

OA 3-6-98

FILED

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IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

By _____
Chief Deputy Clerk

BRADENTON GROUP, INC., et al.,

Petitioner,

CASE NOS.: 91,712 & 92,084
CONSOLIDATED

v.

DISTRICT COURT OF APPEAL
FIFTH DISTRICT - NO. 96-02661

DEPARTMENT OF LEGAL AFFAIRS,

Respondent.

* * * * *

ON APPEAL FROM THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR ORANGE COUNTY, FLORIDA
HONORABLE R. JAMES STROKER

* * * * *

PETITIONERS', BRADENTON GROUP, INC. et al.,
REPLY ON THE MERITS CASE NO.: 92,084

THOMAS F. EGAN, P.A.
204 Park Lake Street
Orlando, FL 32803
407-849-1055

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ARGUMENT

I.

THE ATTORNEY GENERAL STILL HAS NOT ANSWERED
THE CERTIFIED QUESTION.

In its very abbreviated Answer Brief, the Attorney General adopted its Initial Brief filed in Case No. 91,712 as its Answer Brief and raises some objections to the separate appeals. That is not an answer to these Corporate Defendants Initial Brief. The reason for this is that the Attorney General still has not answered the certified and important issues before this Court and the courts below.

The most important questions that were not addressed by the Attorney General was the issue that was certified by the Fifth District Court of Appeal. That question is as follows,

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.

(R126-147).

The position of these Corporate Defendants is that if someone, or some organization violates §849.0931, Fla.Stat. it violates the provisions of that statute. That is it.

In this case, there are collateral questions, given the facts. If a charitable organization, for example, fails to keep an office within the county where it conducts bingo or has not been in existence for more than three years, in violation of §849.0931(2)(a), is it thereby violating the lottery statute or the

bingo statute? The more important question as to these Corporate Defendants is whether a landlord, who rents his/her hall to a charity, which is in violation of any provisions of §849.0931, is in violation of §849.09, and is thereby committing racketeering? In short, can violations of its provisions of §849.0931, by persons, organizations, qualified or not, be equated to violations of lottery and therefore racketeering?

These Corporate Defendants take the position that such things as overcharging for rent, supplies, or coffee can be construed as violations of §849.0931(2)(a), Fla.Stat. dealing with reasonable and essential expenses. These alleged violations cannot thereby become an illegal lottery and therefore Racketeering. The Fifth District Court of Appeal in its opinion below, held the same position. (See pg.6, Opinion). The Attorney General takes the position in its Initial Brief that this equation is the law. Their position has not changed.

Nowhere in its Initial Brief is this issue addressed. The State Attorney General has waffled and has refused to take a clear position on this issue since entry of the affirmation by the Second District Court of Appeal in State v 959 Hall for Hire, Inc., 689 So.2d 1080, (Fla. 2nd DCA 1997). The problem with avoiding this issue is that these Corporate Defendants are presently facing one civil trial and two criminal trials in three different courts in Central Florida. At present, the courts and the parties are unclear as to what evidence can or will be used to prove violations of the lottery statute, and therefore, racketeering against these

people. From their Statement of Facts in the Initial Brief, it appears, the Attorney General is still equating violations of §849.0931 with the lottery statute, §849.09.

Allegations in the complaint are charges. Trials, however, involve proof of facts. There is no issue as to what or how the complaint and information charges these people. The issue here is what "facts" will be used to prove they violated the lottery statute. These Corporate Defendants and the Fifth District Court of Appeal takes the position that violations of the bingo statute cannot be used to prove violations of the lottery statute and therefore racketeering.

The Attorney General has yet to answer these questions in this Court.

II.

THE FLORIDA DEPARTMENT OF BUSINESS REGULATION DOES NOT ISSUE LICENSES FOR THE CONDUCT OF BINGO.

As stated in its Initial Brief, these Corporate Defendants had stated that §849.0931, Fla.Stat. was intended by Florida Legislature to be a comprehensive regulatory system for bingo both in commercial halls for hire and in other halls. That remains an accurate statement, at least as reflected in the legislative history of that statute. In its Answer Brief, the Attorney General states that the Florida Department of Professional Regulation does not issue licenses for such bingo halls. That statement is also correct. The statement in the Initial Brief of the Corporate Defendants to the contrary is incorrect.

As shown in the Legislative history of §849.0931, Florida Legislature, both the House of Representatives, as well as the Florida Senate, intended that the statute would solve the problem of statewide regulation of bingo here in Florida. In its Initial Brief, copies of some of that history are included.

After the House version of HB 685 went to the Senate, it was amended and its apparent final revision was summarized in the report, "Senate Staff Analysis and Economic Impact Statement", dated April 19, 1991. (App/S). As evident in all the Legislative History, the Florida legislature intended that there be regulation and licensing by the State of Florida of all bingo halls in Florida, both fraternal and halls for hire. Apparently, but not evident in the legislative history, the enabling legislation was not enacted for the Florida Department of Business Regulation. All the amendments proposed to the bill in both houses did not alter that legislative intent to establish a uniform statewide regulated system. (App/T).

At present, all bingo halls in Florida, fraternal, halls for hire, or religious, are licensed. The licensing and permitting, however, is done through occupational and business licenses, issued by county and city agencies. In addition, because charities and non-profit organizations are conducting the games, Florida Department of Revenue and the Florida's Secretary of State, control revenue, sales tax licenses, sale tax exemptions, as well as authority to conduct business granted by the Secretary of State.

The point, nonetheless, remains that if there is or was a


problem with any of these halls, State and local authorities have all sorts of ways to prevent violations or prevent these halls from operating. There is more at issue here. The Attorney General cites four examples of this "racketeering" activity in its Statement of the Case, (AG Brief pgs. xii-xiii). Two of them are charging a high rent, in the opinion of the Attorney General, and \$.75 for a cup of coffee. The real problem here is that there is not a single Sheriff in Florida who would go in and arrest someone for charging \$.75 for coffee or charging \$2.00 for a meal that only cost \$.75 to make. If they did they would not charge them with conducting a lottery or racketeering. These may be some kind of technical violations of the bingo statute, but they certainly do not look like running a lottery or behaving like a racketeer. Someone on the street probably would not know these things were even crimes.

Respectfully submitted this 13th day of February, 1998 at Orlando, Orange County, Florida.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via U.S. mail, this 16th of February, 1998, to JACQUELINE DOWD, ESQUIRE, Office of the Attorney General, 28 W. Central Blvd., Suite 310, Orlando, FL 32801; to OFFICE OF THE STATEWIDE PROSECUTOR, 28 West Central Boulevard, Suite 300, Orlando, FL 32801; to ANDREW L. SIEGEL, ESQUIRE, Executive Pavilion, Suite 412, 300 N.W. 82nd Avenue, Plantation, FL 33324; to PAUL OLSON, ESQUIRE,

1776 Ringling Blvd., Sarasota, FL 34236-6836; to STEVEN G. MASON, ESQUIRE, 1643 Hillcrest St., Orlando, FL 32803; with the original and seven copies being filed via Federal Express this 13th day of February, 1998, with the CLERK OF THE SUPREME COURT, Supreme Court of Florida, 500 South Duval Street, Tallahassee, FL 32399-1927.



THOMAS F. EGAN, ESQUIRE
Florida Bar #569895
204 Park Lake Street
Orlando, FL 32803
(407) 849-1055
Attorney for Petitioners