

National Bingo Night in New York State

ABC premiered the show National Bingo Night on Friday May 18. Hosted by Ed Sanders of the ABC hit program Extreme Makeover Home Edition, the program is supposed to feed into America's traditional love affair with Bingo.

The show combines an in-studio game with an at-home game. In the studio component, a single competitor tries to reach a high score determined by the competitor's ability to predict whether each drawn bingo ball is higher or lower than the previous ball drawn before anyone in the 200 member audience achieves a traditional five in a row bingo win.

In the home game, the players can download bingo cards from ABC. The cards are free. If the home players achieve a five in a row bingo win within the number of draws that the take place in the studio, they win.

There are three bingo games per show. Winners of the Red Card game receive a \$5 Kmart gift card. Additionally from all the Red Card winners, one winner receives a \$10,000 Kmart gift card. Winners of the White game receive a DVD or CD from Buena Vista Home Entertainment. Again, from all the White card winners, one winner receives a Royal Caribbean cruise. Winners of the Blue Card game receive no general prize but are eligible for a separate drawing where three major prizes are awarded, with the grand prize being a \$50,000 jackpot.

One might assume that this game would cause few problems with the gambling laws of the various states. Gambling throughout America has been defined as including the elements of consideration, chance, and prize. The winners at home in national Bingo Night are determined by chance, and they receive a prize. However, since the cards are free, there does not seem to be any consideration paid by the viewer and hence there would appear to be no gambling.¹

But bingo at least in New York is different. When bingo was one of the first forms of gambling authorized for non-profit, religious, or charitable groups in many states, there was a fear that the lure of bingo could be so destructive that even free bingo games not-offered by such organizations should be banned.

¹ See generally 1978 N.J. AG LEXIS 4 (N.J. AG 1978). In New York see People v. Psallis, 12 N.Y.S.2d 796, (N.Y. Magis. Ct. 1939). There are issues in some states as to whether personal inconvenience in the time and effort taken to download the bingo cards and the time and effort taken to redeem the prizes would constitute consideration. See generally 64 A.L.R.4th 1021 (1988); 29 A.L.R.3d 888 (1970). See also Glick v. MTV Networks, Div. of Viacom Int'l, Inc., 796 F. Supp. 743, 746 (S.D.N.Y. 1992).

New York State is the one state that which to a significant extent criminalizes free bingo.² Section 495-a of the General Municipal Law makes nearly all games of “free bingo” to be a crime. Section 495-a reads:

1. For the purposes of this section, "bingo" or "game" shall mean and include a specific game or chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random, whether or not a person who participates as a player furnishes something of value for the opportunity to participate.

2. Any person, firm, partnership, association, corporation or organization holding, operating, or conducting bingo or a game is guilty of a misdemeanor, except when operating, holding or conducting:

(a) In accordance with a valid license issued pursuant to this article, or

(b) Within the confines of a home for purposes of amusement or recreation where (i) no player or other person furnishes anything of value for the opportunity to participate (ii) participation in such game does not exceed fifteen players, and (iii) the prizes awarded or to be awarded are nominal.

(c) On behalf of a bona fide organization of persons fifty-five years of age or over, commonly referred to as senior citizens, solely for the purpose of amusement and recreation of its members where (i) the organization has applied for and received an identification number from the bingo control commission, (ii) no player or other person furnishes anything of value for the opportunity to participate, (iii) the prizes awarded or to be awarded are nominal, (iv) no person other than a bona fide active member of the organization participates in the conduct of the games, and (v) no person is paid for conducting or assisting in the conduct of the game or games.

Under this law, free bingo is a crime unless the entity conducting a game has a license to conduct bingo (2.a), the game is played by 15 people or less at home for nominal prizes (2.b), or it is played at a senior citizens center which has an identification number where the game is conducted by members of the senior citizens center, and where the prizes are of nominal value (2.c)

There is no way that National Bingo Night would qualify for any of these exemptions. It does not have a valid license to conduct bingo games in New York. It is not a senior citizens center, and it is played in a television studio not at home. Even if you could construe National Bingo Night as being played at the location of the player rather than at the location of the drawing, the player could be in a location other than a home.

² According to the American Gaming Association, 47 states and the District of Columbia have authorized some form of charitable gaming. See http://www.americangaming.org/Industry/factsheets/general_info_detail.cfv?id=15 The three exceptions are Hawaii, Tennessee, and Utah. There is no legalized gaming in Hawaii and Utah. Tennessee now has a legalized lottery.

Finally, even if you could argue that the game was played only inside a home, the prizes are so substantial that you can not maintain that the game is played for nominal prizes.

As written – although not as enforced – Section 495-a has numerous absurd effects. A school or a PTA that conducts free bingo during recess or as part of pre-school or after school activities is guilty of a crime. Even assuming the game is free and involves only the most nominal prizes, the fact is that the game would be played at a location other than a home. It would be a crime. If more than 15 people gather at a party at homes and play free bingo for a prize, that is similarly a crime. The legislature in New York State has made a number of efforts to remove the draconian effects of this law, but on a number of occasions, Governor Pataki vetoed the bills.

In 1999, the legislature unanimously voted to permit all forms of free bingo. This bill (S. 1490) was vetoed by Governor Pataki.³

The Governor found that:

“The bill fails to restrict the conduct of "free bingo" to religious, charitable or non-profit entities and fails to place any limitations on the value of prizes that may be awarded. Thus, the bill would open the door to for-profit entities to conduct games in furtherance of their own commercial purposes by using the lure of unregulated prize amounts to attract patrons and customers. In this regard, the bill raises constitutional as well as public policy issues, since the Constitution expressly enjoins the Legislature ‘to pass appropriate laws ...ensur{ing} that {bingo} games are rigidly regulated to prevent commercialized gambling’”

The legislature in 2001 attempted to craft a version of free bingo that might be more acceptable to Governor Pataki. That bill (A.7310-a) was similarly passed unanimously by both houses of the legislature. Under that bill. “Free bingo is totally decriminalized in the home, and more than nominal prizes can be awarded for free bingo games played at home. Free bingo is decriminalized when played in localities which have authorized bingo when the game is conducted by an authorized organization as defined in Section 476.4 of the General Municipal Law, groups of senior citizens, and health-care facilities.”⁴

This attempt was similarly vetoed by Governor Pataki.⁵ The Governor stated:

“Similarly, the requirement that prizes be limited in value would be applicable to free bingo games conducted by eligible organizations, but not to free bingo games played in a home. Furthermore, with respect to free bingo games conducted within a home, the bill does not restrict who

³ Veto Message No. 51 of 1999

⁴ Sponsor’s Memorandum, A.7310-a (2001)

⁵ Veto Message No. 6 of 2001.

may operate the game --giving rise to the possibility that others beside a charitable or not-for-profit organization may operate the game.

Notably, without regard to the subject of licensure, the constitution expressly requires that the legislature pass appropriate laws to prevent commercialized bingo. This bill apparently permits commercial entities to operate free bingo games within homes for commercial purposes. Of course, under the constitution, commercial bingo is an activity which cannot be permitted anywhere in the State, with or without a license.”

Then, the governor in language that might reflect the National Bingo Night situation added:

In this regard, one of the bill's proponents is an out-of-state company that seeks to broadcast bingo games into the State with players using their home televisions and telephones to play, with no limit on the value of prizes to be awarded. Accordingly, it appears to be the intent of a for-profit entity to use this bill, the game of bingo, and the lure of valuable prizes to further its own commercial interests, despite the constitutional requirement that bingo games and games of chance be "rigidly regulated to prevent commercialized gambling." Moreover, because the game would be broadcast into the State over the airwaves, the game would be offered in municipalities that have not authorized bingo by local law, in apparent violation of the constitution.”

Given the governor’s thoughts that not only would a televised, free bingo game be illegal under current laws but would also present constitutional problems in New York State., how can National Bingo night be legally played by New York residents? When would there be a challenge to the receipt by a New Yorker of one of the main prizes in the game? When does an aggressive prosecutor bring criminal charges against ABC for conducting a game?

The short answer is that the in-home National Bingo game isn’t really a bingo game. It is a sweepstakes much like any offering where you enter a contest for free and win a prize as a result of a random act such as a drawing. No skills are required.⁶

The official rules of National Bingo call the in-home game a “home viewer sweepstakes.”⁷ Since the studio bingo game has already been prerecorded, the winning numbers are already known. A discrete number of winning tickets/bingo cards are issued based on these winners and circulated via the Internet to at-home entrants. The rules specifically state:

“Unlike bingo, where selected numbers are drawn live before an audience of players who have purchased or otherwise obtained randomized cards, in this Sweepstakes the relevant numbers are known to Sponsor ahead of time, due to the nature of the

⁶ See generally <http://www.onedegree.ca/2005/04/06/contests-sweepstakes-coupons-and-other-online-acquisition-tools>

⁷ <http://abc.go.com/primetime/nationalbingonight/index?pn=officialrules>

recording schedule of the Show. Based upon the numbers drawn during prior in-studio tapings of the Show, Sponsor then randomly distributes a specific, predetermined number of potentially winning Sweepstakes ‘Game Cards.’ The specific prizes and number of potentially winning Game Cards for each week’s Sweepstakes will be published ahead of time on the Sweepstakes Web Site; the disclosures on the Sweepstakes Web Site being made a part of these Official Rules and incorporated herein by reference.”⁸

So it is not bingo at all. The game is no different than any prize game played at MacDonald’s of issued by Kellogg’s cereals. It is the equivalent of a free instant lottery ticket. There are already a pre-determined number of winners, and the at-home contestants compete among themselves for these winning tickets.

The question should be whether this would be sufficient so that a court reviewing New York law would find that the game is not criminal bingo but constitutes a sweepstakes. ⁹The definition of criminal bingo in New York is furnished by Section 495-a.1 of the General Municipal Law. Bingo under this provision means “a specific game or chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random, whether or not a person who participates as a player furnishes something of value for the opportunity to participate.”¹⁰

The greater likelihood is that the in-home game is not bingo. While prizes may appear to be based on selected numbers and symbols, the fact is this is simply an ordinary prize drawing. The numbers have already been drawn, and the distribution of the winning numbers has been made on a random basis. While made out to be bingo, this is a sweepstakes in bingo clothing. Under a close analysis, this game should not be considered bingo in New York, and should not be illegal under the provisions of the General Municipal Law.

The game promoters further protect themselves by noting that the game is “void in Guam, Puerto Rico, U.S. Virgin Islands and other U.S. territories, and where prohibited or restricted by law.”¹¹ Thus, in those jurisdictions which find that the effort made to download and redeem winning tickets would constitute consideration, the game would be an illegal lottery.¹²

In New York, the game should be legal. It is neither bingo nor an illegal lottery under New York Law.¹³

⁸ Id.

⁹ Most sweepstakes in new York are governed by Section 369-3 of the General Business Law governing the use of games of chance in selling commodities.

¹⁰ This is basically similar to the general definition of bingo under Article 14-H of the General Municipal Law. Bingo under Section 476.3 of the General Municipal Law means “a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random.”

¹¹ See note 7 supra.

¹² See cases in note 1 supra.

¹³ Id.