

Local government's regulation of gambling cruises

Number: INFORMAL

Date: April 08, 1997

The Honorable Evelyn J. Lynn
Representative, District 27
300 House Office Building
Tallahassee, Florida 32399-1300

RE: GAMBLING--UNITED STATES--VESSELS--MUNICIPALITIES--COUNTIES--local government's regulation of cruises to nowhere.

Dear Representative Lynn:

You ask what powers a local government may exercise to regulate "cruises to nowhere" within its jurisdiction. These vessels, which leave and return to the state without an intervening stop within another state or foreign destination, conduct gambling when outside the state's territorial boundaries.

While federal law regulates gambling on cruise ships in the territorial waters of the United States, it does not appear that such regulation is preemptive, precluding regulation by the state. A number of federal courts, commenting upon federal gambling statutes, have noted that the federal anti-gambling statutes were enacted to assist and aid the anti-gambling laws of the various states.[1] Accordingly, the state would not appear to be precluded from regulating in this area, provided that such laws do not conflict with federal law or treaties.

The Johnson Act, 15 U.S.C. s. 1172, makes it unlawful to transport into a state any gambling device unless the state has enacted an exemption to the provisions of the Act.[2] Subsection (c) of 15 U.S.C. s. 1172, however, provides that the section does not prohibit the transport of a gambling device to a place in a state or a United States possession on a vessel on a voyage if:

- "(1) the use of the gambling device on a portion of that voyage does not violate 15 U.S.C. s. 1175(b), and
- (2) the gambling device remains on board that vessel while in that State."

Pursuant to 15 U.S.C. s. 1175(b)(1), the prohibitions regarding, among other things, the transportation, possession or use of gambling devices contained in that statute do not apply to a vessel under the flag of the United States or foreign nation when

- "(1) the vessel is not within the boundaries of any State or United States possession, or
- (2) if the transport or possession of a gambling device on such a vessel is within the boundaries of any state or United States possession, the device is used on that portion of the voyage that is not within the boundaries of any State or the United States possession, and the gambling device remains on board the vessel while the vessel is within the boundaries of that State or United States possession."

If, however, a state or United States possession has enacted a statute that prohibits the repair or use of a gambling device on the voyage, or segment thereof, within its jurisdiction, the exemption afforded by 15 U.S.C. s. 1175(b)(1) does not apply.[3] "Voyage and segment" for purposes of this exception is described as a voyage or segment that begins and ends in the same state or United States possession, during which the vessel does not make an intervening stop within the boundaries of another state, United States possession, or a foreign country.[4]

The federal act, therefore, permits a United States flag vessel or foreign flag vessel to bring a gambling device into the state. The state, however, can prohibit such transport for vessels that leave and return to the state without an intervening stop within another state or foreign destination, that is, "cruises to nowhere."

Section 849.231, Florida Statutes, however, exempts vessels of foreign registry or vessels operating under the authority of a country other than the United States from the prohibitions regarding the possession of gambling paraphernalia and gambling equipment contained in the statute (and from section 849.05, Florida Statutes, which provides that gambling apparatus constitutes prima facie evidence that a place is kept for the purpose of gambling).[5] Thus, Florida law currently allows vessels of foreign registry to bring gambling devices into Florida ports, but not vessels of United States registry. While counties and municipalities within this state possess broad home rule powers,[6] they may not act in conflict with state law.[7]

For the "cruises to nowhere" in which interstate or foreign commerce is not implicated, the state may enact, pursuant to the recent amendments to the Johnson Act, legislation that prohibits such vessels, whether under a foreign or American flag, from bringing gambling paraphernalia into the territorial waters of the state. Since such activities are essentially "intrastate," the federal government's interests are limited.[8] Therefore, "cruises to nowhere," while currently permitted by state law for foreign flag vessels and by federal law for United States flag vessels, can be prohibited by a state that "has enacted a statute the terms of which prohibit that repair or use on that voyage[.]"[9] I am not aware of any decision prohibiting the state delegating its authority to its political subdivisions. In light of the language of the Johnson Act, however, it may be advisable for such legislation to generally prohibit such cruises while allowing a local option for counties and municipalities to remove their jurisdictions from the prohibition.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See, e.g., *United States v. Black*, 291 F. Supp. 262 (D.C.N.Y. 1968); *United States v. 420 Gambling Devices*, 191 F. Supp. 111, 115 (D.C.N.Y. 1961). And see, Opinion Letter to Janet Reno from Joseph McSorley, Chief Assistant, United States Attorney, Southern District of Florida, dated October 21, 1986; Opinion Letter to Edwin L. Miller, Jr., District Attorney, from California Attorney General John K. Van De Kamp, dated March 22, 1984.

[2] 15 U.S.C. s. 1172(a).

[3] 15 U.S.C. s. 1175(b)(2)(A).

[4] 15 U.S.C. s. 1175(b)(2)(B).

[5] Prior to the adoption of this exemption in 1987, see s. 2, Ch. 87-255, Laws of Florida, this office noted that the United States Customs Service had taken the position that gambling equipment and paraphernalia on board a vessel of foreign registry are not within a state's jurisdiction until they first come into and pass out of Customs Service jurisdiction. Since the Customs Service has concluded that gambling devices are "vessel equipment" or "ship's equipment" under pertinent maritime treaties, they are not subject to Customs Service jurisdiction. Such equipment of a foreign registry vessel, therefore, does not come within the jurisdiction of the state. See Informal Opinion to Curtis Golden, dated May 1, 1986.

[6] See s. 125.01 and Ch. 166, Fla. Stat.

[7] See, e.g., *City of Miami Beach v. Rocio Corporation*, 404 So. 2d 1066 (Fla. 3d DCA 1981), *pet. for rev. den.*, 408 So. 2d 1092 (Fla. 1981); *Rinzler v. Carson*, 262 So. 2d 661 (Fla. 1972) (municipality cannot forbid what the Legislature has expressly licensed, authorized or required, nor may it authorize what the Legislature has expressly forbidden).

[8] *Cf. United States v. Montford*, 27 F. 3d 137 (5th Cir. 1994), in which the court held that a gambling ship's "cruise to nowhere," on which the vessel had no contact with another state or foreign country or waters within the jurisdiction of another state or foreign country, did not involve interstate or foreign commerce.

[9] 15 U.S.C. s. 1175(b)(2)(A).