



DIVISION OF GAMBLING CONTROL
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TO: ALL POLICE CHIEFS AND SHERIFFS

RE: Tab Force™

We have been informed that the gambling device known as Tab Force™ manufactured by Infinity Group, Inc., is being operated in connection with bingo operations. The Division of Gambling Control does not have jurisdiction over bingo operations. However, the Division does have jurisdiction to investigate suspected violations of state gambling laws (Bus. & Prof. Code, § 19822.1, subd. (2)) and, in the exercise of that jurisdiction, the Division may provide advice to local law enforcement agencies for use in the regulation of bingo operations.

ADVICE: It is the view of the Division of Gambling Control that the gambling device known as Tab Force™ constitutes an unlawful gambling device within the meaning of sections 330b and 330.1 of the Penal Code.

BACKGROUND

Infinity Group's Tab Force™ system offers two gambling activities.¹ One gambling activity is a game of chance (sometimes having a name like "Red Hot Blue" or "Video Tab Force") and is played by use of an electromechanical, video device. The other gambling activity purports to be the game of pull-tabs.

Unlike most slot machines, the Tab Force™ device lacks an internal game-play program medium. Instead, the software used in the play of the game is provided in a paper format, in the form of cards on which is encoded information used in the display of 20 "plays" of the device. One or more software cards are purchased by the player from a "deal" of thousands of such cards. Throughout the "deal," play "outcomes" of varying prize values are randomly distributed

¹We are informed that similar electromechanical devices used in connection with "pull-tabs" are being distributed by Sharp Image Co. through Triton Gaming and under the name of "Wildfire Multitab."

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on the 20-play cards. Prize values depend upon the amount of the wager paid for the winning play.²

Infinity Group argues that the device is legal because each software card could be said to constitute a "pull-tab," i.e., "bingo" as defined by Penal Code section 326.5(o). However, the cards' classification as "bingo" for purposes of section 326.5³ does not detract from the cards' status as a component of the Tab Force™ video device in an analysis under Penal Code sections 330a, 330b, or 330.1:

It is the intention of the Legislature that bingo as defined by [Pen. Code, § 326.5, subd. (o)] applies exclusively to [Pen. Code, § 326.5] and shall not be applied in the construction or enforcement of any other provision of law.

(Pen. Code, § 326.5, subd. (o).)⁴

The first step in the operation of the Tab Force™ device, unlike other slot machine devices, is the procurement of the machine's game-play software by the player and the preparation of that software to be read by the device's optical scanner. Software cards are sold to players for varying prices, the more costly cards offering the potential for payoffs of greater value. The player prepares the software by removing an opaque covering from the card. The card may then be inserted into the device and the device is, thereupon, ready for multi-game play.

The play of each individual game is initiated by pushing a button on the device. Each of the 20 "outcomes" that have been programmed onto the card will be displayed on the device's video monitor as the familiar "eight-liner" or single-line slot machine payout matrix. A paper voucher can be dispensed to the player for redemption of any winnings.

²For example, a \$5-card offers 20 plays at 25¢ each. A "777" line up on a 25¢ play will pay off \$5 to the player. In contrast, a \$20-card offers 20 plays at \$1 each. A "777" on a \$1 play will pay off \$20 to the player.

³The Division expresses no opinion on the question whether the card constitutes "bingo" within the meaning of Penal Code section 326.5.

⁴We are informed that the National Indian Gaming Commission has classified the Tab Force™ system as "class II gaming" under the federal Indian Gaming Regulatory Act. Such a classification is irrelevant to the question whether the device constitutes a "slot machine" within the meaning of the California Penal Code.

ANALYSIS

The Tab Force™ video device is not operated by insertion of money. However, this is not an essential feature of the prohibitory statutes. Prohibited devices include machines that are operated by insertion of an object. (Pen. Code, §§ 330b, subd. (2), 330.1.) The Tab Force device is caused to operate by insertion of the game display software that the player has previously purchased.

Whether the player of the Tab Force™ device wins something of value in any of the twenty plays provided by a single card, is a matter of chance; no skill is involved. Play outcomes have been randomly programmed onto the paper card by Infinity Group and are “read” by the device and displayed on the monitor.

Section 330.1 of the Penal Code defines a “slot machine,” in relevant part, as follows:

[A device] that is . . . used or operated in such a way that, as a result of the insertion of any . . . object such machine or device is caused to operate or may be operated or played, mechanically, electrically, automatically, or manually, and by reason of any element of hazard or chance, the user may receive or become entitled to receive anything of value

(Pen. Code, § 330.1.) Nothing in the statute requires that the element of hazard or chance be supplied by a random number generator within the device. In the case of the Tab Force™ device the element of hazard or chance is supplied by the paper software card that is installed into the device by the player to cause its operation. The software card is an essential component of the Tab Force™ device; it cannot be operated for any purpose unless and until the software card has been installed.

We believe that California courts would not permit Infinity Group to avoid the prohibition against gambling devices because the manufacturer has, in this case, replaced the usual game-play computer chip or cartridge with a paper software medium comprising thousands of randomized play outcomes (the so-called pull-tab deal) that are randomly distributed, twenty each, on cards that players may purchase for installation into the machine.⁵ Courts are well-aware of the creativity of those who seek to circumvent state gambling laws. (See, e.g., Walker

⁵On December 31, 1998, the Attorney General issued an opinion (96-1011), concluding that “a bingo player may use an electronic aid in conjunction with traditional bingo cards to notify him when a game has been won.” The final version clarifies, however, that, “[t]he possible use of an electronic aid [to read pull-tabs] presents a different factual context and additional considerations beyond the scope of this opinion.”

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v. Meehan (1987) 194 Cal.App.3d 1290, 1300 n. 8, citing McCall v. State (Ariz. 1916) 161 P. 893, 895, 899.)

Nor is it material to the analysis that the player of the Tab Force™ could, in advance of using the device, determine whether the software card includes any winning number combinations.⁶ Sections 330a, 330b, and 330.1, by their very terms, are directed to the “the suppression of gambling devices” (People v. Kay (1940) 38 Cal.App.2d Supp. 759, 764 (emphasis added); the statutes thus prohibit the possession, manufacture, repair, ownership, transportation, lease, or distribution of the devices. They do not make unlawful the use of a slot machine for gambling purposes. (Cf., Pen. Code, § 330 (unlawful to “play or bet at or against” the specified games).) Accordingly, it is immaterial that the player of a Tab Force™ video device could, in theory, have determined the outcome of all 20 plays prior to insertion of the software into the machine. Sections 330b and 330.1 of the Penal Code were enacted precisely for the purpose of suppressing machines that could be used as a gambling device, whether or not they are being used as a gambling device. (Merandette v. City and County of San Francisco (1979) 88 Cal.App.3d 105, 113 (“[S]ection 330b et seq. were enacted to prohibit the mere possession of certain machines after the court in Chapman v. Aggeler . . . construed section 330a to prohibit the possession of a machine actually being used as a gaming device, but not the mere possession of a machine which could be so used”).) When loaded with the game-play software and, therefore, fully operational, the Tab Force™ device, is a stand-alone gambling device within the meaning of the statutes.

Sincerely,

BILL LOCKYER
Attorney General

HARLAN W. GOODSON
Director

⁶In such a case, the device becomes completely superfluous. Indeed, if the outcome of the 20 plays is already known, the machine cannot, in good faith, even be characterized as “entertainment.”