



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

September 18, 2002

The Honorable Mike Fair  
Senator, District No. 6  
P. O. Box 14632  
Greenville, South Carolina 29610

Dear Senator Fair:

I thank you for your recent letter. You have asked a number of questions regarding the decision by the South Carolina Supreme Court in Stardancer Casino, Inc. v. Stewart, et al., 347 S.C. 377, 556 S.E.2d 357 (2001). Your questions regarding the decision are as follows:

“Is Justice Burnett’s dissent completely or only partially correct?”

Can a vessel operating in South Carolina’s waters operate its video gaming devices while at dockside?

Does such vessel docked in South Carolina waters need to make a departure into International waters before operation of such games can begin?

Can this vessel operate these games while yet still in South Carolina waters while en route to international waters?”

**Law / Analysis**

In Stardancer, the Supreme Court concluded that the State’s gambling laws are inapplicable to a so-called “day cruise to nowhere.” The Court summarized a “day cruise to nowhere” as follows:

[r]espondent’s day cruises begin and end at an Horry County port, and make no intervening stops. The United States flag vessel is equipped with gambling devices, including slot machines, blackjack tables, a roulette table, craps tables and poker tables. Once the ship is beyond South Carolina’s three mile territorial waters, gambling is permitted. Before the vessel reenters the territorial waters, the equipment is secured and unavailable for use. The equipment remains on the vessel at all times.

*Robert L. ...*

Id. In its ruling, the Supreme Court agreed with the circuit court that “respondent’s possession and use of the devices on board its vessel are not unlawful under our substantive state statutes. ...” Id. at 380.

It is not necessary to detail herein the Court’s analysis as to each of the various anti-gambling statutes involved. Suffice it to say that while the Court expressly emphasized that “the General Assembly is free to enact legislation which effectively bans or makes a state crime ‘day cruise’ operations ...,” it has not as yet done so. Therefore, concluded the Court, “Respondent is not subject to criminal prosecution under any existing criminal statute.” Id., at 386. Specifically, the Court held as follows:

[w]e affirm the circuit court’s ruling that respondent is not in violation of any state criminal statute. As noted above, the applicability of the three lottery statutes (§§ 16-19-10; 20; 30) and the bookmaking statute (§ 16-19-130) is not at issue here. Further, § 16-19-40 is inapplicable because respondent’s vessel is not a prohibited location nor a public place as described therein. In light of the intent clause of 1999 Act No. 125, we agree with the circuit court that the legislature did not intend that either § 12-21-2710 or § 16-19-50 apply to “day cruise” operations. Further, we conclude that the General Assembly’s rejection of statutes which would explicitly criminalize day cruises is evidence of its understanding that none of our existing statutes applies to such operations. Since the devices are not unlawful, they are not subject to seizure under either § 12-21-2712 or § 16-19-120.

Id., at 385-386.

The Stardancer Court noted that its ruling was expressly limited to a construction of the existing statutes “as they apply to ‘day cruises to nowhere,’ that is, cruises on United States flag vessels operating out of a South Carolina port, making no intervening stops, and permitting gambling only when the ship is beyond the State’s territorial waters.” 347 S.C. at 386. At the time of the Court’s decision and continuing until the present time, this Office is on record as “disagree[ing] with the Court that ‘day cruises’ are legal under state law.” We have consistently stated that “[o]ur gambling laws apply equally both on dry land and ... on the water within South Carolina’s territory.” Statement of Attorney General Charlie Condon, November 9, 2001 upon the issuance of the Supreme Court’s opinion in Stardancer.

I turn now to your specific questions. If my responses seem painstakingly precise or repetitive, it is because of the propensity of the gambling industry to seize upon the written word for its benefit or exploitation. Thus, I freely admit that my answers to your questions are unusually cautious.

- (1) Is Justice Burnett’s dissent completely correct or only partially correct?

Justice Burnett issued a vigorous dissent in Stardancer. However, such dissent is, of course, not a part of the Court's decision – which is reflected in the opinion of the majority.

The majority opinion expressly limited its decision in Stardancer to “whether current law criminalizes the possession of gambling devices aboard U.S. flag vessels operating ‘day cruises to nowhere’ out of South Carolina ports.” The four Justices in the majority refused to concede to Justice Burnett's characterization in dissent that the majority had “legalized gambling devices on any contrivance capable of floating or use as water transportation, if controlled by a United States resident, citizen, or corporation.” 347 S.C. at 386, n. 14.

This Office has no opinion as to whether any particular portion or part of Justice Burnett's decision is “incorrect” or whether his characterization of the majority's holding is “correct.”

It was our argument to the Court and remains our opinion today that South Carolina's gambling laws apply equally to the territorial waters of South Carolina as to all other parts of the State. The Court did not, however, adopt or accept the State's arguments. Unless and until the General Assembly amends the law, the majority opinion in Stardancer is the controlling interpretation of South Carolina's gambling laws as they relate to “day cruises to nowhere.”

- (2) Can a vessel operating in South Carolina water operate its gaming devices while at dockside?

Again, assuming that your question relates to “day cruises to nowhere,” – the only issue addressed by Stardancer – the answer to your question is “No.”

- (3) Does such a vessel docked in South Carolina waters need to make a departure into International waters before such games can begin?

Again, my assumption is that you are referring to “day cruises to nowhere.” This Office continues to be of the opinion that Stardancer was wrongly decided in concluding that “day cruises to nowhere” are not prohibited under current State gambling laws. However, as the majority in Stardancer stated, the only exception to the gambling laws created by Stardancer are “day cruises to nowhere.” Pursuant to the Court's decision in Stardancer, “day cruises to nowhere” may only begin gambling after entering international waters.

- (4) Can this vessel operate these games while yet still in South Carolina waters while en route to International waters?

Again, my assumption is that the question relates only to “day cruises to nowhere.” With the caveats that, in our view, Stardancer was wrongly decided, and that the majority in Stardancer expressly stated that its decision applied only to “day cruises to nowhere,” the answer to your question is “No.”

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an