

IN RE:

**DECLARATORY RULING
BY THE SOUTH DAKOTA**

LOTTERY COMMISSION

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

ISSUE: Whether the Lottery should authorize the sale of unlicensed electronic video game machines played for amusement purposes only that simulate card or other games of chance to licensed operators in the state?

BACKGROUND: Lieberman Music Company, a licensed distributor, has submitted a letter of request to the Lottery for an "exception" to allow the sale of an electronic video game, Solitaire Challenge, to South Dakota operators. The letter states that the machine contains no knock off button; that the games awarded must be played off; and the credits remain even when the machine is reactivated. No mention is made of any of these representations in the manufacturer's brochure.

Accompanying the request was a manufacturer's brochure. The game manufacturer is Dynamo Limited of Richland Hills, Texas. Dynamo Limited is not licensed by the South Dakota Lottery. The electronic machine is stand alone and offers the card game of Solitaire where players win free games by playing out the hand and competing against the clock.

POLICY: 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.

LEGISLATIVE HISTORY: The card game displayed on the machine bears great similarity to what was termed a "gray machine" prevalent before authorization of video lottery. The Legislature recognized the need for removal of these types of machines from the market and did so through the enactment of 47-7A-36 that 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 reason for the statute mandating removal of the machines from the South Dakota market was to ensure the security, integrity, successful operation and enforcement of

legalized gaming activities in the state. The legislature also made clear that any video machines associated with video lottery operations must be licensed by the lottery. SDCL 42-7A-39 states:

Any machine which does not display the license required by this section is contraband and a public nuisance subject to confiscation by any law enforcement officer. A violation of this section is a Class 6 felony.

Electronic video machines that simulate card or other game of chance in businesses within the state would be perceived by the public as tested and approved by the Lottery. The entry into the market of "amusement only" electronic machines simulating games of chance also creates the potential for major law enforcement problems. It has been demonstrated that these machines can be easily altered for the removal of credits that can correspondingly be paid their accrued value.

The public policy of this State on video lottery operations has been established by the legislature in SDCL 42-7A-56, which states: "The Legislature hereby finds, and declares to be the public policy of this state that:

- (1) The success of the South Dakota Lottery is dependent upon public confidence and trust that it is conducted honestly and free from criminal and corruptive elements;
- (2) Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities related to the sale of lottery products and the operation, manufacturing and distribution of video lottery games and equipment; and
- (3) No application for a license or other affirmative commission action has any right to a license or to the granting of the approval sought...."

The legislature has made clear through its public policy enactment that public confidence of legalized gaming activities can only be maintained by strict regulation of all persons, locations, practices, and associations.

DATED THIS 28TH DAY OF APRIL, 1994.

ELAINE EMERY, CHAIRMAN