



DIVISION OF GAMBLING CONTROL

BILL LOCKYER
Attorney General

HARLAN GOODSON
Director

VOLUME 1 NUMBER 1

LAW ENFORCEMENT ADVISORY

MAY 17, 1999

Telephone Card Vending Machines, with a “Sweepstakes” Feature

Several gambling devices, described as “telephone card vending machines, with a sweepstakes feature,” were recently placed in operation in California. The Division of Gambling Control has received reports of current efforts to install these types of gambling devices in gambling and retail establishments throughout the State.¹ The Division is aware of such devices being manufactured by Venda Tel² and Diamond Game Enterprises.³ Other manufacturers may also be entering this market.

ADVICE: It is the view of the Division of Gambling Control that such devices are unlawful gambling devices (“slot machines”) within the meaning of Penal Code sections 330a, 330b and 330.1; and unlawful lottery schemes within the meaning of Penal Code sections 319 and 321.

DESCRIPTION: The device has the general appearance of a video slot machine. It is operated by the patron’s insertion of money into the device, followed by the push of a button, which is located on the front of the device. The patron is then promptly advised if any money has been won, and if so, how much, by both a numeric and graphic display on the device’s video monitor. The device also dispenses a printed slip of paper with that information. That slip is then redeemed by the patron for money. With every push of the button, the patron has the chance to win money. In operating the device, the patron does not know in advance whether or not he or she will win any money.⁴ In combination with this “sweepstakes” feature, the device also delivers to the patron a phone card or a printed phone time personal identification number (“PIN”),⁵ which provides the

¹ Some devices bear the inscription: “Money Talks Sweepstakes.” Another label sometimes placed on the device or the “phone card” is: “Lucky Shamrock.”

² A distributor of the Venda Tel gambling device is Pacific Gaming Technologies.

³ A marketer of the Diamond Game Enterprises’ gambling device is A-Action Amusements.

⁴ The patron also does not know in advance the specific amount that will be won. The possible prizes typically range between one and one hundred dollars per play. However, both the percentage of winning plays and the amount that can be won are adjustable.

⁵ The phone card or PIN is usually printed on the same slip of paper that advises the patron of whether or not he or she has won any money.

patron phone time.⁶ The device might also have a placard displayed on the cabinet which offers a “free play” by mail.

ANALYSIS: A device is a slot machine if: (1) it is operated, (2) by inserting money into it, and (3) by reason of hazard, chance or outcome that is unpredictable to the player,⁷ (4) the player is entitled to the opportunity to receive money or something of value.⁸ Nothing more is required.

The telephone card vending machine, with a sweepstakes feature, as described above, is a slot machine. It is operated by inserting money into it, and, as a result of an outcome that is unpredictable to the player, the player is then entitled to the opportunity to receive money. That the device also dispenses a phone card or PIN of minimal value to the player does not make such a slot machine a lawful vending machine.⁹ The current rule of law, applicable throughout the state, is that “an otherwise illegal machine does not become legal merely because it plays music, gives a person

weight, vends food, etc.”¹⁰ Also, the offer of free plays by mail does not make this otherwise illegal gambling device legal.¹¹

A lottery is any scheme in which (1) a prize (2) is distributed by chance (3) among persons who have paid any valuable consideration for the opportunity to obtain that prize.¹²

The telephone card vending machine, with a sweepstakes feature, as described above, is also an unlawful lottery scheme.¹³ The player of the device pays money (“consideration”) for the opportunity to win more money (“prize”). Prior to operating the machine, the player does not know if he or she will win (“chance”). Although there may be posted on the device an offer for a free play by mail, this is still an unlawful lottery scheme.

⁶ This allows the patron to make a long-distance telephone call, usually two to five minutes in length, within the contiguous, continental United States.

⁷ It does not matter that there may not be a random number generator in the device. None of the statutes requires that the element of “chance” be generated within the machine itself. (See Pen. Code, Sections 330a, 330b(2) & 330.1.) The requirement is simply that the player does not know in advance if he or she will win. That is, the outcome of each play is unpredictable to the player.

⁸ See Penal Code Section 330b(2).

⁹ See Penal Code Section 330.5. Moreover, Penal Code Section 330.5, on its face, does not provide an exception to the prohibitions found in Penal Code Sections 330a & 330b.

¹⁰ *Trinkle v. Stroh* (1997) 60 Cal.App.4th 771, 782. See also Penal Code Section 330b(2) which clearly provides that a device is still a slot machine “irrespective of whether it may, apart from any element of hazard or chance or unpredictable outcome of such operation, also sell, deliver or present some merchandise, indication of weight, entertainment or other thing of value.”

¹¹ See *Trinkle v. Stroh* (1997) 60 Cal.App.4th 771, 780-781.

¹² See *Western Telecon, Inc. v. California State Lottery* (1996) 13 Cal.4th 475, 490; *California Gasoline Retailers v. Regal Petroleum Corp.* (1958) 50 Cal.2d 844, 851; and Penal Code Section 319.

¹³ See Penal Code Section 321. For related offenses see also Penal Code Sections 320, 322, 323 & 326.

¹⁴ To be lawful, each device must generally and indiscriminately offer free chances to win a prize from that device, which they do not.¹⁵ If someone wants the chance to win a prize from a device that is placed in a gambling or other retail establishment, they must pay for it.¹⁶

¹⁴ While it is acknowledged that under some circumstances the providing of free plays can make a scheme lawful, the telephone card vending machine, with a sweepstakes feature, as described above, does not qualify for this exception. (See *California Gasoline Retailers v. Regal Petroleum Corp.* (1958) 50 Cal.2d 844, 861-862.)

¹⁵ See *People v. Shira* (1976) 62 Cal.App.3d 442, 459.

¹⁶ Each device is a “stand alone” machine. It is a self-contained unit, with a separate computer program, that operates independently from other machines. Players are given the option of mailing in for a “free play” on some other device located in the manufacturer’s headquarters. Player’s are then advised by mail if they won.

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