

MEMORANDUM

State of Alaska Department of Law

TO: Larry E. Meyers, Director
Income & Excise Audit Division
Department of Revenue

DATE: April 6, 1998

FILE: 663-98-0198

TELEPHONE NO.: 465-3600

SUBJECT: Pull-tab Dispensing
Machines

FROM: Vincent L. Usera
Assistant Attorney General
Commercial Section - Juneau

You have asked our opinion on the question of whether pull-tab dispensing machines are presently legal in Alaska. The short answer is no, not presently, but certain types of machines could be legalized by the department. Our analysis follows.

BACKGROUND

Presently, pull-tab games are played exclusively using fish bowls or other types of transparent containers. In the past, the department has been leery of using machines to dispense pull-tabs because of fears expressed that the use of machines could contribute to the addictiveness of gambling, since they resemble the •one-armed bandit• and have a certain allure. The department has also acknowledged that there are inherent weaknesses in the use of fish bowls, widely used in Alaska as containers for pull-tab games. There is very little security offered by fish bowls, and games are subject to tampering or theft by attendants or others. The use of machines would clearly improve security as access to pull-tabs could be strictly limited and machines are capable of providing accounting for the games.

We note at the outset that pull-tabs are the only such games that are legal to play in Alaska. Raffles, lotteries, and bingo are also available in this state, but raffles and lotteries are not suited, in most instances, to the use of machines, and bingo is already being played using machines to select the numbers.

Several types of machines are available for use in the play of pull-tabs. One type involves the player inserting coins or bills in order to receive a paper pull-tab, which is played in the same manner as those extracted from fish bowl containers. Another type of dispensing machine is also fed with coins or bills; however, it produces an electronic image of a pull-tab on a video screen. The computer completes the play and, if the image is a winner, the machine produces a paper receipt that can be redeemed for cash at a later time. We have recently been

informed of a third type of dispensing machine. An operator controls the use of this machine. The operator receives money from the player and, using computerized input, instructs the machine on how many pull-tabs to dispense. Play is the same as paper pull-tabs. The first and last types can be characterized generically as dispensing machines; the machine that produces an image on a video screen is not truly a pull-tab dispenser, but is a game in itself.

**NO MACHINE INVOLVED IN PULL-TAB PLAY
OR DISPENSING IS PRESENTLY LEGAL**

A regulation presently in force prohibits those machines that are designed to actually select the images or numbers in order to determine the winner of a pull-tab game. 15 AAC 160.470(f).¹ We believe this regulation is well-reasoned and should not be altered. At one time, the regulation also barred use of mechanical or electronic devices to dispense pull-tabs. 15 AAC 105.125(g). That regulation was repealed in 1994 as part of a comprehensive rewrite of the regulations. Register 131, 7/30/1994.

Under statute, all types of machines that might be used in pull-tab play are presently banned, unless specifically authorized:

(a) This chapter does not authorize the use of playing cards, dice, roulette wheels, coin-operated instruments or machines, or other objects or instruments used, designed, or intended primarily for gaming or gambling or any other method or implement *not expressly authorized* by the department.

AS 05.15.100 (emphasis added). No regulations have been adopted to authorize the use of machines. Accordingly, no machines, including pull-tab dispensing machines, may be used at this time in charitable gaming.

¹ That regulation provides:

A mechanical or electronic device may not be used to select the symbols or numbers used to determine the winners of a pull-tab game.

THE DEPARTMENT CAN AUTHORIZE THE USE OF DISPENSING MACHINES

We understand the department is considering authorizing certain types of dispensing machines if it is determined that the department has the statutory authority to do so. Two statutory provisions grant the department authority to exercise its discretion in authorizing the use of dispensing machines. Under AS 05.15.060(a)(6), the department is authorized to adopt regulations governing •the method and manner of conducting authorized activities and awarding of prizes or awards, and the equipment that may be used[.]• Alaska Statute 05.15.180(a) provides the use of any machine in connection with gaming is only permissible if authorized by the department, implying that the authority to permit the use of certain machines exists.

THE DEPARTMENT MUST ADOPT REGULATIONS IN ORDER TO AUTHORIZE THE USE OF MACHINES

We conclude the department must adopt regulations in order to exercise its authority to approve the use of certain machines. We reach this conclusion after reading AS 05.15.060(a)(6), together with AS 05.15.180(a), and the all-encompassing definition of regulation contained in AS 44.62.640(a)(3). Alaska Statute 05.15.060(a)(6) provides that the department shall adopt regulations governing the equipment that may be used in conducting authorized activities.

The department should adopt regulations under the Administrative Procedure Act (AS 44.62) to specify the types of machines that will be allowed. Regulations can specify the conditions under which they may be used, as well as any other limiting factors the department elects to impose.

We understand the department is inclined to limit the types of dispensing machines that could be used and not allow machines that give credit. We believe the department may limit the authorization in that way. We recommend that the rationale underlying that limitation be clearly stated in a memo to the regulations file or the statement of decisions with respect to comments received on the proposed adoption.

If the department chooses to authorize certain machines, we recommend that the descriptions be as specific as possible and closely drawn in order to minimize any confusion or possibility of expansive interpretation by the gaming community. We also recommend that the regulation clearly identify what machines are not to be allowed.

We suggest that the department adopt a rubric under which it would issue a permit for each machine that a given permittee or operator wanted to employ. Thus, rather than the individual making a determination of whether or not a given machine fits the definition, the

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department would make the necessary determination and issue or deny a permit on a case-by-case basis prior to the machine being placed in service. This process would obviate disagreements where a certain machine was placed in operation under the individual's interpretation of the statute and only later discovered to be in use and contrary to the department's interpretation. The simple absence of a permit would allow agency action to remove an offending machine.

We hope this answers your questions. If there is anything further you require please let us know.

VLU/bm