

6924 Liberty



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

June 5, 2000

The Honorable James S. Klauber  
Member, House of Representatives  
406 E. Henrietta Avenue  
Greenwood, South Carolina 29649

**RE: Informal Opinion**

Dear Representative Klauber:

By your letter of May 1, 2000, you have inquired as to the legality of awarding a cash prize to a voter whose name is drawn at random from a listing of all who vote at either a primary or general election. In your letter you state, "[t]his would not be considered a lottery in that there is no consideration for the prize nor is there a purchase of any ticket involved. Eligibility would be predicated on purely those who cast ballots in a certain election."

Article XVII, Section 7 of the South Carolina Constitution (1895 as amended) forbids the operation of lotteries in South Carolina and provides as follows:

[n]o lottery shall ever be allowed or be advertised by newspapers, or otherwise, or its tickets be sold in this State. 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, shall not be deemed a lottery prohibited by this Section.

For years the leading case in South Carolina interpreting this section has been Darlington Theatres v. Coker, et al. 190 S.C. 282, 2 S.E.2d 782 (1939). The South Carolina Supreme Court concluded that the traditional definition of a lottery required the three elements of: (1) the offering of a prize; (2) payment of consideration for the opportunity to win the prize; and (3) the opportunity to win the prize based on chance. In keeping with

The Honorable James S. Klauber  
Page 2  
June 5, 2000

Darlington, courts and this Office have traditionally viewed any game or contest containing these elements as violative of the State Constitution's prohibition on lotteries.

The traditional characteristics of a lottery have recently been called into question by the South Carolina Supreme Court in Johnson v. Collins, 333 S.C. 96, 508 S.E.2d 575 (1998). In determining whether video poker machines are illegal lotteries, the Court distinguished between the terms "lottery" and "games of chance." The Court found that "lottery" as prohibited by the Constitution, could only be defined, in the narrowest sense, as a game in which "a large number of tickets are sold and a drawing is held for certain prizes." *Id.* at 579, (quoting Random House Dictionary of English Language) Not all games of chance or gambling devices fall within this definition and, accordingly, are not necessarily violative of the Constitution. *Id.* at 578.

The South Carolina Supreme Court's decision in Johnson v. Collins has introduced uncertainty into the lottery analysis. No longer are the traditional three elements espoused in Darlington the determinative test for legality. As a result, this Office cannot opine, with any high degree of confidence, that the games you describe do or do not violate the State Constitution's prohibition on lotteries. Enclosed is a copy of Johnson v. Collins, but until the Court speaks again on this issue, we can provide no further guidance.

This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Zeb C. Williams, III  
Deputy Attorney General

ZCW/an