



ALAN WILSON
ATTORNEY GENERAL

October 27, 2017

The Hon. Neal Collins, Member
South Carolina House of Representatives
418-C Blatt Building
Columbia, SC 29201

The Hon. Gary Clary, Member
South Carolina House of Representatives
402-D Blatt Building
Columbia, SC 29201

The Hon. Thomas Alexander, Member
South Carolina Senate
313 Gressette Building
Columbia, SC 29201

Dear Representatives Collins and Clary and Senator Alexander:

You seek an opinion seeking clarification of our October 11, 2017 opinion regarding the legality of a non-profit organization holding a Riverboat Casino Night. Specifically, you state:

A non-profit organization, Pickens County Meals on Wheels, Inc. feeds over 350 people each day in Pickens County. It has spent thousands of dollars promoting a Casino Night as a fund raiser in order to continue feeding these people. It is to be held on November 4, 2017.

Last week your office issued an opinion which is attached directed to a captain in the Pickens County Sheriff's Office. We are unsure of the specific set of facts that was provided to you upon which you issued your previous letter. We would like a clarification of your opinion with the benefit of you having the specific facts as to how the event is to be conducted.

1. Billboards, social media and other advertising have advertised a fundraising event called a Riverboat Casino Night.
2. Tickets have and will be sold for \$75.00 to the event to anyone who wishes to participate.
3. Casino play is free and for entertainment purposes only. No prizes will be awarded. The guests may use unlimited chips.
4. Guests will be encouraged to dress for the Riverboat theme.

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5. Tickets include entry to the facility, music, a silent auction, heavy hors d'oeuvres, casino play on black jack, roulette, poker and craps tables, two drink tickets and a cash bar.

6. All funds raised will go to the benefit of Pickens County Meals on Wheels, Inc.

We request the following:

If Pickens County Meals on Wheels, Inc., a non-profit, conducts a Riverboat Casino Night as outlined above, would this event be legal within the South Carolina Statutes and the South Carolina Constitution?

Law/Analysis:

We appreciate your invitation to clarify our October 11, 2017 opinion regarding casino nights with the benefit of an updated and more thorough description of the specific event which gave rise to this question. *See Op. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017). After carefully reviewing these additional facts, we affirm that our October 11 opinion, together with prior opinions of this Office, sets out the applicable law which a South Carolina court would apply if called upon to determine whether any particular casino night constituted an illegal lottery. *See id.* We reiterate that the relatively brief October 11 opinion, and this opinion, should be read in conjunction with other prior opinions of this Office, in addition to constitutional and statutory provisions and relevant case law. *See id.* Additionally, so that there is no question, we reiterate that "the South Carolina Attorney General's Office unequivocally and resolutely holds to its long-standing position that such gambling events are illegal under the law of this state, no matter how noble the cause." *Id.* (emphasis added) (citing *Op. S.C. Att'y Gen.*, 1997 WL 811909 (December 4, 1997) (concluding that the South Carolina Law Enforcement Officers' Association could not legally hold a fund-raising raffle under then-current law, even to fund a line-of-duty death benefit)).

I. Riverboat Casino Night

Your opinion request asks our Office to opine on the legality of this particular Riverboat Casino Night with the benefit of additional information, and we do so here. We must note, however, that we understand that interested persons also have communicated with local law enforcement and the South Carolina Law Enforcement Division regarding this particular event. Our Office's longstanding policy is to defer to magistrates in their determinations of probable cause, and to law enforcement officers and solicitors in deciding what charges to bring and which cases to prosecute. As you also know, law enforcement officers and solicitors have

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discretion in how they allocate the limited resources that the taxpayers provide to them. Additionally, this Office is not a finder of fact, and our legal opinions are advisory, not binding. While this Office cannot set out a definitive list of all factual scenarios which constitute illegal lottery, and cannot undertake to routinely approve or proscribe specific events going forward, we will discuss the particular scenario you describe in order to be as responsive as possible to a request for advice from members of the General Assembly.

It is the opinion of this Office that a court most likely would hold that the Riverboat Casino Night described in your request would constitute an illegal gambling event as contemplated in our October 11 opinion. We understand that some interested parties have a different opinion on this point. But if individuals choose to proceed with such an event despite the warnings of law enforcement, they do so at their peril.

In South Carolina, "the three elements of a lottery are (1) the offering of a prize (2) for payment of some consideration (3) with the winner determined by chance." *Op. S.C. Att'y Gen.*, 2011 WL 782313 (February 18, 2011) (quoting, *inter alia*, *Darlington Theatres, Inc. v. Coker*, 190 S.C. 282, 292, 2 S.E.2d 782, 786 (1939)). First, as to the element of consideration, our Office has opined previously in the context of a casino-themed night that:

If . . . the people invited to the event part with any money whatsoever, either by cover charge, donation to the charity, admission fee, ticket, or similar method, however disguised, in order to get in the door to play the games, then they would be parting with consideration and a lottery would exist.

Op. S.C. Att'y Gen., 1994 WL 649310 (October 26, 1994). In the factual scenario presented in your letter, "[t]ickets have and will be sold for \$75.00 to the event to anyone who wishes to participate," and those tickets "include entry to the facility . . . [and] casino play on black jack, roulette, poker and craps tables," among other items. We believe that a court would hold that this ticket price unambiguously satisfies the consideration element of the *Darlington Theatres* test. *Id.* Next, your letter describes that once ticketholders are inside, they will play casino games "for entertainment purposes." We understand that there is no question that in these games, such as roulette, "the winner [is] determine by chance," and the chance element is satisfied.

Finally, our October 11 opinion discussed the law relative to the element of a "prize" in this context, and opined:

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For the purposes of your question, we note specifically that our Office has previously opined that "our Supreme Court, at least on one occasion, interpreted the amusement or entertainment as having value to the person engaged in the activity." . . . For that reason, where a casino-style event attempts to circumvent South Carolina gambling laws by removing the element of a material or monetary prize but attempts to preserve the feel of a casino with the betting of chips in poker, roulette, or similar games of chance that allow a person to continue playing if they win, it is the opinion of this Office that such an event still violates state law.

Op. S.C. Att'y Gen., 2017 WL 4707542 (October 11, 2017) (citing, *inter alia*, *Op. S.C. Att'y Gen.*, 2011 WL 782313 (February 18, 2011)). The fact that players are provided with "unlimited chips" does not obviate the fact that the games determine winners and losers by chance and presumably reallocate chips between players and the house, or between the players themselves. Where a player who completely runs out of chips may obtain more on demand from the house, the organizer of the event has not avoided the institution of an illegal lottery. Instead, they have merely compounded participation in it.¹ For these reasons, we opine that a court most likely would hold that the Riverboat Casino Night described in your request would constitute an illegal gambling event as contemplated in our October 11 opinion. *Id.*; *see also* S.C. Code Ann. § 16-19-10 *et. seq.* (2015).

Moreover, with the benefit of a fuller description of the facts, we take this opportunity to bring additional relevant points of law to your attention. Even were a court to disagree with our Office's long and unbroken line of opinions concluding that casino nights which satisfy the elements of a lottery are illegal, and even were the South Carolina Supreme Court to reverse its longstanding precedent upon which those opinions are based, that does not change our conclusion that the Riverboat Casino Night described in your request would violate the criminal laws of this state. It appears that many of the devices intended to be used at the proposed event constitute unlawful gaming tables and are contraband under South Carolina law. *See* S.C. Code Ann. § 16-19-50 (2015). As set out in Section 16-19-50,

Any person who shall set up, keep, or use any (a) gaming table, commonly called A, B, C, or E, O, or any gaming table known or distinguished by any other letters or by any figures, (b) roley-poley table, (c) table to play at rouge et noir, (d) faro

¹ Presumably there also is some finite number of physical chips available at the event, which necessarily leads to some limit on the number of chips a player may acquire and play. We do not explore the legal consequences of this limit here both in the interest of a speedy response to your question and because the conclusion would be redundant.

bank (e) any other gaming table or bank of the like kind or of any other kind for the purpose of gaming, or (f) any machine or device licensed pursuant to Section 12-21-2720 and used for gambling purposes except the games of billiards, bowls, chess, draughts, and backgammon, upon being convicted thereof, upon indictment, shall forfeit a sum not exceeding five hundred dollars and not less than two hundred dollars.

Id. Possession of such unlawful gaming tables can result in incarceration, and the tables themselves are subject to confiscation and destruction as contraband. S.C. Code Ann. § 16-19-100 & -120 (2015).

In the way of background, we note that our state's Supreme Court has distinguished between "derivative contraband," meaning property which normally has a lawful use and is seized as a result of an unlawful use; and "contraband *per se*," meaning property that normally has no lawful use. *State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 189, 525 S.E.2d 872, 879 (2000). The Court expounded on this distinction in *Mims Amusement Co. v. SLED*:

Courts have recognized two classes of contraband subject to forfeiture by statute. The first class is contraband *per se*, which are things that may be forfeited because they are illegal to possess and not susceptible of ownership. This class includes illegal gambling devices such as roulette wheels or craps tables, "moonshine" liquor, [or] illegal narcotic drugs The second class is derivative contraband, which are things that may be forfeited because they are instrumentalities of a crime, but which ordinarily are not illegal to possess. This class includes items such as currency, vehicles, or real property used in the commission of a crime or traceable to the proceeds of criminal activity.

Mims Amusement Co. v. SLED, 366 S.C. 141, 149-50, 621 S.E.2d 344, 348 (2005) (emphasis added) (internal citations omitted).

While this Office does not make findings of fact, for the purposes of this opinion we will undertake to set out some of the relevant information we learned in the course of our research for the purposes of further illuminating our understanding of the question. Prior to issuing our October 11 opinion, we learned that the charity in this instance apparently intended to use a third-party vendor, Funtastic Events, Inc., to provide the blackjack, roulette, craps, and poker tables for the contemplated event. Based on their website, it appears that Funtastic Events is an Atlanta-based entertainment company that offers services, including on-sight casino events,

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throughout the Southeastern United States.² As of this writing, "Casino Parties" is listed as the first clickable link below the introduction on the Funtastic Events home page, and that link leads to another page within the same domain. That "Casino Parties" page includes color photographs of blackjack, roulette, craps, and poker tables.³ The photographs are complete with cards, chips, dealers, and players. This page includes a clickable link to another page, also within the Funtastic Events domain, which is offered as a guide for prospective clients titled "Casino Fund Raising."⁴ Oddly, the only reference to "law" or "legality" on that page is to say that a raffle is an option that depends on local law. In any case, it is apparent that the service offered by this company is to provide a "pop-up casino," complete with all equipment, trappings, and accoutrements.

Regardless of who provides the gaming tables for the contemplated Riverboat Casino Night, it appears that much of the equipment required for the event (i.e. the blackjack, roulette, craps, and poker tables) would contraband *per se*, and its very possession is prohibited by state law. *See* S.C. Code Ann. § 16-19-50 (2015). For these reasons, we opine that a court most likely would hold that this contraband is subject to confiscation and destruction in a manner consistent with the constitutional requirements of due process. *See Mims Amusement Co. v. SLED*, 366 S.C. 141, 154, 621 S.E.2d 344, 351 (2005) (holding that there is no right to a jury trial in a forfeiture proceeding against contraband *per se*, such as illegal gaming devices, because the very possession of such items is illegal).

Finally, in order to be as responsive as possible to your question, we note one additional relevant point of law regarding participation of public officials in the proposed Riverboat Casino Night. As you no doubt are aware, the Constitution of the State of South Carolina provides:

It shall be unlawful for any person holding an office of honor, trust or profit to engage in gambling or betting on games of chance; and any such officer, upon conviction thereof, shall become thereby disqualified from the further exercise of the functions of his office, and the office of said person shall become vacant, as in the case of resignation or death.

S.C. Const. art. XVII, § 8. Therefore, to the extent that any persons involved in a prohibited gambling event are officers of the State of South Carolina, our constitution subjects those persons to removal from office upon conviction.

² www.funtastic-events.com

³ www.funtastic-events.com/Casino-Parties.html

⁴ www.funtastic-events.com/casino-fund-raising.html

II. Additional General Clarification

Having set out the relevant law in response to your specific request regarding the legality of the contemplated Riverboat Casino Night, we offer these additional points in response to your more general request for clarification of our October 11 opinion. We note first that that opinion was only the latest in a long line of opinions which have reached similar conclusions; in fact, a 2011 opinion of this Office referenced at least six other such opinions. *Op. S.C. Att'y Gen.*, 2011 WL 782313 (February 18, 2011). We have included a copy of that opinion for your review. But the persistence of questions related to charity casino nights points to a larger issue, which is the myriad permutations of fundraising events designed for all intents and purposes to be a gambling event but which are constructed in some way in an effort to evade the anti-gambling laws of this state. As stated by our Supreme Court in *Darlington Theatres*, "[a] plan which openly seeks to avoid the terms of a Statute is a lawful one, but one which seeks to evade the Statute is an unlawful one." *Darlington Theatres v. Coker*, 190 S.C. 282, 2 S.E.2d 782, 789 (1939) (emphasis in original) (internal citations omitted). This distinction between avoiding and evading echoed the prior opinion of the Court in *Harvie v. Heise*, where it stated:

In no field of reprehensible endeavor has the ingenuity of man been more exerted than in the invention of devices to comply with the letter but to do violence to the spirit and thwart the beneficent objects and purposes of the laws designed to suppress the vice of gambling. Be it said to the credit of the expounders of the law that such fruits of inventive genius have been allowed by the courts to accomplish no greater result than that of demonstrating the inaccuracy and insufficiency of some of the old definitions of gambling that were made before the advent of the era of greatly expanded, diversified and cunning mechanical inventions.

Harvie v. Heise, 150 S.C. 277, 148 S.E. 66 (1929) (quoting *Moberly v. Deskin*, 169 Mo. App. 672, 155 S.E. 842 (1913)); cf. *Mims Amusement Co. v. SLED*, 366 S.C. 141, 146-47 & n.1, 621 S.E.2d 344, 346-47 & n.1 (2005) ("We decide this case in light of the recent history of video gambling in South Carolina, which mushroomed from a rather clandestine and inauspicious beginning in 1986 into a multi-billion dollar business by its demise in July 2000.").

Of course, our Office has no doubt whatsoever that Meals on Wheels and other such charities are driven by altruistic motives toward benevolent ends. But those goals must be pursued through legal means, no matter how noble the cause. *Op. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017). Indeed, our Office has previously opined that the South Carolina Law Enforcement Officers' Association could not legally hold a fund-raising raffle under then-

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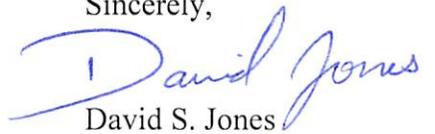
current law, even to fund a line-of-duty death benefit to be paid to the families of slain law enforcement officers. *Op. S.C. Att'y Gen.*, 1997 WL 811909 (December 4, 1997). The question for this Office is not whether a particular cause is worthy of funds, but whether the means used to raise those funds is legal.

Fortunately, charitable institutions in South Carolina may choose from any number of abundant legal fundraising methods which are available to them. In addition to the more traditional methods of sponsorships, dinners, silent auctions, and simply asking for donations, the voters of South Carolina even have amended the Constitution to allow bingo and raffles for charitable purposes, when those events are conducted in compliance with state law. *See, e.g.*, Act No. 3, 2015 S.C. Acts 26 (amending S.C. Const, art. XVII, § 7). But where a particular fundraising method constitutes an illegal lottery, "we reiterate our commitment to upholding the law on this subject as set out in the Constitution of South Carolina and expounded by the South Carolina Supreme Court." *Op. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017).

Conclusion:

For these reasons, we opine that a court most likely would hold that the Riverboat Casino Night described in your request would constitute an illegal gambling event as contemplated in our October 11 opinion. We wholeheartedly support the charitable motives of the individuals involved, but we must advise that the organizers of the event choose some other way to raise funds which does not violate South Carolina law.

Sincerely,


David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:


Robert D. Cook
Solicitor General