S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
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March 23, 2007

Opinion No. 07-35

Legality of Lottery Game - Hot Trax Champions

QUESTIONS

1. As currently offered and played across the State, does the Hot Trax Champions game constitute a form of casino gambling or other game of chance associated with casinos as prohibited by Article XI, Section 5, of the Tennessee Constitution? If not, what distinguishes the game from casino gambling?

2. As currently offered and played across the State, does the Hot Trax Champions game constitute a video lottery as prohibited by Tennessee law? If not, what distinguishes the game from a prohibited video lottery?

OPINIONS

1. We think a court would conclude that Hot Trax Champions is not a game of chance associated with casinos within the meaning of Article XI, Section 5, of the Tennessee Constitution. Although Hot Trax has a progressive jackpot, this type of jackpot does not necessarily make it a game of chance associated with casinos since Powerball and Lotto 5, two well-accepted lottery games, also have progressive jackpots. Further, Hot Trax is similar to Quick Cash, a game that had been conducted by the Georgia Lottery Corporation for seven years when this State adopted the Lottery Amendment in 2002. Finally, based on information provided to us by the Tennessee Education Lottery Corporation, Hot Trax Champions is not a game that has been played in casinos.

2. Hot Trax Champions is not a "video lottery" as prohibited by Tennessee law, because a player does not have individual input, does not insert coins, currency, or other consideration into the device, and does not receive free games or a voucher for cash or non-cash prizes through the device.

ANALYSIS

This opinion addresses the legality of a game being conducted by the Tennessee Education Lottery Corporation ("TEL") that is called Hot Trax Champions.

Article XI, Section 5, of the Tennessee Constitution provides:

> The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that ***the legislature may authorize a state lottery*** if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state.
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> ***A state lottery means a lottery of the type such as in operation in Georgia, Kentucky and Virginia in 2000***, and the amendment to Article XI, Section 5 of the Constitution of the State of Tennessee provided for herein does not authorize games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like.

Tenn. Const. art. XI, § 5 (as approved at election Nov. 5, 2002) (emphasis added). In Op. Tenn. Att'y Gen. 03-058 (May 5, 2003), this Office opined that the phrase, "a lottery of the type such as in operation in Georgia, Kentucky, and Virginia in 2000," does not mean only those games actually operated by those state lotteries in 2000. Opinion 03-058 concluded the phrase also includes games "of the type" similar to those games. To be permitted under Article XI, Section 5, therefore, a lottery game should be of the type operated by Georgia, Kentucky, and Virginia in 2000. Further, it may not be a game of chance associated with casinos.

Included with the opinion request is a brochure that explains how to play Hot Trax Champions, which is described as "a TV monitor game that shows an animated car race among competing professional race car drivers." The brochure contains these instructions alongside a playslip illustration:

> 1. Select the number of drivers per race from 1 to 8.
> 2. Select the order in which the drivers will finish, or choose Quick Pick to let the computer pick your drivers and finishing order. If you choose your drivers, begin with 1st place, and continue to make finishing order selections up to the number of drivers you wish to play per race. [The player may choose among ten drivers listed on the playslip.]
> 3. Select the dollar amount you wish to play per race. Select only one amount. [The player may choose $1, $2, $5, or $10.]
> 4. Select the number of consecutive races you wish to play. [The player may choose 1, 2, 5, 10, or 15 races.]

Hot Trax tickets may be purchased from lottery retailers approved by TEL. According to TEL's website, these include bars, restaurants, and other businesses such as markets. Some retailers offer Hot Trax only, while others sell online games such as Powerball and the instant games or scratch-off tickets. http://www.tnlottery.com/retailers/locations.aspx

TEL has described Hot Trax to us as follows:

> HotTrax™ is not a game that has been played in casinos. The HotTrax™ player views a computer generated 3-D animation of a car race from a television monitor in the retail establishment and has the opportunity to place a variety of wagers on the finishing order of the various race car drivers, rather than on a number. Prior to the race the player purchases a ticket from the retailer, which would be issued through the lottery's on-line terminal, as in the case of the TEL's other games. The winning race car driver would be randomly selected by a software randomizer program prior to the display of the race animation on screen. At the end of the race a successful player could collect his/her winnings from the retailer, for prize amounts of $599 or below, just as players can for any of our current games. For prizes over $599 the player would be instructed to claim at the TEL, as is also the lottery's current practice.

The issue, then, is whether Hot Trax Champions is "of the type" of lottery that was in operation in Georgia, Kentucky, and Virginia in 2000. The Georgia Lottery Corporation ("GLC") introduced a television monitor game December 15, 1995, according to the GLC timeline on its website:

> The Georgia Lottery launches its newest on-line game, Quick Cash, with daily draws every five minutes. The first draw occurs at 6:05 a.m. and the last draw occurs at 11:45 p.m. Players will find Quick Cash at many of their traditional retailers and at new locations such as restaurants, bars, bowling alleys and other social environments.

http://www.georgialottery.com/stc/aboutus/timeline.jsp?focus=aboutus

Quick Cash is described more fully in Op. Tenn. Att'y Gen. 03-058 (May 5, 2003), which addressed what games would be permissible under Tennessee's Lottery Amendment. "In 'Quick Cash,' . . . a player selects from one to ten numbers on a lottery ticket which is then read by a computer at the time of selection. Every five minutes, ten winning numbers are randomly chosen by the computer and displayed on a video monitor connected to the computer terminal. The amount of prize money depends on the total of correctly selected numbers." *Id.,* citing *Jackson v. Georgia Lottery Corporation*, 228 Ga.App. 239, 491 S.E.2d 408 (Ga. Ct. App. 1997), *reconsideration denied* (1997), *cert. denied* (1998).

Like Quick Cash, Hot Trax Champions may be viewed over television monitors at retailer locations, and a new race is conducted every five minutes. Similar to other online games played in Tennessee, a player purchases a ticket or tickets from the retailer's online terminal. Whether any particular player wins is a matter of chance, as the winning combination is determined by a computer program. Different from other games is that players choose race-driver names, rather than numbers, and may watch an animated car race on a television monitor, rather than, for example, a series of

numbered balls being chosen on broadcast television.[1] The essential elements of a lottery — prize, chance, and consideration — are present in each instance; moreover, the differences do not seem material. A court would probably conclude that Hot Trax is of the same type as other online games, especially Quick Cash, which began in Georgia in 1995.

The next issue, then, is whether Hot Trax Champions is a game of chance associated with casinos. Article XI, Section 5, provides two examples of games of chance associated with casinos, namely slot machines and roulette wheels. In this context, "associated" means "closely related, especially in the mind; allied, accompanying." *Webster's Third New International Dictionary of the English Language, Unabridged*, 132 (1986). Even though they can appear at other places, slot machines and roulette wheels are most typically found in casinos. The courts must give effect to the intent of the people who adopted a constitutional provision. *Gaskin v. Collins*, 661 S.W.2d 865 (Tenn. 1983). Thus, the question becomes whether Hot Trax Champions is a game of chance so associated with casinos that a court would conclude the voters adopting the Lottery Amendment meant to exclude it from this State's lottery.

The opinion request asks us to describe what specific features of Hot Trax distinguish it from "games of chance associated with casinos." According to information received from TEL, a fundamental difference between a game like Hot Trax and a traditional slot machine is that the latter involves a single player, with input ability, competing against a single machine. With a slot machine, "there exists no central system and no multiple participation aspects and the prize payout is not dependent upon the presence of other players' winning numbers." The opinion request asks specifically about progressive jackpots, which the request describes as similar to games played in casinos. The Hot Trax brochure states that the game's "[p]rogressive jackpot starts at $25,000 and increases until won." While a progressive jackpot may be characteristic of some games played in casinos, we do not think this feature necessarily makes Hot Trax a game of chance associated with casinos within the meaning of Article XI, Section 5. The lottery games of Powerball and Lotto 5 also have progressive jackpots. Significantly, Hot Trax is similar to Quick Cash, a game that had been conducted by the Georgia lottery for seven years by the time Tennessee modeled its lottery after Georgia's. Finally, TEL has represented to us that Hot Trax is not a game that has been played in casinos. Accordingly, we think a court would conclude that Hot Trax Champions is not a game of chance associated with casinos that the voters adopting Tennessee's Lottery Amendment meant to prohibit from being played in this State.

The opinion request also asks whether Hot Trax is a form of video lottery prohibited by Tennessee law. The Tennessee Education Lottery Implementation Law, Tenn. Code Ann. §§ 4-51-101, *et seq.*, defines "lottery" as follows:

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[1] Drawings for CASH 3, CASH 4, Lotto 5, and Powerball may be viewed at scheduled times on certain television stations in Tennessee. *See* discussion of on-line games at http://www.tnlottery.com.

> "Lottery," "lotteries," "lottery game," or "lottery games" means any game of chance approved by the board[2] and operated pursuant to this chapter, including, but not limited to, instant tickets, on-line games, and games using mechanical or electronic devices. For the purposes of this chapter, "lottery," "lotteries," "lottery game," or "lottery games" does not include:
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> (B) VIDEO LOTTERY. For the purposes of this subdivision (8)(B), "video lottery" means a lottery that allows a game to be played utilizing an electronic computer and an interactive terminal device, equipped with a video screen and keys, a keyboard or other equipment allowing input by an individual player, into which the player inserts coins or currency as consideration in order for play to be available, and through which terminal device, the player may receive free games or a voucher that can be redeemed for a cash or non-cash prize, or nothing, determined wholly or predominantly by chance[.]"

Tenn. Code Ann. § 4-51-102(8). Elsewhere, the Lottery Act prohibits TEL from operating a video lottery, Tenn. Code Ann. § 4-51-108(a)(1), and Tenn. Code Ann. § 4-51-123(g) provides that no lottery game may use an electronic machine that dispenses coin or currency or accepts debit or credit cards. The statutory definition of "lottery" expressly includes games using electronic devices, so Hot Trax's use of a television monitor does not remove it from Tennessee's act. The game is not a "video lottery" prohibited by the act, because a player does not have individual input, does not insert coins, currency, or other consideration into the device, and does not receive free games or a voucher for cash or non-cash prizes through the device. We think a court would conclude, therefore, that Hot Trax Champions is not a video lottery as prohibited by Tennessee law.

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[2] Under Tenn. Code Ann. § 4-51-103(j), the Board may delegate to the chief executive officer such powers and duties as it may deem proper.

Requested by:

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