



**RECEIVED**

SEP 11 2006

**OPINION COMMITTEE**

**Susan D. Reed**  
Criminal District Attorney  
Bexar County, Texas

FILE # ML-44986

I.D. # 44986

September 5, 2006

**RQ-0529-GA**

The Honorable Greg Abbott  
Office of the Attorney General  
Post Office Box 12548  
Austin, Texas 78711-2548

Re: Opinion request regarding an amusement machine which records a player's winnings onto a stored-value debit card.

Dear Attorney General Abbott:

Pursuant to Texas Government Code § 402.043, I respectfully request your opinion as to whether an amusement machine which records a player's winnings onto a stored-value debit card is excluded from the definition of gambling device pursuant to Texas Penal Code § 47.01(4)(B).

The amusement machine in question operates like a traditional eight-liner machine. The machine, however, requires a player to create an electronic account with the machine operator. The player's winnings are recorded in the account and the player is given a stored-value card representing the accumulated winnings. The player can redeem his winnings for merchandise at various stores once the merchant verifies, through the machine operator, that sufficient winnings are in the player's electronic account. If there are sufficient winnings in the player's account, the game operator purchases the merchandise and allows the merchant to give the merchandise to the player. The stored-value cards are not transferable. The player is required to utilize a PIN number when redeeming the winnings. Furthermore, the player cannot redeem the card for cash, nor get cash back from a transaction.

A person commits a gambling offense pursuant to Texas Penal Code § 47.02 if he plays and bets for money or other thing of value at any game played with cards, dice, balls, or other gambling device. A gambling device means any electronic, electromechanical, or mechanical contrivance 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. Texas Penal Code § 47.01 (4). Excluded from this definition of gambling device is a 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 representative of value redeemable for those items, that have a wholesale value available from a single play of the game

Bexar County Justice Center \* 300 Dolorosa, Fifth Floor \* San Antonio, Texas 78205-3030  
(210) 335-2311

For Victim Assistance call (210) 335-2105


Letter to The Honorable Greg Abbott  
September 5, 2006  
Page 2

or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less. Texas Penal Code § 47.01 (4) (B).

The Texas Supreme Court has ruled that a gift certificate is not a non-cash prize and thus an amusement machine that rewards a player with such an item is included in the definition of gambling device. In light of the difference between a stored-value debit card and a gift certificate, is an amusement machine that issues a stored-value debit card excluded from the definition of gambling device?

Thank you for considering this request. Your opinion in this matter will assist me in carrying out my duties.

Very truly yours,



Susan D. Reed

SDR/mge

Enclosure(s)

## Brief

**Issue:** Is an amusement machine that records winnings onto a stored-value card excluded from the definition of gambling device?

**Facts:** The amusement machine in question operates like a traditional eight-liner machine. The machine, however, requires a player to create an electronic account with the machine operator. The player's winnings are recorded in the account and the player is given a stored-value card representing the accumulated winnings. The player can redeem his winnings for merchandise at various stores once the merchant verifies, through the machine operator, that sufficient winnings are in the player's electronic account. If there are sufficient winnings in the player's account, the game operator purchases the merchandise and allows the merchant to give the merchandise to the player. The stored-value cards are not transferable. The player is required to utilize a PIN number when redeeming the winnings. Furthermore, the player cannot get cash back.

**Law:** A person commits a gambling offense pursuant to Texas Penal Code § 47.02 if he plays and bets for money or other thing of value at any game played with cards, dice, balls, or other gambling device. A gambling device means any electronic, electromechanical, or mechanical contrivance 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. Texas Penal Code § 47.01 (4). Excluded from this definition of gambling device is a 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 representative 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. Texas Penal Code § 47.01 (4)(B).

The Texas Supreme Court ruled in *Hardy v. Texas*, 102 S.W.3d 123 (Tex. 2003), that machines that awarded tickets that could be exchanged either for gift certificates or cash to play other machines were gambling devices because the machines were not dispensing noncash winnings. The Court found that "noncash" simply means not cash. Cash is defined either as "ready money (as coin, specie, paper money, an instrument, token, or anything else being used as a medium of exchange)" or "money or its equivalent paid immediately or promptly after purchasing." *Id.* at 131. In *Hardy*, the Court found that the gift certificates were used as a medium of exchange at various retail outlets, and were the equivalent of money, legal tender. *Id.*

However, in Attorney General Opinion No. GA-0341 (2005), the Attorney General opined that a charity could offer a prepaid credit card as a prize because it was

not money as defined under the Charitable Raffle Enabling Act. Under this statute, money is defined as "coins, paper currency, or a negotiable instrument that represents and is readily convertible to coins or paper currency." Tex. Occ. Code § 2002.002(1-a). Quoting the Federal Deposit Insurance Corporations General Council's Opinion, the Attorney General stated that "a prepaid, or "stored value," credit card is not a negotiable instrument." A stored-value card is not in writing, not signed by the maker, and does not contain an unconditional promise to pay a sum certain in money and no other promise, order, obligation or power. Since it is not a negotiable instrument, it is not money, and can be given away as a raffle prize.

In light of the difference between a stored-value debit card and a gift certificate, is an amusement machine that issues a stored-value debit card excluded from the definition of gambling device?