



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES M. CONDON  
ATTORNEY GENERAL

May 21, 1999

Chief Harold B. Johnson  
Chief of Police  
City of Sumter  
Post Office Box 1449  
Sumter, S. C. 29150

**Re: Informal Opinion**

Dear Chief Johnson:

Thank you for your letter to Attorney General Condon, dated April 2, 1999, which has been referred to me for a response. This letter is an informal opinion only. It has been written by a designated Senior Assistant 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.

You request an opinion from this Office on the legality of two games conducted by local organizations. One game involves the purchase of tickets for the opportunity to draw, at random, the queen of spades from a deck of cards. If the queen of spades is not chosen then the card pulled is destroyed and the cash jackpot rolls over until the next meeting, and the game is repeated. The number of cards in the deck gradually reduces and the jackpot increases until the queen is chosen. The second game, entitled Cow Patty Bingo, has ticket purchasers predicting where on a gridded field a cow will defecate. You are concerned that either of these games may constitute an illegal lottery.

Article XVII, Section 7 of the South Carolina Constitution forbids the operation of lotteries in South Carolina. That section of the Constitution provides:

[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.

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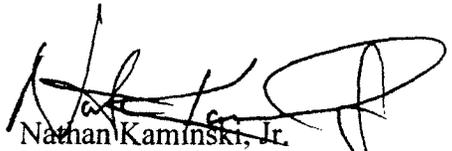
For years the leading case in South Carolina interpreting this section has been Darlington Theatres v. Coker, et al. 190 S.C. 282, 2 S.E.2d 782 (1939). The South Carolina Supreme Court concluded that the traditional definition of a lottery required the three elements of 1) the offering of a prize; 2)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

With kind regards, I remain

Very truly yours,

  
Nathan Kaminski, Jr.  
Senior Assistant Attorney General