

**IN RE:**

**DECLARATORY RULING  
BY THE SOUTH DAKOTA  
LOTTERY COMMISSION**

**RULING 00-1  
AN UPDATE OF RULING 94-1  
PROHIBITION OF UNLICENSED ELECTRONIC  
MACHINES THAT SIMULATE CARD OR OTHER  
GAMES OF CHANCE  
SDCL 42-7A-36; 39; AND 56**

**ISSUES:** Should the Lottery prohibit the placement of electronic video game machines played for amusement purposes only and licensed by the Department of Revenue in licensed video lottery establishments? And, should the Lottery prohibit licensed video lottery operators from placing these devices in non-video lottery establishments or locations?

**BACKGROUND:** In 1994, the South Dakota Lottery was asked by Lieberman Music Company (at the time a licensed video lottery distributor) if the sale of an electronic video game, Solitaire Challenge, to South Dakota video lottery operators was prohibited. Solitaire Challenge featured a solitaire game in which players were awarded credits by playing out a hand of solitaire and competing against the clock.

In April 1994, the South Dakota Lottery Commission issued Declaratory Ruling 94-1 which states: "Any unlicensed electronic video machine manufactured for 'amusement purposes only,' which simulates card or other games of chance associated with regulated and legalized gaming activities in the state, is violative of the public policy on video lottery operations. Therefore, no such machine can be sold to operators for placement or operation in the state."

The ruling goes on to state that "the card game displayed on the machine bears great similarity to what was termed a 'gray machine' prevalent before authorization of video lottery." SDCL 42-7A-36 states:

No person may have in his possession, custody, or under his control or permit to be kept in any place under his possession or control, any device that awards credits and contains a circuit, meter or switch capable of removing and recording the removal of credits when the award of credits is dependent upon chance. A violation of this section is a Class 6 felony. All devices described in this section are hereby declared to be public nuisances. The provisions of this section do not apply to devices or electronic video game machines licensed pursuant to this chapter.

The Commission apparently concluded that solitaire or any game that utilized traditional playing cards as a feature could be mistaken for a video lottery terminal and/or a gray machine. And, concluded that placement of these machines would erode public confidence and trust in the Lottery contrary to the public policy set forth in SDCL 42-7A-56.

During the past two and a half years the Lottery has been attempting to enforce this ruling by having new generations of video games removed from video lottery establishments. Recently, non-video lottery licensed distributors have been placing these devices in video lottery establishments. Note that Declaratory

Ruling 94-1 only prohibits the placement of these machines by video lottery operators. It does not address placement by business owners or others not licensed by the Lottery into a licensed video lottery establishment as long as the establishment does not also have an operator's license.

The South Dakota Lottery has obtained two machines on loan for evaluation purposes. These games offer the player a choice of strategy, trivia, card, sports and entertainment games. The major difference between these games and Solitaire Challenge is that these games do not award credits. Although a few of the many games on these machines consist of various versions of solitaire, none resemble poker, blackjack, keno or bingo. The concern and question is whether the intent behind the prohibition in Declaratory Ruling 94-1 should be applied to these machines, and whether or not licensed video lottery operators can place these machines in video lottery or non-video lottery locations without violating any Lottery rules or regulations.

**POLICY:** Any electronic video machine manufactured for "amusement purposes only," which simulates card or other games of chance associated with regulated and legalized gaming activities in the state, is violative of the public policy on video lottery operations. Therefore, no such machine can be sold to operators for placement or operation in the state nor can any such machines be placed or operated in video lottery establishments. Video amusement machines whose games bear no resemblance to legal lottery and gaming activity and do not meet the criteria of gray machines are not restricted for placement or operation.

**FINDINGS AND CONCLUSIONS:** The machines evaluated by the South Dakota Lottery do not simulate any games associated with regulated and legalized gaming activities in the state. The games on the machines evaluated bear no resemblance to games on video lottery terminals. Video lottery has been in existence for over 10 years and it is not likely that anyone would confuse a non-credit awarding game of solitaire with video poker, blackjack, keno or bingo.

The machines evaluated by the South Dakota Lottery do not award credits nor contain a circuit, meter or switch capable of removing and recording the removal of credits. The fundamental criteria for a gray machine are not present.

Declaratory Ruling 94-1 addresses the need to ensure the security and integrity of legalized gaming activities in the state. If video games bear no resemblance to legal gaming activity and do not meet the criteria of gray machines, it is questionable they could pose a threat to the security and integrity of legal gaming activities. However, there is a need for review of machines proposed to be placed and operated to insure that they meet the above qualifications and to protect the security and integrity of the Lottery.

**DATED THIS 3RD DAY OF MARCH, 2000.**

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**RALPH A. KEMNITZ, CHAIRMAN**