COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

June 20, 2007

Mr. Harry M. Durham
Interim Director, Department of Charitable Gaming
James Monroe Building
101 N. 14th Street, 17th Floor
Richmond, Virginia 23219-3684

Dear Mr. Durham:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You ask whether the definition of "instant bingo" and "pull tabs" in § 18.2-340.16 allows the playing of instant bingo or pull tabs by using electronic equipment that displays electronic facsimiles of cards.[1] Further, you ask whether such games may be played using equipment that dispenses a receipt showing the amount of any monies due when the player ends the game instead of dispensing a card to the player.

Response

It is my opinion that the definition of "instant bingo" and "pull tabs" does not authorize the use of electronic devices that display facsimiles of instant bingo cards or pull tabs. It further is my opinion that such games may not be played using equipment that merely dispenses a receipt showing the amount of any winnings due to the player upon completion of the game.

Background

House Bill 525 was introduced in the 2006 Regular Session of the General Assembly on January 11, 2006,[2] and became law on July 1, 2006[3] ("2006 Amendments"). Among other things, the 2006 Amendments added "pull tabs" and "seal cards" to the definition of "instant bingo" and removed "pull tabs" and "seal cards" from the definition of "raffle."[4] Further, the 2006 Amendments deleted the

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[1] For purposes of this opinion, I presume that you use the terms "cards" and "tickets" interchangeably. Because the definition of "instant bingo" and "pull tabs" uses the term "cards" rather than "tickets," I will use the term "cards" in connection with your inquiry.

[2] 2006 H.B. 525 (status), *available at* http://leg1.state.va.us/cgi-bin/legp504.exe?ses=061&typ=bil&val=hb525.

[3] *Id.*; *see also* 2006 Va. Acts ch. 644, at 854.

[4] *Id.* at 854-55 (amending § 18.2-340.16).

words "made completely of paper or paper products" from the definition of "instant bingo," "pull tabs," or "seal cards."[5] You relate that a manufacturer of electronic gaming equipment has approached the Department of Charitable Gaming and the Charitable Gaming Board about distributing equipment to organizations authorized to conduct charitable gaming to play instant bingo and pull tab games electronically. You state that such machines would allow players to play instant bingo and pull tab games by inserting money into a machine and selecting games from a screen menu. You relate that the player plays a selected game by touching an electronic facsimile of a card that is displayed on the screen. The touch "opens" the card and an electronic facsimile of the open card is displayed to reveal potential winning numbers or symbols. When all games are completed, the machine calculates the player's winnings or refund and issues a receipt. You state that the player may present the receipt to a member of the organization for payment.

Applicable Law and Discussion

Section 18.2-340.15(A) provides that "[c]haritable gaming as authorized herein shall be permitted in the Commonwealth as a means of funding qualified organizations but shall be conducted only in strict compliance with the provisions of [Article 1.1:1 of Chapter 8 of Title 18.2]."

Section 18.2-340.22(A) provides that Article 1.1:1 "permits qualified organizations to conduct raffles, bingo and instant bingo games. All games not explicitly authorized by [Article 1.1:1] or [Charitable Gaming] Board regulations adopted in accordance with § 18.2-340.18 [sic] are prohibited."[6]

Section 18.2-340.16 of Article 1.1:1 defines "bingo" as

> a specific game of chance played with (i) individual cards having randomly numbered squares ranging from one to seventy-five, (ii) *Department-approved electronic devices that display facsimiles of bingo cards and are used for the purpose of marking and monitoring players' cards as numbers are called*, or (iii) Department-approved cards, in which prizes are awarded on the basis of designated numbers on such cards conforming to a predetermined pattern of numbers selected at random. [Emphasis added.]

Section 18.2-340.19(A)(5) provides that the Charitable Gaming Board may adopt regulations that "[d]efine electronic and mechanical equipment used in the conduct of charitable gaming." Section 18.2-340.37(A) provides that any person who violates the provisions of Article 1.1:1, Chapter 8 of Title 18.2[7] is guilty of a Class 1 misdemeanor. Effective July 1, 2006,[8] the 2006 Amendments to § 18.2-340.16 provide that:

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[5] *Id.* at 855.

[6] The reference to § 18.2-340.18 appears to contain a typographical error. Section 18.2-340.18 lists the powers of the Department of Charitable Gaming, rather than those of the Charitable Gaming Board. It actually is § 18.2-340.19 that authorizes the Charitable Gaming Board to adopt regulations governing gaming. Section 18.2-340.19(B) provides that "the Board may, by regulation, approve variations to the card formats for bingo games provided such variations result in bingo games that are conducted in a manner consistent with the provisions of [Article 1.1:1]. Board-approved variations may include, but are not limited to, bingo games commonly referred to as player selection games and 90-number bingo."

[7] The sections comprising Article 1.1:1 are codified in scattered sections.

> "Instant bingo," *"pull tabs," or "seal cards"* means ~~a~~ specific ~~game~~ *games* of chance played by the random selection of one or more individually prepacked cards, ~~made completely of paper or paper products,~~ with winners being determined by the preprinted *or predetermined* appearance of concealed letters, numbers or symbols that must be exposed by the player to determine wins and losses and may include the use of a seal card which conceals one or more numbers or symbols that have been designated in advance as prize winners. Such cards may be dispensed by electronic or mechanical equipment.[9]

No specific reference to electronic gaming equipment or electronic facsimiles of cards other than those in §§ 18.2-340.16 and 18.2-340.19(A) appears in Article 1.1:1.

"[T]he primary object of statutory construction [and interpretation] is to ascertain and give effect to legislative intent."[10] In addition, the plain language of a statute should be given its clear and unambiguous meaning.[11] When the General Assembly amends a statutory provision, a presumption arises that the legislature intended to change existing law.[12] A related presumption is that the amendment to a law is intended to have some meaning and is not intended to be unnecessary or vain.[13] Nevertheless, when the General Assembly includes specific language in one section of an Act but omits language from another section, courts presume that the omission was intentional.[14] Finally, statutes that impose penalties must be strictly construed.[15]

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[8] *See* VA. CODE ANN. § 1-214(A) (2005) (requiring that "laws enacted at a regular session of the General Assembly ... shall take effect on the first day of July following the adjournment of the regular session").

[9] *See* 2006 Va. Acts, *supra* note 3, at 855 (amending definition of "instant bingo" in § 18.2-340.16).

[10] Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); *see also* 1994 Op. Va. Att'y Gen. 114, 116.

[11] *See* Ambrogi v. Koontz, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982); 2003 Op. Va. Att'y Gen. 52, 54.

[12] *See* Wisniewski v. Johnson, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982); City of Richmond v. Sutherland, 114 Va. 688, 693, 77 S.E. 470, 472 (1913); 2003 Op. Va. Att'y Gen., *supra* note 11, at 54.

[13] *See* Cape Henry Towers, Inc. v. Nat'l Gypsum Co., 229 Va. 596, 600, 331 S.E.2d 476, 479 (1985); Williams v. Commonwealth, 190 Va. 280, 293, 56 S.E.2d 537, 543 (1949); 2003 Op. Va. Att'y Gen., *supra* note 11, at 54.

[14] The *Virginia Code* is one body of law. When possible, statutes are "construed with a view toward harmonizing" them with other statutes. *See* Branch v. Commonwealth, 14 Va. App. 836, 839, 419 S.E.2d 422, 425 (1992). Moreover, much can be inferred from the absence of statutory provisions or language in the *Code*, particularly when comparing related statutes therein. *See, e.g.*, Indus. Dev. Auth. v. Bd. of Supvrs., 263 Va. 349, 353, 559 S.E.2d 621, 623 (2002) (holding that when General Assembly includes specific language in one section of act, but omits that language from another section, courts presume that exclusion of language was intentional); Williams v. Matthews, 248 Va. 277, 284, 448 S.E.2d 625, 629 (1994) (holding that when statute contains given provision with reference to one subject, omission of such provision from similar statute dealing with related subject is significant to show existence of different legislative intent); Forst v. Rockingham Poultry Mktg. Coop., 222 Va. 270, 278, 279 S.E.2d 400, 404 (1981) (holding that when General Assembly uses two different terms in same act, it is presumed to mean two different things); 2005 Op. Va. Att'y Gen. 84, 86 n.14.

[15] *See* Harward v. Commonwealth, 229 Va. 363, 365, 330 S.E.2d 89, 90 (1985); Op. Va. Att'y Gen.: 1991 at 124, 125; 1990 at 263, 263; 1987-1988 at 489, 490.

The General Assembly has not defined "card" as used in Article 1.1:1. When a particular word in a statute is not defined therein, the word must be given its ordinary meaning.[16] The ordinary meaning of "card" is "a flat stiff piece of paper or thin paperboard suitable for writing or printing."[17] The deletion of the words "made completely of paper or paper products" from the definitions of "instant bingo" and "pull tabs" presumably was intended to change the law to permit such games to be played on cards made of something other than paper or paper products. However, the use of "Department-approved electronic devices that display facsimiles of bingo cards" in the definition of "bingo" also suggests that the General Assembly specifically would have authorized the use of such devices for the playing of "instant bingo" and "pull tabs" if it had intended the 2006 Amendments to permit the use of such devices to display electronic facsimiles of instant bingo or pull tab cards.[18]

Additionally, Article 1.1:1 legalizes certain games that would otherwise be illegal gambling under § 18.2-325. Under § 18.2-340.22, however, only those games "explicitly authorized" by Article 1.1: 1 or Board regulations are lawful. Prior opinions of the Attorney General have construed strictly the definitions of "bingo," "raffle," and "instant bingo" and have concluded that organizations may conduct only those activities that fall within the specific definitions established in § 18.2-340.16.[19] The definition of "instant bingo" and "pull tabs" does not explicitly authorize those games to be played with electronic devices displaying facsimiles of instant bingo or pull tab cards. Therefore, I must conclude that the definition of "instant bingo" and "pull tabs" does not authorize the use of such electronic devices.

You next ask whether the definition of "instant bingo" and "pull tabs" permits the use of machines that dispense receipts rather than cards. The General Assembly has not defined "dispense" as used in Article 1.1:1.[20] The plain meaning of "dispense" is "to deal out in portions: DISTRIBUTE."[21] Thus, the definition of "instant bingo" and "pull tabs" would permit the cards used to play such games to be distributed by electronic or mechanical equipment. The term "receipts" is not separately defined in § 18.2-340.16 and is not mentioned in the definition of "instant bingo" and "pull tabs." There is no

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[16] *See* McKeon v. Commonwealth, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970); 2005 Op. Va. Att'y Gen. 62, 65.

[17] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 337 (1993) [hereinafter "WEBSTER'S UNABRIDGED"].

[18] The General Assembly defines "bingo" and "instant bingo" separately. *See* VA. CODE ANN. 18.2-340.16 (Supp. 2006). In the definition of "bingo," the General Assembly has included Department of Charitable Gaming-approved electronic devices, but did not do so in defining "instant bingo." *See id.* When the General Assembly uses different language in the same act, it is presumed to mean two different things. *See* 2004 Op. Va. Att'y Gen. 146, 147.

[19] *See, e.g.*, Op. Va. Att'y Gen.: 1993 at 115 (concluding that buddy bingo does not fall within statutory definitions and is not permitted); 1991 at 122 (concluding, under prior law, that duck race that does not fall within statutory definition is not raffle); 1989 at 173 (concluding that "fish bowl" game that does not meet statutory definition is not permitted under Article 1.1, predecessor to Article 1.1:1); *see also* Alcoholic Beverage Control Bd. v. VFW, 10 Va. App. 165, 390 S.E.2d 202 (1990) (holding that licensee did not meet burden of proof to show that "Nevada Club Cards" met statutory definition of "raffle").

[20] *See supra* note 16 and accompanying text.

[21] WEBSTER'S UNABRIDGED, *supra* note 17, at 653.

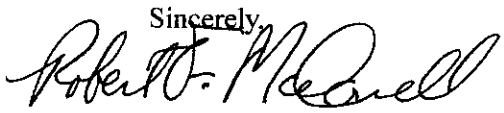
mention of "receipts" in Article 1.1:1 that is relevant to your inquiry.[22] The plain meaning of "receipt" is "a writing acknowledging the taking or receiving of goods or money delivered or paid."[23] Therefore, I conclude that "instant bingo" and "pull tab" games may not be played using equipment that merely dispenses a receipt showing the amount of any winnings due to the player.

Conclusion

Accordingly, it is my opinion that the definition of "instant bingo" and "pull tabs" does not authorize the use of electronic devices that display facsimiles of instant bingo cards or pull tabs. It further is my opinion that such games may not be played using equipment that merely dispenses a receipt showing the amount of any winnings due to the player upon completion of the game.

Thank you for letting me be of service to you.

Sincerely,



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[22]The terms "receipt" or "receipts" in relation to income or inventory appear in nine sections in Article 1.1:1. *See* § 18.2-340.16 (Supp. 2006) (defining "gross receipts" and including in definition of "organization," any nonprofit organization that generates certain amount of annual gross receipts conducting raffles, such gross receipts, less expenses and prizes, exclusively must be used for charitable, educational, community or religious purposes); § 18.2-340.19(A)(1) (Supp. 2006) (mandating that Charitable Gaming Board adopt regulations requiring organizations to use predetermined percentage of gross receipts for specific purposes identified and allowing Board to adopt graduated scale of percentages of gross receipts to be so used) § 18.2-340.23(A) (Supp. 2006) (exempting specified organizations from certain requirements of charitable gaming statutes when annual gross receipts fail to exceed threshold amount; authorizing Department of Charitable Gaming to require organization to file report when gross receipts exceed specified threshold); § 18.2-340.24(B) (Supp. 2006) (providing that organization whose gross receipts from all charitable gaming exceeds or is expected to exceed $25,000 in calendar year must acquire tax-exempt status pursuant to § 501(c) of United States Internal Revenue Code; Department may issue interim certification of tax-exempt status); § 18.2-340.26:1(B) (Supp. 2006) (providing that proceeds from sale of instant bingo, pull tabs, or seal cards are not counted as organization's gross receipts when specific conditions of sale are met); § 18.2-340.28(B) (Supp. 2006) (providing that organizations conducting instant bingo, pull tabs, or seal card games are required to maintain records, including written invoice or receipt from nonmember of organization verifying specific payment and inventory information); § 18.2-340.30 (Supp. 2006) (prescribing requirements for filing reports of organization's gross receipts); § 18.2-340.31(B) (Supp. 2006) (permitting Department to prescribe and charge an organization for audit and administration fees based on percentage of organization's gross receipts); § 18.2-340.33 (Supp. 2006) (listing number of prohibited practices with respect to organization's use of gross receipts).

[23]WEBSTER'S UNABRIDGED, *supra* note 17, at 1894.