

NATIONAL
INDIAN
GAMING
COMMISSION

MAY 23 1994

W. Austin Sebastian, President
Native American Indian Enterprises, Inc.
15914-B Shady Grove Road
Gaithersburg, Maryland 20877

Dear Mr. Sebastian:

Thank you for your letters dated April 25 and April 26, 1994, requesting a legal opinion on whether an instant scratch-off ticket game qualifies as a class II or a class III game under the Indian Gaming Regulatory Act (IGRA). Based on the information you provided, I am of the opinion that an instant scratch-off ticket game qualifies as a class II game if sold in bingo halls on Indian lands.

In order for an instant scratch-off ticket game to fall within class II gaming, it must have the physical and procedural characteristics of one of the enumerated class II games. Clearly, an instant scratch-off ticket game is not bingo, lotto, punch boards, or a game similar to bingo. At issue then is whether an instant scratch-off ticket game shares the characteristics of pull-tabs, tip jars, or instant bingo. The IGRA does 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 game.

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 sold to players at a predetermined price. 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.

Based on the description you submitted with your letter, an instant scratch-off ticket game meets all the essential elements described above and would therefore qualify as a class II game if played at the same location as bingo or lotto. If played at any other location on Indian lands the game would fall within class III requiring a compact between the tribe and the state.

Your letters did not provide enough information for me to offer an opinion on the use of devices to dispense instant tickets. However, if the dispenser meets the definition of a "gambling device" within the meaning of the Johnson Act, 15 U.S.C. § 1171(a), then the instant ticket game would constitute class III gaming.

I hope this responds to your request.

Sincerely,

Michael D. Cox

Michael D. Cox
General Counsel