

Luther Strange

Alabama Attorney General



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AG STRANGE'S MEMO TO DISTRICT ATTORNEYS, LAW ENFORCEMENT SETS FORTH STATE'S LEGAL POSITION REGARDING GAMBLING

(MONTGOMERY) – Attorney General Luther Strange issued a memorandum yesterday to law enforcement and district attorneys throughout Alabama setting out the legal position that his office will take when investigating and analyzing the legality of gambling activities. Noting that the Governor's Executive Order Number 1 returned to the Attorney General's Office the primary authority for ensuring that Alabama's gambling laws are enforced statewide, Attorney General Strange shared the following points of law:

The Alabama Constitution imposes a strict prohibition against gambling.

Slot machines and other gambling devices are illegal in all 67 counties. Although several local constitutional amendments authorize "charity bingo" in certain counties, no amendment authorizes slot machines or other illegal gambling devices in any county. "Likewise, no local bingo rule, regulation or ordinance can legally authorize slot machines." A machine designed to accept cash value such as tokens or a player card with a pin number, and then dispense cash value prizes based upon any elements of chance, "is an illegal slot machine, regardless of what game it plays or whether it is connected to any other machines or equipment."

Gambling devices used in counties with bingo amendments must play traditional bingo as defined by the Alabama Supreme Court to include six necessary factors to be legal. These factors include that each player uses cards with spaces arranged in five columns and rows with each space assigned a letter, number, or similar designation; that such alphanumeric or similar designation is randomly drawn and announced one by one; that each player must pay attention to the announced designations and mark his or her card; that failing to pay attention and mark card lets player miss the opportunity to win; that player has to recognize and announce that he has a "bingo"; and that the game is intended for a group with multiple players competing against one another.

Whether paper or electronic, bingo must be operated for a charity in strict accordance with the requirements of the county's constitutional amendment. "Under the previous Attorney General, an advisory opinion was issued that in effect gutted these requirements. I have revoked this opinion," stated Attorney General Strange in the memorandum. "This office will place a substantial focus on ensuring that any bingo facilities operating pursuant to a constitutional amendment meet each and every operational requirement contained in the applicable constitutional amendment. These requirements will be literally and strictly applied."

A copy of the memorandum is attached.

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MEMORANDUM

TO: Alabama Law Enforcement Personnel and District Attorneys
FROM: Attorney General Luther Strange
DATE: May 16, 2011
RE: Illegal Gambling

On January 18, 2011, Governor Bentley issued Executive Order Number 1, which terminated the Governor's Task Force on Illegal Gambling and transferred primary responsibility for ensuring that Alabama's gambling laws are enforced statewide to the Alabama Attorney General's Office. During Governor Riley's administration, Governor Riley appointed special prosecutors to oversee the State's prosecution and litigation efforts regarding gambling. Executive Order Number 1 recognizes that under the current administration, the Attorney General will once again assume that role. Accordingly, I am providing the following memorandum setting out the legal position the Attorney General's Office will take when investigating and analyzing the legality of gambling activities in Alabama.

1. The Alabama Constitution of 1901 imposes a strict prohibition against gambling in the State. Article IV, § 65 of the Alabama Constitution of 1901, provides:

The legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this state of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the legislature of this state, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

ALA. CONST., art IV, § 65.

2. Slot machines and other gambling devices, as defined in Ala. Code § 13A-12-20 (1975), are also illegal in all 67 Alabama counties under § 13A-12-27 of the Code of Alabama and § 65 of the Alabama Constitution.¹ While several local constitutional amendments have authorized "charity bingo" in certain Alabama counties, no amendment to the Alabama Constitution has authorized slot machines or other illegal gambling devices in any county. Likewise, no local bingo rule, regulation or ordinance can

¹ See *State ex rel. Tyson v. Ted's Game Enterprises*, 893 So. 2d 376, 380 (Ala. 2004) ("[W]e hold that Article IV, § 65, means what it says, and prohibits the Legislature from authorizing 'lotteries or gift enterprises' that involve games or devices in which chance predominates the outcome of the game, even if 'some skill' is involved" (emphasis added)).

legally authorize slot machines.² Any machine designed to accept cash value in any form (including, for example, cash value credits utilized by depositing tokens or swiping or inserting any type of player card or pin number or other device or code) and then dispense cash value prizes based upon any elements of chance is an illegal slot machine, regardless of what game it plays or whether it is connected to any other machines or equipment.

3. The gambling devices used in counties with bingo amendments must play the game commonly or traditionally known as bingo as defined in the Barber v. Cornerstone case.³ The Court laid out six necessary but not exhaustive factors that a game must possess to be considered legal “bingo” for purposes of these amendments. These factors include the following:

1. Each player uses one or more cards with spaces arranged in five columns and five rows, with an alphanumeric or similar designation assigned to each space.

2. Alphanumeric or similar designations are randomly drawn and announced *one by one*.

3. In order to play, each player *must pay attention* to the values announced; if one of the values matches a value on one or more of the player's cards, *the player must physically act by marking his or her card accordingly*.

4. A player can fail to pay proper attention or to properly mark his or her card, and thereby miss an opportunity to be declared a winner.

5. A player must recognize that his or her card has a “bingo,” i.e., a predetermined pattern of matching values, and in turn *announce to the other players* and the announcer that this is the case before any other player does so.

6. The game of bingo contemplates a group activity in which multiple players compete against each other to be the first to properly mark a card with the predetermined winning pattern and announce that fact.⁴

4. Bingo (whether paper or electronic) must be operated for a charity and in strict accordance with every requirement of the applicable constitutional amendment. Every constitutional amendment authorizing bingo in Alabama has specific charitable and operational requirements. Under the previous Attorney General, an advisory opinion was issued that in effect gutted these requirements. I have revoked this opinion. This Office will place a substantial focus on ensuring that any bingo facilities operating pursuant to a constitutional amendment meet each and every operational requirement contained in the applicable constitutional amendment. Those requirements will be literally and strictly applied.

² See *State v. American Gaming Sys.*, No. CV 08-1837 (Jefferson Cnty. Cir. Ct. Oct. 26, 2009) (Vowell, P.J.) (slip op. at 9–12); *Dep't of Tex. Veterans v. Dorning*, No. 07-S-2144-NE (N.D. Ala. Sept. 28, 2009) (Smith, J.) (slip op. at 29–52). Copies of these opinions can be provided if necessary.

³ See *Barber v. Cornerstone Community Outreach, Inc.*, 42 So. 3d 65 (Ala. 2009).

⁴ *Id.* at 86 (emphasis added).