

# MAINE STATE LEGISLATURE

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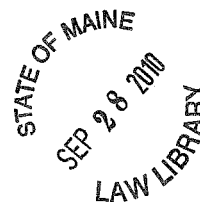
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September 23, 2010

*Via e-mail/regular mail*

Col. Patrick Fleming  
Maine State Police  
42 State House Station  
45 Commerce Drive  
Augusta, Maine 04333-0042



Re: Incentovation Electronic Pull-Tab System

Dear Col. Fleming:

On Wednesday, August 4, 2010, you and I attended a demonstration of the Incentovation Electronic Pull-Tab System at the High Stakes Beano Hall on the Penobscot Nation's Indian Island reservation. Mr. Nash of Incentovation and Mr. Farley of Eclipse Compliance Testing provided helpful information on the operation of the machine which the tribe wishes to use in conjunction with their high stakes beano games. We have also been provided with a written analysis of the machine by Eclipse Compliance Testing dated May 21, 2010. In addition, on June 11, 2010, Mr. Ende and I met with Representative Mitchell and Chief Francis, who described the machine and their reasons for wanting to operate this machine on weekends when high stakes beano is played.

We are told that this machine offers a higher degree of security and less of an opportunity for manipulation than other similar games. Like traditional pull-tab games, there is a finite deal and a set number of chances in playing this machine. The issue, however, is not whether this is a "better" machine but rather whether it qualifies under the revised definition of "Sealed tickets" in 17 M.R.S. § 314-A (1-A), as amended by P.L. 2009, ch. 505, so that it would be legal to operate in conjunction with high stakes beano games conducted by the tribes, 17 M.R.S. § 324-A.

The statute authorizes the Chief of the State Police to issue to a federally recognized tribe "licenses to sell lucky seven or other similar sealed tickets in accordance with section 324-A." A tribe licensed to sell these tickets may operate a "dispenser" to sell the tickets which may include a "mechanical or electrical device or machine that, upon the insertion of money..., dispenses printed lucky seven or other similar tickets. *The element of chance must be provided by the ticket itself, not by the dispenser.*" (Emphasis added.)

The machine demonstrated to us on August 4<sup>th</sup> dispenses a ticket, or piece of paper, that is printed with a bar code and other information at the time the game is played. The piece of paper notifies the player that the player has won a sum of money or that the player is a "non winner." The ticket issues from an attached printer which contains a blank roll of paper. The game -- and hence the element of chance -- is controlled by a computer which dictates the number that will be printed on the paper at the time the game is played.

A number of court decisions in other jurisdictions deal with electronic pull tab machines, specifically whether a particular machine is a Class II (bingo, pull-tab, etc.) or Class III (all other gaming activity) machine under federal law. See, e.g., *Seneca-Cayuga Tribe of Oklahoma v. Nat'l. Indian Gaming Comm'n.*, 327 F.3d 1019 (10<sup>th</sup> Cir. 2003) ("Magical Irish Instant Bingo Dispenser System," which dispenses preprinted cards, is not prohibited as a Class III machine but, rather, is a technological aid to dispensing pull-tabs); *Diamond Game Enterprises, Inc. v. Reno*, 230 F.3d 365 (D.C. Cir. 2000) (Lucky Tab II is classified as a Class II "electronic aid" rather than a Class III "facsimile," "not a computerized version of pull-tabs," under IGRA and the Johnson Act); *United States v. Santee Sioux Tribe of Nebraska*, 324 F.3d 607 (8<sup>th</sup> Cir. 2003) ("Lucky Tab II," which does not generate random patterns with element of chance, is classified as Class II machine and not a computer-generated version of game of pull-tab prohibited by Johnson Act, noting that pull-tabs can be played without the machine, player does not play against the machine and no winnings are paid or accumulated by the machine). See also, *Chesapeake Amusements, Inc. v. Riddle*, 766 A.2d 1036 (Md.Ct.App.2001) ("Play & Win" and "Lucky Tab II" machines which dispense paper tabs with preprinted numbers or bar codes did not fall within state's definition of "slot machine" because the machine simply read the ticket and did not calculate the odds).

Games played on the Incentivation Electronic Pull-Tab System which we viewed on August 4<sup>th</sup> are controlled by a computer which generates winning and non-winning numbers and bar codes on paper tabs which are then dispensed through an electronic terminal. This machine is different than those described in the cases cited above. This machine is more like the one found to be a Class III facsimile in *Cabazon Band Mission Indians v. NIGC*, 14 F.3d 633 (D.C. Cir. 1994). That game too had a fixed number of winning cards but was determined to be a computerized version of pull-tabs and therefore prohibited.

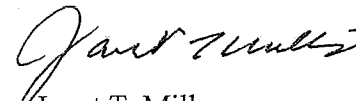
While the case law is not necessarily determinative of our interpretation of state statutes regarding "sealed tickets," the cases do provide some context and useful guidance. The cases draw a clear distinction between machines that dispense or simply read tickets that have previously been assigned winning or losing numbers and machines that actually assign the winning or losing numbers.

Legislation enacted this past session expanded the scope of games included in the definition of "lucky seven or other similar sealed tickets" in section 314-A (1-A) so as to include electronic "dispensers." Although the legislation did not use the term "preprinted," the original bill and the committee amendment consistently referred to the dispensing of "printed" tickets. One could argue that the definition includes a ticket that is printed at the exact time the game is played. However, the committee amendment also clarified that it is the ticket that provides the element of chance, which I interpret to mean that the ticket, like a traditional pull-tab, must be preprinted. This interpretation is supported by the fact that the law authorizes the State Police to license the tribe to sell *tickets* and not to operate a machine.

In my opinion, the machine's mode of operation takes the system out of the scope of permitted machines in section 17 M.R.S. § 314-A because the system does not merely dispense tickets but also determines the outcome of the game. The existence of a ticket or pull-tab is nearly rendered irrelevant by the computer's determination of the element of chance.

For these reasons, I do not believe that this system may be licensed by the State Police under section 314-A of Title 17.

Yours Very Truly



Janet T. Mills

Cc: Rep. Wayne Mitchell  
Rep. Donald Soctomah  
Chief Kirk Francis  
Chief Brenda Commander  
Tribal Governor Reubin Cleaves, Pleasant Point  
Tribal Governor William Nicholas, Indian Township  
Lt. Tribal Governor Joseph Socobasin, Indian Township  
Sen. Nancy Sullivan  
Sen. Debra Plowman  
Rep. Pamela Trinward  
Pat Ende, Esq., Ofc. of the Gov.  
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