

The State of South Carolina



Office of the Attorney General

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November 10, 1988

James A. Spruill, III, Esquire
Attorney for Town of Cheraw
222 Market Street
Cheraw, South Carolina 29520

Dear Mr. Spruill:

Your letter of October 19, and accompanying Memorandum of Law, to Robert D. Cook, Executive Assistant for Opinions, has been referred to me for review and response. I am also in possession of Mr. J. William Taylor's letter to you of October 14 and his letter to Attorney General Medlock of September 15.

My review of the letters and memorandum indicates that the Cheraw Town Council is considering the enactment of an ordinance which would generally prohibit the operation of bingo games within the town limits of Cheraw. Your question, therefore, is whether, in light of the general bingo law, S. C. CODE 52-17-10, et seq., the town may enact such an ordinance.

As you have indicated, the town's ability to enact the proposed ordinance is determined by whether the terms of the ordinance would conflict with any of the provisions of the general bingo law. For, if any conflict would exist, the ordinance would not be lawful. See: 56 Am.Jur.2d Municipal Corporations, Section 374.

In view of the fact that the proposed ordinance would wholly prohibit the operation of a bingo game within the town limits of Cheraw, it is not necessary, for purposes of this discussion, to examine, in full, the general bingo law. The very existence of the state statute which permits the

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operation of bingo games, albeit with certain limitations, calls into question the validity of a local ordinance which would purport to prohibit such games.

The law in the State of South Carolina holds that the game of bingo is a lottery. See: Section 52-17-50, CODE; Army Navy Bingo, Garrison No. 2196 v. Plowden, 281 S.C. 226, 314 S.E.2d 339, (1984). Lotteries, of any kind, are generally prohibited and made unlawful by the provisions of Section 16-19-10, CODE. However, by the provisions of Section 52-17-20, CODE, the Legislature has stated that bingo games, when conducted in accordance with the specified conditions, are not to be deemed lotteries and, thus, are not prohibited. It would appear that by enacting Section 52-17-20, CODE, along with the other provisions of the general bingo law, the Legislature has clearly evidenced its intent to permit the operation of bingo games in this State under certain conditions. (See: Kennerly v. Ocmulgee Lumber Co., 206 S.C. 481, 34 S.E.2d 792, 1945; wherein it is stated that in statutory construction, one must give effect to the manifest intention of the Legislature.)

Although the Legislature did not, by the provisions of Section 52-17-10, et seq., CODE, expressly permit the operation of bingo games in this State, the natural and practical consequence of Section 52-17-20, CODE, was the removal of the legal impediment to the operation of such games. Indeed, Section 52-17-10, et seq., CODE, would be rendered largely ineffective and useless if, despite its existence, municipalities could freely bar the operation of bingo games within their boundaries. To suggest that the Legislature contemplated such a result would require one to ignore a cardinal principle of statutory construction; i.e., it must be presumed that the Legislature intended by its action to accomplish something and not to do a futile thing. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778, (1964).

In view of this reasoning, it must be held that, because the Legislature has manifested its intent to permit the operation of bingo games under certain conditions, an ordinance that would wholly prohibit the operation of such games would, in all probability, be unlawful. This holding is reinforced by dicta found in AmVets Post 100 v. The Richland County Council, et al., 280 S.C. 317, 313 S.E.2d

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293, (1984). In its opinion upholding the validity of a Richland County bingo ordinance which imposed requirements on bingo games above and beyond those imposed by the general bingo law, the Court pointedly noted that the Richland County ordinance did not prohibit the operation of bingo. AmVets, supra, p. 294, (emphasis supplied).

Accordingly, it is the conclusion of this Office that the ordinance proposed by the Town Council of Cheraw which would prohibit the operation of bingo games within the town limits would, most probably, be unlawful.

I trust that you will find the foregoing information to be responsive to your inquiry. Please let me know if I can be of further assistance to you.

Very truly yours,



Wilbur E. Johnson
Assistant Attorney General

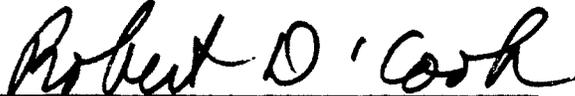
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cc: J. William Taylor
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