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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 14, 2001

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

Re: Your Letter of February 7, 2001
S.C. Code Ann. §§12-21-2710 & 16-19-120

Dear Chief Stewart:

In the above letter, you indicate that it "has come to [SLED's] attention that some amusement companies are attempting to market a new gaming device called 'Domino Pete' at licensed business establishments." Further, you request a "formal opinion regarding whether 'Domino Pete' or similar gaming devices would be prohibited by S.C. Code of Laws, Section 12-21-2710...and can the machine be confiscated and destroyed as provided in S.C. Code of Laws, Section 16-19-120."

By way of background, you indicate that "licensed business establishments are giving food, merchandise, and gift certificates from other vendors in exchange for a players 'credits' or 'skill points' acquired while playing the gaming device." You also provide additional promotional information on the "Domino Pete" gaming device which included a picture of the device and indicated that the device has features such as "redemption ready, no replay feature...[and]...available in ticket dispenser." Also, the following description was contained in the materials:

THE GAME: This game uses a standard rack of double-six dominoes plus seven additional tiles, each containing a "wild" picture of "Pete". The object of this game is to acquire a set of five dominoes that contain tiles qualifying for one of the winning combinations (six-of-a-kind, seven-of-a-kind, etc.) shown in the Skill Point Award Table.

PLAYING CREDITS: When the game begins, you first will need to set the number of credits you want to play. Touch PLAY CREDITS and then touch the appropriate choices. You may change the amount of credits that you wish to play between each round of play.

GAME PLAY: Touch START and the machine will give you five dominoes from a single 28-tile set. You now need to select some, all or none of these to keep. The rest of your dominoes will be discarded. Touch a domino to keep it. If you change your mind, simply touch it again. To keep all of the dominoes, you will need to touch all five of them. When you have selected all the dominoes that you want to keep, touch DRAW. The machine will remove the discards and display replacement dominoes. Your rack will then be evaluated. Skill points will be awarded according to the Skill Point Award Table.

PETE'S COOL SHADES: If you get five or more "Pete" dominoes in your rack, you will be taken to the "Cool Shades" bonus screen where you will be awarded bonus skill points equal to 5, 10, or 20 times the amount of credit you played. Pete will hide bonus skill points behind each of three different sets of sunglasses. Then he'll shuffle them around a bit. When the sunglasses stop moving, just touch one to get your bonus skill points!

Additionally, Captain Stacy Drakeford forwarded information on February 13, 2001 which indicated that SLED agents had entered a particular establishment and played the "Domino Pete" device. Their experience with the machine is described as follows:

The Domino Pete machines looked exactly like a video poker machine...[an a]gent... approached one of the Domino Pete machines and inserted \$22.00. The machine had a .25 cent, a .50 cent and a \$1.00 dollar game. The machine gives a player the option to play either game. [An a]gent... played the \$1.00 game. In this game, each play was a dollar. The machine also had two arrow buttons on the screen that would allow a player to raise or lower a bet. To play the game, a player would hit the play button and five dominoes on the screen would turn over revealing two numbers on each domino, for a total of ten numbers. There was also an animated face that would appear on the dominoes, once in a while, indicating a wild card. The numbers on the dominoes were represented by dots, just like a real domino. There were buttons on the front of the machine that the player used to play. The buttons allowed the player to play, stand, keep and have a ticket printed out. There was a scale on the screen of the machine indicating what combinations won and how many points would be won. The machine awarded skill points for winning games. If a player put twenty dollars in the machine and played the 1 dollar game, the player had twenty games, win or lose. Points were won by getting at least six like numbers up to eight like numbers, or getting at least three natural doubles. After the credits are played off, a player has to put more money in the machine to continue, or push the ticket button and the machine would print a ticket telling the player how many skill points they had won.

[The] agent...played the game and had a ticket printed out that showed 26 skill points. He took the ticket to the bartender to attempt to cash in the points. The bartender told him that he could apply the points toward his meal and wrote \$6.50 on the ticket. He gave [the] agent...the ticket and told him to give it to his waitress. A short time later,

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[another agent] approached the same machine and inserted \$20.00. [That agent] played the credits off and pushed the ticket button. The machine printed a ticket indicating 108 skill points. [That agent] went back to the table we were seated at and the waitress approached [the agents] with the bill for our meals. She stated that our bill was \$19.00 and some change. She took both of the tickets, [the agents] had won on the machines, and took them to the bartender, along with the bill for the meals. She then returned and stated that the bill was taken care of and gave [the agent] \$11.00. She stated that the \$11.00 was what was left from the value of the skill points on the tickets, after the price of the meals were deducted...

You have presented a two-part question in reference to the "Domino Pete" device. Part one relates to the application of S.C. Code Ann. §12-21-2710, banning mere possession of certain machines and devices, and part two relates to the application of S.C. Code Ann. §16-19-120, which provides for the destruction of gambling devices following a criminal conviction. As the application of one is not necessarily dependent on the application of the other, I will address each section separately.

When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The clear and unambiguous terms of a statute must be applied according to their literal meaning. State v. Blackmon, supra.

Section 16-19-120 is titled *Officers shall destroy gambling devices after confiscation* and provides as follows:

All officers of the law in whose care, possession or keeping may be placed any gambling or gaming machine or device of any kind whatsoever or any gambling or gaming punchboard of any kind or description whatsoever which has been confiscated for violation of any criminal law or laws of this State shall immediately after conviction of the violator of the law destroy the same.

A "gambling device" has been generally defined as "...any device used as a means of playing for money or other thing of value, where the result depends more largely on chance than on skill, and the term will ordinarily include only such instruments or contrivances as are intended for the purpose of gambling or such as are used to determine the result of a contest on which the wager is laid." 38 C.J.S. Gaming §76. A device, such as the "Domino Pete," which, as a matter of fact, has been used to determine the outcome of a wager would fit the general definition of gambling device above, and would also appear to fall within the meaning of the sweeping language used in §16-19-120 of a "gambling or gaming machine or device of any kind whatsoever..." Accordingly, where the "Domino Pete" has been used as described above, the device would be subject to seizure and confiscation by SLED and subject to destruction pursuant to §16-19-120 upon the offending person's conviction for

a violation of our gambling laws. The confiscation and destruction of the device in this case would be appropriate regardless of whether the device is classified as contraband per se pursuant to §12-21-2710. See ATTY. GEN. OP. (Dated December 7, 2000); See also T & W Enterprises, Inc. v. Casey, 715 S.W.2d 356 (Tenn. 1986).

Conversely, the application of §12-21-2710 to a particular machine or device is not tied to its actual use to gamble. Section 12-21-2710 provides in pertinent part as follows:

It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device licensed pursuant to Section 12-21-2720 and used for gambling or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance.

The statute makes illegal the mere possession of certain machines and devices regardless of their use or intended use. See State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000); Squires v. South Carolina Law Enforcement Division, 249 S.C. 609, 155 S.E.2d 859 (1967); State v. Appley, 207 S.C. 284, 35 S.E.2d 835 (1945). Machines and devices that fall within the proscriptions of §12-21-2710 are therefore considered contraband per se. State v. 192 Coin-Operated Video Game Machines, supra. While the statute specifically mentions such machines and devices as “slot machines” and “punch boards,” it also outlaws any “other device pertaining to games of chance of whatever name or kind...” A game of chance is simply a “game in which chance rather than skill determines the outcome.” See *Black’s Law Dictionary*. It is obvious that the Legislature intended to outlaw games which contained any element of chance whatsoever as they exempted from §12-21-2710 only those games which, among other things, contain “no element of chance.”

The intent of the Legislature in using such broad language has been expressed this way: “[i]t is clear that the Legislature, by enactment of the statutes involved, did condemn any devices pertaining to games of chance.” Squires v. South Carolina Law Enforcement Division, supra (interpreting predecessor of §12-21-2710 which made it “unlawful for any person to keep on his premises any slot machine or other device pertaining to games of chance of whatever name and kind”). The same language was held by our Supreme Court in 1941 to make unlawful as a “game of chance” a particular machine even “though there was no pay off on the machine or apparatus for pay off...[and] no free games were awarded and [the] only element of chance was the score that might

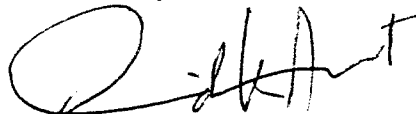
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be made.” Alexander v. Hunnicutt, 196 S.C. 364, 13 S.E.2d 630 (1941). The Alexander v. Hunnicutt decision recognizes that games of chance, regardless of their actual or intended use, are uniquely suited for wagering and gambling. As the Court quoted with approval in Alexander v. Martin, 192 S.C. 176, 6 S.E.2d 20 (1939), “[e]ven if the...machine involved in this case is manufactured and intended for lawful operation, its potentiality and design is such that it may be easily put to unlawful use. The regulation or prohibition of such a mechanism need not be postponed until such event occurs [citation omitted].” Further, it is “proper for the Legislature, in order to prevent the use of a device for gambling, to prohibit its possession or ownership.” Squires v. South Carolina Law Enforcement Division, supra

As described above, the “Domino Pete” gaming device clearly appears to be a “game of chance” as covered by §12-21-2710. The fact that there is no free replay feature or no pay off feature does not effect its status as such. The accumulation of the misnamed “skill points” is dependent not on the players skill, but the luck of the draw. Your agents’ hands-on experience confirms the Legislature’s wisdom in outlawing such devices which “may be easily put to unlawful use.”

Based on the information provided concerning the “Domino Pete” device and the foregoing authority, it is my opinion that there exist clear probable cause to believe that the “Domino Pete” device falls within the prohibitions of S.C. Code Ann. §12-21-2710. Consequently, a law enforcement agency would be justified in seizing the device and taking it “before any magistrate...who shall immediately examine it, and if satisfied that it is in violation of Section 12-21-2710 or any other law of this State, direct that it be immediately destroyed” pursuant to S.C. Code Ann. §12-21-2712.

Sincerely,



David K. Avant
Assistant Attorney General

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