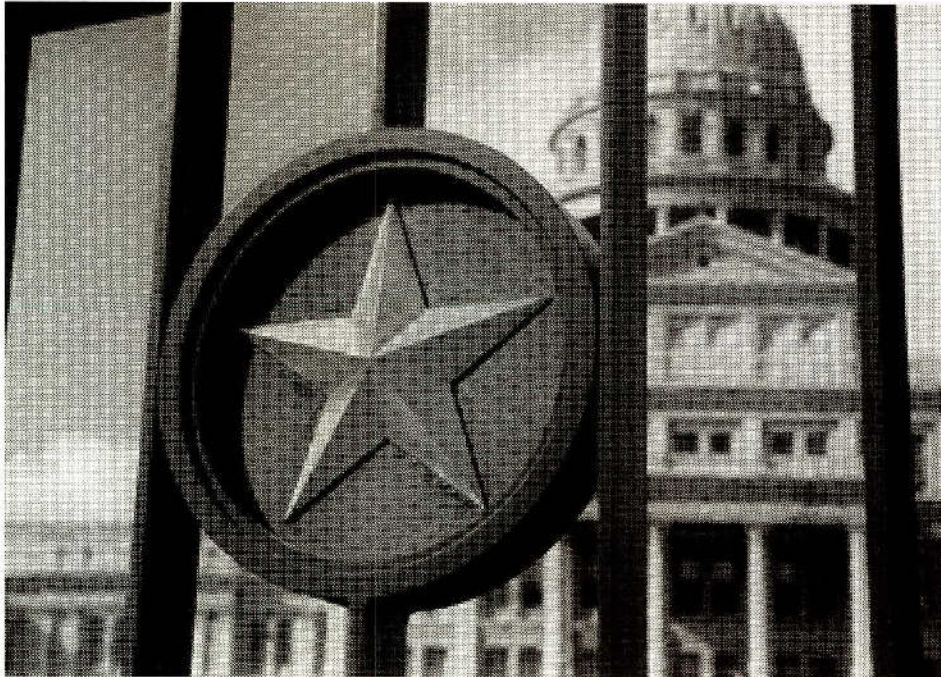


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Report of the Governor's Task Force on Illegal Gambling in Texas

To allow casino style gambling to continue and spread in places where children play not only offends Texans who have not approved casino style gambling in our state, but it also sends a terrible message to our children that gambling is okay. Casino gambling is not okay. It has ruined the lives of too many adults and it can do the same thing to our children.

George W. Bush

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Report of the Governor's Task Force on Illegal Gambling in Texas

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Governor's Task Force on
Illegal Gambling in
Report of the Governor's
Task Force on Illegal
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Texas Comptroller of Public Accounts
Texas Department of Public Safety
Texas Lottery Commission
Texas Alcohol and Beverage Commission
Texas District and County Attorneys Association
Texas Senate Media Services
Texas Senate Staff Services
Texas Senate Research Center

We also appreciate the other public representatives and interested parties for their involvement in this study, especially those who participated in our public hearings.

Report of the Governor's Task Force on Illegal Gambling in Texas



1 INTRODUCTION

Texas has long maintained a public policy against gambling. That public policy, embedded in Article III, Section 47, of the Texas Constitution, produced a system of laws that prohibits virtually all forms of public gambling in Texas. Over the past twenty years, however, the people of Texas, acting through their elected representatives and through the ballot box, have modified that policy through constitutional amendments that have legalized certain forms of gambling. Pursuant to these constitutional amendments and their enabling statutes, Texas now regulates, and accepts as legal, bingo, charitable raffles, pari-mutuel wagering, and the state-run lottery.

The advent of legalized gambling in Texas has spurred an increase in illegal gambling. Further, the state's approval of certain games provided an incentive to the gambling industry to seek expansion of the limits of legal gambling in Texas. These developments led to lobbying and legislative efforts that, over the past five years, have sought the adoption of additional exceptions to Texas' public policy against gambling. These efforts have largely failed, and the tide of public policy has begun to turn against gambling as evidenced by the introduction of legislation during the 75th Legislative Session that sought to tighten restrictions against illegal gambling devices.

The use of illegal gambling devices in Texas, particularly those known as "eight-liners," exploded after the Legislature's 1995 amendment of the Texas Penal Code's definition of "Gambling Device." The change in the law, which introduced an amusement machine exception into the gambling device definition, blurred the distinction between what is a gambling device and what is an amusement machine. This ambiguity reduced the likelihood of prosecution under the statute, and thus opened the door for the gambling industry to expand sales of these illegal gambling devices in Texas.

During 1996 and 1997, the presence of eight-liners became increasingly evident in convenience stores and truck stops across the state. Arcades, billing themselves as "casinos," opened and their profitability fueled the rapid spread of this form of illegal gambling. Governor George W. Bush, working closely with key leaders in the Legislature, sought to remedy this problem during the 75th Legislative Session. Specifically, the Governor voiced his support for bills introduced to clarify the Texas Penal Code's definition of "Gambling Device" and thereby substantiate what has always been true, namely, that Texas law prohibits slot machines like eight-liners. Both Senate Bill No. 1701 and House Bill No. 3350 would have achieved that end. Senate Bill No. 1701 failed to make it out of committee. House Bill No. 3350 overwhelmingly passed the House, but was filibustered in the Senate on the last day of the 75th Session. **See Exhibit A.**

The failure to stem the influx of illegal gambling devices into Texas through legislative action led to the formation, in August 1997, of the Governor's Task Force on Illegal Gambling. **See Exhibit B.** In forming the Task Force, Governor Bush appointed representatives from state agencies with jurisdiction over

gambling enforcement, as well as prosecutors, interested legislators, and public members. **See Exhibit C.** Senator David Sibley of Waco was appointed Chairman, and the Task Force began its work in September 1997. The Governor charged the members with examining the expansion of illegal gambling in Texas and recommending legislative action to counter it.

This report completes the charge given to the Task Force by the Governor.

The Report accomplishes the following:

- recounts briefly the history of gambling in Texas;
- reviews the state's current gambling laws;
- summarizes the recent increase in illegal gambling in Texas and other states;
- outlines the substance of the relevant testimony presented to the Task Force; and,
- presents the Task Force's findings and recommendations.



2 EXECUTIVE SUMMARY

Governor Bush formed the Task Force on Illegal Gambling to address the general increase in illegal gambling in Texas and the specific rise in the use of eight-liners. **See Exhibit D.** The Task Force met in Austin four times over the course of twelve months. The members received testimony from a variety of witnesses on gambling problems in Texas. The testimony came from law enforcement officers, prosecutors, state agency representatives, persons with gambling problems, and former legislators. The substance of most of that testimony is summarized in Section 6 of this report. While the Task Force focused chiefly on the gambling device problem, it also received testimony about other gambling problems in Texas, including illegal sports betting, Internet gambling, and Indian gaming.

The Task Force accumulated a substantial amount of information about eight-liners. Specifically, the Task Force received evidence indicating that gambling device manufacturers have attempted to configure eight-liners so that they operate within the exception to the Texas Penal Code's prohibition against gambling devices. That is, the industry has sought to construct a slot machine, allegedly for "bona fide amusement purposes," that pays off in low-value coupons redeemable for inexpensive merchandise. Notwithstanding these cosmetic modifications, the machines are illegal gambling devices under Texas law, because they operate as slot machines, which are prohibited games of chance.

The 74th Legislature's passage of the exception to the Texas Penal Code's gambling device definition created the eight-liner problem in Texas. The 75th Legislature attempted to change the exception but the proposed legislation failed. The Attorney General of Texas recently ruled that the amusement machine exception to the gambling device definition is unconstitutional. The exception remains in current law, and thus the constitutionally defective statute requires the 76th Legislature's attention and action.

The Task Force recommends that the following actions be considered:

The 76th Legislature should:

- Amend Texas Penal Code Section 47.01(4), which is the definition of “Gambling Device,” so that it unambiguously prohibits all slot machines, including eight-liners. Eliminating Section 47.01(4)(B) would achieve this end. Furthermore, the exception will not lead to the criminal prosecution of operators of legitimate amusement machines.
- Increase the penalties and punishments associated with gambling crimes enumerated in Chapter 47 of the Texas Penal Code.
- Reject efforts to legalize currently illegal gambling in Texas, including proposals for state-run casinos and bills seeking to permit otherwise prohibited gambling devices.

State agencies with licensing jurisdiction should engage in rule making, where necessary, to address the use of illegal gambling devices by licensees.

The Texas Alcoholic and Beverage Commission should review its rules to ensure that they clearly make the presence of gambling devices on a licensee’s premises a licensing violation. The Texas Lottery Commission should review its rules to ensure that they make it a ground for revocation if a licensee permits the use of gambling devices on the licensee’s premises. The Texas Comptroller of Public Accounts should screen out gambling device applicants from those seeking tax stamps for amusement machines by passing a rule prohibiting the issuance of such tax stamps for illegal gambling devices such as eight-liners.

State agencies with law enforcement jurisdiction should increase their efforts to crack down on gambling device use in Texas.

The Department of Public Safety (DPS) should continue to seize eight-liners and other illegal gambling devices. The DPS should seek to expand the resources devoted to this effort until the problem is eradicated. The 76th Legislature should consider appropriating funds to enable DPS to implement this expanded effort. The Office of the Attorney General should use its asset forfeiture powers to seize eight-liners and other illegal gambling devices.

The Office of the Governor should continue to consider making grants through its Criminal Justice Division to further anti-gambling efforts.

Recent grants from the Office of the Governor have helped to fund the prosecution of illegal gambling device offenses and the education of prosecutors and law enforcement officers on how best to seize these devices. These efforts have been successful and should be continued.

The Texas District and County Attorneys Association (TDCAA) should continue to emphasize training in the area of gambling device prosecution.

The TDCAA’s “eight-liner” prosecution seminars were extraordinarily helpful to a large number of prosecutors and law enforcement officers. These seminars should be part of the permanent program offered by TDCAA.

The 76th Legislature should increase funding to address the issue of problem gambling in Texas.

Currently, Texas is near the bottom in per capita spending on helping problem gambling. The Texas Council on Problem and Compulsive Gambling continues to carry virtually the entire load in funding and addressing this issue. Additional funding could support, among other things, an expansion of the problem gambling help line.



3 A BRIEF HISTORY OF GAMBLING IN TEXAS

During its formative years as a Republic and then as a state, Texas never experimented with legalized gambling as a revenue source as did the early American colonies. Additionally, Texas did not have to withstand the disruptive flush of speculators that California endured after the Gold Rush of the late 1840s. That burst of wealth brought a spate of illegal gambling that led to the legalization, for a time, of gambling in California. Thus, during the first few decades of its existence, Texas was not subject to external or internal forces that compelled it to condone or legalize gambling.

The Texas Constitutional Convention that produced the Constitution of 1876 coincided with a turning of the tide of national public opinion against gambling. Further, the weight of Texas' short history and the spirit of its early times led to the adoption by that convention of a constitutional prohibition against lotteries and gift enterprises. Since its inception, that ban has been interpreted as a prohibition against most forms of gambling in this state.

Until the turn of the 20th century, very little pressure existed to legalize any form of gambling in Texas, and illegal gambling apparently had little impact upon the state. That atmosphere began to change after 1900, at least with respect to one form of gambling, namely pari-mutuel wagering on horseracing. During this century's first decade, racetrack gambling was legalized in Texas and then promptly repealed. For the next 20 years, repeated efforts by the Legislature to restore pari-mutuel wagering failed. A bill allowing pari-mutuel betting at racetracks finally passed in 1933. Anti-gambling sentiment, however, quickly arose in response to this development, and by 1938, the Legislature again had repealed the laws permitting pari-mutuel wagering.

During the ensuing 50 years, repeated attempts were made to re-legalize pari-mutuel wagering in Texas. In 1986, during a special legislative session, the Legislature finally passed a bill legalizing this form of gambling. Thus, for nearly three-quarters of the 20th century, pari-mutuel wagering was the primary battleground upon which the struggle over whether to expand the limits of legal gambling in Texas was fought.

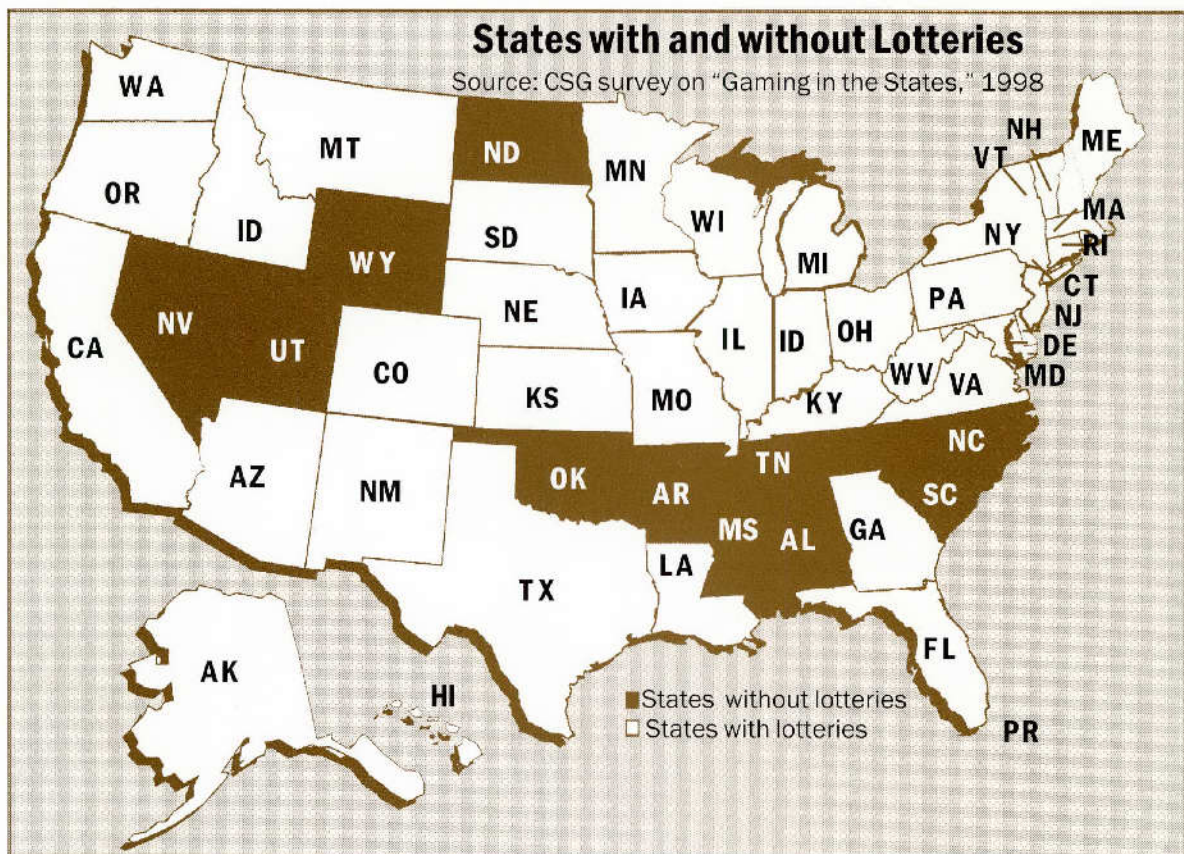
Recent events outside of Texas have brought pressure to bear upon the state's policy-makers to legalize other forms of gambling, specifically charitable bingo, charitable raffles, the lottery, and casino gambling. Over the past 20 years, only the legalization of casino gambling has been successfully resisted in Texas.

The expansion of legalized gambling in Texas reflects a national trend toward accepting gambling as a revenue generator for states rather than treating it as a crime to combat. The proponents of gambling have largely succeeded in persuading the broader culture to accept gambling as a legitimate form of

entertainment rather than a vice. The impact, from a fiscal perspective, has been enormous. In 1997, legalized gambling in the United States generated more than \$50 billion in revenues. Casino gambling comprised approximately three-quarters of this income with lotteries, charitable games, and pari-mutuel gaming making up the balance. Forty-three states now have pari-mutuel wagering and most are regulated, as in Texas, by state commissions.

Lotteries were common in colonial America as governmental revenue generators; but lotteries bred corruption, and thus the opponents of gambling prevailed upon many states to proscribe them in their state constitutions. Article III, Section 47, of the Texas Constitution is virtually identical to the lottery prohibitions found in the constitutions of many southern and western states. The contemporary resurgence of state-run lotteries began in New England during the early 1960s, and the trend toward legalization moved westward. Thirty-seven states now have legalized lotteries including Texas, which approved its state-run lottery in 1991.

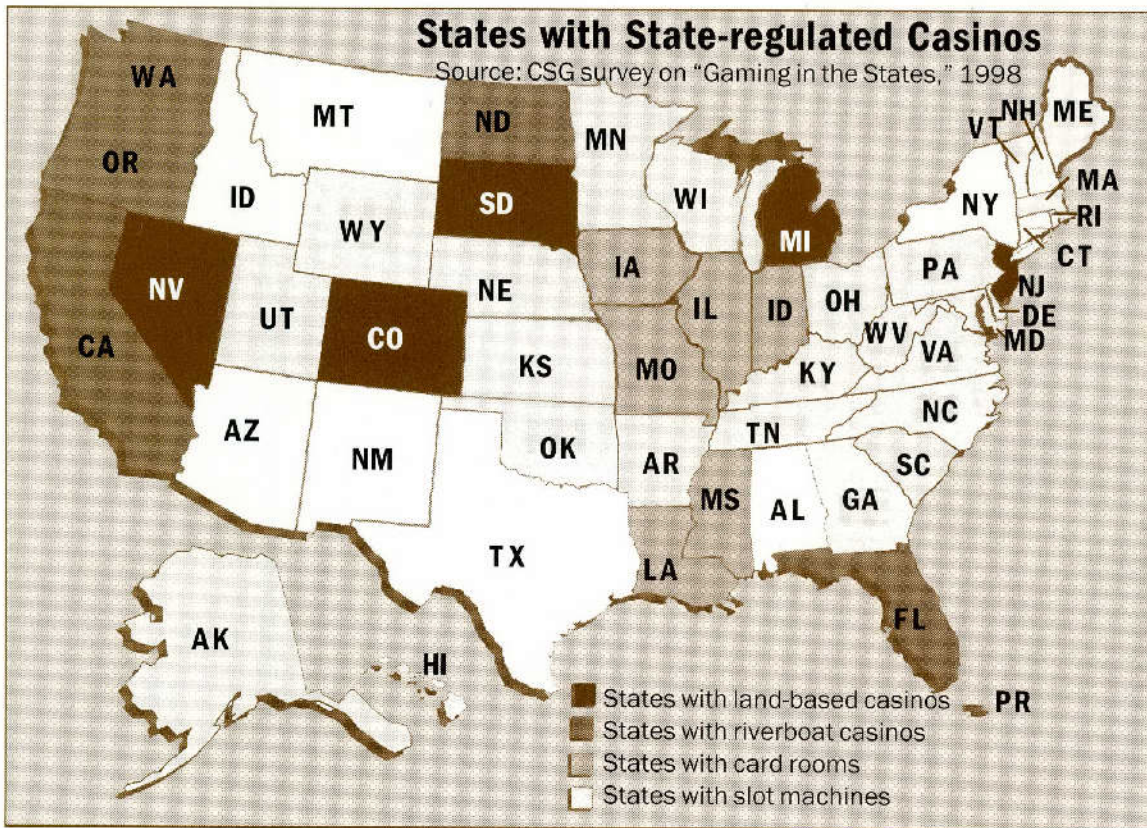
The legalization of the lottery in Texas was a fiercely fought legislative battle. Its proponents now point to the fact that it has produced around \$3 to \$4 billion in state revenue each biennium. Its substantial social costs, however, while actual and acknowledged, have yet to be accurately measured. Apart from the struggle that ensued en route to the Lottery's legalization, objections to the approval of charitable bingo, charitable raffles, and pari-mutuel racing were drowned out by the powerful wave of gambling expansion that was simultaneously sweeping America.



For nearly 50 years, Nevada was the only state to allow casino gambling in this country. Then, in 1976, New Jersey approved casino gambling and another gambling growth trend erupted. Eight other states have followed suit, the majority of which limit casino operations to river boat or dock-side locations. Additionally, since the passage of the federal Indian Gaming Regulatory Act in 1988, Indian tribes have opened casinos in 22 states. Approximately 175 Indian casinos or bingo halls are now operating across the country on Indian lands. Two currently operate in Texas: the Ysleta del Sur Pueblo owns and runs the Speaking Rock Casino in El Paso; and the Kickapoo Tribe operates the Lucky Eagle Casino in Eagle Pass. Neither is currently operating within the statutory limitations of the Indian Gaming Regulatory Act or state gambling laws.

Proponents of gambling will continue to pound upon Texas' legislative door. A neighboring state, Louisiana, has already approved river boat and dock-side gambling. The impact gambling interests have had upon that state's political process and its social fabric should be carefully studied before Texas considers expanding gambling, because the Louisiana story is not a good one.

In summary, over the past 20 years gambling has encroached upon Texas' historically held public policy against gambling. Texans traditionally have viewed gambling as a vice worthy of either strict regulation or absolute prohibition. That view continues to be reflected in Chapter 47 of the Texas Penal Code, which makes various forms of casino gambling criminal offenses. Now is the time for the Legislature to reiterate Texas' historical view of gambling by ensuring that Texas' gambling device law is unambiguous and effective.





4 GAMBLING LAWS IN TEXAS

The Texas Constitution of 1876 prohibits “lotteries” and “gift enterprises.” The most salient aspect of this prohibition is its imposition of an *affirmative duty* upon the Legislature to pass laws that proscribe gambling. The constitutional bar against gambling has been interpreted by Texas courts to mean that no game relying on chance and awarding a prize for consideration can be legalized in Texas without first amending the Constitution. The term “Lottery” subsumes virtually all forms of gambling. The word also describes a certain kind of numbers game that is now legal in Texas.

The constitutional ban against gambling in Texas, found at Article III, section 47, reads as follows:

(a) The Legislature shall pass laws prohibiting lotteries and gift enterprises in this state other than those authorized by Subsections (b), (d), and (e) of this section.

(b) The Legislature by law may 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. A law enacted under this subsection must permit the qualified voters of any county, justice precinct, or incorporated city or town to determine from time to time by a majority vote of the qualified voters voting on the question at an election whether bingo games may be held in the county, justice precinct, or city or town. The law must also require that: (1) all proceeds from the games are spent in Texas for charitable purposes of the organizations; (2) the games are limited to one location as defined by law on property owned or leased by the church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs; and (3) the games are conducted, promoted, and administered by members of the church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs.

(c) The law enacted by the Legislature authorizing bingo games must include: (1) a requirement that the entities conducting the games report quarterly to the Comptroller of Public Accounts about the amount of proceeds that the entities collect from the games and the purposes for which the proceeds are spent; and (2) criminal or civil penalties to enforce the reporting requirement.

(d) The Legislature by general law may permit charitable raffles conducted by a qualified religious society, qualified volunteer fire department, qualified volunteer emergency medical service, or qualified nonprofit organization under the terms and conditions imposed by general law. The law must

also require that: (1) all proceeds from the sale of tickets for the raffle must be spent for the charitable purposes of the organizations; and (2) the charitable raffle is conducted, promoted, and administered exclusively by members of the qualified religious society, qualified volunteer fire department, qualified volunteer emergency medical service, or qualified nonprofit organization.

(e) The Legislature by general law may authorize the state to operate lotteries and may authorize the state to enter into a contract with one or more legal entities that will operate lotteries on behalf of the state.

This section stands as a strong public policy statement against gambling in Texas. The provisions following subsection (a) reveal the recent, if limited, erosion of this affirmative legislative duty and strong public policy. The Legislature nevertheless must continue to comply with the affirmative constitutional duty to pass laws prohibiting gambling, notwithstanding three constitutional exceptions. No doubt should thus exist over whether Texas has a public policy against gambling. The recent exceptions to this rule have not swallowed up this historic and well-founded policy.

The legalization of the Texas Lottery in 1991 was the last in a series of recent amendments to Article III, section 47. The first in this series occurred in 1979, when the Legislature proposed a constitutional amendment to permit charitable bingo. This fairly harmless form of gambling had a laudable purpose, namely, to raise money for charities such as churches, schools, and hospitals. The amendment easily passed the Legislature and was approved by the voters in 1980.

Out of this seemingly harmless change came increasing momentum to legalize other forms of gambling. Within 12 years, Texans approved three more forms of gambling, and this after more than 100 years of nearly complete resistance to an activity that Texas had almost universally decried as a vice. In 1985, the Legislature proposed authorizing pari-mutuel wagering, and the people of Texas approved it by referendum. Then, in 1989, the Legislature proposed an amendment to permit charitable raffles, and the voters approved it as well. Finally, in 1991, the voters approved an amendment allowing the Texas Lottery, which, until recently, had raised nearly \$1.5 to 2 billion annually.

Numerous legislatures since the 1876 passage of Article III, section 47, have fulfilled their duty to pass laws against gambling in Texas. These criminal prohibitions are currently contained at Chapter 47 of the Texas Penal Code. This chapter, however, has undergone substantial flux over the past 10 years, the most significant change being the weakening of punishments for many of the gambling offenses listed therein. Many offenses that formerly were felonies are now misdemeanors. This change apparently reflects a shift in legislative priorities with respect to directing the use of finite crime-fighting resources. It is not surprising that this change in priorities followed upon the heels of the approval of the Texas Lottery. Whatever the reason, it is clear that policy-makers, at least for a time, have deemed gambling crimes as a less compelling societal hazard in Texas.

The Legislature's adjustment of priorities brought with it other changes in the Texas Penal Code's gambling laws. One of those was the change in the definition of gambling device, amended by the Legislature in 1993 and 1995 ostensibly to clarify the fact that the prohibition extended only to gambling devices and not to bona fide amusement machines. This vague amendment, however, has produced confusion over the definition of gambling device and has led to an influx of eight-liners into the state.

The recently amended provision, Section 47.01(4) of the Texas Penal Code reads as follows:

"Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with non-cash merchandise, prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

Subsection (B) was added in 1995. Witness after witness appeared before the Task Force to say that the ambiguity created by subsection (B) was responsible for the growth in eight-liner use across the state. All of these witnesses, prosecutors and police officers alike, urged the Task Force to ask the Legislature to remove the ambiguity from this statute. Thus, one of the chief thrusts of this report is to ask the 76th Legislature to address the eight-liner problem through legislative action.

Eight-liners are a form of slot machines. They look, sound, and pay off like slot machines. Attorney General Opinion DM-302 made it clear that slot machines cannot be legalized in Texas without first amending the Texas Constitution. Thus, if eight-liners are slot machines, then they are clearly illegal in Texas.

However, subsection (B) of the definition of gambling device appears to allow certain machines if they pay off in merchandise worth less than \$5 in a single play, even if they operate like slot machines. In January 1998, Task

Force Chairman Senator David Sibley requested Attorney General Dan Morales to rule on the constitutionality of the exception. The request prompted Attorney General Opinion DM-466 in which General Morales concluded that the existing exception to the gambling device definition is unconstitutional to the extent that it can be read to authorize slot machines in Texas. **See Exhibit E.** He also concluded that eight-liners are gambling devices and thus illegal.

General Morales' opinion on eight-liners had an immediate impact across the state. It caused many of the new "eight-liner casinos" to close, and it motivated law enforcement officers and prosecutors to begin seizing eight-liners and prosecuting their operators **See Exhibit F.** Since the issuance of Attorney General Opinion DM-466, the Department of Public Safety seized over 1,100 machines and more than \$440,000 in eight-liner raids. However, many prosecutors, although in agreement with the reasoning of DM-466, are concerned about the continued existence of the exception to the gambling device prohibition. These prosecutors favor legislative action to remove any remaining ambiguity.



5 RECENT DEVELOPMENTS

In Texas, illegal gambling has grown over the past five years in three areas: (1) illegal gambling devices; (2) Internet gambling; and (3) Indian gaming. The latter two areas contain substantial overlap between state and federal law. In the first area, however, the state has exclusive jurisdiction and thus the authority necessary to remedy the problem. Additionally, the eight-liner and Indian gaming problems are interconnected.

The problem with the use of illegal gambling devices in Texas surfaced as a result of investigations into Indian gaming. In November 1996, the Office of the Governor began receiving reports of illegal gambling device use at the Ysleta del Sur Pueblo Casino in El Paso. It was reported that the Ysleta's Speaking Rock Casino had gambling devices such as eight-liners available for play. When the Office of the Governor addressed the issue with the tribe, the response was that eight-liner use was commonplace in Texas and to stop their use at the tribe's casino would amount to selective enforcement. The tribe documented its response with photographic evidence of eight-liners at various locales across Texas. Moreover, the tribe asserted that these devices were legal under Texas law.

The Office of the Governor worked with the Department of Public Safety and other law enforcement entities to determine the validity of the Ysletas' contention regarding the use of eight-liners in Texas and found the tribe's assertion to be accurate. Indeed, the state's investigation revealed that the use of illegal gambling devices was increasing statewide. The 1995 Texas Penal Code Amendment, which added the exception to the definition of gambling device, apparently had spurred the eight-liner explosion in Texas.

In conjunction with the Department of Public Safety and the Texas Lottery Commission, the Office of the Governor proposed that legislation be introduced during the 75th Legislative Session to address the issue of illegal gambling devices. Senator David Sibley introduced Senate Bill No. 1701, which, among other things, sought to clamp down on illegal gambling devices by clarifying the definition and increasing penalties. SB 1701, however, had a

broad scope, addressing more than just gambling devices, and thus it failed to move through the legislative process.

An alternative bill, House Bill No. 3350, cosponsored by Task Force members State Representatives Allen Place and Terry Keel, had a narrower scope, namely, to ban eight-liners. This bill began to pick up momentum during the latter half of the legislative session. A negotiated bill finally passed the Senate during the last week of the session. It was amended in the House and passed overwhelmingly. However, the bill failed in the Senate because of a filibuster.

The death of this bill did not spell the end of the state's anti-gambling efforts. During the summer of 1997, Governor Bush initiated a renewed effort to combat illegal gambling in Texas by forming the Governor's Task Force on Illegal Gambling, encouraging state agencies with jurisdiction to crack down on the use of illegal gambling devices, and issuing grants to the Office of the Attorney General for an illegal gambling prosecution team and to the Texas District and County Attorneys Association for education and training on eight-liner prosecution. This multifaceted initiative has effectively halted the expansion of illegal gambling device use in Texas. The successes of this initiative can now be made permanent through legislative action.



6 TASK FORCE TESTIMONY

The Task Force heard from a variety of experts on the problem of illegal gambling in Texas. Their testimony is the hard evidence that the problem is genuine and continuing. Compiled below are brief summaries of selected testimony received by the Task Force. The testimony helps substantiate the need to implement the Task Force's recommendations.

LAW ENFORCEMENT

Stan Anderson, Chief Investigator, Travis County Attorney, Austin

Mr. Anderson believes that the number of eight-liner machines in Travis County doubled after the 75th legislative session. This is symptomatic of the increase in illegal gambling statewide after the eight-liner bill was filibustered in the Senate. Mr. Anderson described why certain slot machines are illegal. Some are illegal because the amount of money a player can deposit at one time is above the legal limit allowed for a single play. Others are illegal because of "knock off switches" that are used to reset scores and let the player collect winnings during the course of a "single play." Players can redeem accumulated tickets for gift certificates issued by local stores. The use of the certificates is illegal because they allow players to buy merchandise (or sometimes cash) for less than the total amount of the certificate and collect cash for the difference.

John Laird, Lieutenant, Texas Department of Public Safety, Special Crimes Service

Lt. Laird believes it is difficult to prosecute under the existing gambling device statute because of the ambiguity in the gambling device definition. The definition must be clarified. Additionally, he recommended that the state increase the punishment for gambling promotion and keeping a gambling place from a Class A misdemeanor to a felony in order to provide a greater deterrent. Conviction for a Class A misdemeanor is not a deterrent because of the

amount of money to be made from illegal gambling. The gambling industry simply views misdemeanor charges as a cost of doing business.

Lt. Laird recommended developing a mechanism to grant law enforcement officers regulatory power, perhaps through the Texas Alcoholic and Beverage Commission (TABC) rule making, to allow officers to go into these establishments and inspect the machines and books in order to identify the owners of the machines. Frequently, the owner and the proprietor are different people; and unless the machine owners are prosecuted, the problem will persist. Lt. Laird suggested that TABC take the lead because most machines are in places that sell alcohol and are currently regulated by TABC. He thinks that 10 to 12 companies own the majority of the machines, and that millions of dollars a year are generated from the machines statewide. Finally, Lt. Laird has found instances where the state-issued tax stamp on the machine did not correspond to the owner of the machine.

Tom Mylett, Lieutenant, Corpus Christi Police Department, Vice Squad

Lt. Mylett said that throughout the 1980s there were no serious illegal gambling device problem in Texas. After the 75th Legislature and the failure of House Bill 3350, proprietors started putting slot machines into their convenience stores. He has learned that the majority of people playing gambling devices in convenience stores are 18-19 year olds, and that the machines take in on average \$450-500 per day.

Lt. Mylett believes that organized crime from northeastern states is supplying the slot machines in Texas. He recommended more severe penalties for the slot machines and for gambling. He recommended training for district and county attorneys on how to prosecute the crimes and motivating judges to dispose of the cases. He recognized the need to acknowledge that gambling is not just a business enterprise but that it does have victims.

Oscar Zepeda, Officer Corpus Christi Police Department, Vice Section

Officer Zepeda started seeing slot machines in bars in Corpus Christi four years ago. Most of the bars in Corpus Christi now have between one and four machines. No skill is involved in playing the machines; winning is based on luck.

Officer Zepeda believes that alcohol influences players to become more aggressive and bet more money. He urges that TABC take further action to curb the use of illegal gambling devices in licensed establishments. Officer Zepeda has seen people play \$300-400 at one time. Corpus Christi had three casino-type establishments in shopping centers with 18-20 machines in a room. Two of the establishments were investigated because of cash payouts, and law enforcement confiscated 101 machines and \$124,000 in that investigation.

Ed Borowski, Officer, Houston Police Department, Vice Division Gambling Squad

Officer Borowski testified that, in the past three years, illegal gambling devices have proliferated in Houston in mini marts, gas stations, grocery stores, and chain stores. Payouts occur in cash or gift certificates. Fraternal organizations use the machines to raise money.

Most investigations occur because of complaints by family members regarding losses of money. Players will write checks against the chance of

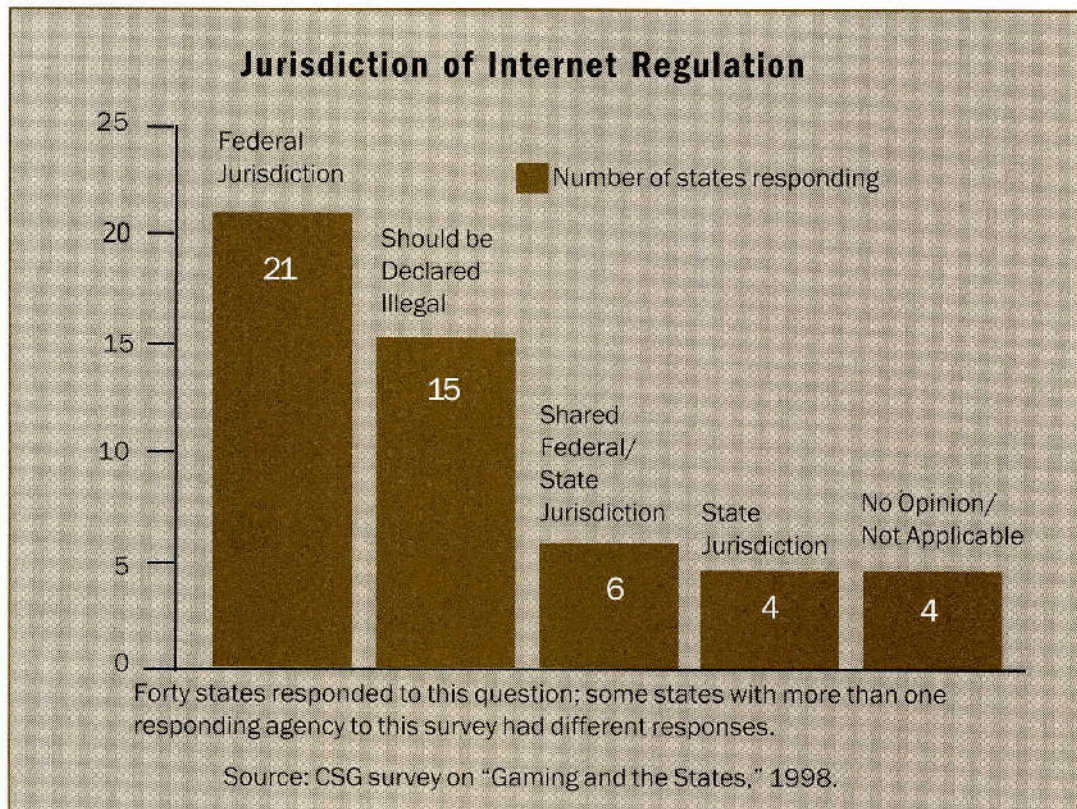
winning more money. Even with variations on play, the machines are largely similar. Larger potential winnings require larger bets. Players make larger and larger bets and then are identified and approached by bookies. There is a snowball effect.

Officer Borowski stated that machine owners can manipulate the payouts. At first, players are enticed by favorable payouts, then the machines are adjusted so that payouts decrease. Since the machines are unregulated, the payouts can be adjusted so that 55-90 percent of the money is retained. This manipulation of odds is accomplished easily through switches on the machines. Seized records indicate that money generated by these machines is laundered. Players have redeemed certificates they have won from the machines for lottery tickets.

Mark Riordan, Lieutenant, Department of Public Safety, Special Crimes

Lt. Riordan addressed problems associated with cracking down on Internet gambling. For example, Internet pari-mutuel wagering is a big issue in Texas. The problem is that Internet wagering may be legal in one state but illegal in another. In Texas, pari-mutuel wagering over the Internet is illegal, but it is legal in Pennsylvania. The controlling federal statute creates confusion with respect to which law applies when, for example, a Texan placed an Internet wager on a Pennsylvania race.

Minnesota has been very successful in cracking down on Internet gambling. The Attorney General there has threatened to sue any state that accepts bets from Minnesota by Internet or telephone, and thus has been able to shut down several Internet wagering operations.



Mike Simmons, Department of Public Safety, Special Crimes

Mr. Simmons addressed the problem of investigating and prosecuting bookmaking crimes in Texas. He said the biggest problem is the 1993 Texas Penal Code rewrite that converted bookmaking from a felony to a misdemeanor. He reported that the reduction in punishment caused bookmaking to jump about 50 percent statewide. He noted that the investigation of bookmaking offenses is very complex and frequently involves money laundering issues. As long as this offense remains a Class A misdemeanor, investigation and prosecution of these crimes will remain well below what it could be if the crime was again a felony. Mr. Simmons also reported that bookmaking is a serious problem on college campuses.

PROSECUTORS

Clay Abbott, Deputy District Attorney, Lubbock County

Mr. Abbott reported that the first eight-liner appeared in Lubbock in May 1997, and that in the following nine months, a new eight-liner casino had opened up every month. At least nine eight-liner casinos were still operating in Lubbock. Machines also were appearing in convenience stores, and by his estimate about 400 machines appeared in Lubbock between May and December 1997. The operators were paying cash for redemption gifts effectively converting the eight-liners into cash slot machines.

Lubbock County created its own prosecutorial task force to address the problem. It encouraged citizens to report violations of the gambling device statute. Mr. Abbott wanted to publicize the fact that these eight-liners were taking money away from charities. He also sent letters out to all the surrounding District and County Attorneys urging them to get involved in cracking down on eight-liners. He reported that vendors were coming into Lubbock and offering each proprietor up to 40 machines for free and as long as they agree to split the profits.

Mr. Abbott stated that the current gambling device statute is very difficult to prosecute. He urged that it be clarified in the next legislative session. He said he could use more coordination from state-level agencies for their prosecutorial efforts. Moreover, he does not have the financial resources to go after every violator. He noted that the Department of Public Safety (DPS) and the TABC have been very helpful in cracking down on prosecution assistance.

Barry Macha, Wichita County Criminal District Attorney, Wichita Falls

Mr. Macha thinks that one avenue of enforcement against eight-liners is through the licensing laws, since many of these machines are unlicensed. Thus, rule making by the TABC and the Lottery Commission would enhance the fight against these gambling devices. Enforcement may also be through the law requiring that records be kept for each machine. The law also provides for forfeiture of machines in Article 18.18 of the Code of Criminal Procedure. Finally, Mr. Macha was troubled by the "single play" issue, and thinks that prizes should be strictly limited both in type and where they can be redeemed. He recognized that the gambling device law needed to be clarified by the Legislature.

Rob Kepple, Texas District and County Attorneys Association

Mr. Kepple reported on a very successful training seminar conducted by the TDCAA in December 1997 in Kerrville. He stated that 150 elected prosecutors attended, and that the training focus was on the prosecution of eight-liners. The seminar was made possible by a grant from the Governor's Office Criminal Justice Division. He also reported that a Governor's Office grant funded a second training seminar in May 1998 for all prosecutors and law enforcement personnel. The May training occurred in Austin, was very well attended, and by all accounts was a great success. Mr. Kepple said that he sent out Attorney General Opinion DM-466 to every prosecutor and expected it to prompt prosecutions. Mr. Kepple said that legislation was still necessary to clarify to prosecutors that eight-liners clearly are illegal.

Stephen Smith, District Attorney, Tom Green County

Mr. Smith said there were three eight-liner casinos in San Angelo, and he had issued a warning to them that he would prosecute unless they shut down. He noted that as soon as the Attorney General opinion came out, they shut down quickly, but one had recently reopened. He said that operators were making a lot of money in the eight-liner business. Mr. Smith said that as the casinos reopened, he was renewing his threat to prosecute.

STATE AGENCIES

Drew Durham, Deputy Attorney General for Criminal Justice, Texas Attorney General

Mr. Durham observed that the approach of law enforcement with respect to eight-liners is uneven because of the ambiguity created by the gambling device statute. That ambiguity arose from the insertion of an exception to the gambling device definition in 1995. That exception appears to have almost swallowed the rule. Many in law enforcement are going to wait until 1999 for the Legislature to clean up the statute and clarify the fact that eight-liners are illegal gambling devices.

The jurisdiction of the Office of the Attorney General (OAG) is limited. District and county attorneys can grant consent to the OAG assuming jurisdiction over matters within the district or county attorney's jurisdiction. The OAG can also bring gambling matters to the attention of a grand jury, but cannot prosecute.

Gaming machines operate under the "amusement" exception in 47.01(4) of the Texas Penal Code. Defining the gambling machines themselves as illegal would make prosecution much easier. In that case, there would not be the burden of investigation to establish activities that comprise illegal gambling. Moreover, the punishment must be enhanced because the OAG cannot succeed against an organized crime enterprise by misdemeanor prosecution. Mr. Durham also suggested that persons transporting eight-liners into the state be prosecuted under the federal Johnson Act, which prohibits the interstate transshipment of illegal gambling equipment.

Mr. Durham analyzed the import of Attorney General Opinion DM-466, and he noted that it accomplished two things. First, it declared the exception to the gambling device statute unconstitutional, because it authorized games of chance that awarded a prize for consideration. This violated Article III, Section 47's prohibition. He then observed that the opinion specifically held that eight-liners are gambling devices.

Doyne Bailey, Administrator, Texas Alcoholic and Beverage Commission

Mr. Bailey indicated that the TABC is interested in pursuing rule making with respect to eight-liners and other illegal gambling devices. He said that it would take about six months to get the rule drafted, approved and ready for enforcement. Mr. Bailey said that the TABC was pursuing licensing action under existing law and that TABC personnel charged with enforcement were being trained to recognize an illegal gambling device.

Mike Pitcock, Director of Security, Texas Lottery Commission

Mr. Pitcock said that a massive influx of gambling devices occurred after the 1997 legislative session. Prior to that, most of the bingo conductors were not aware of nor did they use gambling devices in bingo halls. Owners of bingo halls, who are the licensed commercial lessors regulated by the Lottery Commission, are using eight-liners. The Texas Bingo Enabling Act prohibits more than one game of chance from being played at a single licensed location. In an attempt to circumvent this prohibition, the licensed lessors have constructed walls separating the eight-liner rooms from the bingo halls.

Bingo game conductors have complained to the Commission that eight-liners have reduced their revenue. The licensed lessors, however, do not care since they profit off of both operations, perhaps even more off of the eight-liner rooms. Since the eight-liner revenue does not go to charity, their presence in bingo halls is cutting directly into the bingo operation's charitable benefit to the community. Mr. Pitcock also reported that lottery tickets have been payed out in return for eight-liner coupons throughout Texas. Finally, Mr. Pitcock related that a new and problematic gambling device had recently appeared in bingo halls. This machine dispenses phone cards as a prize and it too would be illegal but for the exception to the gambling device statute.

Ray Bonilla, General Counsel, Texas Comptroller of Public Accounts

Mr. Bonilla said that eight-liners fit within the Comptroller's interpretation of the tax on machines for amusement, and thus they receive a tax stamp if the \$60 tax was paid. The amusement machine tax brings in a total of \$6 million annually. Comptroller John Sharp had directed that his Agency's rules be rewritten and that the forms be revised to take account of gambling devices disguising themselves as amusement machines. The revised form will require the machine owner to identify the type of machine upon which tax is paid. Mr. Bonilla said that the fact that the machines received tax stamps and permits did not serve to make them legal. He said, however, that the Comptroller would continue to issue the stamps to eight-liners until the law is clarified.

Martin Cherry, Legal Division, Texas Comptroller of Public Accounts

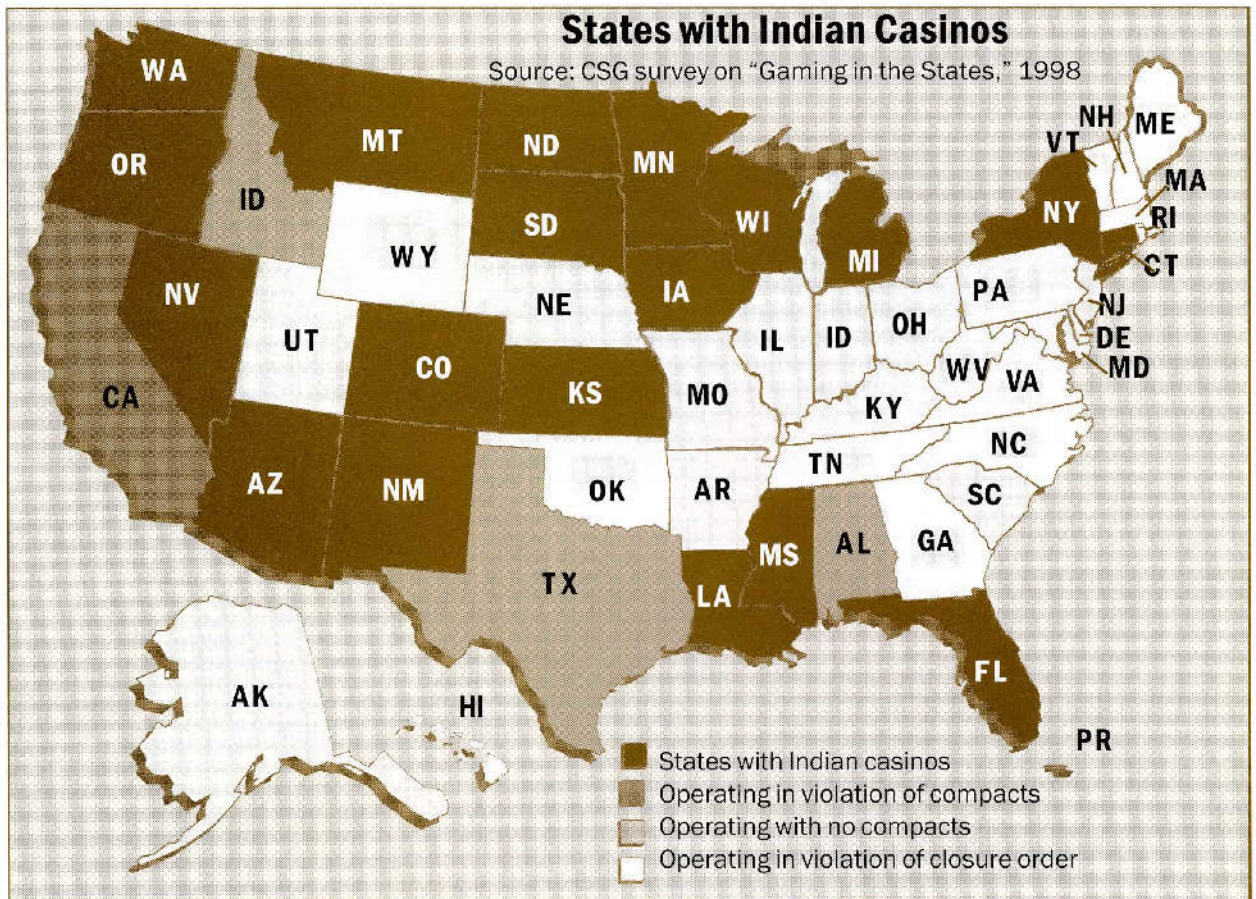
Mr. Cherry reported on the limited resources available to the Comptroller to address Internet gambling. He commented on Senator John Kyle's federal bill (which has since passed the Senate and is awaiting House action), noting that it would make Internet gambling a federal offense and thus remove it from the purview of state prosecutors for the most part. But Mr. Cherry was concerned about whether federal prosecutors will have the resources to prosecute such a potentially complicated crime.

Stuart Bowen, Deputy General Counsel for Litigation, Governor's Office

Mr. Bowen reported on the status of the two Indian casinos currently operating in Texas. First, the Ysleta del Sur Pueblo operates the Speaking Rock Casino in El Paso, where it has been since 1994. Recent reports indicate that Las Vegas-style slot machines are present at the casino as well as other games that are illegal in Texas. The Governor has asked Attorney General Morales to investigate and take appropriate action. Second, the Kickapoo operate the Lucky Eagle casino in Eagle Pass. It is a much smaller enterprise where machines called "Lucky Tab II" are in use. These are electronic bingo games that look like slot machines. The Kickapoo have submitted a compact to the Governor and, pursuant to federal law, the Governor's Office is discussing the compact with the tribe.

Reed Lockhoof, Assistant Attorney General, Texas Attorney General

Mr. Lockhoof reported on the extensive civil litigation he has been involved in defending the state against injunctive actions filed by the eight-liner lobby (Amusement and Music Operators of Texas - AMOT). He said that the state had prevailed in virtually every case but that Attorney General Opinion DM-466 had not been directly attacked in any of them. The Declaratory Judgment action brought by AMOT in Travis County District Court had been nonsuited. He also reported that no appellate court ruling on the validity of the gambling device statute's exception would be issued before the end of the next legislative session.



Types of Problems Faced by States in Dealing with Indian Casinos	
Arizona	Defiance of state regulation of Class III gaming. Breach of compact provisions that jeopardize the integrity of gaming. Sovereignty issues.
Colorado	The free flow/sharing of regulatory and enforcement information, including intelligence.
Idaho	Have had a continuing disagreement with the tribes regarding electronic pull-tab machines.
Kansas	Employment of unlicensed personnel. Insufficient separation of power between tribal gaming commission and casino owners/operators. Practical management. Contractors that place the state and tribe in a conflict situation. The presence of the casinos has in some cases exacerbated historical friction between tribal and local governments.
Louisiana	As a result of paying no state taxes, tribes have a competitive advantage over other gaming entities. Certain state gaming policies and procedures cannot be imposed on Indian casinos. Limited information on entities managing Indian casinos impairs or precludes insuring overall and financial stability of the casino operation.
Minnesota	Lack of sufficient revenue for enforcement and regulation. Some strained relationships with local governments over courts.
Nebraska	Failure to compact. Illegal operations of slot machines.
New Mexico	Disagreement about the level of revenue sharing and other payments required to be made to the state from tribes pursuant to compacts and revenue sharing agreements. Inability to provide the appropriate forum for negotiating and approving compacts. The state really has little authority and control pursuant to compacts.
Oregon	Gambling addiction. Competition for state lottery and local lottery retailers. Lack of information, oversight authority, revenue sharing and/or legislative involvement in compact negotiations.
Washington	Duplication of regulatory efforts. Constant requests for negotiations. Conflicts over sovereignty.
Wisconsin	Compact provisions are unclear. Technology changes result in compact not addressing numerous situations. Additional regulatory authority is needed by the state.
Source: CSG survey on "Gaming and the States," 1998.	

PROBLEM GAMBLING

Lynn Wallisch, Senior Research Associate, Texas Commission on Alcohol and Drug Abuse

Ms. Wallisch has published the only recent comprehensive look at the problems created by gambling in Texas. From 1992 to 1995, there was an increase in casino-style gambling, video poker and slot machines in truck stops and arcades in Texas and in neighboring states, especially Louisiana. Non-lottery gambling remained fairly stable during this period. However, the percentage of adults who had played slot machines and video poker machines at truck stops, casinos, and arcades increased from 9 percent in 1992 to 19 percent in 1995. Non-lottery gambling in cards and dice games increased from 8 percent in 1992 to 13 percent in 1995. A significant number of adults and teens have severe gambling problems. Increased gambling opportunities may have a detrimental effect on these vulnerable individuals.

Michael Mallicote, Counselor, Texas Council on Problem and Compulsive Gambling

Mr. Mallicote counsels gambling addicts. He related several anecdotes including the story of a woman who sat in a convenience store and spent \$600 trying to hit a \$100 bonus. She was addicted to Cherry Master gambling devices and spent her husband's paycheck on them. The hotline, with which Mallicote is associated, answers about 300 calls a month from Texas. Much of the problem gambling in Texas is related to bookies on college campuses. Bookies sometimes call parents of children who owe them money and the parents will call the hotline.

Compulsive gamblers go through three stages. First, they win and get hooked. Eight-liners are rigged to let the player win more often at the outset. The second stage is losing. The gambler tries to win back his money. Even if he wins again, he doesn't stop because he thinks he could win more. The third stage is desperation, which includes maxed out credit cards, hot checks, sale of personal items, and embezzlement. The player now gambles only for the "emotional rush." More resources need to be devoted to addressing the issue of problem gambling in Texas. It is a problem that will only get worse with the arrival of Internet gambling.

Carolyn Stephens, Gamblers Anonymous

Ms. Stephens observed that it is possible to lose \$100 in ten minutes on an eight-liner. She knows people who have gambled away \$20,000 a year on eight-liners, bingo, and the lottery. Many people overcome addictions to alcohol and cocaine, but still suffer from an addiction to gambling. Ms. Stephens has had contact with addicts ranging in age from 14 to 90. She is concerned about the "innocent" locations of gambling machines, and their availability to young people. Gambling devices are particularly addictive, she said.



7 FINDINGS AND RECOMMENDATIONS

In his charge to the Task Force, Governor Bush asked the members to study the problem of illegal gambling in Texas. He ordered the Task Force to accumulate and review available data in order to address the gambling device issue. He further asked the Task Force to make recommendations on legislation to address this issue.

The Task Force, under Senator David Sibley's leadership, met four times over 12 months, and heard from 40 witnesses. The testimony provided the Task Force with a basis for making the following findings and recommendations.

FINDINGS

- Texas has a public policy against gambling embodied by the affirmative prohibition against gambling contained in Article III, section 47, of the Texas Constitution.
- Illegal gambling in Texas is a persistent problem that requires attention and remedies through legislative, administrative, and social resources.
- The problem of curbing illegal gambling device use continues to burden law enforcement officers and prosecutors.
- Limited resources currently exist to address the problems associated with illegal gambling.

RECOMMENDATIONS

- The 76th Legislature should amend Texas Penal Code section 47.01(4), the definition of "Gambling Device," so that it unambiguously prohibits all slot machines, including eight-liners.
- The 76th Legislature should increase the penalties and punishments associated with gambling crimes in Chapter 47 of the Texas Penal Code.
- The 76th Legislature should reject all efforts to legalize forms of gambling that are currently illegal in Texas.
- State Agencies with licensing jurisdiction should review their rules to ensure that they prohibit the use of illegal gambling devices by licensees.
- State Agencies with law enforcement jurisdiction should increase their efforts to crack down on illegal gambling device use in the state.
- The Governor's Office should continue to make grants through its Criminal Justice Division to promote the education of prosecutors and law enforcement officers on how best to go after these devices.
- The Texas District and County Attorneys Association should continue to emphasize training in the area of illegal gambling device prosecution.
- The 76th Legislature should increase funding to address the issue of problem gambling in Texas.



8 CONCLUSION

The work of the Governor's Task Force on Illegal Gambling affirms that Texas continues to hold and advance a general public policy against gambling with few exceptions. The Texas Constitution mandates this policy, and our state's system of laws directs its enforcement. The Task Force has identified many problems associated with the growth of gambling in Texas and has provided guidance on how the Legislature and State and local authorities might address these problems.

With the submission of this Report, the Governor's Task Force has fulfilled its charge.

Respectfully submitted on behalf of all Task Force members,

Senator David Sibley
Chairman, Governor's Task Force on Illegal Gambling
December 1998
Austin, Texas



EXHIBIT A

3/14/97
Filed by Place

22--193*

A BILL TO BE ENTITLED

1

AN ACT

2

relating to the definition of "gambling device" for the purposes of
prosecuting certain offenses under the Penal Code.

3

4

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5

SECTION 1. Section 47.01(4), Penal Code, is amended to read
as follows:

6

7

(4) "Gambling device" means any electronic, electromechanical,
or mechanical contrivance [~~not excluded under Paragraph (B)~~] that
for a consideration affords the player an opportunity to obtain
anything of value, the award of which is determined solely or
partially by chance, even though accompanied by some skill, whether
or not the prize is automatically paid by the contrivance. The
term[~~r~~

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~~(A)~~ includes, but is not limited to, gambling device
versions of bingo, keno, blackjack, lottery, roulette, video poker,
or similar electronic, electromechanical, or mechanical games, or
facsimiles thereof, that operate by chance or partially so, that as
a result of the play or operation of the game award credits or free
games, and that record the number of free games or credits so
awarded and the cancellation or removal of the free games or
credits[~~r~~ and

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~~(B) does not include any electronic, electromechanical,
or mechanical contrivance designed, made, and adapted solely for
bona fide amusement purposes if the contrivance rewards the player~~

23

24

1 ~~exclusively with noncash merchandise prizes, toys, or novelties, or~~
2 ~~a representation of value redeemable for those items, that have a~~
3 ~~wholesale value available from a single play of the game or device~~
4 ~~of not more than 10 times the amount charged to play the game or~~
5 ~~device once or \$5, whichever is less].~~

6 SECTION 2. (a) The change in law made by this Act applies
7 only to an offense committed on or after the effective date of this
8 Act. For purposes of this section, an offense is committed before
9 the effective date of this Act if any element of the offense occurs
10 before the effective date.

11 (b) An offense committed before the effective date of this
12 Act is covered by the law in effect when the offense was committed,
13 and the former law is continued in effect for that purpose.

14 SECTION 3. This Act takes effect September 1, 1997.

15 SECTION 4. The importance of this legislation and the crowded
16 condition of the calendars in both houses create an emergency and
17 an imperative public necessity that the constitutional rule
18 requiring bills to be read on three several days in each house be
19 suspended, and this rule is hereby suspended.

20



EXHIBIT B

EXECUTIVE ORDER
BY THE
GOVERNOR OF THE STATE OF TEXAS

THE STATE OF TEXAS
EXECUTIVE DEPARTMENT
OFFICE OF THE GOVERNOR
AUSTIN, TEXAS

EXECUTIVE ORDER
GWB 97-20

RELATING TO THE CREATION OF
THE GOVERNOR'S TASK FORCE ON ILLEGAL GAMBLING

WHEREAS, Texas has a general public policy against gambling;

WHEREAS, the citizens of Texas have approved of bingo, charitable raffles, pari-mutuel wagering, and the state lottery as the only exceptions to the State's general public policy against gambling;

WHEREAS, recent reports from various law enforcement agencies indicate a troubling growth in other gambling activity in Texas;

WHEREAS, the Governor has been advised by law enforcement officials that current state law does not make the prosecution of illegal gambling activities a priority;

WHEREAS, the Governor believes that a systematic, state-wide evaluation of gambling in Texas is necessary; and

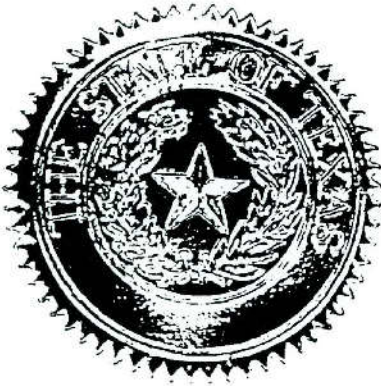
WHEREAS, the Governor believes that it is appropriate to evaluate whether law enforcement officials have the necessary tools to enforce the State's public policy against gambling.

NOW, THEREFORE, I, George W. Bush, Governor of the State of Texas, under the authority vested in me, do hereby create and establish the Governor's Task Force on Illegal Gambling, which shall serve in an advisory capacity to the Governor. This Task Force shall be composed of representatives from the Legislature, from the prosecutorial and law enforcement communities, from State agencies charged with the enforcement of gambling laws, and from the public. The Task Force shall accomplish the following objectives: (1) accumulate all available data on gambling in Texas, and analyze it to formulate an accurate picture of the current status and future growth of illegal gambling in this State; (2) solicit input from persons identified by the Task Force, who can provide relevant information on illegal gambling in Texas; (3) review all Texas laws that address gambling and suggest ways to enhance enforcement of those laws through legislative or administrative action; (4) devise proposed legislation that will amend Chapter 47 of the Texas Penal Code and enhance enforcement of existing laws against the use of gambling devices; (5) suggest any other enhancements to the State's gambling laws that will advance Texas' general public policy against gambling; and (6) submit a written report to the Governor summarizing its findings and recommendations on or before May 1, 1998. The Task Force shall have no final action authority and shall serve only in an advisory capacity.

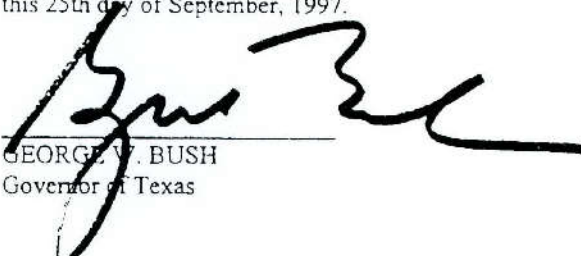
The Governor shall designate the Chair and Vice Chair of the Task Force, who shall serve at the pleasure of the Governor. Members of the Task Force shall serve without salary or, if state employees, without additional salary. The members of the Task Force shall be reimbursed for their actual expenses incurred, pursuant to the limits allowed under the Texas General Appropriations Act of 1997, but shall not receive any monetary compensation or per diem for their work.

The Task Force shall meet upon call of the Chair; and the first meeting shall occur as soon as practicable after the date upon which this Executive Order becomes effective. All agencies of the state are hereby directed to cooperate and assist the Task Force in the performance of its duties.

This Executive Order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Texas to be affixed. Done at the Capitol in the City of Austin this 25th day of September, 1997.



GEORGE W. BUSH
Governor of Texas

By the Governor



ANTONIO O. GARZA, JR.
Secretary of State



EXHIBIT C

OFFICE OF THE GOVERNOR
George George W. Bush

FOR IMMEDIATE RELEASE

September 25, 1997

Contact: Karen Hughes or
Ray Sullivan, 512-463-1826

GOVERNOR BUSH NAMES 12 TO TASK FORCE ON ILLEGAL GAMBLING

AUSTIN – Governor George W. Bush today named 12 Texans to serve on the Governor’s Task Force on Illegal Gambling. This morning, Governor Bush signed executive order GWB 97-20 creating the Task Force. The task force will examine the extent of illegal gambling in Texas, review gambling laws and their enforcement, find ways to strengthen the enforcement of existing anti-gambling laws, and suggest ways to clarify and strengthen the state’s position against casino gambling. The Task Force will finish its work and provide an advisory report to the Governor on or before May 1, 1998.

The following individuals have been named to the Task Force:

- State Senator David Sibley, R-Waco. Senator Sibley will serve as the chairman of the Task Force.
- State Representative Allen Place, D-Gatesville. Rep. Place will serve as vice-chairman of the Task Force.
- State Representative Terry Keel, R-Austin. Rep. Keel is a former Travis County sheriff.
- Commander Marshall Caskey, DPS Special Crimes Service.
- Sue Cox, Executive Director, Texas Council on Compulsive Gambling.
- Tim Gallagher, Assistant District Attorney, Dallas County.
- Kim Kiplin, General Counsel, Texas Lottery Commission.
- Mark Martinez, Assistant County Attorney, Travis County.
- Officer Kevin Templeton, Houston Police Department.
- Weston Ware, Associate Director, Texas Baptist Christian Life Commission.
- Ted Wilson, Assistant District Attorney, Harris County.
- Randy Yarborough, Assistant Administrator, Texas Alcoholic Beverage Commission.

Recent reports from law enforcement agencies indicate a troubling growth in gambling activity in Texas. An estimated 30,000 casino-style slot machines, commonly known as “eight-liners,” are believed to be operating in Texas. The machines have appeared in neighborhood shopping malls, convenience stores and truck stops throughout Texas. Many allow winnings to accumulate through repeated plays and pay out cash or prizes worth hundreds and thousands of dollars.



EXHIBIT D

FOR IMMEDIATE RELEASE
September 25, 1997

Contact: Karen Hughes or
Ray Sullivan, 512-463-1826

GOVERNOR BUSH ANNOUNCES NEW EFFORT AGAINST ILLEGAL GAMBLING AND CASINO-STYLE MACHINES IN TEXAS

ARLINGTON –Governor George W. Bush today announced a new effort to crack down on illegal gambling and casino-style slot machines in Texas. In a speech to the Texas District and County Attorneys Association, Governor Bush outlined his plans to create a task force to recommend stricter anti-gambling laws and provide up to \$200,000 in criminal justice training grants to improve enforcement of existing laws.

This morning, Governor Bush signed executive order GWB 97-20 creating the Governor's Task Force on Illegal Gambling. The task force will examine the extent of illegal gambling in Texas, review gambling laws and their enforcement, find ways to strengthen the enforcement of existing anti-gambling laws, and suggest ways to clarify and strengthen the state's position against casino gambling. The Task Force will include state legislators, prosecutors and law enforcement officials, representatives of state agencies charged with enforcing gambling laws, and members of the public. Governor Bush's criminal justice division will also make up to \$200,000 in grants available to help train prosecutors and law enforcement officers to improve enforcement of existing law.

"If it looks like a slot machine, plays like a slot machine, and pays like a slot machine, then it's illegal in Texas," said Governor Bush. "We will not tolerate back-handed attempts to bring casino gambling to our state. Texans deserve to have our laws respected and enforced."

Recent reports from law enforcement agencies indicate a troubling growth in gambling activity in Texas. An estimated 30,000 casino-style slot machines, commonly known as "eight-liners," are believed to be operating in Texas. The machines have appeared in neighborhood shopping malls, convenience stores and truck stops throughout Texas. Many allow winnings to accumulate through repeated plays and pay out cash or prizes worth hundreds and thousands of dollars.

"Texans do not want our neighborhood shopping centers to resemble Las Vegas casinos," said Governor Bush. "We must put a stop to illegal gambling now. To allow it to continue to spread not only offends those Texans who do not want gambling, but also sends a terrible message to our children. Every day we are exposing children to something that is, for many people, addictive and harmful. I do not want to see a wave of under-age gambling addicts in Texas," the Governor said.

The citizens of Texas have approved of bingo, charitable raffles, pari-mutual wagering, and the state lottery as the only exceptions to Texas' policy against gambling. State law allows for games of chance only so long as they offer non-cash prizes worth \$5 or less, such as those found in family restaurants or arcades. During the 75th Legislative Session, Governor Bush worked with Senator David Sibley, Representatives Alan Place and Terry Keel and other legislators to clarify the law and crack down on casino-style gambling. The legislation was filibustered to death during the final days of the session.

#

DEC 15 1997

Gambling law loopholes should be closed tight

Most forms of gambling remain illegal in Texas, but profiteers are finding ways to get around the state's laws.

Clearly, Texas gambling statutes need to be tightened to close some loopholes now being exploited by greedy operators in the gambling industry.

A state gambling task force heard vivid testimony recently in Austin detailing the worrisome growth in the problem.

The rampant misuse of so-called eight-liners is one of the biggest problems that must be addressed.

These machines are slot-style games that give gift certificates worth up to \$5 rather than cash. Actual cash prizes are illegal.

But law enforcement witnesses told the task force that the use of the machines is out of control, according an Associated Press report.

People are playing the machines as if they were in casinos, building up stacks of certificates and then cashing them in as the machines rake in as much as \$1,500 a week.

The distinction between cash and prizes is rather blurred. What is the difference?

■ **Lawmakers should strengthen efforts to halt the growth of gambling in Texas.**

A Lubbock County prosecutor said nine casino-style operations with 400 eight-liners have opened in the Panhandle area this year.

Lawmakers attempted to pass tougher rules on eight-liners in this year's legislative session, but the legislation died.

Gov. George W. Bush has instructed the task force to give him a report on strengthening the state's anti-gambling laws.

We hope lawmakers will take the recommendations seriously and stop the insidious spread of gambling in the state's culture.

The state-sanctioned lottery, pari-mutuel gambling and bingo are more than enough for those who want a game of chance.

Texas must not allow gambling and its inherent social problems to spread any more.

Gambling confusion

EL PASO TIMES DEC 13 1997

Texas needs to resolve gambling problems

The issue of gambling in Texas is in a state of total confusion. Department of Public Safety lawyer David Boatright recently told a governor's task force: "The Texas gambling laws are unduly confusing and ambiguous and complicated. There are 254 counties in Texas and 254 opinions as to what exactly is illegal gambling in Texas."

By contrast, the issue of gambling in El Paso is in a state of prosperity. Speaking Rock Casino in the Lower Valley is experiencing rapid growth, both in business as well as the resultant tribal improvements.

Therefore, it would be unwise and impractical for confused state officials to resume any pressure upon the Tiguas' tribal casino. Simply stated, until the state solves what it perceives to be gambling problems beyond the reservations, it should not be trying to destroy the Tiguas' success. Politics in Texas, however, sometimes thrives on confusion and as the 1999 session of the Texas Legislature nears, intense pressure can be expected from various special interest groups to restrict gambling activities throughout the state.

The road to success has not been smooth for the Tiguas, and on occasion they can appear to be their own worst enemies. Tribal dissension has existed for several years and tribal elections have resulted in opposing factions. One group has offered a \$500,000 reward for the return of a sacred drum and other artifacts. It would be devastating to the Tiguas if that tribal dissension were allowed to detract from the success of the casino.

And so far, Speaking Rock's success has been astounding. Patronage has doubled in two years to about 10,000 visitors per week.

More than \$30 million has been rewarded to gamblers in the past four years.

Of greater importance, though, has been the boost to the Tiguas' economic development efforts. Four years ago the tribe's unemployment rate was more than 30 percent. Today, it's 2 percent. Speaking Rock employs 681 people, 110 of whom are tribal members.

Speaking Rock profits were used this year to fund \$100,000 in scholarships. Every one of the tribe's 80 senior citizens receives a free meal each day, paid by casino revenues.

Ysleta del Sur Pueblo Governor Vince Muñoz said Friday that the Tiguas have not been challenged by state officials for several months, but he expects pressure to resume as the legislative session nears. That would be unfortunate, as Muñoz explained: "For years the government told Indian tribes to become self-sufficient. Now that we're becoming self-sufficient, the state sometimes wants to cut back on us. It doesn't make sense."

Elsewhere in Texas, state officials have become alarmed at an estimated 20,000 "eight-liner" machines at truck stops, convenience stores, bowling alleys and malls. The machines allow players to accumulate prizes in the form of redeemable coupons. The legality or illegality of those machines has fueled the statewide confusion. And, as David Boatright the lawyer stated, there may be 254 opinions on how legalized gambling should be defined in Texas.

It will be up to the tribe to extend Speaking Rock's success beyond any tribal dissension. And it will be up to state officials to address other perceived gambling irregularities elsewhere in the state before trying to suffocate a proven success in El Paso.

VIDEO CASINOS should be under state's umbrella

ABIENE REPORTER-NEWS

JAN 09 1988

Serious legal issues at stake

When video casinos started opening around the state last year, few Texans took much notice. After all, we've grown used to the lottery, to bingo parlors and horse racing.

Besides, these weren't *real* casinos, were they? They were only amusement arcades that awarded small gift certificates, not gambling saloons that paid out big chunks of cash. Scattered voices of opposition were brushed aside as coming from the Puritanical fringe who would deny all forms of harmless fun if they could.

A state senator holding press conferences throughout his district to urge a boycott of the rapidly proliferating industry is not so easy to dismiss.

As Sen. Troy Fraser said in his visit to Abilene on Wednesday, the problem with video casinos isn't just moralistic. There are also serious legal issues at stake.

"Amusements" such as video casinos are considered legal unless players receive prizes worth more than \$5. But many casino operators have been going in the back door, so to speak, by giving winners an unlimited supply of those \$5 gift certificates, a practice that clearly violates the spirit if not also the letter of the law.

Plus, some players are then making an end run around legality by taking their stack of gift certificates to a retailer, buying an item, then returning it for cash. It's no wonder that in the face of such abuse, many merchants are now refusing to accept casino certificates.

In addition, there's the whole question of an industry operating without regulation. Without casino guidelines enforced by the state, consumers have no protection against being ripped off by rigged video machines.

If enough Texans want casino gambling legalized, they should convince the Legislature to make it so. Up to now, the Legislature's answer, wisely, has been a firm no. Unless that changes, video casinos shouldn't be allowed to circumvent state law and operate outside state supervision.

Texas lawmakers have weightier matters that need their attention, and they shouldn't be forced to make room for this one. But they also have the responsibility to address unexpected issues when they surface. Until appropriate legislative measures can be taken, businesses should be aware of the potential harm in redeeming casino certificates, and players should realize they could be cheated without protection from the state.

SEP 26 1997

AUSTIN STATESMAN

Bush task force to promote tougher anti-gambling laws

Associated Press

ARLINGTON — Gov. George W. Bush on Thursday created a task force to recommend stricter anti-gambling laws in an effort to crack down on illegal gaming and casino-style slot machines.

In a speech to the Texas District and County Attorneys Association, Bush also said he would provide up to \$200,000 in grant money to help train prosecutors and law enforcement officers to improve enforcement of existing laws.

The Governor's Task Force on Illegal Gambling will examine the extent of such activities in Texas, review gambling laws and enforcement, and suggest ways to

clarify and strengthen the state's position against casino gambling, Bush said.

State Sen. David Sibley, the Waco Republican who sponsored a bill in the 1997 Legislature that would have banned gambling machines with casino-type payoffs, will lead the task force. His bill was talked to death in the waning hours of the session.

The task force also will include other state legislators, prosecutors, law officers, representatives of state agencies charged with enforcing gambling laws and members of the public.

Bush wants the group to write a bill for the next legislative session, in 1999, that would make it easier

to crack down on casino-style slot machines, known as eight-liners.

Eight-liners are estimated to generate more than \$100 million annually in Texas, with more than 20,000 in use at truck stops, convenience stores, veterans halls and other sites, industry observers say.

Current law allows games of chance as long as they offer non-cash prizes worth \$5 or less. Lawmakers intended the exception to allow stuffed animals and other trinkets offered as prizes in children's arcade games. Ambiguities in the law have cleared the way for the proliferation of eight-liners.

Bush finds advocates in crackdown

Prosecutors at Arlington forum echo opposition to casino-style machines

By Rani Cher Monson

Arlington Morning News

ARLINGTON — Gov. George W. Bush's pledge to stop the spread of casino-style slot machines won backing Thursday from prosecutors who say they need more power to crack down on illegal gambling.

"This is turning into a major business because nightclubs are paying their rent with a few machines," said Mack Martinez, an assistant county attorney for Travis County.

"When you can feed a \$100 bill into these machines, this is clearly not for amusement," Mr. Martinez said. "Clearly, this is a gambling machine."

Mr. Bush outlined his plans in a speech to the Texas District and County Attorneys Association meeting in Arlington.

The Republican governor said he would provide up to \$200,000 in grant money to help train prosecutors and law enforcement offi-



David Sibley

cers to improve enforcement of existing anti-gambling laws.

He also said he will name a 12-person task force, headed by Sen. David Sibley, R-Waco, to suggest ways to clarify ways to root out illegal gambling machines. The committee will provide a report by

May 1 to the governor.

Texas prohibits casino gambling, "yet we see a virtual explosion of video slot machines here that are being used illegally," Mr. Bush said.

Targeted are machines that look and play like those in casinos. Texas has as many as 30,000, collecting more than \$100 million a year at truck stops, convenience stores, bars

Please see PROSECUTORS on Page 30A.

Prosecutors back Bush effort against casino-style machines

Continued from Page 25A.

and other spots, Mr. Bush said.

"Texans do not want our neighborhood shopping centers to resemble Las Vegas casinos," he said. "This is beginning to spread, and I fear it will influence our kids."

Ira Tobolowsky of Dallas, an attorney for the Amusement Machine Operators of Texas, a trade association, said the state's existing anti-gambling laws are sufficient.

"The laws are adequate, and they do not need to be changed," said Mr. Tobolowsky. "We make sure our members are in compliance with the law."

The machines being questioned by Mr. Bush are those that allow winnings to accumulate through repeated plays and pay out cash or prizes above the state's legal limit.

State law allows games of chance to offer noncash prizes worth \$5, or 10 times the amount it costs to play, whichever is less. Lawmakers in-

tended that to allow stuffed animals and other trinkets offered as prizes in arcade games.

Mr. Martinez, the Travis County prosecutor, said that law officers have faced conflicts over the low prize limits and what is considered an individual play. Also, he said, the legality of gift certificates as prizes is not clear in state law.

Alberto Gonzales, general counsel for the governor, said illegal use of the machines should be raised from a misdemeanor to a state jail felony.

He said that change would help district and county attorneys. "They won't spend as much time for a conviction of a misdemeanor because they have limited resources," he said.

A misdemeanor has a maximum penalty of one year in jail and a \$4,000 fine. A state jail felony carries a maximum penalty of two years in jail and a fine of \$10,000.

Slots hurt charity bingo, panel told

Texas task force hears testimony on casino operations, illegal gaming

By George Kuempel
Austin Bureau of The Dallas Morning News

AUSTIN — The proliferation of Las Vegas-style gambling machines is taking a big chunk out of charitable bingo proceeds, a task force on illegal gambling was told Tuesday.

Mike Pitcock, chief of enforcement for the Texas Lottery Commission, said the machines — which look and play like casino slots — are forcing some charitable groups to give up bingo.

"One lady said that if something isn't done about the machines, bingo is on the way out," Mr. Pitcock testified.

Gov. George W. Bush appointed the panel to recommend legislation to crack down on the machines after his own proposal to curb them was

Please see STATE on Page 42A.



Associated Press

Sen. David Sibley, R-Waco, holds a Texas license for a coin-operated amusement machine as he questions a witness during a hearing on illegal gambling Tuesday.

State panel told gambling machines cutting into charity bingo proceeds

Continued from Page 37A.

killed in an end-of-session filibuster last year.

The panel will report to the governor by May 1. It is made up of legislators, prosecutors, gambling foes and representatives of the state lottery and Texas Department of Public Safety.

The lottery commission, which oversees the game, prohibits any other types of gambling in halls where charity bingo is being played.

Mr. Pitcock said bingo hall operators are circumventing state law by installing the machines in special rooms inside or adjacent to the halls to attract bingo players.

As a result, bingo proceeds have fallen 20 percent to 30 percent and some charities are talking about giving up the games, he said.

The charitable groups that rent the halls get none of the money from the gambling machines. And if they complain, they are told to take their games elsewhere, Mr. Pitcock said.

The machines, he said, are so profitable that some lottery retailers are moving out merchandise to make room more of them.

Under the law, so-called eight liners, video poker and other gambling machines can offer only non-cash prizes of \$5 or 10 times the cost of the play, whichever is less.

But witnesses told the panel Tuesday that many operators are slipping winners cash under the counter or paying out in gift certificates worth hundreds of dollars.

W. Clay Abbott, Lubbock County deputy criminal district attorney, said a special task force has been set up to try to halt the flood of machines into West Texas.

Since May, nine businesses advertising themselves as casinos have opened in Lubbock, Mr. Abbott said. Nearby Leveland, with a population of only 20,000, has three such casinos.

One Lubbock casino, the Golden Bonanza, has 75 to 80 machines, Mr. Abbott said. Each machine can bring in \$1,500 a week, he said.

"The big trend in West Texas is opening small casinos," he said. Waitresses serve players tea, soft drinks and popcorn, making it "very much a casino-type atmosphere."

"This is out of control, and we need to do something immediately," Mr. Abbott said.

Drew Durham, deputy state attorney general for criminal justice, said the state should pool its resources and attack the problem now rather than wait for the Legislature to reconvene in 1999.

He proposed a special task force be created and made up of two seasoned prosecutors, four investigators and a financial expert and assigned full time to putting illegal operators out of business.

DPS lawyer David Boatright said state law has made it difficult to pull the plug on the illegal machines.

"Texas gambling laws are complicated, confused and ambiguous. These are anathema to prosecutors," he said.



EXHIBIT E



Office of the Attorney General

State of Texas

January 23, 1998

DAN MORALES

ATTORNEY GENERAL

The Honorable David Sibley
Chair, Senate Committee
on Economic Development
Texas State Senate
P.O. Box 12068
Austin, Texas 78711

Opinion No. DM-466

Re: Constitutionality of section 47.01(4)(B), Penal Code, which excepts certain types of electronic contrivances from the definition of "gambling device," and related questions (RQ-1060)

Dear Senator Sibley:

You have requested our opinion regarding the constitutionality of the legislature's 1995 amendment to the definition of "gambling device" to exclude from its ambit certain kinds of machines that, for consideration, award prizes to a player on the basis of chance.

Section 47.06(a) of the Penal Code provides:

A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

In 1995, the legislature amended the Penal Code's definition of "gambling device" to read:

"Gambling device" means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash

merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

Penal Code § 47.01(4). The substance of the 1995 amendment to the definition of gambling device was initially adopted in 1993. *See* Act of May 31, 1993, 73d Leg., R.S., ch. 774, § 1, 1993 Tex. Gen. Laws 3027, 3027. *See generally* Attorney General Opinion DM-280 (1994) (history of 1993 amendments). Prior to 1993, a “gambling device” was defined as

any contrivance that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

Section 47(a) of article III of the Texas Constitution provides:

The Legislature shall pass laws prohibiting lotteries and gift enterprises in this State other than those authorized by Subsections (b), (d), and (e) of this section.¹

You ask whether, in light of article III, section 47(a), the amended definition of “gambling device” invalidly authorizes the operation of certain “lotteries” not contemplated by the constitution.

We must, of course, begin with the proposition that a statute must be upheld “if a reasonable construction can be ascertained, which will render the statute constitutional.” *Ely v. State*, 582 S.W.2d 416, 419 (Tex. Crim. App. [Panel Op.] 1979). If, however, the amended definition of “gambling device” authorizes the operation of slot machines, it cannot be upheld. In Attorney General Opinion DM-302, this office considered whether the legislature was empowered, in the absence of a constitutional amendment, to authorize the operation of slot machines, either directly or by amending the definition of “bet” in section 47.01(1) of the Penal Code. Attorney General Opinion DM-302 (1994). The opinion adopted the requestor’s characterization of a “slot machine” as a device that for consideration awards cash or other prizes solely on the basis of chance and that is not affected by any skill, judgment, or knowledge of a particular player. *Id.* at 11. A device that fits this description, the opinion concluded, is “an unlawful lottery in contravention of article III, section 47 of the Texas Constitution.” *Id.* The opinion noted that, although article III, section 47,

¹Subsection (b) permits the legislature to authorize bingo games conducted by a church or other nonprofit organization; subsection (d) does the same for charitable raffles; and subsection (e) permits the legislature to authorize a state lottery.

"is not self-enacting, and, had the legislature never enacted any implementing legislation, suit would not lie to compel enactment," it is also the case that

where there is a history of penal statutes implementing the constitutional prohibition, repeal of one of those prohibitions is not a neutral act, and, in our opinion, such repeal would contravene the constitutional proscription of subsection (a) of section 47 of article III.

Prior to 1993, the definition of "gambling device" contained no exception for contrivances that at present fit within the scope of paragraph (B) of article 47.01(4). The pre-1993 definition is of long standing. Thus, there exists a "history of penal statutes implementing the constitutional prohibition," and as a result, the amendment of section 47.01(4)'s definition of "gambling device" in paragraph (B) to exempt from its proscription a limited class of contrivances, like the similar situation in Attorney General Opinion DM-302, "is not a neutral act." The constitution allows no exception for lotteries whose prizes are small, even those that some might call *de minimis*. We are compelled to conclude that the exception from the definition of "gambling device" in section 47.01(4)(B) of the Penal Code invalidly authorizes the operation of certain "lotteries" not contemplated by the constitution.

You also ask whether chapter 47 of the Penal Code prohibits the use of machines known as "eight liners," which are video versions of slot machines, and other machines that operate wholly or partially by chance, reward players with prizes, and are not "adapted solely for bona fide amusement purposes."² This question is prompted by your concern about the growth of the "eight-liner" industry since the amended definition of "gambling device" was first adopted in 1993. You advise:

This amendment essentially legalized machines that pay off in coupons redeemable for non-cash merchandise valued at no more than five dollars. In practice, these machines have been used to permit accumulation of credits so that players have obtained winnings well in excess of the statutory limit. However, because of the exception's inherent ambiguity, law enforcement authorities have encountered great difficulty in successful prosecution. That difficulty prompted the 75th Legislature to propose an amendment that would have clarified the exception, thus enhancing prosecutions. Despite widespread support from the law enforcement community, that proposal failed to become law.³

....

²Letter from Senator David Sibley, Chair, Economic Development Committee, Texas State Senate, to the Honorable Dan Morales, Attorney General, Office of Texas Attorney General (Jan. 4, 1998).

³*Id.*

It is clear that the illegal use of “eight liners” in Texas continues to grow at a rapid pace. This growth has been fueled by a vague and potentially constitutionally defective amendment to the Penal Code’s gambling device definition.⁴

Although, as we have concluded, the 1995 exception to the definition of “gambling device” in paragraph (B) of section 47.01(4) is void because it contravenes the Texas Constitution’s proscription of “lotteries,” the rest of the definition remains intact. The 1995 act that enacted the present version of article 47.01(4) contains neither a severability clause nor a nonseverability clause.⁵ Section 311.032(c) of the Government Code provides:

In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

The present version of the definition of “gambling device” “can be given effect without the invalid provision” simply by placing a period after “credits” and before the semicolon in paragraph (A), by deleting the phrase “not excluded under Paragraph (B)” in the first paragraph of article 47.01(4), and by severing paragraph (B).

If the contrivances described as “eight-liners” fit the Penal Code’s definition of “gambling device,” freed of the unconstitutional 1995 exception in paragraph (B), their possession is proscribed. In *State v. Mendel*, 871 S.W.2d 906 (Tex. App.—Houston [14th Dist.] 1994, no writ), the court, reviewing an attack on the constitutionality of article 47.01(4) on grounds of vagueness, considered a particular kind of machine that is virtually identical to the device you have described as an “eight-liner.” The court said:

At the hearing on the motions to quash the indictments, the court heard testimony from Officer Templeton of the Houston Police Department about the Lucky 8 Liner video slot machines possessed by appellees. Appellees are the owners of the club in which the video slot machines were found. The machines will accept anything from a quarter to a one hundred dollar bill. Depending on the amount of money that is put in the machine, it gives the player a set number of credits. A player wagers the number of credits he chooses, pushes a button, and then an electronic display depicts lines of fruit and numbers, much like a traditional slot machine. After accumulating credits, employees of the club paid the player in cash at the rate of one dollar

⁴*Id.*

⁵See Act of May 27, 1995, 74th Leg., R.S., ch. 318, 1995 Tex. Gen. Laws 2734, 2734.

per four credits. The employee then touched a "knock-off switch," which would reset the credits at zero. Officer Templeton testified that this "knock-off switch," along with the "accounting memory" of the machine, the number of credits bet on each play, and the absence of any skill involved in its play, tended to establish the machine's character as a gambling device.

Mendel, 871 S.W.2d at 907-08.

The three elements necessary to constitute a prohibited "lottery" are: 1) the offering of a prize, 2) by chance, and 3) the giving of consideration for an opportunity to win the prize. *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 701 (Tex. 1936); see Attorney General Opinion DM-302 (1994); Letter Opinion No. 97-008 (1997) (and cases cited therein). As the court found in *Mendel*, an "eight-liner" functions solely on the basis of "chance" and its operation obviously requires the payment of consideration in order to play. Furthermore, we have been advised that, while most eight liners do not pay off directly in cash, coupons are redeemable for, *inter alia*, gift certificates from a variety of reputable merchants. Thus, the three elements necessary to constitute a prohibited "lottery" appear to be present in the case of "eight-liners." We believe it likely that a court would find, as did the *Mendel* court, that an eight-liner is a "gambling device" within the statutory definition.

Finally, you ask whether the Texas Lottery Commission and the Texas Alcoholic Beverage Commission "possess the statutory enabling authority to pass rules permitting the agencies to suspend or revoke a license if a regulated entity owns or operates an 'eight-liner.'"

In order to sell tickets offered by the state lottery, a person must be licensed as a "sales agent."⁶ The Lottery Commission is required, after a hearing, to "suspend or revoke a license" of a sales agent if it finds, *inter alia*, that the individual "has been convicted of a felony, criminal fraud, gambling or gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense."⁷ If an "eight-liner" or similar machine is a "gambling device" under section 47.01(4) of the Penal Code, conviction for owning or possessing such a device under section 47.06(a) is an offense for which the Lottery Commission may suspend or revoke the license of a sales agent. The Lottery Commission also has rulemaking authority to consider the conduct of an applicant or licensee with respect to gambling.⁸

⁶Gov't Code § 466.151.

⁷*Id.* § 466.155(a)(1)(A).

⁸*Id.* §§ 466.015, .154

Likewise, the Lottery Commission is authorized to issue licenses for “the conduct of bingo;”⁹ to manufacture “bingo supplies;”¹⁰ to sell, distribute, or supply “bingo equipment, devices, or supplies for use in bingo games in this state;”¹¹ and to sell or supply “automated bingo services for the use of licensed authorized organizations.”¹² None of these licenses may be issued to any person who has been convicted of a “gambling offense,”¹³ and the Lottery Commission, after a hearing, may suspend or revoke any license for failure to comply with the act, “for any reason that would allow or require the commission to refuse to issue or renew a license of the same class.”¹⁴ Just as is the case for lottery sales agents, conviction for owning or possessing a “gambling device” under section 47.06(a) of the Penal Code is an offense for which the Lottery Commission may suspend or revoke the license of any individual licensed to participate in various bingo activities.

The Alcoholic Beverage Commission is specifically authorized to “prescribe and publish rules necessary to carry out the provisions of this code.”¹⁵ The commission is further authorized to “supervise and regulate licensees and permittees and their places of business in matters affecting the public,” and this “authority is not limited to matters specifically mentioned in [the] [Alcoholic Beverage Code].”¹⁶ Finally, “a license or permit issued under [the] code is a purely personal privilege and is subject to revocation or suspension if the holder is found to have violated a provision of this code or a rule of the commission.”¹⁷

The authority of the Alcoholic Beverage Commission with regard to licensees or permittees charged or convicted of misdemeanor gambling offenses is very extensive. An original or renewal application for a retail dealer’s license shall be denied if the applicant has within the past three years been convicted of an offense involving “gambling or gaming.”¹⁸ Additionally, an original or renewal license shall be denied under section 61.42(a)(3) or 61.42(a)(7) and may be denied under section 61.43(a)(1), 61.43(a)(3), or 61.43(a)(9). An original or renewal application for a permit may be denied under section 11.46(a)(1), 11.46(a)(3), 11.46(a)(6), or 11.46(a)(8).

⁹V.T.C.S. art. 179d, § 13(c).

¹⁰*Id.* § 13a(a).

¹¹*Id.* § 13b(a).

¹²*Id.* § 13e(a).

¹³*Id.* §§ 13(c)(2), (q); 13a(c), 13b(c), 13e(c).

¹⁴*Id.* § 16(d).

¹⁵Alco. Bev. Code § 5.31.

¹⁶*Id.* § 5.33.

¹⁷*Id.* § 6.01(b).

¹⁸*Id.* § 69.06(a)(4), (c)(1), (2); *see also id.* § 25.06(a)(4), (c).

In our opinion, the Alcoholic Beverage Commission could reasonably conclude that a person charged with or convicted of a misdemeanor gambling offense under the Penal Code had "conducted his business in a place or manner which warrants the cancellation or suspension of a license¹⁹ [or permit]²⁰ based on the general welfare, health, peace, morals, safety, and sense of decency of the people."²¹ Such a conclusion would then furnish sufficient grounds for a suspension for up to sixty days or a cancellation of the individual's retail dealer on- or off-premises license or permit. Furthermore, we believe that the Alcoholic Beverage Commission is authorized to enact a rule prohibiting the presence of "eight-liners" in facilities licensed by the Alcoholic Beverage Commission, and it could then revoke the license or permit of an individual found, after notice and hearing, to have violated the rule. Both the Alcoholic Beverage Code and the enabling statutes of the Lottery Commission offer means for the commissions to significantly halt the intrusion of these machines upon an unsuspecting public.

¹⁹*Id.* § 61.71(a)(17).

²⁰*Id.* §§ 11.61(b)(7), .612(a).

²¹*Id.* § 61.71(a)(17); *see also id.* § 11.61.

S U M M A R Y

The amended definition of "gambling device" in paragraph (B) of section 47.01(4) of the Penal Code invalidly authorizes the operation of certain "lotteries" proscribed by article III, section 47 of the Texas Constitution. The Lottery Commission has statutory and rulemaking authority to consider the conduct or activities of an applicant or licensee with respect to gambling. Additionally, the Alcoholic Beverage Commission has rulemaking and statutory authority to regulate permittees and licensees who have been found, after proper notice and a hearing, to have engaged in a gambling offense as defined in the Penal Code.

Yours very truly,



DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

SARAH J. SHIRLEY
Chair, Opinion Committee

Prepared by Rick Gilpin
Assistant Attorney General



EXHIBIT F

1st conviction is obtained on 8-liner games

Austin American-Statesman

Conviction obtained in 8-liner operation

Continued from B1

■ Game operators say Georgetown man's plea bargain isn't good test because of DWI, drug charges

BY JASON SPENCER
American-Statesman Staff

A Georgetown man became the first Texan convicted of running an eight-liner gambling operation Monday after pleading no contest to misdemeanor charges of possession of a gambling device and gambling promotion.

Robert E. Sovil Jr., who owned the Eight Lines of Fun business in Taylor until Department of Public Safety troopers closed it after an April 29 raid, will spend a year on probation and will pay \$251 in fines as part of a plea bargain with the Williamson County attorney's office.

DPS troopers confiscated 19 eight-liner machines and \$4,400 cash during the raid.

Sovil, 40, also pleaded no contest to an unrelated driving while intoxicated charge and was sentenced to a year and a half of probation. In return, prosecutors in County Attorney Gene Taylor's office dropped misdemeanor charges of keeping a gambling place and marijuana possession.

In another plea bargain with the Williamson County district attorney's office, Sovil was sentenced earlier this month to four years' probation for cocaine possession, a state jail felony.

Neither Sovil nor his attorney, Ken Crain of Georgetown, would comment on the gambling case.

State officials on Monday



Robert Sovil Jr.: Pleads no contest, gets probation, \$251 fine but no jail time for operation in Taylor.

lauded the conviction as a victory in the back-and-forth fight against low-stakes video gambling machines, while the trade group representing eight-liner operators played down the case's significance.

Members of the Amusement and Music Operators of Texas said the DWI and drug charges make Sovil's gambling conviction a poor barometer of how future eight-liner cases will be adjudicated.

"Some back-room deal struck between a defense attorney and a hard-nosed prosecutor has no effect on our industry," said Joe Cutbirth, spokesman for the Amusement and Music Operators of Texas. "It's clear that the circumstances of this case go way beyond Mr. Sovil's possession of eight-liner machines."

In January, Attorney General Dan Morales issued a legal opinion declaring the casino-style machines illegal. Since then, Sovil and 39 other eight-liner owners and patrons have been arrested in a series of DPS sting operations. DPS troopers have seized 1,200 eight-liners and more than \$450,000 cash in truck stops, bars and Las Vegas-style businesses.

Before Monday, though, none of the eight-liner operators had been convicted on gambling charges. Earlier this month, a Burnet

County jury deliberated five minutes before acquitting 55-year-old Al Fenter of Granite Shoals of 32 misdemeanor charges stemming from a March raid on his establishment.

Taylor said he was unaware his office had won the state its first successful prosecution of an eight-liner operator. "We didn't set out to make any groundbreaking rules," Taylor said. "It's just following the law as it exists."

Sovil's sentence, which includes no jail time, prompted one anti-gambling advocate to call for tougher laws against gambling establishment owners. The charges against Sovil carry a maximum sentence of one year in jail and a \$4,000 fine.

"In my view, possession of a gambling device ought to be a felony," said Weston Ware, associate director of the Texas Baptist Christian Life Commission, who serves on Gov. George W. Bush's Task Force on Illegal Gambling. "If persons can receive probation or a mere fine . . . the eight-liners are so lucrative that people will be willing to suffer fines in order to operate them."

Sovil's successful prosecution shows Morales' opinion and the subsequent DPS raids should be taken seriously by video gambling machine operators, said Teta Mange, a DPS spokeswoman.

"We've felt all along it was gambling, and we look forward to continued success," Mange said. "We'll continue to get convictions, and we'll continue seizing the machines."

See Conviction, B3

