

1978 WL 34774 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
March 17, 1978

*1 John H. Cook
Chief of Police
Department of Public Safety
Police Division
Post Office Box 1425
Orangeburg, South Carolina 29115

Dear Mr. Cook:

In response to your inquiry of January 4, 1978, the State of South Carolina clearly prohibits lotteries of all kinds, both in [Art. 17, § 7 of the State Constitution](#) and by the provisions of the [South Carolina Code, §§ 16-19-10](#), et seq. According to [Darlington Theater, Inc. v. Cooper](#), 190 S.C. 282, 2 S.E.2d 782, 786 (1938), 'to constitute a lottery or a scheme in the nature of a lottery, it is essential that three elements be present, to wit: 1) The giving of a prize; 2) by a method involving chance; 3) for a consideration paid by the contestant or participant.'

The situation you described in your letter obviously involves the offering of a prize, and the use of the pinball machine is predicated upon a 25 cents 'consideration,' thus conforming with requirements 1) and 3) above. Requirement 2) is somewhat different, as high scores on a pinball machine are arguably related to skill rather than chance. In [AAA Amusements, Inc. v. State](#), 106 Ga.App. 663, 127 S.E.2d 919 (1962), it was held that cash payoffs made for free games did constitute a lottery; however, the element of chance involved in winning free games is slightly different from that involved solely with the point score. Nonetheless, an opinion of this office of June 14, 1973, stated that 'winning on a pinball machine does not depend solely on skill or judgment, and if skill or judgment were involved . . . They are not the dominant factors in winning.' Similarly, an opinion of October 11, 1972, noted that certain carnival midway games, such as the 'ball-toss' or 'shooting gallery,' ostensibly games of skill or ability, did in fact involve a sufficient element of chance to render them lotteries.

Therefore, it is the opinion of this office that the offering of prizes by store owners for the highest monthly pinball score does constitute a lottery, and that such activity is prohibited by the relevant statutory provisions.

If we may be of any further assistance, please do not hesitate to let us know.
Sincerely,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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