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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 30, 2002

The Honorable D. Leslie Tindal
Commissioner
SC Department of Agriculture
Post Office Box 11280
Columbia, South Carolina 29211-1280

Re: Legality of State Lottery Ticket Sales at the State Farmers Market

Dear Commissioner Tindal:

By letter dated January 8, 2002, you have requested an opinion concerning a regulation governing the operation of the State Farmers Markets which has been promulgated by the South Carolina Department of Agriculture. Your question relates to the Department's prohibition of gambling on market properties. The regulation in question is found at 23 S.C. Code Ann. Regs. 5-190(20) (1976), and provides in pertinent part as follows:

Gambling, possession or use of intoxicants, and disorderly conduct are prohibited on market properties.

By way of background, you indicate that "vendors at the Greenville and Columbia markets apparently have procured licenses from the Lottery Commission and are selling lottery tickets at these markets." Given this scenario, you ask for our "opinion and advice as to the legality of the sale of these lottery tickets."

The general duties of the Department of Agriculture with regard to agricultural marketing are set forth in S.C. Code Ann. §46-15-10 (1976) which provides that:

For the purpose of aiding, establishing and providing proper facilities for the efficient handling of farm and other food products in the interest of the farmer, consumer and general public and to assist in the disposal and sale of such products the Department of Agriculture shall be responsible for the implementation of the provisions of [law governing agricultural marketing].

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To carry out these duties, the Department is given the power to "...make and promulgate such rules and regulations as, in the opinion of the Department, shall be necessary" S.C. Code Ann. §46-15-20(12). Further, Section 46-15-30 provides that any rules and regulations so made and promulgated, once properly filed and posted, "shall have the force and effect of law."

Generally, courts, as well as this Office, must as a matter of law afford considerable latitude to an agency's discretion in promulgating regulations. See OPS. ATTY. GEN. (Dated August 21, 1991 & November 27, 1995). Such regulations are deemed to stand unless they are clearly in contravention of or lacking in statutory authority or are inconsistent with the federal or state Constitutions. Id. An agency's regulations carry with them a presumption of validity. U.S.C. v. Batson, 271 S.C. 242, 246 S.E.2d 882 (1978). Further, an administrative regulation is deemed valid as long as it is reasonably related to the purpose of the enabling legislation. Hunter and Walden v. S.C. State Licensing Board for Contractors, 272 S.C. 211, 251 S.E.2d 186 (1978)

When interpreting rules and regulations of administrative agencies the same rules of construction apply as when interpreting statutes in the same field. Thus, administrative regulations are construed in such a manner as to uphold their validity and to give effect, if possible to all the provisions of the regulations. See OP. ATTY. GEN. (Dated March 24, 1989).

As cited above, the legislative purpose of the statutes authorizing the Department of Agriculture to regulate the State Farmers Market is the "... establishing and providing [of] proper facilities for the efficient handling of farm and other food products in the interest of the farmer, consumer and general public and to assist in the disposal and sale of such products" Farmers Markets are not created to provide a venue for the marketing of non farm and food related products and services, such as gambling and gaming activities. Accordingly, it is my opinion that the prohibition of gambling on Farmers Market property is consistent with and reasonably related to the express purpose of the statutory authority granted to the Department.

Moreover, as this Office has recently opined, "[p]laying the State Lottery would constitute 'gambling or betting on games of chance.'" See OP. ATTY. GEN. (Dated January 7, 2002); See also Darlington Theaters v. Coker, 190 S.C. 282, 2 S.E.2d 782 (1939). In the January 7th opinion, Attorney General Condon went on to say: "[t]hat the State Lottery is now legal in South Carolina does not alter the fact that playing or participating in the Lottery is a form of gambling or betting on a game of chance." Accordingly, the Department's regulation prohibiting "gambling" would extend to the playing of the State Lottery on Farmers Market property.

Interpreting 23 S.C. Code Ann. Regs. 5-190(20) in such a way that it prohibits playing the State Lottery on Farmers Market property is also not inconsistent with or repugnant to the statutory provisions governing our Lottery. The South Carolina Education Lottery Act is silent on the subject. In reviewing the Act, I can find no indication that the General Assembly intended to repeal or alter, either expressly or by implication, any pre-existing regulation properly promulgated by the authorized agency. Therefore, I can find no reason why 5-190(20) should not be given its full effect.

Attorneys General from other states have been confronted with similar questions and reached similar conclusions. In Virginia, the Attorney General was asked whether, "under its land use and zoning powers, a locality has the authority to prohibit the sale of lottery tickets as a condition in a special use permit granted a retail store." The Virginia Attorney General recognized that the their State Lottery Board is authorized to adopt regulations on the types of locations at which tickets may be sold and on the licensing of agents to sell tickets, but that no provision of the State Lottery Law prohibits zoning ordinances restricting the sale of lottery tickets. Given these recognitions, the Virginia Attorney General opined that:

These provisions of the State Lottery Law relate to the licensing of agents, and not to the uses of land. I do not construe these sections, either apart or collectively, as evidencing a legislative intent to remove from local governments the authority to impose reasonable restrictions on the sale of lottery tickets at specific sites if the purpose of the restriction is to further a legitimate land use goal. Neither do I view the prohibition of the sale of lottery tickets in a particular location under a locality's special use permit authority as unreasonably infringing on the ability of the State Lottery to conduct its business

See VA. OP. ATTY. GEN. (Dated December 15, 1995).

In Iowa, the Attorney General opined that, as a lottery constitutes gambling, the laws prohibiting gambling in bars applies to the sell of tickets for the state-run lottery. The Iowa Attorney General held that:

[the] statutes creating the lottery and [regulating] gambling in bars, can be harmonized. They can be read together and effect can be given to both. On the one hand, the state lottery can be instituted successfully. On the other, gambling in bars, including the sale of lottery tickets, is prohibited Both statutes are specific as to their respective subject matter. In short, the two laws are not incompatible.

See IA. OP. ATTY. GEN. (Dated July 18, 1985).

The logic expressed in these opinions is compelling and is easily applied to the Department's regulation of gambling on Farmers Market property. The prohibition of gambling at the few Farmers Market sites around the State cannot be said to unreasonably infringe on the ability of the State Lottery Commission to conduct its business. Further, the prohibition is reasonably related to the Department's purpose of providing a efficient facility for the marketing of farm and food products.

Based on the foregoing, it is my opinion that the sale of lottery tickets on Farmers Market property is prohibited by virtue of 23 S.C. Code Ann. Regs. 5-190(20) (1976).

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This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. K. Avant', written in a cursive style.

David K. Avant
Assistant Attorney General

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