

January 26, 2007

The Honorable Lawrence K. Grooms
Senator, District No. 37
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Grooms:

In a letter to this office you referenced a proposed charitable event fundraiser and questioned whether such event would constitute an illegal lottery in South Carolina.

As explained by you, the fundraiser would consist of the release of rubber ducks into the Wando River. Each duck would be assigned a number that corresponds with a ticket sold to a participant. The ducks will travel down the river to a predetermined finish line. The first duck to cross the line "wins" and the holder of the ticket matching the number on the duck would be awarded a cash prize.

In the opinion of this office, such a fundraiser constitutes a lottery which is prohibited under state law. S.C. Code Ann. § 16-19-10 provides:

(w)hoever 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 and, upon conviction, must be fined one thousand dollars and imprisoned for one year. One-third of the fine imposed shall be paid to the person, if any, who informed law enforcement officials or other appropriate authorities about the violation which led to the conviction. Each violation constitutes a separate offense.

S.C. Constitution, Article XVII, Section 7 states that

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

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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.

Typically, 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) upon payment of some consideration (3) with the winner determined by chance.

Based upon the description of how the proposed charity event utilizing the rubber ducks is played, it is the opinion of this office that such event has all three elements of a lottery. Clearly, there is a prize and the required payment of consideration in order to play. Furthermore, it appears that the winner is determined purely by chance by the "winning" duck crossing the line first. As a result, such activity would, in the opinion of this office, constitute an illegal lottery.

If there are any questions, please advise.

Sincerely,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General