

The State of South Carolina



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The Honorable James H. Hodges
Chairman, Judiciary Committee
House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Hodges:

You have asked the opinion of this Office whether coin-operated video poker machines with a free play feature, where the store owner disburses money and a player receives money, is a lottery under the State Constitution. You contend in your request letter that the South Carolina Supreme Court's decision in State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991) does not resolve this issue. We agree with you.

This Office has previously held that

... cash payoffs from pinball machines, which are the antecedent of video machines, 'constitutes an illegal lottery within the meaning of [the] ... South Carolina Code ...' See Op. Atty. Gen., May 23, 1978; see also, Op. Atty. Gen., May 22, 1981.

Op. Atty. Gen., October 29, 1990 [attached]. The previous opinion further recognized that the Supreme Court in Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984), resolved that when coin-operated video machines with free play features are not used for gambling, their use does not contemplate a "lottery" as that term is used in the State Constitution. Most importantly, as we recognized in our earlier opinion, the Court suggested that if these machines were used for gambling, their use may constitute a lottery.

We further agree with your assessment that State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991), does not undermine the prior opinions of this Office that cash payoffs for pinball machines constitute an illegal lottery. In Blackmon, the Court interpreted the

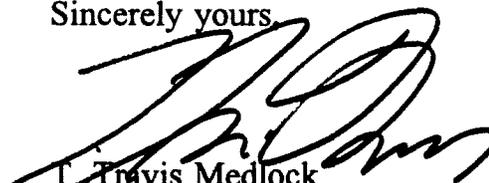
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statutory exemption contained in Section 16-19-60, supra, as exempting coin-operated, non-payout machines with free play features from the reach of Section 16-19-40 as long as these machines do not disburse money to the player. In reaching this conclusion, the Court chose to follow a literal interpretation of the Section 16-19-60 exemption; thus, it appears that the Court would construe the exemption contained in Section 16-19-60 to apply only to South Carolina Code Sections 16-19-40 and 16-19-50 and not to other statutory criminal provisions since, again, that is the provision's literal import. Interestingly, the Court in dicta realized that cash payoffs from free games won on coin-operated video machines with free play features "seems to be unlawful gambling ...," 403 S.E.2d, at 662. Thus, it is our opinion that the Court in Blackmon agreed with our earlier opinions and the suggestion in Powell v. Red Carpet Lounge that gambling upon these machines constitutes a lottery.¹

CONCLUSION

In summary, this Office is of the opinion that a cash payoff from playing coin-operated video poker games constitutes a lottery, and thus is in violation of the South Carolina Constitution. That being the case, the only mechanism for permitting these machines to provide cash payoffs is by constitutional amendment.

Sincerely yours,



T. Travis Medlock
Attorney General

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Attachment

¹In Berkebile v. Outen, S.C. Sup. Ct. Op. # 23779 (filed January 11, 1993), the Court assumes, at least for the limited purpose of disposing of the preliminary issue raised in a motion to dismiss, that cash payoffs paid to winners of free games on coin-operated video poker machines does not constitute illegal gambling. Again, the Court did not resolve this issue in Berkebile, but makes that assumption.