

Memorandum

TO: Tadd Johnson, Chairman

FROM: Penny Coleman, Acting General Counsel *PJC*

DATE: March 11, 1998

RE: King Dobber bingo card dispenser

This memo responds to a request by Ms. Maggi Otis in an August 15, 1994, letter, on whether the "King Dobber" bingo card dispensing equipment is a Class II game under the Indian Gaming Regulatory Act (IGRA), 25 U.S.C. Sec. 2701 et seq. (1988). The Enforcement Division has also inquired about the classification of this game.

We reviewed the materials submitted and for the reasons outlined below, we conclude that the "King Dobber" game does not meet the statutory or regulatory definition of a Class II game, and is therefore, a Class III game.

DESCRIPTION OF "KING DOBBER" MACHINES

Charitable Equipment Inc. provided the NIGC with a packet of information explaining the "King Dobber" Bingo card dispenser. According to the literature, "King Dobber" is a game played by inserting currency into the "King Dobber" machine, and the machine dispensing a stamped bingo card and/or a dauber. Players open the bingo card and daub the card by matching numbers on their card to "King Dobber's" built-in LED-lit flashboard located on the face of the machine, which displays the previously drawn numbers. Players compare their daubed "King Dobber" cards to the posted card board "King Dobber Flare", which shows winning games and patterns. Winning cards are redeemed by a cashier or attendant, utilizing the "King Dobber Verifier" book for security.

The "King Dobber" machine does not generate the posted numbers. Rather, the winning numbers are chosen randomly, often by using a deck of cards, a squirrel cage, or a bingo blower. Depending on the designated winning pattern, a certain number of "B"'s are drawn, along with a certain number of "I"s, "N"s, "G"s and "O"s. Once all the winning numbers are drawn, they are posted on both flashboards. After the numbers are drawn, the "King Dobber" machine dispenses bingo cards that are stamped with the "King Dobber" machine serial number, the date and the time dispensed. As a result, no bingo card is active until it is stamped and dated. The players then compare the numbers on their card to the posted winning numbers, and cover the numbers on their card that match the posted numbers. The length of a "King Dobber" bingo session is determined by the bingo site. From the

information provided, it appears that the length of a game can be until all the cards in the "King Dobber" machine are sold. Or, the game could be played until the first person covers the posted winning pattern. A final option is that the game could be for a set period of time such as an hour, a day or a week. For example, in the bingo flare that was provided, there are five different winning patterns. Two of the prizes are \$100 and \$500 prizes, while the others are smaller, \$15, \$10 and \$2 prizes. The game could be played until someone wins the \$100 or \$500 prize, or it could be played until all the cards (9030) are sold, which could take days or weeks. A third option could be to play the bingo game for a day, and then play a new game beginning the next day. To start a new bingo session, the operator chooses a different flare game and draws and posts the new winning numbers.

DEFINITION OF CLASS II GAMING UNDER IGRA

The NIGC definition regulation of class II gaming is closely modeled after the statutory definition located at 25 U.S.C. § 2703.

Class II gaming means:

(a) Bingo or lotto (whether or not electronic, computer, or other technologic aids are used) when players:

- (1) Play for prizes with cards bearing numbers or other designations;
- (2) Cover numbers or designations when object, similiary numbered or designated, are drawn or electronically determined; and
- (3) Win the game by being the first person to cover a designated pattern on such cards;

(b) If played in the same location as bingo or lotto, pull-tabs, punch boards, tip jars, instant bingo, and other games similar to bingo;

25 C.F.R. § 502.3. The regulations further define "games similar to bingo" as "any game that meets the requirements for bingo under § 502.3(a) of this part and that is not a house banking game under § 502.11 of this part." 25 C.F.R. § 502.9.

ANALYSIS

As described, the "King Dobber" game does not meet the regulatory definition of bingo for several reasons. First, the players do not cover the numbers when objects similarly numbered are drawn. Instead, all the winning numbers are drawn and posted on the flashboards, before the players buy their cards. The players then compare and cover the numbers on their cards with the posted numbers to see if they won. Also, as it is being played in some instances, the game is not won by the first person to cover a previously designated arrangement. Rather, the game may be played for a set period of time, such as a day or a

week, or the game may be played until all the cards in the dispenser are sold. The possible impact of such variations is that in the first instance, no one would win the game, and in the later instance, people would continue to play, after someone else had already won the larger prize.

When examining whether "King Dobber" meets the definition of "bingo" or "games similar to bingo", the analysis is the same because NIGC regulations define "games similar to bingo" as any game that meets the above statutory definition and is not a house banking game. See 25 C.F.R. § 502.9. Therefore, case law involving "games similar to bingo" is relevant to the discussion of whether "King Dobber" meets the definition of "bingo".

As discussed in *Shakopee Mdewakanton Sioux Community v. Hope*, 798 F.Supp. 1399 (D.Minn. 1992), *aff'd* 16 F.3d 261 (8th Cir. 1994), we must determine whether the statutory elements of bingo are essential to the game being presented. In this instance they are not.

In *Shakopee*, the court was considering, in part, whether the game of keno meets the statutory characteristics of bingo and therefore could be considered a game similar to bingo. In determining that it did not, the court found that covering numbers when they are drawn and being the first to cover numbers are not rules of keno and are irrelevant to winning a game of keno. *Shakopee*, 798 F.Supp. at 1411. Consequently, keno is not a game similar to bingo within the meaning of IGRA. Similarly, "King Dobber" does not require that players cover the numbers when they are drawn, and at least in some instances, the game is not over when the first person to cover the numbers in the previously designated pattern wins. Thus, "King Dobber" is not bingo within the meaning of IGRA, and is consequently not a "game similar to bingo" as currently defined in NIGC regulations. Therefore, "King Dobber" is not a Class II game as defined in IGRA.

The definition of Class III games is one of omission. According to IGRA, "Class III gaming means all forms of gaming that are not Class I¹ gaming or Class II gaming". 25 U.S.C. Sec. 2703(8). Since "King Dobber" is not Class I or Class II, by omission it must be Class III and can only be played according to a tribal-state compact. Furthermore, King Dobber is not a bingo game, and cannot be used as a basis for the sale of pull-tabs as a form of class II gaming.

If you have any questions regarding this opinion, please ask me or Darla M. Silva.

cc: Alan Fedman, Director of Enforcement

¹ Class I gaming means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations. This definition is not applicable to "King Dobber".