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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 87-75-192

August 20, 1987

SUBJECT: Taxation and Revenue - Annual License to Conduct Bingo Games.

SYLLABI: 1. Organizations presently holding Class "A" or Class "B" bingo licenses that do not expire until after September 1, 1987 are not required to obtain new licenses. Bingo may be conducted under such licenses after September 1, 1987, however, subject to the limitations imposed by the 1987 Act.

2. Bingo games authorized under the Class "A" or Class "B" licenses cannot after September 1, 1987 exceed the limitations imposed by the 1987 Act. No other license can be issued the holder of a Class "A" or Class "B" license until the expiration date of the present license.

TO: Hon. S. Hunter Howard, Jr., Chairman  
Hon. John M. Rucker, Commissioner  
Hon. A. Crawford Clarkson, Jr., Commissioner  
South Carolina Tax Commission

FROM: Joe L. Allen, Jr. *JA*  
Chief Deputy Attorney General

QUESTIONS: A 1987 Act, ratification number R291, House Bill 2085, was approved by the Governor on June 30, 1987. It amended §§ 12-21-2590 and 12-21-2600 effective September 1, 1987. The inquiries are the effect of the amendments on outstanding bingo licenses and are more specifically stated as follows:

1. Are organizations presently holding bingo licenses required to purchase new licenses as of September 1, 1987 or can they operate under their present licenses until they expire?

2. If a new license is required, does the Commission have the authority to allow a credit, refund or proration of the license fee?

3. If a current holder of an "A" or "B" license conducts his operations such that he falls within the criteria of a

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higher level license, is he required to purchase a new license?

4. Can a current license holder purchase a higher level license voluntarily, if he so desires, prior to expiration of his current license?

APPLICABLE LAW: Article XVII, § 7 of the South Carolina Constitution, §§ 12-21-2590 and 12-21-2600, South Carolina Code of Laws, 1976.

DISCUSSION:

The Constitution prohibits lotteries except that:

"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."

This, however, confers no constitutional right to conduct bingo games. That right is subject to legislative restriction and control.

"There is no right to conduct bingo under the State Constitution. Nor is there a fundamental right to gamble protected by the Federal Constitution. Lewis v. United States, 348 U.S. 419, 75 S.Ct. 415, 99 L.Ed. 475 (1955). In fact, the State's power to suppress gambling is practically unrestrained. Ah Sin v. Wittman, 198 U.S. 500, 25 S.Ct. 756, 49 L.Ed. 1142 (1905).

Organizations may conduct bingo in this state only by license. The license confers no property right. It is a permit issued pursuant to the State's police power. Unlicensed bingo is punishable under Code § 16-19-10 as a crime. Bingo may only be conducted in accordance with the restrictions imposed by the legislature. Feldman v. South Carolina Tax Comm'n, 203 S.C. 49,

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26 S.E.2d 22 (1943); 51 Am.Jur.2d  
Licenses and Permits, § 18 (1970)."  
Army Navy Bingo, Garrison #2196 v.  
Plowden, 281 S.C. 226, 314 S.E2d 339 at  
p. 340.

The General Assembly, by Act 466, Acts of 1982, first adopted the provisions that are here applicable. In providing for the licenses, it established the following licenses:

1. Class "A" cost \$1,000 and authorized games that had prizes in excess of \$4,000 per session. One session per month could be conducted under this license.
2. Class "B" cost \$500 and authorized games with prizes that did not exceed \$4,000 per session and no more than \$1,000 per session in jackpots. Regular game prizes could not exceed \$150 and the sessions were limited to three per week.

There are other classes, however, the 1987 Act did not modify the costs or conditions under which the game could be conducted for each of those classes.

The 1987 Act established a new "AA" class and amended the costs and other limitations of the Class "A" and Class "B" licenses as follows:

1. Class "AA" cost \$4,000 and authorizes games with prizes of not less than \$30,000 nor more than \$250,000 per session. It is limited to one session per month.
2. Class "A" cost \$2,500 and authorizes prizes in excess of \$6,000 but not greater than \$30,000. It is limited to one session per month.
3. Class "B" cost \$1,000 and authorizes prizes that do not exceed \$6,000, jackpots of \$1,000 and regular game prizes of \$150. It is limited to three sessions a week.

In considering the effect of the 1987 Act upon the Class "A" and "B" licenses that were established in the 1982 Act, we are governed by settled rules of construction.

First is that the amendatory language is prospective in its application unless otherwise provided by clear language. (For cases see 17 S.C.D., Key 263, et seq.) The 1987 Act specifically provides that the amendments here considered are to be effective September 1, 1987.

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The general rule is stated in 73 Am.Jur.2d, Statutes, § 408, p. 517, as follows:

"An amendment of an act of course operates as a repeal of provisions of the amended act which are changed by, and repugnant to, the amendatory act. . . ." See also Windham v. Pace, 192 S.C. 271, 6 S.E.2d 270 and Independence Ins. Co. v. Independent Life and Acc. Ins. Co. 218 S.C. 22, 61 S.E.2d 399.

It is thus obvious that the provisions of the 1987 Act repealed the conditions of the Class "A" and "B" licenses that are in conflict with the 1987 amendments. Those are the costs for the licenses and the limitations provided thereunder. The changes are effective September 1, 1987. A cost for license issued on or after that date will be the amounts as set forth in the 1987 Act. The Act, however, does not revoke the annual license that was issued before that date and which expires after that date. There is no legislative expression or declaration that the license fee is to be retrospectively applied to such existing license. The heading of the Act provides in part that the amendments were adopted.

". . . so as to increase the fees and applicable admissions tax for Class 'A' and 'B' licenses and to establish a Class AA license. . . ."

As stated, this was to be effective September 1, 1987. Section 12-21-2590 provides that:

"Once issued, the organization must function under the regulations of that license for a period of not less than one year. . . ."

By this language, an organization can hold only one license within a twelve month period.<sup>1</sup>

<sup>1</sup>As stated in Army Navy Bingo, Garrison #2196 v. Plowden, supra, "The license confers no property rights. It is a permit issued pursuant to the State's police power." The General Assembly can thus modify the terms or conditions under which the game can be conducted. (For cases, see 17 S.C.D., Statutes, Key 129.)

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CONCLUSIONS:

Questions 1 and 2. Organizations presently holding Class "A" or Class "B" bingo licenses that do not expire until after September 1, 1987 are not required to obtain new licenses. Bingo may be conducted under such licenses after September 1, 1987, however, subject to the limitations imposed by the 1987 Act.

Questions 3 and 4. Bingo games authorized under the Class "A" or Class "B" licenses cannot after September 1, 1987 exceed the limitations imposed by the 1987 Act. No other license can be issued the holder of a Class "A" or Class "B" licenses until the expiration date of the present license.

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