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MEMORANDUM

TO: Alabama Law Enforcement Personnel and District Attorneys
FROM: Attorney General Luther Strange *LSS*
DATE: January 7, 2015
RE: Illegal Gambling

Since the Governor signed Executive Order No. 1 on January 18, 2011, the Alabama Attorney General's Office has continued to enforce Alabama's gambling laws throughout the State of Alabama. Although my Office has taken the lead on these cases, we have enjoyed the cooperation of numerous law enforcement agencies and district attorneys around the state. In these four years, our joint efforts have resulted in the seizure and destruction of thousands of illegal machines, forfeiture of more than a million dollars of illegal funds from gambling operations to the state general fund, and the closure of numerous illegal casinos.

Four years ago, I sent a memorandum to law enforcement agencies to explain the State's position with respect to illegal gambling activities and, specifically, why so-called "electronic bingo" is illegal under Alabama law notwithstanding local constitutional amendments that allow charitable bingo. Over the last four years, the Alabama Supreme Court has interpreted the local bingo amendments in Greene County, Macon County and Houston County. Trial courts in Lowndes County and Jefferson County have also ordered so-called "electronic bingo" machines and proceeds to be forfeited, and the gambling interests declined to appeal those orders. Because of these intervening judicial decisions, I believe it is appropriate to update my 2011 memorandum on the law of gambling in Alabama. The law is absolutely clear: so-called "electronic bingo" is illegal in Alabama.

SUPREME COURT RULES ELECTRONIC BINGO ILLEGAL IN ALABAMA

The Supreme Court of Alabama recently emphasized in a unanimous opinion that bingo in Alabama could not be played with machines:

[W]e reiterate today that the game traditionally known as bingo is not one played by or within an electronic or computerized machine, terminal, or server, but is one played outside of machines and electronic circuitry.

Houston County Economic Development Authority v. State of Alabama, --- So. 3d ---, 2014 WL 6608547 at *11 (Ala. Nov. 21, 2014). Since the game of bingo cannot be played electronically, any such machines that are presented as "electronic bingo" machines are slot machines under state law.

Slot machines and gambling devices, as defined in Ala. Code § 13A-12-20 (1975), are 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 authorizes the use of slot machines or other gambling devices to play bingo games in any county.

Likewise, no local bingo rule, regulation or ordinance can legally authorize slot machines. 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. There are no exceptions to this prohibition based on the type of game the machine purports to play or whether the machine is connected to other machines or equipment.

BINGO GAMES MUST MEET THE CORNERSTONE ELEMENTS

Alabama's charitable bingo amendments authorize only the game commonly or traditionally known as bingo as defined in the *Barber v. Cornerstone* case. The Supreme Court in *Cornerstone* laid out six necessary, but not exhaustive, factors that a game must possess to be considered legal "bingo" for purposes of all the state amendments. These factors include the following:

- I. 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.
- II. Alphanumeric or similar designations are randomly drawn and announced *one by one*.
- III. 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*.
- IV. 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.
- V. 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.
- VI. 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.²

In subsequent decisions after *Cornerstone*, the Supreme Court of Alabama has further expounded, clarified and reiterated that all local amendments allowing "bingo" allow only that game

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)).

² *Barber v. Cornerstone Community Outreach, Inc.*, 42 So.3d at 86 (emphasis added).

that complies with the elements of bingo contained in *Cornerstone*.³ Most recently, the Supreme Court made specific findings about these elements and further described their application to games of bingo:

[Bingo] is a group activity, and one that requires a meaningful measure of human interaction and skill. This includes attentiveness and discernment and physical, visual, auditory, and verbal interaction by and between those persons who are playing and between the players and a person commonly known as the "announcer" or "caller," who is responsible for calling out the randomly drawn designations and allowing time between each call for the players to check their cards and to physically mark them accordingly. In accordance with the previously stated list of characteristics, each player purchases and plays the game on one or more cards that...are not electronic devices or electronic depictions of playing surfaces but are actual physical cards made of cardboard, paper, or some functionally similar material that is flat and is preprinted with the grid and the designations referenced above.⁴

The Supreme Court has clearly held that games played on machines are not "bingo" under any local bingo amendment because that game play does not comport with the required elements of *Cornerstone*.

LOCAL ENFORCEMENT AGAINST ILLEGAL GAMBLING ENCOURAGED

I encourage and expect local law enforcement and district attorneys to investigate and enforce our anti-gambling laws just as they would investigate and enforce other laws. For the past several years, some officers and elected officials have hesitated to bring criminal and civil cases against those operating so-called electronic bingo facilities because of concern that the law was unclear. That is not a reasonable or valid concern. Because of our work over the last four years, the law is settled. After the Supreme Court's decision in *HEDA v. State*, you can be confident in pursuing criminal and civil enforcement against illegal gambling. These recent unanimous decisions from the Alabama Supreme Court make it crystal clear that so-called electronic bingo operations are illegal and should not be operated in Alabama. Please do not hesitate to contact Assistant Attorney General John Kachelman at (334) 353-0619 if you have any questions, need assistance with gambling-related prosecutions or investigations, or would like copies of the relevant judicial opinions.

Most importantly, the newly formed Alabama Law Enforcement Agency (ALEA) is a valuable resource to assist in the investigation of criminal activity and the enforcement of Alabama law. This new agency has been strategically formed to help coordinate and foster uniform and efficient enforcement of laws. If you need assistance or additional manpower to investigate and enforce our laws, including our gambling-related laws, please contact ALEA. I have been assured that ALEA will assist as possible.

³ See *Ex parte State*, 121 So.3d 337 (2013); *State v. Greenetrack, Inc.*, --- So.3d ---, 2014 WL 1283084 (2014); *HEDA v. State*, --- So.3d ---, 2014 WL 6608547 (Ala. Nov. 21, 2014).

⁴ *HEDA v. State*, 2014 WL 6608547 at *11.