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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 8, 2001

The Honorable Robert M. Stewart, Chief
South Carolina Law Enforcement Division
Post Office Box 21398
Columbia, South Carolina 29221-1398

Dear Chief Stewart:

You have asked our advice regarding the legality of a new game which is cropping up in 'Lil Cricket stores in the Upstate and in Horry County. As I understand it, the "Touch Easy Keno" game is being sold to customers in the form of either the option to purchase time on the Internet or to play the game. First Link of Greenville is arguing that it is not providing video gambling to customers but is instead promoting the Internet through the "Touch Easy Keno sweepstakes" game. Based on the information provided, in my opinion, however, this is illegal gambling inside and out. This Internet scheme is nothing but a ruse with a capital R. Accordingly, I urge you and other law enforcement agencies to make arrests of violators under the State's gambling laws for these games. My Office will assist you in whatever way possible.

As I understand it, First Link's "Touch Easy Keno" is played by selling an "Insta Card" to the customer out of an automated cash machine. The card is then swiped through the reader on the Expressway Computer terminal. The customer is transmitted to a registration page. After certain registration information is entered by the customer, he or she is given three options on the screen: a direct link to the home page of GEICO Insurance; an e-mail link to AOL; and a button marked "Internet." If the customer pushes the "Internet" button, he or she is given the option of either logging onto the Internet or playing the Keno game.

Each game costs \$1 and each 5 minutes of Internet time also cost a dollar. When a \$20 bill is placed in the ATM machine, the customer has bought either 20 Keno games or 100 minutes on the Internet, whichever he chooses. Apparently, the customer can go back and forth between playing the Keno game and spending time on the Internet. The Company also offers free game pieces by mail order.

If the customer has won at the Keno game, he or she can collect the winnings by reswiping the Insta Card through the ATM machine. Winnings of as much as \$1 million are advertised at the

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'Lil Cricket stores. The amount of the winnings depends on how many Keno balls match each other in a given Keno game.

In my opinion, First Link is incorrectly characterizing the "sweepstakes" as merely the same kind of promotional device routinely used by chains such as McDonalds or Piggly Wiggly to sell their products. The Company says it is promoting the Internet, not engaging in video gambling.

This is ridiculous. Gambling is defined as the risking of money, credit, deposit or other thing of value for gain contingent in whole or in part upon lot, chance or the operation of a gambling device. Op. Atty. Gen., September 26, 1980. All the elements of gambling - prize, chance and consideration - are present in the "Touch Easy" game. The gambling game is one of pure chance. Moreover, the prize and consideration are contained in the ATM machine which is inextricably linked to the game by the Insta Card. A gambling scheme cannot be transformed into legitimacy merely by splitting it into two parts.

With respect to the element of consideration, the Company will undoubtedly argue that such element is lacking because the customer is, in reality, purchasing Internet time and that the Keno game is merely a promotional device for the sale of a legitimate product. The video gambling industry has been perfecting this argument for some time. The industry's dream is to disguise itself as a legitimate business which is simply promoting a legitimate product. But concocting a scheme of selling time on the Internet does not make video gambling the same as McDonalds hamburgers.

In the case of McDonalds or Piggly Wiggly promotions, the customer always gets the product paid for - whether it is fast food or groceries. He or she doesn't have to choose between gambling and the product. Here, however, First Link is, in reality, selling the Keno game. If the customer chooses to play the game - whether or not it is after pushing the button marked "Internet" - he or she gets absolutely nothing else in return for his \$20 but 20 chances to win. Most times, if not all, the customer chooses to spend his \$20 on 20 games of Keno and never even bothers with logging onto the Internet. When that is the case, he gets absolutely nothing else for his money but the chance to gamble.

To try and conceal the gambling behind the facade of purchase of Internet time is thus nothing more than legal trickery. See, People v. Pacific Gaming Technologies, 98 Cal. Repr.2d 400 (2000); Harvie v. Heise, 150 S.C. 277, 148 S.E. 266 (1929); Op. Atty. Gen., September 26, 1980. Clearly, the lure here is not Internet time, but the Keno game. The company posts a sign advertising the chance to win as much as \$1 million. Thus, in my opinion, the "Touch Easy Keno" game is violating the gambling laws of South Carolina.

Once criminal cases are made against these games, undoubtedly, we will have to face the argument that the games are legal based upon a new law quietly slipped through the General Assembly in 1999 at the same time video gambling was being outlawed. S.C. Code Ann. Sec. 61-4-580 provides in pertinent part as follows:

No holder of a permit authorizing the sale of beer or wine or a servant, agent or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

- ...
- (3) permits gambling or games of chance except game promotion including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:
 - (a) the game promotion is conducted or offered in connection with the sale, promotion or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;
 - (b) no purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize;
 - (c) all materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation.

In my view, the video gambling industry likely knew all along that it might need to fall back on this amendment to reestablish itself if the Legislature decided to ban the industry. It is clear from the design of "Touch Easy Keno" that video gambling has been working overtime to cleverly disguise itself as businesses like McDonalds and to skillfully fit itself within the 1999 law.

Undoubtedly, the industry will attempt to use § 61-4-580 in the same way that it used § 16-19-60 in State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991) to once more legalize video gambling. In Blackmon, the Court read § 16-19-60 as an exception to the gambling laws with respect to non-payout video poker machines. Likewise, the argument will be made that the ban on video gambling does not reach games such as "Touch Easy Keno" because they are promotional sweepstakes used to promote a legitimate product.

I reject this argument. In my opinion, § 61-4-580 does not immunize the "Touch Easy Keno" game from the State's gambling laws. Section 61-4-580 was designed to provide merely a safe harbor for beer and wine permit holders from administrative licensing sanctions, but not a zone of amnesty for video gambling criminal sanctions. If the elements of gambling are present, as they are here, § 61-4-580 does not protect this Keno game from criminal penalties. Administrative licensing

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penalties and criminal penalties are totally separate and apart from one another and have no effect on each other. See, State v. Young, 3 Neb. App. 539, 530 N.W.2d 269 (1995).

In short, this Internet scheme is nothing but a sham and a scam. Full-fledged video gambling is being peddled to the public by dressing it up as surfing the Net. That is ludicrous. If it looks like a duck, walks like a duck and quacks like a duck, it's a duck. This game is gambling.

The State of South Carolina cannot tolerate video gambling's rise and return to power. The State must act swiftly and surely before video gambling can gain another foothold of legal legitimacy in the courts.

I believe we must have a two-front war. The first front will be arrests and prosecutions under the State's gambling laws. I urge you immediately to make arrests where violations occur. As you are aware, § 16-19-120 permits seizure of the fruits of gambling paraphernalia as part of a criminal case. See Op. Atty. Gen., December 7, 2000. This Office will back you completely.

Secondly, I am sounding the alarm to the Legislature that § 16-4-580 was quietly slipped through the General Assembly and that the video gambling industry will try to use this statute for the industry's resurrection. The General Assembly must do whatever is necessary to make absolutely sure video gambling is dead and stays buried in the grave.

Sincerely,



Charlie Condon
Attorney General