



ALAN WILSON  
ATTORNEY GENERAL

October 4, 2013

Stirling Halversen, Esquire  
City Attorney  
City of Isle of Palms  
P.O. Drawer 508  
Isle of Palms, S.C. 29451

Dear Ms. Halversen,

You seek an opinion as to the legality of a "casino night" under State law. By way of background, you provide the following information:

As you know from a prior inquiry to your Office from Steven Craig regarding this matter, Johnson & Johnson Insurance wishes to host a private "casino night" event. The City Council recently approved a request from Johnson & Johnson to sanction the event as a "City-sponsored event" so that the company may land a helicopter within the City's Conversation District in accordance with the permitted uses allowed under Section 5-4-40(3)(d) of the City Code. At the time of granting its approval, City Council understood that the theme of the party was to be a "Vegas"-style theme and cautioned that no gaming devices would be allowed at the party as such are prohibited under the City Code as well as under State law. Since granting its approval of the event as a "City-sponsored event," City Council has learned that Johnson & Johnson intends to have such gaming devices at the party.

In your response email to Mr. Craig dated August 27, 2013, a copy of which is attached, you cited to an Attorney General Opinion dated October 26, 1994. That Opinion advised:

In your example you state the participants, the guests invited to attend the particular function, would pay no money personally, (and, I assume, indirectly) to the sponsoring organization, for their presence and the right to participate in the games. If that is truly the case, then one of the three elements of a lottery would be missing, and the "casino night" would not be in violation of the statutes.... If, on the other hand, 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, however disguised, in order to get in the door to play the games, then they would be parting with consideration and a lottery would exist.

However, in your email response you also cautioned that if the attendees at the event were Johnson & Johnson customers, "a court could find the company's customers have indirectly given consideration to participate in the event, thus making the event an unlawful lottery under State law." We now have further information about the types of guests that would attend the Johnson & Johnson event and seek clarification on whether or not this particular "casino night" would be permissible under State law.

Approximately 475 invitees are clients of Johnson & Johnson who are independent insurance agents located throughout the Southeast. Approximately 125 are Johnson & Johnson employees. This event is an opportunity for employees and clients to see each other and for Johnson & Johnson to say "thanks" to its top clients. The entertainment for the event, which includes casino style games and a band, will be donated by a key sponsor, American Modern Insurance. There will be signs up recognizing their sponsorship of this gift to the guests. Attendees of the event will be given chips which they may use to bet on or play certain games for which they may win prizes. However, no real money would be used in playing these games.

In my review of this subject, I have not found any legal authority which addresses facts identical to this case. The invitees to the party include only independent agents and employees – not paying "customers" of Johnson & Johnson as referenced in your prior email. The invitees are not parting with any money whatsoever, either by cover charge, donation to charity, admission fee, ticket, or similar method in order to get in the door to play the games. Rather, the party is intended to be a gift to the invitees from the company.

Although the City wishes to allow the Johnson & Johnson party to go forward as planned, the City is concerned that its "City-sponsored event" might be in violation of State law and seeks your advice concerning the legality of such "casino night" events....

#### Law/Analysis

Article XVII, § 7 of the South Carolina Constitution states:

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.

S.C. Const. art. XVII, § 7.

In addition, several statutes generally prohibit lotteries and gambling. See generally S.C. Code §§ 16-19-10 et seq. For example, § 16-19-10 states:

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 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.

Pursuant to § 16-19-40:

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.

Furthermore, § 16-91-50 states:

Any person who shall set up, keep, or use any (a) 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, (b) roley-poley table, (c) table to play at rouge et noir, (d) faro

bank (e) any other gaming table or bank of the like kind or of any other kind for the purpose of gaming, or (f) any machine or device licensed pursuant to Section 12-21-2720 and used for gambling purposes except the games of billiards, bowls, chess, draughts, and backgammon, upon being convicted thereof, upon indictment, shall forfeit a sum not exceeding five hundred dollars and not less than two hundred dollars.

The elements of an illegal lottery have been described as: "(1) The giving of a prize, (2) by a method involving chance, (3) for a consideration paid by the contestant or participant." Darlington Theatres v. Coker, 190 S.C. 282, 2 S.E.2d 782, 786 (1939). In Darlington, a movie theater developed an advertising plan to direct "public attention to the type and quality of pictures displayed in the theater from day to day." Id., 2 S.E.2d at 783. The theater compiled a list of names from which winners would be drawn. It was not required that a person pay anything or purchase a ticket to be on the list; any person could simply ask to have their name included. A winner did not have to be present at the time of the drawing or enter the theater to claim the prize, and were given ample time to reach the theater from his or her home to claim it. Even if the winner was out of town at the time of the drawing, he or she could still claim the prize if they gave written notice to the theater ahead of time that he or she would be absent.

Noting that a scheme would not constitute a lottery where "no consideration is derived *directly* or *indirectly* from the party receiving the chance," the Court found the plan in Darlington did not constitute a lottery in violation of State law as it involved "no payment of money or the parting of any other consideration on the part of the participants ...." Id., 2 S.E.2d at 787-88 (emphasis added) (citation omitted). The Court also noted the plan was lawful in that it sought to *avoid*, not *evade*, the law prohibiting lotteries. Id., 2 S.E.2d at 789.

However, as we noted in a prior opinion:

[T]he Darlington Court left open the question of whether requiring attendance to enter the contest would constitute sufficient consideration. Citing the case of Maughs v. Porter, 157 Va. 415, 161 S.E. 242 (1931), the Court noted that in Maughs every person attending a sale of residence lots and had been given the opportunity to get his or her name into the receptacle from which a drawing for a car to be given away was made. The Virginia Court had concluded that there was consideration passing from the ticket holder to the promoter by virtue of the detriment of attending the sale. While our Supreme Court sharply criticized the case, the Court left open the question of whether "voluntary attendance without obligation, is a legal consideration for participation in a drawing," because actual attendance was not required in the case before it. Moreover, the Court specifically noted that in the facts before it, there was no suggestion of any "subterfuge or fraud in an attempt to evade ...."

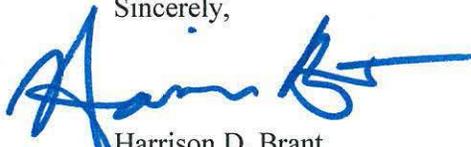
Op. S.C. Att'y Gen., 1996 WL 82893 (Jan. 11, 1996).

We went on in that same opinion to summarize case law from other jurisdictions finding the element of consideration was met such that a scheme or event constituted an unlawful lottery even though participation was considered "free," where the participants were required to expend time and effort to be eligible for a prize, or where prizes were made available only to paying customers or members of the

sponsoring organization. See, e.g., G.A. Carney, Ltd. v. Brzeczek, 117 Ill.App.3d 478 (Ill. App. Ct. 1983) (evidence indicated element of consideration was met such that contest was illegal lottery where only purchasers of \$1 magazine were eligible to enter and win cash prizes and \$1 paid was simply "an indirect payment to participate in a game of chance"); Boyd v. Piggly Wiggly Southern, Inc., 155 S.E.2d 630, 634-35 (Ga. Ct. App. 1967) ("It is well-settled in Georgia that a 'closed participation' gift enterprise scheme—that is, one which is open only to patrons purchasing goods, services, or whatever the promoter is trying to push by the scheme—is illegal and contrary to public policy"); Knox Industries Corp. v. State ex rel. Scanland, 258 P.2d 910 (Okla. 1953) ("consideration" element of illegal lottery was established where prospective participants had to appear at one of sponsor's service stations to obtain ticket, thus requiring "expenditure of time and inconvenience"; prospective participants were "subjected to sales appeal of merchandise offered for sale at [sponsor's] stores"; in order to claim prize, participant whose number is drawn must do so within certain hours on particular days of the week at sponsor's main office and thus "expend further time and effort in appearing to claim the prize").

In light of Darlington and the above prior opinion summarizing case law from other jurisdictions, we cannot say that the element of consideration is absent from the "casino night" event you indicate this particularly company plans to hold. Unlike the scheme approved of in Darlington in which anyone could participate without purchasing a ticket or even being present at the event, participation in the "casino night" at issue here is limited to clients or employees of the company who must attend to have a chance at winning prizes. Consistent with the prior opinion and case law from other jurisdictions mentioned above, a court could find consideration in the instant case is established by the fact that participants have to be a client or employee of the company and must expend time and effort in order to have a chance at winning a prize. Furthermore, a violation of §§ 16-19-10 et seq. may occur if such an event involves a game or undertaking which constitutes a lottery or is otherwise expressly prohibited by the provisions contained therein. Unless and until our courts decide otherwise, we must conclude such an event would likely violate State law.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General