

NEWS ADVISORY
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Alabama Attorney General



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**ATTORNEY GENERAL STRANGE RELEASES LETTER REGARDING THE POSITION OF
STATE OF ALABAMA CONCERNING THE LEGALITY OF
ELECTRONIC BINGO MACHINES IN THE STATE**

(MONTGOMERY) – Attorney General Luther Strange released a copy of his response to a March 21, 2016, letter from U.S. Attorney George Beck requesting clarification of the State’s position on gambling concerning electronic bingo machines operated on both tribal and non-tribal lands in Alabama.

A copy of the letter appears below.

March 30, 2016

George L. Beck, Jr.
United States Attorney
Middle District of Alabama
U.S. Department of Justice
131 Clayton Street
Montgomery, AL 36104

Dear Mr. Beck:

This letter responds to your letter of March 21, 2016 in which you requested materials about “the position of the State of Alabama on gaming related to Electronic Bingo Machines (Bingo Machines) operated in Alabama on Tribal and non-Tribal lands.”

As an initial matter, you should be aware that Mayor Johnny Ford – whose complaint apparently prompted your letter – sued me several years ago in federal court on similar legal theories. His complaint was dismissed, and his lawyer was sanctioned for filing a legally frivolous lawsuit. The Eleventh Circuit affirmed. Two of the Judges on the panel were appointed by President Obama and the third was appointed by President Carter. The court concluded “that Defendant Strange has treated comparable facilities equally” and that gambling in Macon County is not comparable to tribal gambling because “gaming on Indian lands is subject to an entirely distinct regulatory regime in which the State may often have a lesser role.” I have attached these materials as Exhibit A to this letter.

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My responses to your questions are as follows.

The terms “electronic bingo” and “bingo machines” do not appear in the Alabama Code or any constitutional amendment in Alabama. The Alabama Code provides this definition of illegal gambling device: “any device, machine, paraphernalia or equipment that is normally used or usable in the playing phases of any gambling activity, whether that activity consists of gambling between persons or gambling by a person involving the playing of a machine.” Ala. Code § 13A-12-20(5). And the Alabama Code provides this definition of slot machine, which is one type of illegal gambling device: “a gambling device that, as a result of the insertion of a coin or other object, operated, either completely automatically or which the aid of some physical act by the play, in such manner that, depending upon elements of chance, it may eject something of value.” Ala. Code § 13A-12-20(5).

Numerous courts have held that so-called “electronic bingo machines” are illegal gambling devices under Alabama law. The U.S. District Court for the Northern District of Alabama held in 2009 that the way such machines operate “compel[s] the conclusion that the electronic bingo games at issue in this case constitute illegal slot machines under Alabama law.” The Jefferson County Circuit Court held in 2012: “The Court finds that the devices before the Court are slot machines or gambling devices proscribed by Ala. Code (1975) § 13A-20 (4), (5) and (10).” Similarly, the Houston County Circuit Court held in 2013 that “After careful review of the evidence in this case the Court finds that the devices before the Court are slot machines or gambling devices proscribed by Alabama Code (1975) § 13A-12-20(5)(10).” The Supreme Court of Alabama affirmed. The Supreme Court of Alabama explained that bingo in Alabama is not a game “played by or within an electronic or computerized machine, terminal, or server, but is one played outside of machines and electronic circuitry.” I have attached a composite of relevant judicial opinions as Exhibit B to this letter.

Tribal gaming is governed by federal law. In the interest of fairness to all involved, I have asked the National Indian Gaming Commission and the federal courts to clarify the status of Indian gambling. The NIGC’s position is that Indian tribes may offer so-called “electronic bingo” under federal law even though such gambling is illegal under state law. See Exhibit C. And, as you note in your letter, the federal courts have held that tribal gaming is outside the state’s jurisdiction.

My office negotiated memoranda of understanding (MOUs) with several out-of-state slot-machine companies in 2011. Those MOUs required the slot-machine companies to remove their devices from Alabama’s jurisdiction or suffer civil and criminal penalties. They have nothing to do with a tribal-state compact. A tribal-state compact is an agreement between a tribe and a state, but the Poarch Band of Creek Indians is not a party to any of those MOUs. Note that gambling regulators in other states imposed fines on some slot-machine companies for their participation in illegal gambling in Alabama prior to 2011. See Exhibit D.

I hope this letter sufficiently explains Alabama law.

Sincerely,

Luther Strange
Alabama Attorney General

Note:

[Click link to download full copy of letter with attachments \(10 MB, 255 Pages\)](#)