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ATTORNEY GENERAL

State of Louisiana  
DEPARTMENT OF JUSTICE  
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JAN 22 2014  
OPINION 13-0201

Jennifer Morvant  
Council Administrator  
City of Thibodaux  
Post Office Box 5418  
310 West Second Street  
Thibodaux, Louisiana 70302

15A - CONSTITUTIONAL LAW  
48 - GAMBLING  
71 - MUNICIPALITIES  
174 - ZONING

La. Const. art. VI, § 17; La. R.S. 27:451; La. R.S.  
27:452; La. R.S. 33:4721

City of Thibodaux's proposed ordinance restricting  
the location of new gaming establishments with  
more than three (3) video poker machines is within  
the City's jurisdiction and authority and is not  
prohibited by Louisiana Video Poker Gaming Law.

Dear. Ms. Morvant:

This office is in receipt of your recent request for an opinion regarding whether a proposed amendment to the City of Thibodaux's zoning ordinance, which restricts the location of gaming establishments with more than three (3) video poker machines is within the City's governing authority. For the reasons that follow, it is the opinion of this office that the proposed zoning ordinance is within the City of Thibodaux's jurisdiction and authority and is not prohibited by the Video Draw Poker Devices Control Law, La. R.S. 27:401, *et. seq.* and the regulations promulgated pursuant thereto and found in the Louisiana Administrative Code at LAC 42:XI.2401, *et. seq.* (hereinafter collectively referred to a "Louisiana Video Poker Gaming Law").

The Louisiana Constitution provides local governments broad powers to adopt regulations for land use, zoning, and historic preservation. La. Const. art. VI, § 17. Louisiana's zoning enabling act also confers upon local governments the authority to enact municipal zoning regulations for the purpose of promoting the health, safety, morals, or general welfare of the community. La. R.S. 33:4721. Accordingly, the City of Thibodaux, through its Planning and Zoning Commission, has the authority to enact and enforce zoning regulations.

Louisiana Video Poker Gaming Law does provide some restrictions in regard to the location(s) of gaming establishments with video poker devices. Those restrictions are found in La. R.S. 27:417(A)(1), La. R.S. 27:422 and LAC 42:XI.2415(E). Paragraph 1 of Subsection (E) of 2415 provides that video gaming activities shall be prohibited as provided in La. R.S. 26:281. La. R.S. 26:281 is found in the Alcohol and Tobacco Control Law and provides location restrictions for businesses permitted by ATC for the sale of alcohol. La. R.S. 26:281(A) provides that "no permit shall be granted under this Chapter in contravention of any municipal ordinance adopted pursuant to the zoning laws of the state." Paragraph 1 of Subsection (E) of 2415 applies to all types of establishments licensed for video draw poker. Paragraphs 2 and 3 of Subsection (E) of 2415 apply to truck stop facilities only, and were promulgated pursuant to La. R.S. 27:417(A)(1) and La. R.S. 27:422.

La. R.S. 27:451 provides that video poker devices are exempt from local taxes, fees, and licensing restrictions. Section 451 was passed with the original gaming legislation in 1991. There was apparently some confusion as to what constituted "licensing restrictions" under Section 451 and whether the statute prohibited local governing authorities from zoning gaming establishments. See La. Atty. Gen. Op. No. 92-148 (April 16, 1992); La. Atty. Gen. Op. No. 93-659 (October 26, 1993); La. Atty. Gen. Op. No. 94-85 (March 14, 1994). Consequently, in 1994 the Louisiana Legislature passed La. R.S. 27:452 to clarify the meaning and intent of Section 451 in that it does not prohibit a local governing authority from exercising its constitutional right to zone. Subsection (A) of 452 explicitly authorizes local governing authorities to enact zoning ordinances to regulate and restrict the placement or use of video draw poker devices. Beyond the clear recognition of a local governing authority's right to zone, Subsection (B) of 452 provides:

The provisions of this Section shall not be construed as limiting, superseding, or repealing any grant of zoning authority heretofore granted to any governing authority either by statute or home rule charter.

A local governing authority's constitutional right to zone is limited in that ordinances "shall not exempt any device owner or operator or any other licensee from any of the restrictions on the ownership, operation, use, or location of video poker devices" as provided for in Louisiana Video Poker Gaming Law. La. R.S. 27:452(A).

Moreover, Louisiana jurisprudence provides that zoning is a legislative function, the authority for which flows from the police power of governmental bodies. *St. Charles Gaming Co., Inc. v. Riverboat Gaming*, 94-2697 (La. 1/17/95); 648 So.2d 1310. The ordinance at issue in *St. Charles* was enacted after the Louisiana Riverboat Gaming Commission awarded the St. Charles Gaming Company a certificate of preliminary approval to berth and conduct gaming operations at a site located in St. Charles Parish. However, the Parish subsequently enacted an ordinance that frustrated efforts of the St. Charles Gaming Company to berth in the parish. The Supreme Court found that the

ordinance did not purport to regulate the activity of gaming itself. Instead, the Court found that the local ordinance was designed “merely to designate an area in which such legal activity may be conducted and to limit legal gaming to that district.” *Id.* at 1315.

The Supreme Court further found that nothing in the Riverboat Gaming Act purported to prevent localities from confining legal gaming activities to reasonable and fair zones in accord with surrounding uses of property and comprehensive zoning ordinances to promote the better good of the community. *Id.* at 1317. In fact, the Court expressed that by the constitutional grant of land use and zoning power to local governments, the promotion and protection of the better good of any community is best accomplished with respect to land use and zoning by permitting regulation at a local level. *Id.* The court found nothing in the Riverboat Gaming Act that indicated a legislative intent to remove this power from local government. Although *St. Charles* concerned casino gaming and not video poker, it is our opinion that the Court’s legal analysis and conclusions reached therein would apply equally to video poker.

It should be noted that the ordinance amendment proposed by the City of Thibodeaux will not only affect pari-mutuel wagering, offtrack wagering, and truck stop facilities, but may affect hotels located in the City of Thibodeaux as well, because under the Louisiana Video Poker Gaming Law hotels may qualify for up to twelve (12) devices. La. R.S. 27:414.

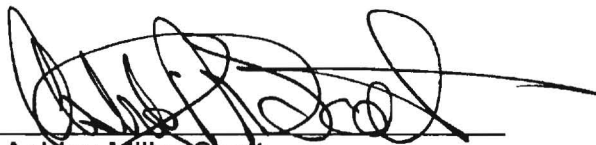
It is also our opinion that any ordinance affecting the operation of video draw poker devices must be deemed a “zoning ordinance or building code” consistent with La. R.S. 27:452 and the constitutional and statutory authority granted to local governments to regulate land use, zoning and historic preservation and not an attempt to regulate gaming.

In conclusion, it is the opinion of this office that the proposed zoning ordinance at issue is within the City of Thibodeaux’s jurisdiction and authority and is not prohibited by Louisiana Video Poker Gaming Law. The proposed ordinance does not purport to regulate the activity of gaming itself, but limits the location of establishments licensed for the operation of more than three (3) video gaming devices to specific areas within the City of Thibodeaux. Therefore, the proposed ordinance is not an illegal regulation of gaming, and Louisiana Video Poker Gaming Law does not prevent the City of Thibodeaux from restricting the location of establishments with more than three (3) video poker machines to certain areas by exercising its constitutional right to regulate zoning and land use.

I trust that the foregoing adequately responds to your request. Should you have other questions as to which our office may provide assistance, please let us know.

Sincerely,

JAMES D. "BUDDY" CALDWELL  
Attorney General

BY: 

Ashley Miller Scott  
Assistant Attorney General

AMS:sd