

The State of South Carolina



Office of the Attorney General

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June 20, 1991

The Honorable Kenneth S. Corbett
Member, House of Representatives
405 79th Avenue North
Myrtle Beach, South Carolina 29577

Dear Representative Corbett:

In a letter to this Office you questioned whether giving away a lottery ticket from a state where lotteries are permitted pursuant to a random drawing at a bingo session in South Carolina is legal in this State.

Pursuant to Section 16-19-10 of the Code

whoever shall publicly or privately erect, set up or expose to be played or drawn at or shall cause or procure to be erected, set up or exposed to be played, drawn or thrown at any lottery ... or by any undertaking whatsoever, in the nature of a lottery ... and shall be convicted of any of the offenses aforesaid, on any indictment for the same, at the court of general sessions, shall forfeit the sum of one thousand dollars ... and shall also, for every such offense be committed by the court to the common jail for the space of twelve months....

Also, pursuant to Article XVII, Section 7 of the State Constitution, "no lottery shall ever be allowed or be advertised by newspapers, or otherwise, or its tickets be sold in this State...."

In an opinion of this Office dated July 11, 1989 it was referenced that as to use of the term "expose to be played" as used in Section 16-19-10,

the term "expose" generally means to "show publicly; to display; to offer to the public view, as to 'expose' goods for sale." The term

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also means "to point out or to show to ... bystanders ..." or to "lay upon" or "place in a situation to be affected or acted on"

Therefore, as to the situation you addressed where a lottery ticket from another state will be given away, such may be within the conduct prohibited by Section 16-19-10.

I must emphasize, however, that this Office can only set forth the general law to you in the abstract. As with any prosecutions, the judgement call as to whether to prosecute a particular individual or whether a specific prosecution is warranted, or is on sound legal ground in an individual case, remains a matter within the exclusive discretion and jurisdiction of the local solicitor. Such a decision, of course, requires the weighing of a multitude of factors in addition to the general law in the area.

Federal statutory law may also be relevant to your issue. Federal law prohibits certain conduct in connection with lotteries. 18 U.S.C. § 1301 prohibits the interstate transportation of lottery tickets. 18 U.S.C. § 1302 prohibits mailing material dealing with lotteries, lottery tickets, or payment for the purchase of a lottery ticket. ^{1/} 18 U.S.C. § 1303 prohibits an employee of the Postal Service from delivering material dealing with lotteries while 18 U.S.C. § 1304 prohibits broadcasting by radio any advertisement or information dealing with a lottery. However, pursuant to 18 U.S.C. § 1307(a) and (b), state-conducted lotteries are exempt from prohibitions. Such provisions state in part:

(a) The provisions of sections 1301, 1302, 1303, and 1304 shall not apply to an advertisement, list of prizes, or other information concerning a lottery conducted by a State acting under the authority of State law which is

(1) contained in a publication published in that State or in a State which conducts such a lottery, or

(2) broadcast by a radio or television station licensed to a location in that State or an adjacent State which conducts such a lottery; or an advertisement, list of prizes, or other information concerning a lottery, gift enterprise, or

^{1/} In a prior opinion dated March 27, 1985 this Office concluded that federal law prohibits residents of this State from playing lotteries by mail unless permitted as set forth by 18 U.S.C. § 1307.

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similar scheme, other than one described in paragraph (1), that is authorized or not otherwise prohibited by the State in which it is conducted....

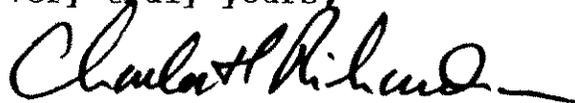
Therefore, newspapers are authorized to carry advertisements and information dealing with a state-conducted lottery if such newspaper is published in that state or in an adjacent state which also has a state-conducted lottery. Of course, any questions dealing with the applicability of such federal provisions to the situations you addressed should be directed to the United States Attorney.

In addition to the above, the fact that a prize, which in this instance would be a lottery ticket, would be given away pursuant to a random drawing may in itself constitute a lottery if the additional element of consideration is present. As referenced, Section 16-19-10 of the Code prohibits the conducting of a lottery in this State. In Darlington Theatres v. Coker, 190 S.C. 282, 2 S.E.2d 782 (1939) the State Supreme Court determined that a lottery consists of three elements: the offering of a prize, the payment of money or other consideration for an opportunity to win the prize, and the awarding of the prize by chance. Therefore, if there is a payment of consideration to win a prize, the lottery ticket, as a result of a random drawing, a lottery may exist.

Based upon the foregoing, violations of Section 16-19-10 may be present in the situation you addressed in your letter. Moreover, I am unaware of any exclusion which would permit such an operation as a part of an authorized bingo game in this State.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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