

January 19, 1988

REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
AMENDING THE MUNICIPAL CODE RELATING TO ELECTRONIC BINGO
BACKGROUND

On September 17, 1986, a proposed ordinance was presented to the Public Services and Safety committee which would amend Chapter III, Article 3, Division 34 of the Municipal Code. The amendment would, among other things, prohibit the use of "player operated computerized, electronically or mechanically operated machines or devices for the purpose of playing bingo."

During public comment at this meeting, Selectro-Vision Ltd., a local manufacturer of electronic bingo equipment, made a presentation objecting to the Manager's Report regarding the prohibition of electronic bingo. As a result of the presentation, the Committee requested the San Diego Data Processing Corporation (SDDPC) to examine the Selectro-Vision device and to render an opinion as to its integrity. On October 8, 1986 SDDPC indicated by memo that the device could be tampered with. In addition, the Committee gave direction to the Police Department and SDDPC to examine the feasibility of a 128 day test program to evaluate the electronic bingo system.

At the meeting of November 19, 1986 the Committee requested the City Attorney to seek a legal opinion from the Attorney General on "electronic bingo" vis-a-vis Penal Code section 326.5. An opinion was requested on January 6, 1987, returned for local legal analysis and resubmitted. On December 21, 1987 the Attorney General issued Opinion No. 87-701 in response to the request, a copy of which is forwarded as Attachment 1.

ACTION

The opinion of the Attorney General is in complete agreement with the position of the Police Department and that of this office that "electronic bingo" is not bingo. The basis for the opinion is that the electronic representations in the computerized device do not constitute "numbers or symbols on a

card" as provided in the definition of bingo within Penal Code section 326.5, subdivision (o).

Based on acceptance of the published opinion as a correct statement of the law, it is our view that the Committee should no longer consider the alternative of permitting "electronic bingo" by legislation. The two options remaining are:

1. Take no action to amend Municipal Code section 33.3402

subdivision (a) with respect to "electronic bingo." The rationale for this option would be that, since the Attorney General's Opinion appears to foreclose "electronic bingo" as being outside the permissive limits of Penal Code section 326.5, City action is no longer necessary.

2. Amend the Municipal Code as requested by the City Manager to prohibit "electronic bingo."

This office recommends that the Committee take action to submit the proposed amendment to Council for approval. The bases for this recommendation are clarity and cost. By amending the Code, the City would take a position in concert with that of the Attorney General which would be clear to all organizations which conduct bingo. If no amendment were enacted, any individual or organization with an interest in "electronic bingo" could claim that there was no prohibition against it and start playing it. The Police Department would then be required to litigate the issues raised by the Attorney General, at City's expense, in order to effectuate the underlying policy. Passage of the amendment, on the other hand, would clarify the prohibition.

Respectfully submitted,

JOHN W. WITT

City Attorney

GRT:lfs:503.2(x043.1)

Attachment

RC-88-4