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HENRY McMASTER  
ATTORNEY GENERAL

February 2, 2006

Carolyn Hatcher, Director  
Charities Division  
Secretary of State's Office  
Post Office Box 11350  
Columbia, South Carolina 29211

Dear Ms. Hatcher:

You have asked our advice concerning the legality of a plan by Dutch Fork High School to raise funds for the construction of an athletic field house. You have forwarded to us a letter written on behalf of a group of citizens in the Dutch Fork Community. This letter sets forth the specifics of the fundraising plan. The question which you wish to resolve is whether, in our opinion, such plan would violate the gambling laws of South Carolina. The plan is described by the letter which you have forwarded as follows:

[w]e would like to raise at least \$275,000 by hosting a golf skills tournament. There will be 22 flights consisting of 200 contestants each who have entered the contest by paying an entry fee of \$100 or by selling 10 entry fees of \$100 each. Each contestant will be given the opportunity to chip two golf balls from the goal line to a pin located in the 50-yard line of one of the football fields at Dutch Fork High School. The contestant with the golf shot closest to the pin in each flight will qualify to move to the finals of the tournament.

The finals of the tournament will be held at the halftime of the Dutch Fork vs. Chapin football game in the fall of 2006. Each contestant will again be given the opportunity to chip two golf balls as before. The Top three or four contestants with the shots closest to the pin will win a new car. First choice of the carts will be given to the best shot and so on. We have not yet determined the number of cars we will provide. All golf balls used will become the property of our nonprofit corporation and will be sold to assist in the fund raising.

Our goal of \$275,000 may be increased if we are not able to obtain financial assistance from the school district. If needed, we will increase the number of contestants and awards to achieve a high goal.

After the fund raising goals have been met, we intend to dissolve the corporation or continue it as a fund raising entity for Dutch Fork High School Athletics.

### Law / Analysis

*Darlington Threatres v. Coker*, 190 S.C. 282, 2 S.E.2d 782 (1962) enunciates the criteria for determining a lottery which is prohibited by Art. XVII, Sec. 7 of the South Carolina Constitution. The elements, as specified by the Court in *Darlington* are:

1. the offering of a prize;
2. the payment of money or other consideration for the opportunity to win a prize;
3. the awarding of the prize by chance.

In addition, S.C. Code Ann. Section 16-9-10 also forbids lotteries. A lottery is a form of gambling. *Johnson v. Collins Entertainment Co., Inc.*, 333 S.C. 96, 508 S.E.2d 575 (1998). Other statutory enactments prohibit various forms of gambling and gaming devices. See, e.g. § 16-19-40 (unlawful games and betting); § 16-19-50 (keeping unlawful gaming tables); § 16-19-80 (forfeiture) § 16-19-90 (betting on elections) § 16-19-130 (betting or wagers prohibited); §§ 12-21-2710 and -2712 (forfeiture of gambling devices).

Previous opinions of this Office have concluded that the playing of the game of golf predominately involves skill, not chance. In *Op. S.C. Atty. Gen.*, March 24, 1986, for example, we set forth the general definition of "chance" as it relates to lotteries and gaming:

[c]hance, as one of the elements of a lottery, has reference to the attempt to attain certain ends, not by skill or any other known or fixed rules, but by the happening of a subsequent event, incapable of ascertainment or accomplishment by means of human foresight or ingenuity .... (I)t is not necessary that this element of chance be pure chance, but it may be accompanied by an element of calculation or even of certainty; it is sufficient if chance is dominant or [the] controlling factor ... .

While the South Carolina Supreme Court has never squarely adopted this so-called "Dominant Factor" test, the dissent in *Johnson v. Collins Entertainment Co., Inc.*, *supra* indicates that the Court would likely accept this rule. In *Johnson*, Justice Burnett, joined by now Chief Justice Toal, opined:

... where the dominant factor in a participant's success or failure in a particular scheme is beyond his control, the scheme is [a game of chance], even though the participant exercises some degree of skill or judgment. If a participant's skill does not govern the results of the game, the scheme contains the requisite chance necessary to constitute a [game of chance].

Applying these principles, our 1986 Opinion thus concluded:

[i]nasmuch as the proposed golf tournament appears to be a game of skill, as opposed to a game of chance, such tournament would not constitute a lottery. However, as indicated above, such construction is based upon my understanding that an individual's success in such a tournament is based entirely upon his skills as a golfer.

*Accord., Op. Atty. Gen., August 10, 1990 [proposed golf tournament not a lottery]. See also, People v. Cohen, 160 Misc. 10, 289 N.Y.S. 397 (1936) [golf is a game where skill is so essential, it cannot be said to be a game of chance "even though occasionally an unskilled player may make a lucky shot."]*

However, we have distinguished so-called "hole-in-one contests" from the game of golf generally. In an Opinion dated August 29, 2003, we concluded that in a hole-in-one contest the element of chance predominates. Thus, where the other elements of a lottery are present, such contests are illegal. In that Opinion, we quoted authority from elsewhere that "making a hole-in-one, however, is such a fortuitous event that skill is almost an irrelevant factor." We added that "the possibility of a hole-in-one, even for the world's best players, is still remote." Thus, we concluded that

... the referenced commercial proposal [hole-in-one contest] would likely constitute a lottery, as well as gambling. We find particularly persuasive the reasoning that, unlike a golf tournament, where skill is primarily involved, the making of a hole-in-one "is such a fortuitous event that skill is almost an irrelevant factor." .... Statistics appear to fully back up our conclusion. In addition, we are advised that the difficulty of the pin placement is a significant factor in determining the likelihood of a hole-in-one. In view of all this, I see little to distinguish this game from the carnival games found illegal in Op. No. 3397, discussed above.

Thus, I strongly doubt that the proposal outlined above would pass muster under South Carolina law.

And, in an Opinion dated August 29, 2003, we further considered the "legality of tournaments based upon contests of skill, in whatever form, in which a prize, purse, or premium, usually in the form of cash, is offered to contestants who win or place highly in the tournament." We noted that such tournaments typically "include such things as professional golf tournaments ...." Following review of the case law regarding this issue, we advised as follows:

[t]he assumption of your question is that a particular contest is purely one of skill; the entity operating the tournament or contest does not participate in the contest or through representatives; the participants pay an entry fee, but the entry fee does not determine or make up the prize, purse or premium; and the total prize, purse or premium is not based upon the number of persons entering the contest or the amount of the entry fees. Based upon these assumptions, and the authorities referenced

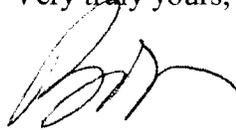
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above, it is our opinion that a game which meets all of these criteria would likely be held by a court not to violate South Carolina's gambling laws, particularly § 16-19-130 (betting statute).

**Conclusion**

Based upon all of the foregoing authorities, we conclude that the plan set forth in your letter would likely be held by a court not to violate South Carolina's gambling laws. In terms of the element of skill, we deem the Dutch Fork plan more akin to the traditional golf tournament than to the hole-in-one contest addressed in our September 5, 1995 opinion. A contest which offers a prize to a golfer or golfers who can place one or more golf shots closest to the hole is, in reality, a condensed version of the game of golf which has as its object hitting the ball in the hole in the least number of shots possible. Such is primarily a game of skill, in marked contrast to a "hole-in-one contest," the results of which are largely fortuitous. Thus, assuming the Dutch Fork plan operates as described in the letter which you have enclosed, we are of the opinion such does not violate the gambling laws of South Carolina.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General