

1978 WL 35108 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 12, 1978

***1 RE: Newberry County Fair: Indecent exposure and gambling laws pertaining thereto.**

Honorable C. A. Shealy, Jr.

Mayor

City of Newberry

Newberry, S. C. 29108

Dear Mayor Shealy:

I have this day received an inquiry from Mr. James S. Verner, Esquire, concerning the above matter. Mr. Verner has requested that I advise you of state laws pertaining to gambling and indecent exposure as may apply to the Newberry County Fair. For your convenience, I have enclosed a copy of Mr. Verner's letter of August 7, 1978, to Chief Shealy of the Newberry Police Department.

In reference to laws which govern indecent exposure, I direct your attention to [Section 16-15-130, S. C. Code of Laws \(1976\)](#). That section expressly prohibits indecent exposure in public places. I have enclosed an opinion of this Office in which it was concluded that [Section 16-15-130](#) (formerly, Section 16-413, 1962 Code of Laws) prohibits any female from appearing 'topless' as a waitress in a public place, to include private clubs open to the public. It is my opinion that [Section 16-15-130](#) prohibits 'topless' and 'bottomless' dancing at state or county fairs.

As to your inquiry concerning gambling laws which would apply to the Newberry County Fair, I direct your attention to Section 16-19-10, et seq., S. C. Code of Laws (1976). Specifically, Section 16-19-10, prohibits the setting up of lotteries. For clarification, a lottery has been defined by our Supreme Court as consisting of three elements: the offering of a prize; the giving of a consideration for an opportunity to win the prize; and the awarding of the prize on the basis of chance. [Darlington Theatres v. Coker, 190 S.C. 282 \(1939\)](#).

[Section 16-19-40, S. C. Code of Laws \(1976\)](#), would also be applicable to county fairs. That section makes it unlawful to play certain games, as specified in the statute. However, [Section 52-1-20, S. C. Code of Laws \(1976\)](#), provides as follows: No carnival to which games of chance or gambling devices are attached shall exhibit in this State. Provided, games of chance involving skill shall be permissible at recognized State and county fairs; provided further, no cash prize shall be awarded.

Therefore, games of chance, involving skill may be played at county fairs provided no cash prizes are awarded.

I further direct your attention to [Article XVII, Section 7, S.C. Constitution \(1976\)](#), as amended. The constitutional provision provides as follows:

Lotteries. No lottery shall ever be allowed or be advertised by newspaper or otherwise, or its tickets sold in this State. The game of bingo, when conducted . . . at recognized annual State or county fairs, shall not be deemed a lottery prohibited by this section (emphasis supplied).

The plain language of the constitutional provision makes it clear that the game of bingo, when played at a recognized county fair, does not constitute a lottery. To the extent that the Newberry County Fair is a recognized county fair, it is entitled to the exceptions provided under [Section 52-1-20](#), [supra](#), and [Article XVII, Section 7](#), [supra](#).

*2 I trust that the foregoing summary has been of some benefit to you. If you need further assistance, please do not hesitate to call at any time.

With kind personal regards.

Very truly yours,

William K. Moore

State Attorney

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