



ALAN WILSON
ATTORNEY GENERAL

February 18, 2011

W. Lawrence Brown, Esquire
Aiken County Attorney
828 Richland Avenue West
Aiken, South Carolina 29801

Dear Mr. Brown,

We received your letter requesting an opinion of this Office concerning a casino night event to be held in Aiken County. In your letter, you provided us with the following background information on the event.

The event is presented as a “celebrity charity casino night,” a party with music and a casino theme. Each guest purchases a ticket for admission to the event. Prices are \$65 for one ticket, \$110 for two, \$165 for three, or \$200 for four. Each guest receives \$25,000.00 in play money, 2 drink tickets, and hor d’oeuvres. The games consist of Blackjack, Poker, Roulette and Craps. No cash is involved in gaming, and no prizes are awarded for winning. Proceeds from ticket sales for the event will go to the Aiken County First Steps program.

This event is different from most of those for which I have found opinions from your office in that no prizes of any kind are to be awarded. It appears that no real risk of any kind is involved. I am not clear from Opinion 07-056 whether the participants were actually gambling with the proceeds going to charity or how the “contributions” were being made. Regardless of the potential for any actual gain or loss in the current situation, I am concerned about the nature of the games proposes in light of the wording of the statutes and prior opinions. However, I would hate to cause the event to be canceled if my interpretation is in error. Therefore, out of abundance of caution, I turn to your for assistance.

Law/Analysis

Section 7 of article XVII of the South Carolina Constitution (2009) provides a general prohibition on the conduct of lotteries in the state of South Carolina. This provision states as follows:

Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must first be used to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the 'Education Lottery Account', and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for education purposes as the General Assembly provides by law.

The game of bingo, when conducted by charitable, religious, or fraternal organizations exempt from federal income taxation or when conducted at recognized annual state and county fairs, is not considered a lottery prohibited by this section.

Article XVII, § 7.

As we noted in a prior opinion,

“[t]ypically, a raffle whereby an individual buys a ticket for the opportunity to win a prize based upon a random drawing is considered a lottery. See: Op. Atty. Gen. dated June 23, 2004. However, other games or events may also be considered a lottery. In Darlington Theatres, Inc. v. Coker, et al., 190 S.C. 282, 292, 2 S.E.2d 782, 786 (1939), the State Supreme Court determined that a lottery is

...a species of gaming, which may be defined as a scheme for the distribution of prizes or things of value by lot or chance among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize.

Therefore, the three elements of a lottery are (1) the offering of a prize (2) for payment of some consideration (3) with the winner determined by chance.

Op. S.C. Atty. Gen., May 4, 2005.

In addition to the constitutional provision, several State statutes also prohibit lotteries. Section 16-19-10 of the South Carolina Code (2003) specifically prohibits lotteries utilizing cards, dice and balls.

Whoever shall publicly or privately erect, set up, or expose to be played or drawn at or shall cause or procure to be erected, set up, or exposed to be played, drawn, or thrown at any lottery under the denomination of sales of houses, lands, plate, jewels, goods, wares, merchandise, or other things whatsoever or for money or by any undertaking whatsoever, in the nature of a lottery, by way of chances, either by dice, lots, cards, balls, numbers, figures, or tickets or who shall make, write, print or publish, or cause to be made, written, or published any scheme or proposal for any of the purposes aforesaid is guilty of a misdemeanor

S.C. Code Ann. § 16-19-10. Furthermore, section 16-19-40 of the South Carolina Code (2003) states:

If any person shall play at any tavern, inn, store for the retailing of spirituous liquors or in any house used as a place of gaming, barn, kitchen, stable or other outhouse, street, highway, open wood, race field or open place at (a) any game with cards or dice, (b) any gaming table, commonly called A, B, C, or E, O, or any gaming table known or distinguished by any other letters or by any figures, (c) any roley-poley table, (d) rouge et noir, (e) any faro bank (f) any other table or bank of the same or the like kind under any denomination whatsoever or (g) any machine or device licensed pursuant to Section 12-21-2720 and used for gambling purposes, except the games of billiards, bowls, backgammon, chess, draughts, or whist when there is no betting on any such game of billiards, bowls, backgammon, chess, draughts, or whist or shall bet on the sides or hands of such as do game, upon being convicted thereof, before any magistrate, shall be imprisoned for a period of not over thirty days or fined not over one hundred dollars, and

every person so keeping such tavern, inn, retail store, public place, or house used as a place for gaming or such other house shall, upon being convicted thereof, upon indictment, be imprisoned for a period not exceeding twelve months and forfeit a sum not exceeding two thousand dollars, for each and every offense.

As you mentioned in your letter, prior opinions of this Office considered whether “casino nights” violate state law. In 1980, we considered whether a casino night constituted gambling prohibited under State law. Op. S.C. Atty. Gen., September 26, 1980. The circumstances presented to us involved a situation in which patrons purchase chips directly or indirectly through a registration fee or cover charge and participate in games such as blackjack, poker and roulette. Id. At the end of the evening, an auction is held in which patrons bid on prizes with the chips they accumulated. Id. Employing the three part test cited above, we determined that the casino night violated sections 16-19-10 et seq., of the South Carolina Code. Id.

In 1984, we were asked whether or not a Monte Carlo Night hosted by the manufacturers’ council of the Greater Columbia Chamber of Commerce is illegal. Op. S.C. Atty. Gen., April 13, 1984. We concluded that even though attendance at the event was restricted to members, the price charged for the event was to cover only the reception and dinner, and everyone in attendance at the event was to receive the same amount of play money for games, the function was illegal under State law prohibiting lotteries. Id.

In 1994, we considered whether a group could offer its clients casino themed parties Op. S.C. Atty. Gen., October 26, 1994. We were informed that “none of the guests would pay any money to participate in the games.” Id. We reiterated the three elements of a lottery and stated that if “the people invited to the event part with any money whatsoever, either by cover charge, donation to the charity, admission fee, ticket, or similar method . . . in order to get in the door to play the games, then they would be parting with consideration and a lottery would exist.” Id.

In your letter, you mention that unlike the situations described in our prior opinions, the attendees at the casino night are not eligible for prizes. Nonetheless, we agree with your assessment that a court would likely find the activities you describe to be illegal under State law. Section 16-19-40 of the South Carolina Code generally prohibits persons from playing games involving cards or dice regardless of whether or not a prize is involved. In a 2007 opinion, this Office considered the legality of a poker challenge with no cash prizes. Op. S.C. Atty. Gen., April 23, 2007. Citing section 16-19-40, we concluded that such an event appears to violate State law as an illegal game of cards. Id.

Moreover, we believe a court could find the casino night be an illegal lottery under article XVII, section 7 of the South Carolina Constitution. Following the three part test set forth in

Darlington Theatres, Inc., each guest will pay a price to be admitted to the event and will engage in games of chance including blackjack, poker, roulette, and craps. While no cash prizes will be received for winning, we must note that our Supreme Court, at least on one occasion, interpreted the amusement or entertainment as having value to the person engaged in the activity. Harvie v. Heise, 150 S.C. 277, 148 S.E. 66 (1929). That case involved the issue of whether a mint machine that also dispensed tokens at random constituted an illegal gambling device under South Carolina law. Id. The Court stated that “[i]t is generally held that a slot machine which gives for a coin deposited therein merchandise of the value of the coin, and also returns at uncertain intervals, in varying amounts, money or trade checks, is a gambling instrument.” Id. at 283, 148 S.E. at 67. The machine operator argued that the tokens dispensed by the machine in addition to the mints did not have any monetary value. Id. However, the court stated “the amusement or entertainment furnished the player is worth something to him if it constitutes the inducement for him to operate the machine.” Id. at 287, 148 S.E. at 69. Ultimately, the Court concluded the machine violated the statute. Id. Based on this decision, we believe a court could find the casino night you describe constitutes an illegal lottery.

Although you indicate in your letter that you believe that the casino night described likely violates State law, we understand you question whether or not section 61-2-180 of the South Carolina Code (2009) provides an exemption from the laws explained above because the proceeds will go to charity. Section 61-2-180 states:

Notwithstanding any other provision of law, a person or organization licensed by the department under this title may hold and advertise special events such as bingo, raffles, and other similar activities intended to raise money for charitable purposes. This section does not affect the requirements for obtaining a bingo license from the department.

In prior opinions, this Office considered the validity of this provision in light of article XVII, section 7 of the Constitution. In a 1997 opinion, we noted that “it goes without saying that the General Assembly may not permit what the Constitution expressly prohibits. Accordingly, based on the foregoing authorities, it remains the opinion of this Office that raffles generally constitute a lottery (because elements of prize, chance and consideration are present) and are thus prohibited by the Constitution of South Carolina.” Op. S.C. Atty. Gen., December 4, 1997.

We further explained our position with regard to section 61-2-180 in a 2004 opinion. Op.S.C. Atty. Gen., June 23, 2004. We began by stating that “[o]n its face, § 61-2-180 thus authorizes raffles ‘to raise money for charitable purposes’ if the person or organization conducting the raffle is ‘licensed by the department [of revenue] under this title’” Id. However, we found several cases from other jurisdictions concluding that “statutes which

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attempt to create exceptions to the state constitutional prohibition against lotteries are unconstitutional.” Id. While we noted that “only a court may declare § 61-2-180 to be in conflict with Art. XVII, § 7 of the State Constitution,” we opined that a court would likely declare this provision unconstitutional. Id. Accordingly, would not advise that the group organizing the casino night referenced in your letter to rely on section 61-2-180 as exempting the event from the State laws prohibiting lotteries.

Conclusion

Although we understand the casino night proposed in your letter would not involve the award of any prizes, we agree with your assessment that a court would likely find such an event prohibited under State law. Generally, this Office has concluded that casino nights constitute lotteries in violation of article XVII, section 7 of the constitution and sections 16-19-10 et seq. In addition, we specifically believe a court would find the games proposed for the casino night are illegal under section 16-19-40.

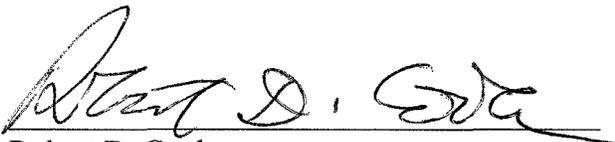
Section 61-2-180 of the South Carolina Code appears to allow certain events generally viewed as illegal lotteries, so long as they are conducted for charitable purposes. However, we do not believe it is prudent to rely on this provision to exempt the casino night event from State laws prohibiting lotteries because of the questionable nature of its constitutionality. This Office is not a court and therefore, cannot declare section 61-2-180 invalid. However, based on the analysis provided in our prior opinions, we must caution that this provision could be rendered unconstitutional by a court. While we are mindful of the importance and good work of charities, we are nevertheless, constrained to agree with your conclusion that the casino night event is inconsistent with current state law.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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