

NATIONAL
INDIAN
GAMING
COMMISSION

NOV 12 1996

Mr. Frank Banyai
President
Jester Games International
2688 South Rainbow Blvd. Suite D
Las Vegas, NV 89102

Dear Mr. Banyai,

Thank you for your letter of June 10, 1996, on behalf of Jester Games International, requesting an advisory opinion on whether "Wild Ball Bingo" is a class II or class III game under the Indian Gaming Regulatory Act (IGRA). For the reasons outlined below, we conclude that "Wild Ball Bingo" is a game similar to bingo and thus qualifies as a class II game.

Description

"Wild Ball Bingo" is played on a table approximately 16 feet in length and five feet in width. Sixteen player stations are marked on a felt table cover, and each station contains three blank squares that represent the player's card. The table layout also has two sets of circles above each player's card for buy-ins and commissions. The three buy-in circles indicate the buy-in fee for the game in which the player chooses to participate. The first buy-in circle is mandatory, the second and third buy-in circles are optional. The buy-in fees are set at various increments by the operator, for example, \$1, \$3, and \$5. The second set of three circles establish the commission fee which the player pays to the operator in order to play the game at the selected level. The commission fee ranges from .25 cents to .75 cents.

Before play begins, a player selects three number plaques from a box of plaques numbered "1" through "29" and places them on his or her card. The player thus constructs a card for each game. The player then must pay the lowest level of buy-in (e.g., the \$1 level in a \$1-\$3-\$5 game) and places a dollar on that circle, usually with a token of that value. The player also places a corresponding commission on the first commission circle. If the player desires to participate in levels 2 or 3 (i.e., the \$3 or \$5 level game), the player places similar amounts and corresponding commissions on those circles. Play cannot begin until there are at least two players.

When all buy-ins have been made, a bingo blower or a similar device for selecting numbers containing 30 numbers is activated. One of the balls is designated as the "Wild Ball." When a ball is selected, the caller specifies the numbers, and the players, using plastic discs provided for such purposes, cover the corresponding number on their card. If the "Wild Ball" is selected, the players

may cover any number on their card.

The first player to cover all three numbers on their card and declare "bingo" is the winner. Winners are paid from other buy-ins only. When a winner calls "bingo", play stops, and the bingo is verified by the operator. If the player has only covered the first buy-in level, the player only collects the first level buy-in from the other players. If the player has covered the first two levels, the player collects the first two level buy-ins from the other players who have participated at that level. If the player has participated in all three buy-in levels, the player receives all three buy-in amounts from each of the other players. If two or more players cover all three numbers at the same time, the prize is split between the winning players at that level. If players remain at the second or third level buy-ins, play resumes until a new bingo is called by one of the remaining players. The same process is then repeated, matching the winners' buy-in levels with those remaining on the table. If a level still remains to be collected, play resumes until that bingo is called, unless only one player remains, in which case that level is nullified and a new game commences.

A jackpot feature can be added to the game which allows a jackpot to build from amounts placed on a special jackpot circle located by each player station. Those player who choose to participate in the jackpot are entitled to play for two jackpot bingo prizes. The super jackpot is won by the first player to cover all three numbers in the exact sequence within the first three numbers drawn. A consolation jackpot is won by the first player to cover all three numbers in any sequence within the first three numbers drawn.

Analysis

The IGRA defines bingo games as follows:

The term "class II gaming" means-

(i) the game of chance commonly know as bingo (whether or not electronic, computer, or other technological aides are used in connection therewith)-

(I) which is played for prizes, including monetary prizes, with cards bearing numbers or other designations,

(II) in which the holder of the card covers such numbers or designations when objects, similarly numbered or designated, are draw, or electronically determined, and

(III) in which the game is won by the first person covering a previously designated

arrangement of numbers or designations on such cards,

including (if played in the same location) pull-tabs, lotto, punch boards, tip jars, instant bingo, and other games similar to bingo. . ."

25 U.S.C. § 2703(7)(A).

The term "games similar to bingo" is defined by the NIGC as any game that meet the requirements for bingo set forth above and is not a house banking game. See 25 C.F.R. § 502.9. The term "house banking game" is defined by the NIGC as "any game of chance that is played with the house as a participant in the game, where the house takes on all players, collects from all losers, and pays all winners, and the house can win." 25 C.F.R. § 502.11.

"Wild Ball Bingo" is played for prizes (the buy-in amounts paid by other players of the game) with cards bearing numbers or designations, in which the holder of the card covers the required three numbers and wins the game by being the first player to do so. "Wild Ball Bingo" is not a house banking game because the house has nothing at risk in any game, nor does it take on all players. All players pay the operator the same fee to play, with players playing only against each other. All prizes come from other players, not the house.

The fact that the game is played with fewer people than are usually associated with the traditional game of bingo and is played around a table does not disqualify "Wild Ball Bingo" as a class II game. ~~Bingo-type games in which the house designates a pattern different from traditional or classic bingo fall within the definition of games similar to bingo if such games meet the three criteria for bingo and are not house banking games.~~

With respect to the use of the jackpot in connection with "Wild Ball Bingo", the progressive jackpot is to be funded by the players of the game. The source of funds for the jackpot is the "Jackpot" buy-ins that each player makes at their option. In order to provide incentive to make this buy-in, the operator will initially "seed" the jackpot. However, this initial seed will ultimately be returned to the operator from the "administrative" portion of the buy-in. Thus, the jackpot is funded totally by the players.

At the end of each shift, day, or playing period, jackpot collections will be totaled. It is recommended by Jester Games International that sixty-five percent (65%) of the total collected will be directly applied to the progressive jackpot when play resumes on the game(s) for the next period of play. For games that are in constant operation, the progressive increase will be posted

at the beginning of each shift of operation.

The remaining thirty-five percent (35%) of the jackpot buy-ins will be designated as the "administrative" portion and is reserved to repay the operator for the initial seed of the jackpot and to provide the base for future jackpots. After discussions with you concerning the "administrative" portion of the jackpot, you clarified that the administrative portion is never retained by the operator as profit; it is only used to repay the operator for "seeding" the jackpot and for future jackpots.

The NIGC has specifically recognized that such prizes and games do not alter the game's classification from class II to class III. In the preamble to the final definition regulations, the NIGC stated:

Several commentors suggested that the Commission had erroneously excluded [from the definition of bingo] guaranteed bingo prizes, progressive cover-all prizes, and jackpot bingo from class II. By eliminating the concept of the house as stakeholder as discussed in the preamble to the proposed rule, the Commission has clarified that bingo games with guaranteed bingo prizes, progressive prizes, and jackpot bingo are Class II bingo games.

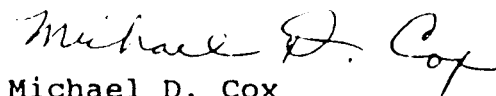
57 Fed. Reg. 12,387 (April 9, 1992) (emphasis added). The NIGC further stated:

The Commission believes that Congress' intent was to include jackpot or progressive bingo in class II as long as: (1) there is eventually a winner (in other words, the house never takes a jackpot), and (2) in each game there is at least a winner of a consolation prize.

Id. at 12,382. According to the rules for "Wild Ball Bingo", the jackpot is always won by a player, not the house, and in each game in which a jackpot is offered, there is always a winner of a consolation prize.

For the above mentioned reasons, "Wild Ball Bingo" , as described in this letter, is a game similar to bingo within the meaning of the IGRA and NIGC regulations and therefore qualifies as a class II game. If you have any questions regarding this letter, please feel free to contact our office.

Sincerely,



Michael D. Cox
General Counsel