

**Westlaw Delivery Summary Report for COOK,GENEVIEVE L**

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230 Ala. Op. Atty. Gen. 36, 1993 WL 584259 (Ala.A.G.)

Office of the Attorney General  
State of Alabama

\*1 February 23, 1993

Constables—Bingo—Lotteries—Crimes and Offenses

Games involving pull tab wagering tickets or devices do not constitute authorized bingo and are illegal as a lottery scheme contrary to [Article IV, Section 65, Constitution of Alabama of 1901](#).

Sale of pull tab wagering ticket to purchaser/player constitutes crime of simple gambling.

Sale of game of pull tab wagering tickets by distributor to business establishment for intended subsequent sale of tickets to purchasers/players constitutes crime of promoting gambling.

When seller/distributor of pull tab game and purchaser/business establishment criminally conspire to advance or profit from gambling activity, action constitutes crime of conspiracy to promote gambling.

Honorable John P. Hansen  
Constable 3F  
Montgomery County  
P.O. Box 70428  
Montgomery, AL 36107

Dear Mr. Hansen:

This opinion is issued in response to your request for an opinion from the Attorney General.

#### QUESTIONS

1. Would a distributor be in violation of any Alabama law if he sold pull tab tickets to an establishment which is authorized to conduct a charity bingo game?
2. Would a business which is authorized to play charity bingo be in violation of Alabama law if it sold pull tab tickets to its customers?

#### FACTS AND ANALYSIS

In your request you enclosed a brochure advertising five different pull tab wagering games, consisting of different priced pull tab tickets, entitled “Jingle Bell Rocks” under a “CHECK-MATE” trademark. The drawings and infor-

mation in the brochure reveal the fact that under the pull tabs exists a slot machine type format so that when the tab or tabs are pulled by a purchaser/player, if three like-kind figures appear in a row, the purchaser/player has “won” and is entitled to something of value from the seller, a prize of a fixed dollar amount.

[Article IV, Section 65 of the Constitution of Alabama of 1901](#) prohibits conducting lotteries or schemes in the nature of a lottery in the State of Alabama, and specifically provides:

“The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose 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 voided.”

In the [Opinion of the Justices, No. 277, 397 So.2d 546 \(Ala.1981\)](#), the Alabama Supreme Court defined the elements of a lottery as: (1) a prize, (2) awarded by chance, and (3) for a consideration.

With regard to the term “gambling,” in the opinion to Honorable Doug Valeska, District Attorney, under date of September 20, 1988, A.G. No. 88–00455, this office noted that the term “gambling” is defined in [Code of Alabama 1975, § 13A–12–20\(4\)](#) as “... risk[ing] something of value upon the outcome of a contest of chance....” A “contest of chance” is defined in [§ 13A–12–20\(3\)](#) as:

\*2 “Any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein.” (Emphasis added.)

These “pull tabs” are wagering devices which permit the purchaser/player to engage in gambling games independent of any legally authorized bingo game that would be specifically sanctioned by an amendment to the Constitution of Alabama of 1901. These tickets are normally purchased separately from the admission fee charged to enter the bingo premises. These tickets customarily are not utilized as part of the bingo game itself, but permit the player to pull the tabs on the ticket after its purchase and to instantly determine if he/she is a winner without regard to the random drawing of numbers in an authorized bingo game.

You asked in your opinion request if an establishment authorized to conduct charity bingo would be in violation of the law if it sold pull tab tickets to its customers.

The law in Alabama prohibits unlawful gambling activity as a player:

“§ 13A–12–21(a). A person commits the crime of simple gambling if he knowingly advances or profits from unlawful gambling activity as a player.” (Emphasis added.)

Hence, if a business legally authorized to play bingo should sell a pull tab wagering ticket to a purchaser/player for a consideration where the prizes are awarded to the pull tab ticket purchaser/player as a matter of chance, and not skill, both parties would be in violation of § 13A–12–21(a) which prohibits simple gambling.

You also asked in your opinion request if a distributor would be in violation of Alabama law if he sold pull tab tickets to an establishment authorized to conduct charity bingo.

The law in Alabama also prohibits “unlawful gambling activity” by a person other than a player. [Section 13A–12–22, Code of Alabama 1975](#), which prohibits “promoting gambling” and Section 13A–12–23 which prohibits “conspiracy to promote gambling,” set forth the elements of the two crimes:

“[§ 13A–12–22](#). Promoting gambling.

“(a) A person commits the crime of promoting gambling if he knowingly advances or profits from unlawful gambling activity otherwise than as a player.” (Emphasis added.)

“§ 13A-12-23. Conspiracy to promote gambling.

“(a) A person commits the crime of conspiracy to promote gambling if he conspires to advance or profit from gambling activity otherwise than as a player.

“(b) ‘Conspire’ means to engage in activity constituting a criminal conspiracy as defined in § 13A-4-3.”

The sale of a game of pull tab wagering tickets by a distributor to a person or business establishment for the intended subsequent sale of individual tickets to purchasers/players would be knowingly advancing or profiting from unlawful gambling activity otherwise than as a player, thereby constituting the crime of promoting gambling, contrary to state law.

Further, if a distributor of a game of pull tab wagering tickets and any person or business establishment, with criminal intent, conspire to advance or profit from gambling activity, the action of the parties would constitute the crime of conspiracy to promote gambling, although neither party would actually be a player.

#### CONCLUSION

**\*3** Games involving pull tab wagering tickets or devices do not constitute authorized bingo and are illegal as a lottery or as a scheme in the nature of a lottery in violation of [Article IV, Section 65 of the Constitution of Alabama of 1901](#).

The sale by a person or a business establishment and the purchase by a purchaser/player of a pull tab wagering ticket would constitute the crime of simple gambling, contrary to state law enacted by the legislature pursuant to [Article IV, Section 65 of the Constitution of Alabama of 1901](#).

The sale of a game of pull tab wagering tickets by a distributor to a person or business establishment would be knowingly advancing or profiting from unlawful gambling activity otherwise than as a player, thereby constituting the crime of promoting gambling.

The sale of a game of pull tab wagering tickets by a vendor to a person or business establishment together with the parties' requisite criminal intent to advance or profit from gambling activities constitutes the crime of conspiracy to promote gambling by either or both parties, although neither party is a player.

I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,  
Jimmy Evans  
Attorney General  
Opinion by Assistant Attorney General Solomon

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