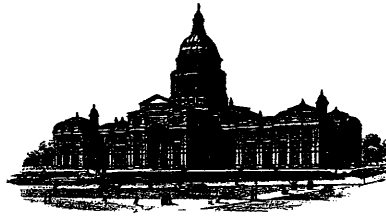


# TEXAS HOUSE OF REPRESENTATIVES

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SAN ANTONIO, TX 78229  
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April 14, 2003

FRANK J. CORTE JR.

RECEIVED

The Honorable Greg Abbott  
Attorney General  
State of Texas  
P.O. Box 12548  
Austin, Texas 79711-2548

APR 16 2003

OPINION COMMITTEE

**RQ-0039-6A**

FILE # ML-43058-03

I.D. # 43058

Dear General Abbott:

The 78<sup>th</sup> Legislature has seen much activity and publicity regarding video lottery terminals ("VLT"), and the potential revenue for the State. While Texas has a constitutionally authorized lottery, I believe the statutory addition of VLT-type gaming would require a constitutional amendment.

Currently, the State Lottery Act (adopted in 1993) prohibits video lottery machines. Section 466.024(c)(2) defines a video lottery machine as "any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game, including video poker, keno, and blackjack, using a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash, coins, or tokens, or that directly dispenses cash, coins, or tokens." Current legislation in the House and Senate, in essence, repeals this prohibition, and either uses this definition or a very similar definition to authorize VLT's.

The Comptroller of Public Accounts issued an e-Texas recommendation this month (ED18) calling for Texas to implement a video lottery system. She briefly defined VLT's as a "centrally monitored game machines that can offer a variety of games of chance." (*Special Report to the Legislature, Additional e-Texas Recommendations*, Carole Keeton Strayhorn, April 2003, ED18)

In 1994, former Attorney General Dan Morales issued Opinion No. DM-302 relating to whether "slot machines" were lawful without a constitutional amendment. This Opinion defined a "slot machine" as a "device which awards cash or other prizes solely on the basis of chance, and is not affected by skill, judgment, or knowledge of a particular player." He found that Article 3, Section 47 of the Texas Constitution, contains a general proscription of "lotteries;" moreover, the constitutional provision authorizing the current state lottery does not contemplate the operation of slot machines, both by constitutional construction standards and by the intent of the voters at the time of adoption.



DISTRICT 122

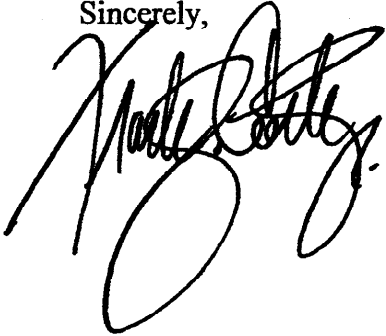
COMMITTEES: CHAIR-DEFENSE AFFAIRS AND STATE-FEDERAL RELATIONS • JUDICIAL AFFAIRS

It seems to me that the same legal arguments offered by General Morlaes prohibiting "slot machines" without a constitutional amendment would also apply to VLT's.

In summary, I am requesting an Attorney General Opinion as to whether the Texas Legislature may authorize the operation of video lottery terminals without an amendment to the Texas Constitution.

Thank you for your consideration in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark R. Kelly". The signature is stylized with large, sweeping loops and a prominent "K" at the beginning.