013
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**RE: Illegal Gaming Equipment and Breach of Exclusivity
Affecting State General Fund**

Dear Attorney General Brown:

Stand Up for California is concerned with what we believe are instances of the use of illegal slot machines by charitable bingo operations and horse tracks in California, as described below. Because the use of these unlawful slot machines is within the jurisdiction of the Division of Gambling Control of the Department of Justice and because the use of these machines is both new and expanding, Stand Up for California respectfully requests that appropriate remedial and enforcement actions be promptly implemented by the Department of Justice.

Bingo Machines installed in Sacramento, Solano, and San Diego Counties and perhaps other counties throughout California present both legal and financial problems to the State of California. The machines have features such as “*auto daub*” and “*sleep daub*” that allow them to operate faster than the machines designated as class II under the federal Indian Gaming Regulatory Act and the legal status of which is currently under review by the National Indian Gaming Commission and the United States Department of Justice. The bingo machines operating in Sacramento County are clearly contrary to prior opinions from the Attorney General’s Office.

For example, a 1998 AG opinion¹ stated conditions under which electronic aids to bingo are permissible under California law. The permissible electronic aides clearly do not include the machines described above, which constitute the game itself. In addition, I have been informed that certain of these machines are standalone games that do not involve other players and are, therefore, unlawful house-banked games. All of these machines are, however, illegal slot machines that violate the Penal Code prohibitions and are not permitted under the constitutional and statutory provisions authorizing local charitable bingo.

¹ Opinion of Daniel E. Lungren Attorney General, Clayton P. Roche Deputy Attorney General, No. 96-1011, December 31, 1998.

In addition, as discussed below, the operation of these machines in certain areas appears to violate the exclusivity provisions of several of the Indian gaming compacts and potentially could result in the loss of hundreds of millions of dollars to the State of California.

These bingo machines appear to violate Article IV, section 19, of the California Constitution, which prohibits casinos of the type in Nevada and New Jersey, as the bingo machines² are slot machines, which the voters intended to prohibit when they adopted that constitutional provision.

Therefore, Stand Up For California requests prompt consultation with the appropriate officials of the affected counties followed by enforcement actions if necessary by the Division of Gambling Control. The Department of Justice may also wish to follow up consultation with California State Association of Counties and California League of Cities to identify additional locations of gaming equipment that is noncompliant with the California Penal Code or the exclusivity provisions of any tribal-state class III gaming compact.

The California Horse Racing Board authorized a "Simplified Wagering Machine (SWM) in 2004. However, the Horse Racing Board was not able to actually look at the SWM, as no prototype was available.

"Although no prototype has been provided for examination, staff has reviewed the specifications of the SWM and finds it to be a device that may assist a novice bettor to become acclimated to wagering on horse races. The SWM has limited wagering options on a great number of races that will allow the novice to quickly experience the entire cycle of the wagering process thereby, it is hoped, make a racing fan of the novice."³

The approval of the SWM occurred during the time racetracks were pushing Prop 68 to legalize slot machines at tracks. (The Prop 68 vote failed by 82%) Had a prototype been made available to the Horse Racing Board for examination the Board may have determined that the machine actually installed is "readily converted" to a Video Instant Racing Machine. Thus, the machine violates section 330b (d) of the California Penal Code. These machines also potentially conflict with exclusivity provisions in class III gaming compacts with Indian tribes, as the machines meet the compacts' definition of a "gaming device." These machines currently are present at Golden Gate Fields and Santa Anita Racetracks.

Once again, Stand Up For California requests prompt remedial and/or enforcement action.

Our State's gaming policy is evolving as we grow into what is becoming the largest gaming state in the nation. The California Constitution grants exclusive rights to Indian Tribes to operate slot machines. Breach of the exclusive geographic market areas guaranteed in tribal-State gaming compacts will relieve the affected Indian Tribes of their obligation to make revenue sharing payments to the State. Operation of gaming devices in violation of California Penal Code, and the exclusivity provisions in Tribal-State Compacts will terminate tribal obligations for substantial funding allocated to the State General Fund.

² Letter to Honorable Loni Hancock from Attorney General Bill Lockyer, November 16, 2005. The letter provides an informal opinion on current bingo gaming devices stating that they are slot machines.

³ Staff Analysis September 15, 2004 – California Horse Racing Board minutes

The amended compact of the United Auburn Indian Community, Rumsey, Pala, Pauma and Viejas geographic market areas are affected. The newly amended and not yet ratified 2006 compacts of Agua Caliente, Pechanga, San Manuel, Morongo and Sycuan Indian Tribes are also affected. California's breach of the exclusivity provisions of these compacts would severely impact the State's General Fund by risking the payment of shared gaming revenue totaling in the hundreds of millions of dollars. It further threatens the Secretary of the Interior's decision to approve future tribal state compacts that includes revenue sharing with the State.

Stand Up For California respectfully requests the Attorney General's prompt attention to these matters. Additionally, if your office determines a basis upon which the continued operation of these machines, or certain of them, are lawful under California law, Stand Up for California would appreciate a response advising us of the basis for that conclusion. Thank you in advance for your assistance.

Sincerely,

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CC: Honorable Arnold Schwarzenegger- Governor of California
Honorable Dean Shelton – Chairman, California Gambling Control Commission
Honorable Bob Lytle - Director – Division of Gambling Control