066-40—April 14, 1966

MOTOR VEHICLES

DEALERS' LICENSES—WHEN REQUIRED; EXCEPTION

To: Charles Knott, Attorney, Department of Motor Vehicles, Tallahassee

QUESTION:

May a business firm which owns a number of motor vehicles, used in connection with the firm's business, offer for sale and sell to the public more than three of such vehicles in any twelve months period without obtaining a motor vehicle dealers license, where such firm is not engaged primarily in the business of buying, selling and trading in motor vehicles?

As you mention in your letter, the type of business firm with which we are here concerned is not ". . . engaged in the business of buying, selling or dealing in motor vehicles or offering or displaying motor vehicles for sale," as the term "motor vehicle dealer" is defined in §320.27-(1)(d), F. S. On the other hand, many of such firms do offer for sale in a 12 month period more than 3 motor vehicles which have been used in the conduct of their businesses. This fact, considered independently, would appear to place such business within the prima facie presumption also prescribed in §320.27(1)(d), F. S., that: ". . . Any person who buys, sells or deals in three or more motor vehicles in any twelve months period (is) engaged in (the business of motor vehicle dealer)" and thus subject to the license required by §320.27(2), F. S.

However, §320.27(3), F. S., further requires that each applicant for such a license shall certify:

> . . . that the location . . . is a suitable place where the applicant can in good faith carry on such business (and) that the business of a motor vehicle dealer is the *principal business which shall be conducted* at the said location; (and) that the applicant is either: Franchised by a manufacturer of motor vehicles . . . or (that he is) an independent (non-franchised) motor vehicle dealer. (Emphasis supplied.)

From the foregoing, it would appear that few, if any, of the businesses included within the scope of your inquiry, could so certify in good faith. The particular point of your inquiry has apparently not been the subject of judicial determination, but I am of the opinion it was not the intention of the legislature that a business firm unable to certify that the "principal business which shall be conducted" by it at any given location is that of a "motor vehicle dealer" should be required to meet the license requirements of §320.27, F. S.

Your question, as phrased, must therefore be answered in the affirmative.

066-41—April 14, 1966

CRIMES

GAMBLING LAWS—BINGO, GUEST—GOLF OR BOWLING TOURNAMENTS

To: Alan R. Williams, County Prosecutor, Clearwater

QUESTIONS:

1. Where a contestant pays a monetary consideration for the privilege of entering a golf tournament or a bowling tourna-

ment, and has an opportunity to win a valuable prize by the exercise of skill, does this constitute a violation of any of the gambling laws of Florida?

2. How is bingo or "Guest" to be distinguished from a golf tournament or a bowling tournament insofar as gambling is concerned?

AS TO QUESTION 1:

Golf and bowling tournaments are predominantly contests of skill and our only gambling statute which applies to contests of skill is §849.14, F. S., which reads as follows:

> 849.14 *Unlawful to bet on result of trial or contest of skill, etc.—Whoever stakes, bets or wagers any money or other thing of value upon the result of any trial or contest of skill,* speed or power or endurance of man or beast, or whoever receives in any manner whatsoever any money or other thing of value staked, bet or wagered, or offered for the purpose of being staked, bet or wagered, by or for any other person upon any such result, or whoever knowingly becomes the custodian or depositary of any money or other thing of value so staked, bet or wagered upon any such result, or whoever aids, or assists, or abets in any manner in any of such acts all of which are hereby forbidden, shall be guilty of gambling, and shall be punished by imprisonment not exceeding six months or by fine not exceeding five hundred dollars. (Emphasis supplied.)

This statute applies to a "stake," "bet" or "wager." Therefore, the answer to question 1 depends upon whether or not the payment of an entrance fee by each competitor in a golf tournament or bowling tournament amounts to a stake, bet or wager, where valuable prizes are awarded to the winners. (In gambling lingo, "stake," "bet" and "wager" are synonymous terms. Creash v. State, 179 So. 149.)

In 38 C.J.S. 81, Gaming, §5, states:

> It is held that the contest does not become a wager by the mere fact that the contestants are required to pay an entrance fee, where the entrance fee does not specifically make up the purse or premium contested for, or by the fact that the purse offered consists in part of entrance fees and in part of an added sum.

In 24 Am. Jur. 442, Gaming, §63, states:

> . . . The deposit of an entrance fee to enable the depositor to compete for a prize in an athletic contest is not a bet. . . .

In 24 Am. Jur. 473-474, Gaming, §100, states:

> . . . Moreover, the offering of and paying of premiums or prizes by a racing association to the owner of horses contesting at racing held by such association are not gambling, even where entrance fees are paid to such association, if such fees are put into its general fund, and become, for the time being, a part of its assets, subject only to the obligation of the association to pay out of its funds definite sums which it has offered as premiums or prizes, regardless of the amount of entrance fees received. Horse racing under such circumstances differs from that in which a stake is contributed by the participants alone. . . .

(Since §849.14, F. S., applies to wagers on contests of either speed or skill, the statements in the preceding quotation with reference to horse races, which involve speed, are equally applicable to golf or bowling tournaments, which involve skill.)

In 24 Am. Jur. 441-442, Gaming, §63, states:

> . . . A purse, prize, or premium is, on the other hand, ordinarily something of value offered by a person to the successful competitor in a contest in which the person offering the purse, prize, or premium does not engage. He has no chance of gaining the thing offered, and, if he abides by his offer, must give it over to some one of those contending for it. . . .

In the light of the foregoing authorities, I conclude that there is no stake, bet or wager, and therefore no violation of our gambling laws, where the contestants in a golf or bowling tournament pay entry fees and have the opportunity to win valuable prizes by the exercise of skill, provided that the entry fees do not specifically make up the purses, prizes or premiums contested for.

Of course, the posting of entry fees could be merely a device resorted to in an effort to disguise a gambling transaction, as, for example, if such fees were put in a "pot" for which the golfers or bowlers played. In such case, the fees would specifically make up the prizes and the transaction would violate §849.14, F. S. In this connection, I quote the following observations made by the Sup. Ct. of Montana in Toomey v. Penwell, 245 P. 943, a case in which the decision was in line with the foregoing quotations from Corpus Juris Secundum and American Jurisprudence, to wit:

> But these observations and the authorities cited have to do with bona fide transactions, and not with gambling so cleverly disguised as to appear to be what it is not. They are predicated upon the theory that the so-called entrance fee is an amount of money actually paid unconditionally and in good faith for the privilege of entering the contest, and for no other purpose. If in fact the fee is not paid for such purpose, but is merely posted upon the outcome of the contest, no amount of dissembling can save the transaction from the condemnation of our anti-gambling statute.

AS TO QUESTION 2:

Bingo may be distinguished from a golf or bowling tournament of the kind approved in my answer to question 1 by the fact that bingo involves betting or wagering while there is no betting or wagering in such a golf or bowling tournament; rather, there is an award of a purse, prize or premium. The same distinction exists between "Guest" (as described in my opinion 066-14, rendered to Sheriff Don Genung on March 2, 1966) and a golf or bowling tournament of the kind hereinabove approved.

066-42—April 15, 1966

LICENSE TAXES

CONSTRUCTION OF §205.53, F. S.—PUBLIC SERVICE ESTABLISHMENTS, ADDITIONAL EMPLOYEES

To: Fred O. Dickinson, Jr., State Comptroller, Tallahassee

QUESTION:

> **Are public service establishments liable, under §205.53, F. S., for additional license charges when they add additional employees after being licensed, and, if so, when do such additional charges accrue and become payable?**

It appears from your file handed us with your request for opinion that the above question has been raised in Collier county by the Provincetown-Boston Airlines, Inc., a foreign corporation, licensed to trans-