

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S. C. 29211
TELEPHONE 803-758-3970

March 24, 1986

J. P. Strom, Chief
South Carolina Law
Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221-1398

Dear Chief Strom:

In a letter to this Office you questioned whether a proposed golf tournament would constitute a lottery.

As you are aware, Section 16-19-10 of the 1976 Code of Laws prohibits the conducting of a lottery in this State. In Darlington Theatres v. Coker, 190 S.C. 282, 2 S.E.2d 782 (1962), the State Supreme Court determined that a lottery consists of three elements:

1. the offering of a prize;
2. the payment of money or other consideration for an opportunity to win the prize;
3. the awarding of the prize by chance.

Present laws provide no exception for lotteries conducted by or on behalf of charitable organizations.

As described in the enclosure forwarded to this Office, a fee is paid to participate in the golf tournament referenced in your request. (Rule 5). Prizes are awarded as the result of play. While two elements of a lottery, a prize and payment of consideration for an opportunity to win the prize, are present, it does not appear that the necessary third element, the awarding of the prize by chance is present. At least one court has specifically determined that the game of golf is a game of skill

Chief Strom
Page 2
March 24, 1986

and not gambling. Faircloth v. Central Florida Fair, Inc., 202 So.2d 608 (D. C. Fla. 1967).

Generally, it has been stated that

(c)hance, as one of the elements of a lottery, has reference to the attempt to attain certain ends, not by skill or any known or fixed rules, but by the happening of a subsequent event, incapable of ascertainment or accomplishment by means of human foresight or ingenuity ... (I)t is not necessary that this element of chance be pure chance but it may be accompanied by an element of calculation or even of certainty; it is sufficient if chance is the dominant or controlling factor....

38 Am.Jur.2d, Gambling, Section 9 pp. 115-116. Similarly

(c)hance within the lottery statute is one which dominates over skill or judgment. The measure is a qualitative one; that is, the chance must be an integral part which influences the result. The measure is not the quantitative proportion of skill and chances in viewing the scheme as a whole.

Seattle Times Co. v. Tielsch, 495 P.2d 1366 at 1369 (Wash. 1972).
See also: Opinions of the Attorney General dated December 5, 1978, October 11, 1978; May 23, 1978; March 17, 1978.

The conclusion that the element of chance is not dominant in the proposed tournament is based on my understanding that the four man teams which play in the tournament are formed by considering the individual players' handicaps. (Rule 1). This rule governs the selection of local, regional, and national level teams. Also, the scores received by the players are based entirely on their skills in playing the game of golf. Based upon my understanding of the rules, no element of pure chance is present.

Inasmuch as the proposed golf tournament appears to be a game of skill, as opposed to a game of chance, such tournament would not constitute a lottery. However, as indicated above, such construction is based upon my understanding that an individual's success in such a tournament is based entirely upon his skills as a golfer. Of course, if chance would enter into

Chief Strom
Page 3
March 24, 1986

the determination of the winner, the conclusion would have to be reexamined.

If there is anything further, please advise.

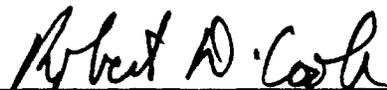
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions