

Strong

NATIONAL
INDIAN
GAMING
COMMISSION

September 14, 1992

Joan
4/2/93

Mr. Robert Auxier, President
Caribbean Instant Lottery
850 Sligo Avenue
Suite 200
Silver Spring, Maryland 20910

Dear Mr. Auxier:

Thank you for your letter dated August 4, 1992, in which you requested a legal opinion on whether an instant scratch-off game known as "CASHPOT" qualifies as a class II game under the Indian Gaming Regulatory Act (IGRA). Based on the information you provided, I am of the opinion that the IGRA would authorize you to offer the game as a class II game inside bingo halls on Indian lands. Expanded sales elsewhere on Indian lands, however, would constitute class III gaming under the IGRA and, therefore, would require a tribal-state compact.

In order for "CASHPOT" or any other similar instant scratch-off game to qualify as a class II game, it must have the physical and procedural characteristics of one of the enumerated class II games. Clearly, "CASHPOT" is not bingo, lotto, punch boards, or a game similar to bingo. At issue then is whether "CASHPOT" shares the characteristics of pull-tabs, tip jars, or instant bingo. The IGRA did not define these games nor has the National Indian Gaming Commission through rulemaking. A review of state gambling laws that do define these games reveals that they are essentially the same games. In the view of the Commission, the essential elements of pull-tabs, tip jars, and instant bingo are as follows. They are played with paper or plastic tickets containing hidden winning or losing combinations of symbols that are revealed to the purchaser (player) when physically opened. Tickets are purchased in sets by the gaming operation; each set contains a predetermined mix of winners and losers; and the total proceeds from sales and payouts to winners from each complete set is known to the gaming operation. Tickets are sold to players at a predetermined price.

Based on the description you submitted with your letter, "CASHPOT", an instant scratch-off game, meets all the essential elements described above and, therefore, would qualify as a class II game when played at the same location as bingo or lotto. When played at any other location on Indian lands, however, this would be a class III game that, under the IGRA and the Commission's regulations, would require a compact between the tribe and the state.

I hope this adequately responds to your request.

Sincerely,



Michael D. Cox
General Counsel