



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

October 28, 2024

Sent Via Electronic Communication

Honorable Anthony G. Brown
Attorney General
Office of Attorney General
200 St. Paul Place
Baltimore, Maryland 21202

Re: Request for Opinion

Dear Attorney General Brown:

We write to respectfully request an Opinion from the Attorney General on the proper application of the limitations in Article XIX of the State Constitution on the General Assembly's ability to authorize additional forms or expansion of gaming. As you are well aware, since November 15, 2008, Section 1(d) of Article XIX has precluded the General Assembly from directly authorizing additional forms or an expansion of gaming in Maryland. Instead, as per subsection (e) of the Article, "the General Assembly may only authorize additional forms or expansion" of gaming if approval is granted through a referendum in a general election by a majority of qualified voters in the State.

There is no dispute that these provisions of Article XIX require a referendum before the General Assembly could approve an additional casino license for a new casino location in the Maryland. Likewise, there is general consensus that the General Assembly could not authorize the placement of casino-style games (like video lottery terminals ("VLTs")/slots, table games, etc.) in bars, pizza shops or convenience stores without a referendum.

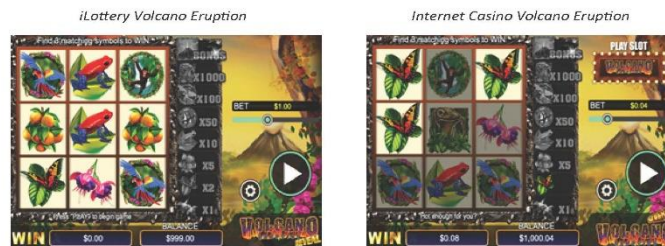
This conclusion should apply with equal force regardless of who is operating or behind the casino games. For example, if the Maryland Lottery and Gaming Control Agency started a program to place roulette wheels in all of their licensed retailers' locations, it would clearly constitute an expansion or additional form of gaming and, as a result, require approval by referendum under Article XIX. The same would be true if the Lottery started operating VLTs/slot machines in convenience stores across Maryland – a referendum would be required to approve such an expansion of gaming.

This last example, in essence, is exactly what the General Assembly considered last legislative session with House Bill 1218 and its proposed authorization of Internet Lottery (or “iLottery”). It’s crystal clear from information the House received on HB 1218 that iLottery games are nothing more than slots machines in appearance, play and operation.

- To the player, the games look, feel and play just like a slot machine, frequently with slot-like bonus games within the game.
- The math and mechanics behind iLottery games are the same as a slot machine.
- The prize structure for iLottery games is the same as a slot machine.

This is not surprising given the fact that many of the games provided to state lotteries engaging in iLottery are actually older versions of the same games that manufacturer are also currently selling to licensed casinos in those and other states. Below are images of iLottery games that have been offered by the Pennsylvania Lottery and their casino game counterparts that were shared as part of public testimony on HB 1218.

**Images of Volcano Eruption Game –
iLottery and Internet Casino Versions**



Images of iLottery Game Super Gems and Casino Game Bejeweled



The supposed lottery games are virtually identical to the slot machine games. And yet, HB 1218 did not call for or require a referendum.

Despite the fact that iLottery games are no different than slot machines, there seems to be confusion about whether the requirement for a referendum under Article XIX applies. This confusion is presumably based on Section 1(a), which states that the Article does not apply to “Lotteries conducted under Title 9, Subtitle 1 of the State Government Article.” However, as explained, iLottery games are not “lotteries” like those typically conducted under the Lottery Subtitle. They are not traditional lottery games like draw games or digital versions of a scratch-off. Instead, they operate just like a slot machine. For example:

	Traditional Lottery Game	iLottery Game
Predetermined outcome	Each scratch off ticket has a predetermined outcome that is established at the time the roll of tickets is made.	Just like a slot machine, iLottery games do not have predetermined outcomes. The game outcome is determined randomly when the player presses play.
Depleting prize pool	Scratch off games have a depleting prize pool. As players win certain prizes, the odds change and eventually all the prizes at various levels are won and no longer available.	Just like a slot machine, iLottery games feature a non-depleting prize pool. The player can win a jackpot (or any prize) on any spin and the odds do not change.
Limited # of plays	A roll of scratch-off tickets has a limited number of games.	Just like a slot machine, iLottery games have an unlimited number of plays.
Animated reveal	With a scratch-off, players remove the covering on portions of the game one at a time to reveal the game result.	Just like a slot machine, iLottery games use animation to reveal the results of each play, often enabling the player to reveal all symbols in one move.
Random number generator	An RNG is utilized one time when a roll of scratch-off tickets is manufactured to predetermine the outcome of each ticket on the roll.	Just like a slot machine, iLottery games use an RNG with every play of the game to determine the outcome after the player initiates the game.
Bonus games	Scratch-off tickets do not offer players the opportunity to play a bonus game, or second game within the game.	Just like a slot machine, iLottery games include the chance during normal game play to unlock a bonus game, wheel spin, etc.

As is clear from this comparison, iLottery games would be very different from traditional “lotteries” conducted by the Lottery under its standing authority. They are in every way akin to a VLT/slot machine – except they would be operated by the Lottery and played on mobile phones and computers across the State. Indeed, if enacted, iLottery may well violate the 15,000 VLT limit in subsection (c) of Article XIX.

As the saying goes, a rose by any other name is still a rose. A VLT/slot machine cannot be magically transformed into a traditional lottery game simply by renaming the VLT/slot machine “iLottery.” Likewise, casino gaming does not become a lottery simply because it is being offered by the MLGCA or its retailers. The unavoidable fact is that a bill authorizing “iLottery” as conducted in other states and as proposed last session would constitute an expansion of gaming and/or the authorization of an additional form of gaming in Maryland. Given that circumstance, I request an Attorney General Opinion that iLottery would require approval by referendum under Article XIX.

While maybe not germane to your legal opinion, our constituents, many of whom operate small retail establishments, count on the daily traffic generated by persons coming into their venues to purchase Lottery tickets. While only a handful of states have allowed iLottery, in those few states that have done so the impact on retailers and loss of employment has been horrific. For this reason alone, Unions have been adamantly opposed to the adoption of iLottery.

Thank you for your consideration. We look forward to hearing your opinion on these very important matters.

Sincerely,



Kathy Szeliga
District 7A



Ryan Nawrocki
District 7A



Matt Morgan
District 29A



Brian Chisholm
District 31



Mark Fisher
District 27C



Nic Kipke
District 31



Robin Grammer
District 6