



City of Bunnell, Florida

Agenda Item No. H.5.

Document Date: 5/2/2017 Amount: N/A
Department: Attorney Account #: N/A
Subject: Proposal of Draft Bingo Ordinance by Chiumento Selis Dwyer Law Firm authorizing
"Instant Bingo Machines" within City of Bunnell
Agenda Section: New Business:

ATTACHMENTS:

Description	Type
City Attorney Memo re Draft Bingo Ordinance proposed by Chiumento Selis Dwyer	Cover Memo
Ex. A to CA Memo - Draft Ordinance proposed by Chiumento Selis Dwyer	Exhibit
Ex. B to CA Memo - FDLE Report re Shamrock Bingo in Bunnell	Exhibit
Ex. C to CA Memo - Chiumento Selis Dwyer letter to Commission	Exhibit

Summary/Highlights:

This agenda item relates to a draft ordinance proposed by the law firm of Chiumento Selis Dwyer that would purport to authorize the operation of so-called "Instant Bingo Machines" within the City of Bunnell.

The operations proposed to be legalized by the purported authorization of "Instant Bingo Machines" have recently been found to violate the criminal laws of the State of Florida, including F.S. 849.15 (slot machine or device), F.S. 849.09 (illegal lottery), and F.S. 849.01-849.03 (keeping an illegal gambling house) by the Florida Department of Law Enforcement, BPD Chief Foster, and the City Attorney.

Background:

See attached memorandum from City Attorney.

Staff Recommendation:

Staff strongly recommends that the City Commission not entertain the passage of this ordinance as currently drafted, or any ordinance purporting to legalize "Instant Bingo Machines" in light of current State law.

City Attorney Review:

City Attorney concurs in staff recommendation and strongly recommends that the City Commission not entertain the passage of this ordinance as currently drafted, or any ordinance purporting to legalize "Instant Bingo Machines" in light of current State law.

See attached memorandum from City Attorney.

Finance Department Review/Recommendation:



M E M O R A N D U M

TO: Bunnell City Commission
FROM: Wade C. Vose, Esq., City Attorney
DATE: May 2, 2017
SUBJECT: Staff Recommendation Against draft ordinance proposed by Chiumento Selis Dwyer purporting to legalize "Instant Bingo Machines" and Related Background

Overview

This agenda item relates to a draft ordinance proposed by the law firm of Chiumento Selis Dwyer that would purport to authorize the operation of so-called "Instant Bingo Machines" within the City of Bunnell. A copy of their draft ordinance is attached as Exhibit "A".

The operations proposed to be legalized by the purported authorization of "Instant Bingo Machines" have recently been found to violate the criminal laws of the State of Florida, including F.S. 849.15 (slot machine or device), F.S. 849.09 (illegal lottery), and F.S. 849.01-849.03 (keeping an illegal gambling house) by the Florida Department of Law Enforcement, BPD Chief Foster, and the City Attorney.

To be clear, the attached draft ordinance has not been prepared or revised by City Staff or the City Attorney. Staff strongly recommends that the City Commission not entertain the passage of this ordinance as currently drafted, or any ordinance purporting to legalize "Instant Bingo Machines" in light of current State law.

History – FDLE Inspection of Shamrock Bingo in Bunnell

On May 10, 2016, Chief Foster, accompanied by FDLE Special Agents Daniel Wallace and Gabriel White, and additional law enforcement officials, conducted an inspection relating to alleged illegal gaming/gambling activities at an establishment known as Shamrock Bingo within the city limits of Bunnell. A copy of FDLE Special Agent Wallace's report resulting from that inspection is attached as Exhibit "B" and warrants review.

As the report outlines, approximately 40 casino-style gaming/gambling devices were located inside Shamrock Bingo, all of which appeared operational and available for play. The FDLE special agents and other law enforcement officials reviewed the game play on the devices while recording with a GoPro video camera, and spoke with the owner of Shamrock Bingo, Gregory Irwin, concerning the operations. During the inspection, Mr. Irwin attempted to justify the operations by arguing to the law enforcement officials that the casino-style devices were merely electronically revealing the results of paper pull tab instant bingo tickets. Based on this inspection, FDLE Special Agent Wallace made the following determination:

SA Wallace concludes the overt inspection conducted on the above listed date shows that Shamrock Bingo utilized technology and devices which operated in violation of F.S. 849.15, as a "slot machine or device" as defined in F.S. 849.16.

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In addition, SA Wallace determined that the casino-style games of chance offered in the establishment were in fact an illegal lottery in violation of F.S. 849.09 et. seq. Due to the fact that the business is currently operating illegal slot machines and conducting an illegal lottery, the business is also operating as an illegal gambling house in violation of F.S. 849.01 – 849.03. SA Wallace presumes that any proceeds generated or derived from the illegal gambling operations are illegal proceeds.

As indicated in FDLE Special Agent Wallace's report, Chief Foster issued a cease and desist letter to Mr. Irwin in lieu of immediate arrest and seizure of the devices, with which Mr. Irwin eventually complied.

Meeting with City Manager and City Attorney

Thereafter, on November 2, 2016, the City Manager and City Attorney met with Michael Chiumento and Vincent Lyon of Chiumento Selis Dwyer, and their client, Gregory Irwin. The meeting was requested by Mr. Chiumento to discuss how Mr. Irwin could resume bingo operations within the City of Bunnell.

In that meeting, both the City Manager and City Attorney reiterated what had previously been communicated to Mr. Chiumento and Mr. Lyon, that the City has no objection to the operation of live-called bingo and paper pull tab instant bingo, so long as such operations strictly comply with the requirements of Florida law. The City Attorney also reiterated the fact that the bingo statute, Section 849.0931, Fla. Stat., does not authorize electronic instant bingo, "instant bingo machines", or the electronic reveal of instant bingo paper pull tab results. The City Attorney further reiterated his concurrence with FDLE Special Agent Wallace's and Chief Foster's determination, based on the available evidence, that the "instant bingo machines" at Shamrock Bingo had operated in violation of F.S. 849.15, as illegal "slot machines or devices".

Chiumento Selis Dwyer's January 19, 2017 Letter with Proposed Ordinance

On January 19, 2017, Mr. Lyon, on behalf of Chiumento Selis Dwyer, sent a letter to the City Commission concerning this matter, a copy of which is attached as Exhibit "C". City staff and the City Attorney strenuously disagree with so many of the factual assertions made in that correspondence that it would be difficult to address them all comprehensively in an agenda staff report.

The letter incorrectly asserts that Chief Foster did not have the legal authority interpret the criminal laws of Florida and to determine whether probable cause existed that certain crimes (to wit, keeping illegal slot machines or devices, operating an illegal lottery, keeping an illegal gambling house) were being committed within the City of Bunnell. This unfounded assertion runs entirely contrary to the role of law enforcement officers and the authority vested in a Bunnell police officer under Florida law.

Further, the letter implies that in 2015, Chiumento Selis Dwyer had informed the City Attorney of the electronic instant bingo portion of Shamrock Bingo's operation, and that the City Attorney

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had given them “the green light to operate” such devices. Nothing could be further from the truth, and it is surprising that such an assertion would be made in a correspondence also addressed to me.

The only information the City Attorney was ever provided in 2015 by Chiumento Selis Dwyer concerning bingo operations in Bunnell was information relating to live-called bingo and paper pull tab instant bingo, and not to electronic instant bingo or “instant bingo machines.” In fact, Chiumento Selis Dwyer never disclosed to the City Attorney the existence of electronic instant bingo or “instant bingo machines” at any of their clients’ facilities in Bunnell until around the time of Chief Foster’s 2016 inspection.

The letter asserts that the bingo statute, Section 849.0931, Fla. Stat., “contains some ambiguity or room for interpretation, and the state legislature intended that local municipalities interpret the statute.” However, the letter provides no citation to authority for such assertions, and neither has Mr. Lyon provided the City Attorney with any authority supporting such a conclusion.

The letter goes on to state. “We have conducted extensive review of ordinances passed by other statutes (*sic*),” (I presume Mr. Lyon meant “cities” or “jurisdictions” by “statutes” *infra*), and goes on to introduce Chiumento Selis Dwyer’s draft ordinance. However, Mr. Lyon does not reference a single jurisdiction in the State of Florida that has recognized as legal or purports to legalize “instant bingo machines,” nor has Mr. Lyon pointed the City Attorney to one after repeated inquiries.

Finally, the letter states that their proposed ordinance is a “result of” their meeting with the City Manager and City Attorney, and that Chiumento Selis Dwyer believes that “all of their concerns are dealt with.” This may be their belief, but such belief is inaccurate. As stated above, the City Manager and City Attorney indicated that there was no objection to the operation of live-called bingo and paper pull tab instant bingo, so long as such operations strictly comply with the requirements of Florida law, but that the bingo statute does not authorize electronic instant bingo or “instant bingo machines,” and that a such device was an illegal “slot machine or device”.

The ordinance provides pages of regulations relating to live-called bingo and paper pull tab instant bingo, none of which was the gravamen of City staff’s concerns. Meanwhile, the ordinance, at Sec. 14-162(f), purports to authorize the use of “instant bingo machines,” the core concern expressed by City staff.

Conclusion

City Attorney concurs in staff recommendation and strongly recommends that the City Commission not entertain the passage of this ordinance as currently drafted, or any ordinance purporting to legalize "Instant Bingo Machines" in light of current State law.

ARTICLE VIII. - BINGO AND INSTANT BINGO

Sec. 14.151. – Definitions.

In this article the definitions set forth in, Section 849.0931, F.S., as amended from time to time, are incorporated herein by reference. In addition, the following terms, phrases, words and their derivations shall have the meaning given herein, unless the context otherwise requires:

Actual business expenses means those authorized expenses that have a direct bearing on and are necessary to the conduct of a bingo or instant bingo game and related activities, the allocation of which shall be in accordance with generally acceptable accounting practices.

Authorized expenses means and includes rent or purchase of equipment, tables, chairs and other articles and supplies essential to the conduct of bingo, supplies necessary to running a business, accounting services for records and reports, state and local license fees, advertising, cost of security personnel, pro rata costs for insurance and utilities such as electricity, water, gas, sewage or garbage collection resulting from conducting a bingo or instant bingo game, cost of cleaning the premises and setting up and taking down of any equipment, cost of refreshments provided at no cost to players and volunteers, costs of prizes, and the costs of creating and maintaining a petty cash fund no larger than five hundred dollars (\$500.00) and rental charge so long as the rental charge does not exceed the fair market rent charged for similar premises located within The City of Bunnell.

Chairperson means the person designated by a licensed organization to be responsible for the conduct of bingo games.

Conviction or convicted means an adjudication of guilt, or a plea of guilty or nolo contendere to a felony or a misdemeanor involving theft or illegal gambling.

Entire or net proceeds means all moneys collected from customers to participate in bingo games or to play instant bingo, admissions and related sales, less only actual business expenses.

Instant Bingo Machine means any machine, device or object of an electronic or mechanical nature used to deliver the result of an instant bingo game ticket to the consumer.

Lease includes a lease, sublease, assignment, rental or agreement to use any premises for the conduct of bingo, other than premises owned by the licensed organization and used by it to conduct bingo for its own benefit.

Lessor means a person who or organization which leases, subleases, assigns or rents any premises to be used for the conduct of bingo and instant bingo, or agrees to the use of the premises for the conduct of bingo and instant bingo.

Organization shall mean a charitable, nonprofit, or veterans' organization as defined in Section 849.0931(1)(c), F.S., or condominium association, homeowners association as defined in 720.301, F.S., mobile home owners association or a group of residents of a mobile home park or parks as defined in Chapter 723, F.S., or a recreational vehicle park.

Person means an individual, partnership, corporation, trust, foundation, group, association, organization, society, or any combination thereof.



Premises means on the property owned, leased, or controlled where bingo ^{Instant bingo} sessions are conducted.

Principal officer means the president, vice president, or treasurer, or partner, or limited partner, or director or stockholder, or an organization's officers performing similar duties.

Sec. 14-152. - Legislative intent; exemptions.

(a) It is the intent of The City of Bunnell that all phases of the regulation, licensing and supervision of bingo and instant bingo be closely controlled and the law pertaining thereto be strictly construed and rigidly enforced, to the end that commercialization in all its forms be discouraged, and diversion of the proceeds of bingo games and instant bingo from the purposes authorized by Section 849.0931, F.S., be eliminated.

(b) It is the intent of The City of Bunnell that the provisions of this article shall not be applicable to residents, and their overnight guests, residing within condominium complexes, residential developments or subdivisions, mobile home parks, recreational vehicle parks or adult living facilities. Such organizations shall not use or lease their facilities for the conduct of bingo games by any other organization.

Sec. 14-153. - Administration and enforcement.

Responsibility for administration of this article shall be the responsibility of the city manager. Responsibility for enforcement of this article is vested in the The City of Bunnell Code Enforcement Board.

Sec. 14-154. - License required.

(a) It shall be unlawful for a person to conduct a bingo game or instant bingo unless the person is a member of a licensed organization holding a current and effective license, which license shall not be under suspension or revocation. No licensed organization shall allow the use of its name in any manner or for any reason whatsoever for the conduct of bingo or instant bingo by any other person.

(b) It shall be unlawful to lease any premises of any type for the conduct of bingo games or instant bingo as a lessor unless the lessee is the holder of a license as required herein.

(c) A license issued under this article shall be nontransferable from one organization to another. The prohibition shall not be construed to prevent an organization from changing the name set forth in the original application.

(d) Each organization licensed under this article shall display the license in a conspicuous place on the premises where bingo games ~~are conducted~~ in a transparent cover or frame. The license shall be available for inspection at all times by persons using the premises when bingo games are in progress, where instant bingo tickets are sold, or where instant bingo machines are operating. No person shall mutilate, cover, obstruct or remove a license so displayed.

(e) All licenses issued under this article shall be renewed annually provided all the requirements of this article have been complied with by the licensed organization during the previous year.

(f) No license shall be issued to an organization whose license under this article has previously been revoked unless the The City of Bunnell Code Enforcement Board have, after public hearing, specifically

authorized the issuance of the license after it is satisfied that the reason or reasons for revocation have been corrected and steps taken to insure that such problem or problems will not arise in the future.

(g) No ^{bingo} license shall be issued under this section to an ^{organization} that has not had an office or place of business located within the limits of the City of Bunnell for a period of three (3) years prior to the date of the first application for a License under this section.

Sec. 14-155. - License application; fee.

(a) Any organization desiring to obtain a license under this article shall file with the city manager a sworn application on forms supplied by the city manager. The application shall be executed under oath by the chairperson of an organization. The application shall contain the following information:

(1) The applicants name, address, phone number, and any address and phone numbers used by the applicant in the previous three (3) years.

(2) The name, address and phone number of the person designated by the applicant who will be responsible for the running of any ^{Instant bingo} bingo game allowed under this article.

(3) The name, address and phone number of any member of the applicant who will conduct or assist in conducting bingo games or in sale of instant bingo allowed under this article.

(4) Whether the applicant has had any license under this article or a similar license issued by any other jurisdiction revoked or suspended and, if so, the date of each revocation or suspension.

(5) The name and address of each bank in which the net proceeds from the conduct of bingo or instant bingo are to be deposited.

(6) A statement that all individuals listed in subparagraph (2) and (3) are current and active members of the applicant.

(7) A statement that the applicant agrees to abide by all the provisions of this article and Section 849.0931, F.S. and the failure to do so may result in revocation or suspension of the licensee, or the imposition of noncriminal or criminal penalties.

(b) There shall be an initial nonrefundable application fee of _____ dollars (\$_____).

Sec. 14-156. - Investigation.

Upon receipt of an application properly completed and filed and upon payment of the application fee, the city manager shall investigate the qualifications of the applicant to determine the applicant's eligibility for a license in accordance with the provisions of this article.

Sec. 14-157. - Issuance denied.

(a) Upon completion of the investigation of an application, the city manager shall within seven (7) days following investigation either approve or disapprove the application. If approved, the license fee shall be paid by the applicant.

(b) If the application is disapproved, the city manager shall provide the applicant, through its representative, notice of disapproval and the reasons therefore.

Sec. 14-158. - Amendment to application.

(a) An application, so long as the license issued thereon is valid and effective, must be amended, without an additional application fee, if any of the information contained in the application changes.

(b) The city manager shall conduct such investigation of the new or additional matters as he deems necessary to determine the eligibility or continued eligibility of the licensed organization to hold a license pursuant to this article. The provisions of section 14-157 shall be applicable to the results of investigations conducted pursuant to this section; provided, that where the amendment is of an application on which a license has already been issued, disapproval by the city manager of the amendment shall subject the license to the possibility of suspension or revocation as provided in this article.

Sec. 14-159. - Suspension and revocation of license.

(a) The city manager is authorized to suspend or revoke a license when he determines, upon sufficient cause that an organization:

(1) Permitted its name to be used in connection with a bingo game that is conducted by any person, contrary to the provisions of this article or of Section 849.0931, F.S., or acquiesced in such use.

(2) Permitted its representative to conduct a bingo game on its behalf contrary to any of the conditions of play required by this article or of Section 849.0931, F.S., or acquiesced in such conduct.

(3) Offered, paid or gave any salary or compensation, to any person or volunteer for conducting or assisting in the conduct of bingo or instant bingo. Nothing in this section shall be construed to prohibit a member and volunteer from also being paid as the provider of any authorized expenses, provided such pay is reasonable for the services performed.

(4) Failed or refused to maintain the records or make the reports required by this article or by the city manager pursuant to this article.

(5) Failed or refused to deposit the proceeds derived from the conduct of bingo into a separate bank account as required by this article.

(6) Its representative, or its principal officers, servants, employees, volunteers or members violated any of the requirements of this article or of Section 849.0931, F.S.

(b) Before the city manager suspends or revokes a license, he shall furnish the organization a written statement, by certified or registered mail or by personal service, of the cause of the suspension or revocation. The organization shall have twenty (20) days from the date of the statement in which to request in writing a hearing on the matter. If no request is made within this time, the city manager shall proceed to suspend or revoke the license without further proceedings. If a hearing is requested, the organization shall be entitled to a hearing before the The City of Bunnell Code Enforcement Board and shall be entitled to produce witnesses, cross examine witnesses and be represented by counsel. After the hearing, the The City of Bunnell Code Enforcement Board shall make the decision and notify the organization of its decision.

(c) The revocation of any license issued pursuant to this article shall be for a period of one year, unless the The City of Bunnell Code Enforcement Board agrees to allow reinstatement upon a finding that the

cause of the initial revocation has been satisfactorily eliminated by the organization. The suspension of a license may be made up to a period of one year.

Sec. 14-160. - License fee.

(a) There is hereby imposed a _____ dollar annual license fee under this article separate from the application fee.

(b) The fees collected under this article are fees paid for the purpose of examination and inspection of the person, organization or lessors and premises under this article and are declared to be regulatory fees in addition to and not in lieu of the occupational license taxes that may be imposed by the board of county commissioners. The payment of license fees under this article shall not relieve the person, organization or lessor of liability for the responsibility of paying an occupational license tax where it is required, and for doing such acts and providing such information as may be required by the occupational license requirements set forth in the The City of Bunnell Code.

Sec. 14-161. - Records and reports; consent by licensee.

Each organization shall keep such records and make such reports as may be required by the city manager to implement this article and carry out its purpose. By applying for a license under this article a person shall be deemed to have consented to the provisions of this article and to exercise by the city manager of the authority granted by this article.

Sec. 14-162. - Conduct of bingo.

Each bingo game shall be conducted under the following conditions of play:

(a) Except for instant bingo, which is not limited, the number of days per week during which an organization may conduct bingo shall not exceed the amount set by Florida Statute 849.0391(6) as codified and as amended from time to time.

(b) Each person conducting or assisting in the conduct of a bingo game shall wear a legible tag bearing his name and the name of the organization he represents.

(c) During the course of a bingo game; the organization shall post, as directed below, in a conspicuous place in letters and numbers no less than three (3) inches high the names of all members or volunteers conducting or assisting in the conduct of the bingo game.

(d) Every person directly involved in the conduct of a bingo game must be a bonafide member of the organization. It shall be unlawful for any person or any member of any organization to falsely represent the membership status of any person involved in the conduct of a bingo game. Proof of membership shall be furnished by the licensed organization upon demand by the city manager or his authorized representative. The possession by the member or volunteer or other person of a valid identification or membership card issued by the licensed organization containing the date of active membership and full name of the person to whom it is issued is required. A change of a principal officer or of a member or volunteer of a licensed organization may be made at any time, but such change shall require the immediate filing with the city manager of an amendment of the licensed organization's application.

(e) No salary or compensation shall be offered, solicited, paid or given, before, during or after, directly or indirectly, to any person conducting or assisting in the conduct of bingo for such. Nothing in this

section shall be construed to prohibit a member and volunteer from also being paid as the provider of any authorized expenses, provided such pay is reasonable for the services performed.

(f) Instant bingo as defined in Section 849.0931(1)(f), F.S. may be played as described in the statute, and the use of instant bingo machines is permitted provided the instant bingo ticket is available upon request of the customer prior to use of the machine, and the machine itself contains no inherent element of chance.

Sec. 14-163. - Financial requirements.

(a) The entire net proceeds derived from the conduct of bingo or instant bingo by a organization shall be deposited during the next business day in a specially designated bingo checking account in a bank located within Flagler County, which shall be maintained separate and apart from all other accounts of the organization and which shall not be used for the deposit of funds received from any other activity other than the conduct of bingo or instant bingo. The provisions of this subsection shall not preclude;

(1) In the case of an organization, the periodic transfer of the entire net proceeds derived from the conduct of bingo into a savings or other account established for the charitable, religious, educational, fraternal, patriotic, civic, community or benevolent endeavor for which the bingo games were played.

(2) In the case of an organization, the withdrawal of the entire net proceeds, or the necessary portion thereof, to be used on the next scheduled day of play as prizes.

(b) An organization shall maintain adequate records according to generally accepted accounting practices and in a form prescribed by The City of Bunnell which records shall show:

(1) Gross proceeds from any source related to the conduct of bingo or instant bingo, including a method of cash control with respect to admissions and other related activities.

(2) Receipts records.

(3) Actual expenses.

(4) Entire or net proceeds.

(5) The distribution or disposition of the entire or net proceeds.

These records shall be made available within 24 hours from the time of request, for inspection by the city manager or his authorized representative at reasonable times during normal business hours and whenever a bingo game is in progress, but the city manager or his authorized representative shall not interrupt an actual bingo game or interfere with the operation of the premises where bingo is played unless necessary in order to make an inspection. All records shall be retained by an organization for a minimum time of three (3) years.

(c) Annually each organization shall file with the city manager a financial statement, in the form prescribed by the city manager, containing the sources and amount of the gross revenue derived by the organization from the conduct of bingo during the twelve (12) month or other period for which the statement is being filed and stating the names of the distributees of the net revenues and the amounts received by each. The financial statement shall be certified as correct by a principal officer, one of the partners or one who controls the organization but need not be audited; provided; that the foregoing

language shall not prohibit an operation from filing an audited financial statement nor the city manager from requiring the filing of an audited financial statement whenever he determines that an audited financial statement is necessary to enable him to ascertain whether the organization is obeying the law and rules promulgated under this article. The city manager may also require an organization to submit other reports, on a periodic basis covering the activities connected with or related to the conduct of bingo and instant bingo, which reports shall be certified as prescribed for financial statements as set forth herein.

Sec. 14-164. - Use of premises.

A premises may be used to conduct bingo and instant bingo under the following conditions:

(a) Bingo and instant bingo shall not be conducted between the hours of 1:00 a.m. and 9:00 a.m.

(b) Not more than one licensed organization shall lease any premises for the conduct of bingo in any twenty-four (24) hour period, and no other licensed organization shall conduct bingo upon the same premises in that time period. This prohibition shall not extend to or affect the leasing, rental or use of premises for any other purpose than the conduct of bingo.

(c) The rental fee for the lease on any premise on which bingo games or instant bingo are to be conducted shall not be calculated on a percentage basis of the seating capacity of the leased premises or the game receipts before or after payment of the actual business expenses or of the number of persons attending any occasion that includes that play of bingo and instant bingo games. The amount paid for such lease shall not exceed the fair market value of the leasehold interest. The city manager shall be authorized to require the lessor to demonstrate the manner or method by which the fair market rent was determined. The city manager shall have the right to use the services of an appraiser to ascertain whether or not the rental charge represents a fair market rent for the premises.

Sec. 14-165. - False statements prohibited.

No person shall knowingly make, or induce or cause to be made by another, a false, untrue or misleading statement or a signature of another on a certificate, application, registration, report or other document required to be prepared pursuant to this article. No person shall knowingly make a false, untrue or misleading oral statement to the city manager as to any matter investigated by the city manager.

Sec. 14-166. - Violations.

A person who violates the terms of this article shall be subject to the provisions of section 162.09, F.S. For violations that are of a continuing nature, each day that the violation continues shall be a separate offense.

FILE TITLE: Southern Quality Business Systems, LLC. 2323 N. State Street Bunnell, Florida, 32110 (Flagler County)	DATE: May 10, 2016
REPORT PREPARED BY: Special Agent Daniel Wallace Orlando Regional Operation Center 500 West Robinson Street Orlando, Florida, 32801	VIOLATIONS: Lottery F.S. 849.09(1) Slot Machines or Device F.S. 849.15 Keeping Gambling Houses F.S. 849.01 – 849.03
REPORT STRUCTURE: SYNOPSIS / DETAILS / SUMMARY	

SYNOPSIS:

Chief Tom Foster from the Bunnell Police Department requested assistance in reference to a business located within the City of Bunnell suspected of operating illegal gaming/gambling operations. This report documents the overt inspection of Southern Quality Business Systems, LLC operating under the name Shamrock Bingo which is suspected of conducting illegal gaming/gambling activities. In this report, the Southern Quality Business Systems, LLC located at 2323 N. State Street Bunnell, Florida, 32110, will be referred to as Shamrock Bingo.

DETAILS:

- 1) On May 10, 2016, at approximately 1127 hours, Special Agent (SA) Daniel Wallace, SA Gabriel White, Seminole County Sheriff's Office (SCSO) Agent Doug Schlim, SAS Josh Mead, Chief Tom Foster, Detective Harry Kuleski, and Officer James Flynn conducted an overt inspection into the alleged illegal gaming/gambling activities at an establishment identified as Shamrock Bingo located at 2323 N. State Street, Bunnell, Florida, 32110.
- 2) Upon entering the business, Chief Foster made contact with an unidentified employee at Shamrock Bingo who was behind the cashier's counter. Chief Foster told the employee that the Bunnell Police Department wanted to inspect the machines to determine if they were in violation of Florida State Statute. Chief Foster asked permission to inspect the machines. The employee granted permission and stated that he would call the owner who could assist. The employee called the owner and Chief Foster was afforded the opportunity to speak with him.
- 3) Shamrock Bingo had approximately forty (40) casino-style gaming/gambling devices inside the business, which all appeared to be operational and available for play. SA Wallace observed approximately ten (10) customers inside the business, all of whom were playing casino-style games of chance on the gaming/gambling devices.

INTERVIEWS:

- 4) An individual by the name of Gregory Irwin (G. Irwin) arrived and identified himself as the owner of Shamrock Bingo. SCSO Agent Schlim interviewed G. Irwin who stated that the games were an electronic version of the paper pull tabs (instant bingo). G. Irwin also



stated that upon payment, a customer has the option to find out their winnings/losses at the cashier's terminal without accessing the gaming/gambling device. According G. Irwin, customers prefer to play the gaming/gambling device instead of finding out their winnings/losses at the cashier's terminal. It was determined that the games were part of a pre-determined finite pool, which is indicative of a lottery.

GAME PLAY:

- 5) Upon request, a customer agreed to demonstrate game play for SA Wallace and SCSO Agent Schlim. SA Wallace utilized a GoPro camera to video document the game play of the machine. The customer explained that the game and the initial bet amount of twenty five cents, fifty cents, or a dollar (\$0.25, \$0.50, or \$1.00) which must be selected at the cashier's terminal, prior to logging into the gaming/gambling devices. The customer selected a casino-style gaming/gambling device and manually entered the access code/PIN to access the game system. The gaming/gambling device utilized a touch screen monitor. The customer paid sixty dollars (\$60.00) to receive one hundred and twenty (120) credits/entries/ tabs at the fifty cents (\$0.50) level used to bet/wager on the casino-style games of chance.
- 6) Before accessing any games, there was an "OFFICIAL RULES" displayed on the screen which noted that the game was a pull tab revealer. Upon accessing the game system, eight (8) different casino-style games of chance were selectable for play, each with a different appearance and/or theme. There was a button available to view more games, but the customer did not select the button to reveal the total amount of casino-style games available for play.
- 7) The customer demonstrated game play of the game titled "THE FINER THINGS" which was a five (5) reel, three (3) row game. The game utilized a fade-in reel method where the reels displayed from left to right, starting at the top row (top left) and moving towards the third row (bottom right). The game was played at one bet level of \$0.50 per wager/bet/revel. The screen displayed the following buttons: upper left corner- "TOUCH TO SELECT DENOMINATION" fifty cents (\$0.50) was displayed, bottom left "EXIT", middle "HELP", bottom right "REVEAL." The game also displayed the following in the boxes displayed on the screen: "TOTAL TABS REMAINING", LEVEL, WIN, and BALANCE.
- 8) When the game was displayed, and the customer clicked the "REVEAL" button. An image appeared on the entire screen that seemed similar to a paper pull tab. After the image disappeared, the iteration of play initiated and the reels began to fade-in. At the conclusion of the iteration of play, any winnings awarded were displayed at the bottom of the screen, in a box labeled "WIN." Before the next cycle of game play continued, the winnings from the previous cycle are transferred to the "BALANCE" box at the bottom of the screen which displayed the total amount of credits/entries/ tabs awarded to the customer.
- 9) After the customer depleted the entire one hundred and twenty (120) credits/entries/ tabs, the customer was then allowed the option to change the bet/ wager amounts and/or choose other games available on the gaming/gambling device.

- 10) The casino-style game of chance SA Wallace and SCSO Agent Schlim encountered during the overt inspection did not utilize any form of player invoked skill. The presence of an unpredictable outcome and the element of chance as perceived by the player were present in the game at all levels of play.

SUMMARY:

SA Wallace concludes the overt inspection conducted on the above listed date shows that Shamrock Bingo utilized technology and devices which operated in violation of F.S. 849.15, as a "slot machine or device" as defined in F.S. 849.16. In addition, SA Wallace determined that the casino-style games of chance offered in the establishment were in fact an illegal lottery in violation of F.S. 849.09 et. seq. Due to the fact that the business is currently operating illegal slot machines and conducting an illegal lottery, the business is also operating as an illegal gambling house in violation of F.S. 849.01 – 849.03. SA Wallace presumes that any proceeds generated or derived from the illegal gambling operations are illegal proceeds.

"Instant Bingo" in F.S. 849.0319 is defined as a form of bingo that is played at the same location as bingo, using tickets by which a player wins a prize by opening and removing a cover from the ticket to reveal a set of numbers, letters, objects, or patterns, some of which have been designated in advance as prize winners. These pull tabs must comply with the North American Gaming Regulators Association (NAGRA) which outlines printing, laminating, cutting, and packaging.

The owner of Southern Quality Business Systems, LLC (Shamrock Bingo) is listed as Harold Irwin from Palm Coast (Additional Intel would need to be gathered on Harold Irwin). The software utilized at Southern Quality Business Systems, LLC. (Shamrock Bingo) was manufactured by three (3) software providers identified by G. Irwin as Blue Star (Innovation Bingo), Backlight, and Epic (aka Legacy). G. Irwin operates another alleged bingo location at the Costal Centre located at 4750 E. Moody Blvd. Bunnell, Florida, 32110. The gaming systems/software at the Costal Centre have not been inspected. However, G. Irwin stated that the software is the same as at Southern Quality Business Systems, LLC (Shamrock Bingo). Chief Foster with the Bunnell Police Department has issued cease and desist letter to G. Irwin for the gaming/gambling activities conducted at both Southern Quality Business Systems, LLC locations.

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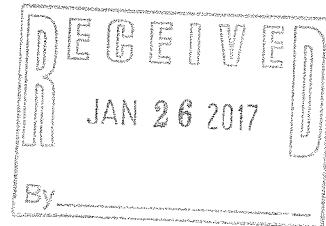
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January 19, 2017



City of Bunnell
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John R. Rogers
Vice-Mayor

Wade Vose
City Attorney

Dan Davis
City Manager

Madam Mayor et al.

In 2016, the Chief of Police of the City of Bunnell caused a charity - one that had been operating with the knowledge and approval of the Police and City Attorney for years - to end its fundraising activities. The owner of the equipment the charity used was threatened with arrest and seizure of property if he did not take his equipment out of the city. The Police Chief threatened to confiscate everything and to charge the owner of the building housing the charity with felonies. Under fear of being arrested, the owner of the equipment removed it all and terminated the lease. As a result, Flagler Cats, the long-standing and respected non-profit organization, has lost the bulk of its revenue. We believe the Chief of Police was over-extending his authority, because the City has not established any rules or ordinances to deal with this specific fundraising activity.

We are of course referring to Bingo. The state legislature carved out an exception to the state's gambling laws that separates Bingo and Instant Bingo as exempt from the gambling statutes. Flagler Cats was renting space and equipment from Southern Quality Business Systems, LLC so that the charity could hold Bingo and Instant Bingo games in the city of Bunnell. The operation had been demonstrated to past chiefs and had been investigated by the City Attorney in the past and had received the green light to operate. The law did not change in 2016, and the City did not provide any new guidance, yet the Chief of Police reversed five years of policy and ordered a shut-down.

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We disagree with the Chief's interpretation of the law. More to the point, we disagree with his authority to interpret the law on his own. The statute (849.0931) contains some ambiguity or room for interpretation, and the state legislature intended that local municipalities interpret the statute. We have conducted extensive review of ordinances passed by other statutes. We have drafted a proposed ordinance for the City of Bunnell. Our proposal would address the concerns the legislature had around gambling and bingo – e.g. directing all profits to a qualified organization, protecting qualified organizations from abuse, containing the benefits within the local community, and assuring Bingo and Instant Bingo are not used as covers for illegal lotteries. We believe the ordinance we are proposing would provide clarity to non-profits who are considering using Bingo and Instant Bingo to raise funds necessary to do their good works.

In 2012, Southern Quality Business Systems, LLC approached then Chief Jones on behalf of Flagler Cats and demonstrated the business plan and operations. Chief Jones verbally approved the operation. It was demonstrated to Chief Hoffman in 2014 and again in 2014 to Chief Foster, and in 2015 the City Attorney investigated the operation for allegations of being a gambling hall. Each of them said he was satisfied with what he saw and Flagler Cats was allowed to keep operating. Then in 2016, Chief Foster, with involvement of unnamed state agents, changed his mind and caused Flagler Cats to cease its Bingo and Instant Bingo operations.

Bingo and Instant Bingo are not illegal. They are exceptions to the gambling laws of the state of Florida, provided they are conducted by qualified organizations under certain specific restrictions. Flagler Cats is a qualified organization that was following the statutory requirements. The money raised through this legal activity has enabled Flagler Cats to do considerable pro-bono work in and for the City of Bunnell. Now everyone involved is in fear of retaliation by the police for activities the state condones. The fear and uncertainty affects Flagler Cats and other good causes. Flagler Cats cannot provide the same level of service to the community without its state-sanctioned fundraising exercise.

We believe the proposed ordinance satisfies the concerns of the legislature while giving the city a greater level of control over activities within its borders. The ordinance will provide the guidance needed by both law enforcement and the public, allowing charities to move forward with confidence that their legal activities will not be shut down because one man changed his mind. The ordinance ensures that all profits from Bingo and Instant Bingo go to qualified organizations. The licensing process will allow the city to better supervise and control such operations to avoid abuse or fraud. The city will better be able to say who can or cannot offer Bingo and Instant Bingo within the city. It will be able to identify and penalize bad actors. Only those with a real connection to the City of Bunnell will be able to run Bingo and Instant Bingo games. Consumers will have the protection of the city against abuse by requiring accounting and certain ethical standards.

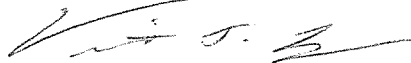
We previously sat down with the City Attorney and the City Manager to discuss some of their concerns. The proposed ordinance is the result of that meeting. We believe all of their concerns are dealt with, but if there are problems with the language we will be happy to work with the city to amend the proposal and address any other apprehensions. We just ask that the city allow Flagler Cats to resume operations with reassurance that the Chief of Police will not

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interfere again, provided they keep within the terms of the proposed ordinance. The City can view this as a test case and impose a moratorium against other businesses open until it can assess the impact of the proposed ordinance on Flagler Cats. In the event problems arise that have not been foreseen, we could then address them with relative ease.

Please let us know if you have any questions and what would be a convenient time to meet with representatives of the city to discuss our proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent T. Lyon", with a stylized flourish at the end.

Vincent T. Lyon