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The Senate of the State of Texas

Jane Nelson  
 Senate District 12

Committees:  
 HEALTH AND HUMAN SERVICES, CHAIR  
 TEXAS LEGISLATIVE COUNCIL  
 GOVERNMENT ORGANIZATION  
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**OPINION COMMITTEE**

October 24, 2006

EXECUTIVE ADMINISTRATION  
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OCT 25 2006

ACTION BY Nancy Fuller  
 COPY TO Ellen Witt

Stacey Napier

The Honorable Greg Abbott  
 Attorney General of Texas  
 209 W. 14th Street  
 Austin, Texas 78701

FILE # ML-45041-06  
 I.D. # 45041

**RQ. 0547-GA**

Dear General Abbott:

As chair of the Senate Committee on Health and Human Services, I ask for your opinion regarding the constitutionality of a proposed statutory provision that would purport to legalize the use of "electronic pull-tab bingo" by nonprofit organizations authorized by law to conduct charitable bingo. It is my belief that such gambling could not be authorized by the legislature without amending the Texas Constitution.

During the Regular Session of the 79th Legislature, on May 10, 2005, on second reading in the Senate of H.B. 3, Senator Armbrister offered, and the Senate adopted, Floor Amendment No. 24, which would have authorized "electronic pull-tab bingo" to be conducted by licensed authorized organizations under Chapter 2001, Occupations Code. *Senate Journal*, 79th Legislature, Regular Session, May 10, 2005, pp. 1807-1813. I have included a copy of that amendment with this request. The amendment may be found on the legislature's Internet website at <http://www.legis.state.tx.us/tlodocs/79R/amendments/html/HB00003S2f24.HTM>.

Section 47(a), Article III, Texas Constitution, requires the legislature to "pass laws prohibiting lotteries and gift enterprises" other than those authorized by that section. Section 47(a) has been construed to prohibit the legislature from authorizing any form of gambling based on the lottery principle, other than those forms specifically authorized by the other subsections of Section 47. See Op. Tex. Att'y Gen. No. GA-0103 (2003) and the authorities cited in that opinion.

Subsection (b) of Section 47, adopted by the voters in 1980, permits the legislature to "authorize and regulate bingo games conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs" under certain restrictions.

For several reasons, it does not appear that the method of gambling described by Floor Amendment 24 to H.B. 3 as "electronic pull-tab bingo" is a legitimate form of bingo game that the legislature may authorize under current Section 47(b).

In Op. Tex. Att'y Gen. No. GA-0103 (2003), you were asked whether the legislature may authorize the state to operate video lottery terminals under the authority granted by Section 47(e), Article III, Texas Constitution, which permits the legislature by general law to "authorize the State to operate lotteries." In determining that Section 47(e) does not permit the legislature to authorize state-run video lottery games, you noted, citing numerous precedents, that constitutional provisions should be interpreted in light of the general understanding of their meaning at the time of their adoption. Op. No. GA-0103 pp. 5-6. In that opinion, you concluded that when the legislature proposed and the voters approved Section 47(e), the common public understanding of the term "lotteries" to be operated by the state did not include video lottery games played on electronic terminals.

Applying the reasoning of Op. No. GA-0103, it seems clear that when the legislature proposed Section 47(b) in 1979, and when the voters approved the constitutional amendment in 1980, the term "bingo games" in no way contemplated gambling on a computer terminal in the form referred to as "electronic pull-tab bingo" by Floor Amendment No. 24. Contemporaneous materials describing the proposed constitutional amendment and summarizing the then-current arguments for and against the bingo amendment emphasized that the amendment was intended to authorize bingo games largely because religious groups, veterans and fraternal organizations, and other nonprofit organizations were *already* conducting bingo games, and that these technically illegal games were widely tolerated as harmless, even socially beneficial, fund-raising activities. In effect, the voters who approved Section 47(b) in 1980 largely believed that they were simply legalizing the status quo. See, for example, *Analyses of Proposed Constitutional Amendments Appearing on November 4, 1980, Ballot*, Texas Legislative Council, August 1980, pp. 9-10. In addition, these contemporaneous materials indicate that the debate over legalizing bingo also focused on the social nature of bingo games. The 1980 summary of the arguments then being offered in support of the bingo amendment prepared by the former House Study Group makes this clear: "Bingo is a social function. It brings people together who want to be together. Its social nature is one of the ways it differs from games like roulette or *slot machines*" (italics and bolding added). House Study Group, *Constitutional Amendment Analyses*, 1980, p. 22. In fact, the "electronic pull-tab bingo" described by Floor Amendment No. 24 that would be played on an electronic terminal with a video monitor to simulate a pull-tab bingo ticket would look and operate substantially like a casino-style slot machine or the illegal eight-liner.

The Bingo Enabling Act, enacted immediately after the constitutional amendment was adopted, initially defined "bingo" as "a specific game of chance, *commonly known as bingo or lotto*, in which prizes are awarded on the basis of designated numbers or symbols *on a card* conforming to numbers or symbols selected at random" (italics and bolding added). Section 2, Chapter 11, Acts of the 67th Legislature, 1st Called Session, 1981. This definition is strong contemporaneous evidence of the limited authorization that was intended by Section 47(b). What Floor Amendment No. 24 describes as "electronic pull-tab bingo" has no relation to the game *commonly known* as bingo when the voters approved the constitutional amendment in 1980. While the use of technology to assist in the conduct of bingo is not necessarily

inconsistent with the original conception of the game of "bingo," it is unlikely that the voters would have imagined in 1980 that by approving the legalization of "bingo games" they would be approving the play of solitary wagering on a computer terminal that has more in common with playing a slot machine than participating in a communal bingo game.

It should also be noted that Section 47(b) requires each locality through a local option election to approve the conduct of bingo by authorized organizations in that locality. Had the voters of each of those localities imagined that solitary computer-operated gambling would be permitted as a form of "bingo game," I strongly suspect that the outcomes of many of those local option elections would have been very different from the ones that resulted when the voters were imagining the sociable bingo games then being played in the community.

Because there is a significant possibility that legislation to authorize electronic pull-tab bingo will again come before the legislature for consideration during the upcoming Regular Session of the 80th Legislature, I respectfully request that you expedite your response to this request and issue your opinion before the regular session convenes in January 2007.

Thank you in advance for your consideration of this matter. Please do not hesitate to contact me if you have any questions or need further information.

Very truly yours,

A handwritten signature in black ink that reads "Jane Nelson". The signature is written in a cursive, flowing style.

Senator Jane Nelson  
Chair, Senate Committee on Health and Human Services

Enclosure