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SUPREME COURT OF FLORIDA

DEPARTMENT OF LEGAL AFFAIRS,

Petitioner,

vs.

BRADENTON GROUP, INC.,  
et al

Respondents.

CASE NO.: 91,712 ✓

CASE NO.: 92,084 ✓

BRADENTON GROUP, INC.,  
et al

Petitioners,

District Court of Appeal,  
5th District - Nos. 96-2661  
96-2979

vs.

DEPARTMENT OF LEGAL AFFAIRS,

Respondent.

APPEAL FROM FIFTH DISTRICT  
COURT OF APPEALS

AMICUS CURIAE BRIEF  
SUNSHINE STATE BINGO ASSOCIATION INC.

✓  
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PRELIMINARY STATEMENT

This Brief is being filed in support of Bradenton Group, Inc. and Eight Hundred, Inc. position that alleged violations of the Bingo Law are not racketeering activities and are not subject to the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. The Defendants, Bradenton Group, Inc. and Eight Hundred, Inc. shall be referred to in this Brief as, "Respondents". The State of Florida Department of Legal Affairs shall be referred to in this Brief as, "State". Sunshine State Bingo Association, Inc. shall be referred to in this Brief as, "SSBA".

## STATEMENT OF THE CASE AND FACTS

The case, giving rise to the certified question, began when the State filed a civil lawsuit against multiple defendants. In the complaint, the State alleged RICO violations and obtained an ex-parte injunction, in effect, seizing property belonging to many of the defendants. The Respondents were two of the multiple defendants joined in the civil lawsuit. The Respondents filed a motion seeking to dissolve the injunction and a moved the trial court for an order requiring the State to post a bond as a condition of the injunction. The trial court denied the Respondent's motion to dissolve, however required the State to post a bond. The Respondent and the State each appealed the trial court order. The Respondents appealed that portion of the trial court's order denying the motion to dissolve the injunction. The State appealed that portion of the trial court's order requiring the State to post a bond. After affirming the trial court, the Fifth District Court of Appeal certified the pending issue as a question of great importance.

SSBA adopts the facts, set forth by Chief Judge Griffin, in the introduction to the Fifth District's Appellate Opinion. Chief Judge Griffin stated the pertinent facts as follows,

"...The Defendants are for-profit Florida corporations who own or operate a number of properties throughout central Florida at which bingo is or was conducted. In November, 1995, the state filed in the Orange County circuit court a civil complaint against the defendants and several other corporations and individuals. The complaint sought relief under civil RICO based on alleged violations of section 895.03, Florida Statutes (1995). The RICO violations were based on some fifty-four alleged predicate acts, all consisting of violations of the lottery statute. The complaint sought forfeiture pursuant to subsection 895.05(2) of two parcels of real property, one located in Pinellas County and the other in Manatee County, as well

as personal property, namely money, and other unknown property derived from proceeds gained from the defendant's alleged criminal activities. At the same time, the state also initiated a companion criminal case against the defendants based on the same alleged RICO violations, the result of an indictment by a statewide grand jury..." Bradenton Group, Inc. and Eight Hundred, Inc. v. Department of Legal Affairs, State of Florida 22Fla.L.Weekly D 2320 (Fla.5DCA October 3, 1997)

Trial is set, in the companion criminal case, to begin on May 11, 1998. The legal issue pending, in the companion criminal case, is almost identical to the issue certified as a question of great importance. The Honorable Clarence Johnson (Retired) sits as trial judge in the companion criminal case.



### SUMMARY OF ARGUMENT

The Bingo law, Florida Statute §849.0931(1992), (formerly numbered §849.093(1984)) was created as an exception to the absolute prohibition against lotteries set forth in Florida Statutes 849.09. A violation of the Bingo law is not a violation of the lottery statute. Any alleged violations of the Bingo law cannot form the basis, (through the Lottery statute), of predicate acts, required under Florida Statute, Chapter 895 (1977), Florida RICO (Racketeer Influenced and Corrupt Organization) Act.

## ISSUE

Whether a bingo game, conducted by an organization not authorized under Section 849.0931, Florida Statutes, or conducted by an authorized organization in violation of Sections 849.0931(5)-(12), Florida Statutes, constitutes a "lottery" as that term is used in Section 849.09, Florida Statutes, and thus, is racketeering activity which is subject to Florida RICO.

## INTRODUCTION

As an introduction, SSBA believes, it would be helpful to the court if this brief begin by detailing, the two (2) basic types of bingo halls that exist in the State of Florida.

The first type of bingo hall is operated by a charity, in a building, owned by the charity conducting the bingo games. These charities are commonly referred to as "have" charities because they "have" the financial resources necessary to own the physical facility and to conduct bingo games. The bingo games are conducted, in the same facility, used by the "have" charities, for their functions or rented out by the "have" charities for weddings, banquets, activities or other fund raising events. These bingo halls are usually open two (2) days per week. The "have" charity can legally conduct one (1) bingo session per day, two(2) days per week in their building.

The second type of bingo hall is operated, in a building leased from a single landlord to various charities. This landlord rents a retail location (like a vacant store) from a landowner, builds out the location, furnishes the premises, equips the location, advertises, and then subleases the complete facility to the various charities along with all of the other items necessary for each charity to run bingo games. The charities, which conduct bingo, in this second type of bingo hall, are generally small charities which

do not have independent financial resources, which cannot afford their own building and/or which cannot afford the recurring fixed expenses associated with owning a building. These charities are commonly referred to as "have not" charities. The "have not" charities pay the landlord a preset rent per session to occupy the bingo hall. This type of bingo hall is referred to by the State as a "commercial bingo hall". It is called "commercial" because it is usually a "commercial enterprise" or "for profit corporation" that lends its creditworthiness to secure the retail space for the bingo hall; that invests (sometimes) in excess of one hundred thousand (\$100,000.00) dollars to construct the bingo hall; that invests to purchase the furnishings and equipment necessary to the operation of bingo games; that provides janitorial services, electric, air conditioning, plumbing, water, sewer, trash removal, security, maintenance, smoke control, supplies, telephone, printing, advertising, insurance, fire protection and other property management services; and that suffers the economic loss, if the bingo hall, is not successful in generating bingo players.

Both the "have" and "have not" charities open their respective bingo halls, to the general public. Both the "have" charities and the "commercial bingo halls" can operate under the provisions of Florida Statute §849.0931 (1992). Both the "have" and "have not" charities conduct bingo games though the use of volunteers, who are bona fide members of the charities. Florida Statute §849.0931 (1992) specifically allows for the existence of a "commercial bingo hall". This categorical statement is supported by the fact that, in 1984, the Legislature removed limiting language, from Florida Statutes §849.093, prohibiting a "commercial bingo hall", and replaced that

language, with language, permitting the creation of a "commercial bingo hall", to wit, the language in the 1983 version of Florida Statute §849.093, "Bingo games may be held only on the following premises ... (c) property leased full time for a period of not less than 1 year by the nonprofit organization or by the charity or organization that will benefit by the proceeds" was replaced in the 1984 version of Florida Statute §849.093 with "Bingo games may be held only on the following premises ... (c) property leased for a period of not less than 1 year by a charitable, nonprofit, or veterans' organization, providing the lease or rental agreement does not provide for the payment of a percentage of the proceeds generated at such premises to the lessor or any other party and providing the rental rate for such premises does not exceed the rental rates charged for similar premises in the same locale".

Simply, the "commercial bingo hall" is for all practical purposes a "turn-key bingo hall" for the "have not" charities to conduct bingo. The "commercial bingo hall" exists because it is profitable to provide the "have not" charities with the facilities necessary for them to compete with the "have" charities in raising funds, through conducting bingo games. In a "commercial bingo hall" generally, more than one (1) charity conducts bingo on any given day. Each charity conducts no more than three (3) jackpots during its session. The "commercial bingo hall" bingo is generally operated six (6) or seven (7) days per week. The Attorney General's Office has indeed, though reluctantly, recognized the right to act as a commercial landlord and to participate in the conduct of bingo. Op. Att'y Gen. Fla. 95-69 (Gambling - Lotteries - Bingo - Charitable Organizations - Nonprofit Corporations); Op. Att'y Gen. Fla. 95-21

(Gambling - Lotteries - Nonprofit or Charitable Organizations); Op.Att'y Gen. Fla.92-91 (Bingo); Op.Att'y Gen. Fla.94-07 (Gambling - Lotteries - Nonprofit Corporations - Recreational Vehicles); State v. South County Jewish Federation, 491 So.2d 1183 (Fla.4DCA 1986).

#### ARGUMENT

The Legislature of the State of Florida never intended a violation of the Bingo law to form the basis of a predicate act under the provisions of Florida Statute Chapter 895 Florida Racketeer Influenced and Corrupt Organization Act (through the Lottery Statute, Florida Statute §849.09). This is evident from the history and the terminology used by the Legislature.

The history of the gambling-lottery-bingo statutes applicable to the case at bar, is as follows,

- a. **1885** - The State of Florida adopts its initial constitution and sets forth in Article III, Section 23 a prohibition against all lotteries. This provision of the constitution states, **"Lotteries - Lotteries are hereby prohibited in this State."**
- b. **1895** - The Legislature of the State of Florida adopts a statutory codification of the prohibition against lotteries contained in the 1885 constitution. **This statutory provision is titled, "849.09 Lottery prohibited.-"**
- c. **1967** - The Legislature of the State of Florida through Chapter 67-178 Senate Bill No. 3 added a new provision to Florida Statute Chapter 849, Gambling, authorizing "bingo or guest games" to be conducted in the State of Florida. (Note: See Journal of Senate, May 4, 1967, at Page 260 in which dissenting arguments made by Senator Gong and Senator Stone, impute that the adoption of the bingo statute is an exception or a violation of the constitutional lottery prohibition).

- d. 1967 - The Legislature of the State of Florida through Chapter 67-72, Senate Bill No. 189, and Chapter 67-435, Senate Bill No. 1760 adopts amendments to Florida Statute §849.09 recognizing that "Exceptions" exist to the prohibition against lotteries. The Legislature amended the title of Florida Statute §849.09 to read, **"Lottery prohibited - exceptions."**
- e. 1968 - The State of Florida revises its constitution. The 1885 version of the lottery prohibition becomes qualified in the State of Florida. Article X, Section 7 reads, **"Lotteries - Lotteries, other than the types of parimutuel pools authorized by law as of the effective date of this Constitution are hereby prohibited in this state."**
- f. 1969 - The Legislature of the State of Florida through Chapter 69-91, House Bill No. 202 adopts additional amendments to Florida Statute §849.09 recognizing that exceptions exist to the prohibition against lotteries. The Legislature amended Florida Statute §849.09 to include, **"Provided that the provisions of this Section shall not apply to bingo or guest games as provided for in Section 849.093"**.
- g. 1977 - The Legislature of the State of Florida through Chapter 77-334, House Bill No. 2127 adopts Florida Statute 943.46 (1977) known as the Florida RICO (Racketeer Influence and Corrupt) Act now Chapter 895. In adopting same, the Legislature recognizes the ill of certain recurring violations of Florida law. The Legislature specifically defines by reference, the criminal acts subject to its penal provisions. **Included are specific references to certain provisions of Florida Statute Chapter 849 to wit, §849.09, §849.14 (1971), §849.15 (1937), §849.23 (1971), or §849.25 (1975); not all of the provisions of Florida Statute Chapter 849.**
- h. 1984 - The Legislature of the State of

Florida through Chapter 84-247, House Bill 210 amended Florida Statute §849.093 to recognized the right of any organization within the State of Florida to conduct bingo by amending the language of §849.093(3) and recognized the existence of a "commercial bingo hall" by amending the language of §849.093(10)(c). These significant amendments expanded the conduct of bingo games by removing from the statute the limiting word, "nonprofit" and by adding the authority to lease commercial space to charitable, nonprofit or veterans organizations.

- i. 1992 - The Legislature of the State of Florida through Chapter 92-280 Senate Bill 150-H reenacted the provisions of Florida Statute §849.093 and when doing so, renumbered the provisions as Florida Statute §849.0931. When reenacting §849.093 the Legislature also specifically amended §849.09 to again reference the exception for bingo. The provisions of Florida Statute §849.093, since 1984, are the same as the provisions of Florida Statute §849.0931, as of the date of the civil lawsuit.

When a court is requested to interpret the meaning of any word or phrase of a statute, the Supreme Court stated that the court must examine the word or phrase in the context in which it is used; the court must consider both the common and the technical meaning of the word or phrase; and the court must consider the sense of its use. City of Tampa v. Thatcher Glass Corp., 445 So.2d 578 (Fla.1984). When a court is requested to interpret the nature of a statute, the Supreme Court stated that the court must give effect to the intention of the Legislature as expressed in the statute. Deltona Corporation v. Florida Public Service Com'n, 220 So.2d 905 (Fla.1969) Justice Atkins stated,

..."It is a cardinal rule that a statute should be construed so as to ascertain and give effect to the intention of the Legislature as expressed in the statute...It is a familiar rule of statutory construction that a statute should be so construed and applied as to give effect to the evident legislative intent, even if the result seems contradictory to rules of construction and the strict letter of the statute. \* \* \* In construing a statute, the legislative intent should be gleaned from the language of the statute, the subject sought to be regulated, the purpose to be accomplished, and the means adopted for accomplishing the purpose. \* \* \* Where there is ambiguity and uncertainty in the meaning to be given the words employed in a statute, or where the context of a statute taken literally conflicts with a plain legislative intent clearly discernible, the context must yield to the legislative purpose, for otherwise the intent of the lawmakers would be defeated." page 907; Citing from Beebe v. Richardson, 156 Fla.559, 23 So.2d 718 (Fla. 1945)

In Thayer v. State, 335 So.2d 815 (Fla.1976) Justice Boyd stated it is a general principal of statutory construction that the meaning of one thing implies the exclusion of another and that a statute is to be ordinarily construed as excluding from its operation all those things not expressly mentioned therein, i.e., *expressio unius est exclusio alterius*. Justice Boyd also stated that statutes are intended to operate prospectively unless the intent is clear that it is to operate retrospectively. 30 Fla.Jur,2d Statutes, §151. It is clear from a reading, of both Florida Statute §849.09 and §849.0931, when read side by side, that the activities, within each, are mutually exclusive of the other, i.e., any organization conducting bingo can never comply with the mandates of the lottery statute, Florida Statute §849.09 because of the absolute language used within the lottery statute.

The Legislature, when it adopted Florida Statute §849.093 (the



predecessor of Florida Statute §849.0931) intended to create an exception to Florida Statute §849.09. It is clear that an exception was created because of the dissent set forth in the Journal of the Senate at the time the bingo statute was passed by the Legislature. It is clear that an exception was created because the numbering of the bingo statute falls after the lottery statute, to wit, compare Florida Statute §849.09 to Florida Statute §849.0931. It is clear that an exception was created because Florida Statute §849.093 was passed after Florida Statute §849.09 went into effect. It is clear that an exception was created because the title of the Florida Statute §849.09 was amended in 1967 to include the word, "exceptions". It is clear that an exception was created because Florida Statute §849.09(3) include, the words, "the provisions of this section shall not apply to bingo or guest games as provided for in §849.093." It becomes crystal clear that an exception was created because the Legislature added a penal provision to Florida Statute §849.093 which stated, "any organization or other person who willfully and knowingly violates..." It becomes crystal clear that an exception was created because in 1984, the Legislature made amendments to Florida Statute §849.093 specifically authorizing any organization within the State of Florida the right to conduct bingo. It becomes crystal clear that an exception was created because in 1984 the Legislature made amendments to Florida Statute §849.093 specifically authorizing for profit corporations to lease premises to charities. It becomes crystal clear that an exception was created because the 1984 legislative amendment made any organization conducting bingo automatically in violation of the lottery statute. It becomes crystal clear that an exception was created because the

elements of proof necessary to convict on the basis of a violation of the lottery statute, Florida Statute §849.09 are less stringent than the elements of proof necessary to convict on the basis of a violation of the bingo statute, Florida Statutes §849.0931.

Logic, as well as the law dictates, that the Legislature knew exactly what it intended to say when it drafted the description of the exemptions to the Lottery statute, Florida Statute §849.09. In Florida Statute §849.09(3) the Legislature used the specific words, "The provisions of this section do not apply to bingo as provided for in s.849.031." The key word in this portion of Florida Statute §849.09 is word, "section" (Note, also the word, "Subsection" is used to describe "(1)" within this portion of the statute) In fact, the entire body of law known as the Florida Statutes, describes in the preface, the methodology for denoting individual provisions within a statute. The Continuous Revision System for the entire body of general law known as Florida Statutes, states,

... Numbering system. - After the chapters of the Florida Statutes are arranged by subject matter, each is assigned a whole number. Each section within a chapter is identified by a whole decimal number consisting of the chapter number followed by digits appearing to the right of the decimal point. For example, "s.16.01" would identify a section in chapter 16 of the Florida Statutes. Various designations thus indicate the hierarchical arrangement of textual subdivisions. Chapters are identified by whole Arabic numbers; sections, by numbers containing a decimal point; subsections, by whole Arabic numbers enclosed by parentheses; paragraphs, by lowercase letters enclosed by parentheses; subparagraphs, by whole Arabic numbers followed by a period; and sub-subparagraphs, by lowercase letters followed by a period...

If the Legislature had not intended bingo to be exempt from the entire Lottery statute, then the terminology used by the Legislature,

when Florida Statute §849.09(3) was drafted, would have either been omitted or would have been worded, "The provisions of this subsection do not apply to bingo as provided for in s.849.0931." It becomes crystal clear that an exception was created, because of the Legislature's use of the word, "section", instead of the word, "subsection". See, also State v. Parsons, 569 So.2d 437 (Fla. 1990), in which Justice Kogan, compared two statutes. One statute was a specific grant of authority and the other statute was a general grant of authority. In the Supreme Court's reversal of a Third District Court of Appeal ruling, divesting the Marine patrol of the power to give traffic tickets, Justice Kogan opined that the specific statute must give way to the general statute. Here also, the general prohibition against lotteries must give way to the specific exception of the Bingo law. The Bingo law, through its reading gives everyone the right to conduct bingo, it only penalizes the method of play and use of funds. The Florida Statute 849.09, on the other hand, through its reading, (if it did not include the exception for bingo), prohibits bingo in the entirety and the use of any funds generated by bingo.

The State would have this Court believe that a violation of Florida Statute §849.0931 amounts to a violation of Florida Statute §849.09 because the Respondents do not fall within the class of an "authorized organizations" permitted to conduct bingo. The State would have this court believe that only qualified organizations are permitted to conduct bingo in the State of Florida. This is absolutely false. Florida Statute §849.0931 does not contain such a restriction. Florida Statute §849.0931 (3) provides that

it specifically authorizes any organization to conduct bingo within the State of Florida. Florida Statute §849.0931 does not limit the right to conduct bingo, it only governs the permitted use of the funds collected as a result of operating bingo games. The lottery statute, Florida Statute §849.09, on the other hand, prohibits the use of any money generated as a result of a lottery or bingo game. (Note: See Florida Statute §849.0931(2)(a) which authorizes certain charitable or nonprofit veterans organizations to conduct bingo; See Florida Statute §849.0931(3) which authorizes any organization not engaged in charitable, civic, community, benevolent, religious, or scholastic works or similar endeavors to conduct bingo; See Florida Statute §849.0931(4) which authorizes condominium associations, mobile home associations, groups of residents of mobile home parks, and groups of residents of recreational vehicle parks to conduct bingo). In fact, in order to give credence to the State's argument, one would have to ignore the provisions of Florida Statute §849.0931(3). In fact, in order to give credence to the State's argument, one would have to ignore the provisions of Florida Statute §849.0931(3) authorizing prizes to be paid at the conclusion of each bingo game.

In arguing the point that the Lottery statute limits the conduct of bingo, the State will rely heavily upon various cases under which individuals were charged with violations of operating a "gambling house" based upon violations of Florida Statute §849.093. All of these cases predate Florida Statute §849.0931, in effect at the time of State's civil lawsuit. Madar v. State, 376 So.2d 446 (Fla.4DCA 1979), Pearlman v. State, 269 So.2d 385 (Fla.4DCA 1972), Paskin v.

State Ex Rel, Salcines, 390 So.2d 1198 (Fla.2DCA 1980), Carroll v. State, 361 So.2d 144 (Fla.1978) and Caldwell v. State, 402 So.2d 1260 (Fla.3DCA 1981). The cases upon which the State relies are totally inapplicable to the case at bar. In 1984, the Legislature removed limiting words from Florida Statute §849.093(3), to wit, "Not for Profit", when referring to the types of organizations which are permitted to conduct bingo games. In 1984, the Legislature of the state of Florida, changed the language of Florida Statute §849.093(3) to recognize every organization's right to conduct bingo games. The 1984 legislative amendments changed Florida Statute §849.093 in such a manner to further set bingo apart and exclude it from the general provisions of Florida Statute §849.09. (Note: The portion of the bingo law under which Mr. Madar, Mr. Pearlman, Mr. Paskin, Mr. Carroll and Mr. Caldwell were charged was deleted as a result of the 1984 legislative amendments).

The State would also argue that the RICO Statute incorporates any violations of the bingo law because a violation of the bingo law is also a violation of Florida Statute §849.09. This argument flies in the face of statutory interpretation. A review of the RICO Statute in its entirety, reveals that of the thirty six (36) separate categories of crimes are set forth therein, sixteen (16) refer to specific sections of the Florida Statutes and twenty (20) refer to specific chapters of the Florida Statutes. If the Legislature of the State of Florida had intended bingo violations to be included within the RICO Statute, then clearly the Legislature would have enumerated, "§849.0931", in the RICO Statute. While bingo is recognized as a form of lottery, the courts of this state have

recognized the exclusion of certain overlapping criminal activity from the RICO Statute. State v. Sun City Oil Co., Inc., 522 So.2d 474 (Fla.5DCA 1988), State v. Kessler, 646 So.2d 251 (Fla.4DCA 1993).

A review of the RICO Statute reflects that Florida Statute §895.02 (1977) enumerates specific provisions "relating to gambling", to wit, §849.09 - Lottery; §849.14 (1971) - Unlawful to Bet on Trial or Contest of Skill; §849.15 (1937) - Manufacture, Sale, Possession of Coin Operated Devices; §849.23 (1971) - Penalties; and §849.25 (1975) - Bookmaking. A review of Chapter 849, in total, reflects additional provisions prohibiting other gambling acts which were not included in Florida Statute §895.02 (1977), to wit, §849.01 - Prohibiting keeping of a gambling house; §849.02 - Prohibiting agents from keeping a gambling house; §849.03 - Prohibiting renting a gambling house; §849.04 - Prohibiting minors from gambling; §849.08 - Prohibiting gambling; §849.085 - Prohibiting certain poker games; §849.091 - Prohibiting chain letters; §849.0935 - Prohibiting certain drawings; and §849.11 - Prohibiting games of chance by lot. **If the Legislature had intended all of the provisions of Florida Statute Chapter 849 to be included within the RICO Act, it would have referenced "Chapter 849" as opposed to referencing specific statutory sections. The exclusion of one implies the exclusion of all other provisions not expressly mentioned therein i.e., *expressio unius est exclusio alterius*.**

In a prior action, brought by the Seminole Tribe against Robert Butterworth, then the sheriff of Broward County, the Seminole Tribe sought to defend its position that bingo was an exception to the Florida Statute §849.09 (and thus, permitted under the law governing

Indian tribes). The Seminole Tribe sued, then Sheriff Butterworth, because Sheriff Butterworth threatened to arrest all those who sought to participate in bingo, claiming the authority to do so through Florida Statute §849.09. Robert Butterworth, then Sheriff of Broward County claimed, Florida Statute §849.09 prohibited the conduct of bingo, as proposed by the Seminole Tribe. The Seminole Tribe brought its action in Federal Court in order to prevent the arrest of all those involved in the opening of Seminole Bingo. In that action, (though the issues pivoted upon whether bingo was civil/regulatory versus criminal/prohibited), the Fifth Circuit Court of Appeals was faced with interpreting the legislative intent of the Bingo law when compared to the prohibitions against lotteries as contained in Florida Statute 849.09. The Federal Appellate Court specifically recognized bingo as an exception to Florida Statute §849.09. Circuit Judge Morgan opined, based upon similar arguments,

"...Furthermore, we note that the statute in question, Fla. Stat. § 849.093, makes no reference to violations of its restrictions by the players of bingo. Sheriff Butterworth suggests that several general lottery prohibition statutes, such as Fla. Stat. §§ 849.09, 849.09(1)(b), and 849.09(2), permit the arrest of bingo players as players of illegal lotteries; however we refuse to recognize in one breath that bingo is excluded from the general lottery prohibition and in the next permit the arrest of bingo players as players of illegal lotteries. The statutes cited must be considered in pari materia with the bingo statute permitting the operation of bingo games. The bingo statute does not prohibit the playing of bingo games in violation of its restrictions, and if the legislature of the State of Florida desires to prohibit such, then it must act accordingly.

Thus, the Federal courts have recognized that bingo is an

exception to the prohibition against lotteries.

The State's argument, if taken to its limit, implies that each and every bingo operation, including those bingo games played in an preschool school for bubble gum, are violations of the state's lottery statute. The State's argument, if taken to its limit, implies that two (2) or more bingo games played in an preschool school, including games played for bubble gum, forms the basis to indict the principal of the elementary school for violations of Florida RICO (Racketeer Influenced and Corrupt Organization) Act.

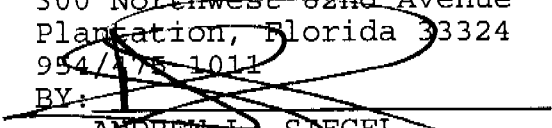
#### CONCLUSION

The civil lawsuit and companion criminal action were brought by the Attorney General's Office because the Attorney's Generals Office has been unable to successfully convince a majority of the Legislature in Tallahassee, to pass laws to eliminate the ills the Attorney General's Office desires eliminated in this state. The civil lawsuit and companion criminal action are classic examples of an executive branch of the government's attempt to support its desires and avoid the mandates of legislative decree. The legislature created bingo as a permitted lottery. The legislature created bingo as an exception to the many other laws outlawing other forms of gaming. The Attorney General's Office, is trying to twist its way around the exception created by the Legislature through the use of the provisions of Florida RICO (Racketeer Influence and Corrupt Organization) Act.

For all the reasons above, the Respondents respectfully state that any violation of Florida Statute §849.0931 is not a violation of Florida Statute §849.09, and does not fall within the boundaries

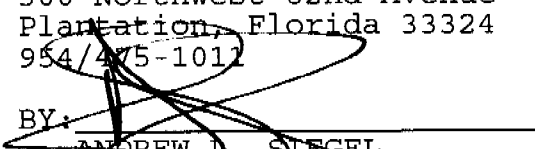


of Florida Statute Chapter 895 Florida RICO (Racketeering Influenced and Corrupt Organization) Act. When read together, Florida Statute §849.09 and Florida Statute §849.0931 are mutually exclusive of the other.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. mail Thomas F. Egan, 204 Park Lake Street, Orlando, Florida 32803; Steven G. Mason, 1643 Hillcrest Street, Orlando, Florida 32803; Jacqueline H. Dowd, Office of the Attorney General, 28 West Central Boulevard, Suite 310, Empire Building, Orlando, Florida 32801; Paul Olson, 1776 Ringling Boulevard, Sarasota, Florida 34236-6836; James M. Russ, Esq., 18 West Pine Street, Orlando, Florida 32801-2697 and Eddie A. Suarez, Esq., 606 Madison Street, Suite 2001, Tampa, Florida 33602 the 26 day of January, 1998.

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