

2001 WL 1215464 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 7, 2001

Re: Informal Opinion

*1 The Honorable Harry C. Stille
Member, House of Representatives
9 Dogwood Drive
Due West, SC 29639-0203

Dear Representative Stille:

You have forwarded to this office two "Great American Pre-Paid Phone Cards," the use of which apparently provides the holder with two minutes of long distance telephone service. Attached to both of these cards is a game piece called "Lucky 7's" which states "Get three 7's in a horizontal, vertical or diagonal line (like tic-tac-toe) and win prize in prize box." To determine if the card is a "winner", the surface of the game piece is "scratched off" to reveal the alignment of the game numbers on the card, as well as the potential "prize" amount. On the back of each card are instructions for the use of the two minute phone card. Also on the back of the card opposite the game piece is the statement "No purchase required to play promotional game" with further instructions on how to obtain a free game piece, the "Official Rules", and how to collect the possible cash "prizes" if the card happens to be a winner.

You state in your attached note that these cards were purchased in Greenwood by one of your neighbors. Although you did not state the purchase price for these particular cards, my experience has been that the convenience stores charge \$1.00 for each card purchased. You state that the questions is "how are these legal?"

Our Office has taken the position that these types of "phone cards," which are never sold without an accompanying game piece, represent a scheme or contrivance designed to avoid prosecution under South Carolina's anti-gambling laws (including [S.C. Code Ann. §§ 16-19-40](#) (West 2000) (unlawful games and betting), [16-19-160](#) (unlawful to use or offer for use any punchboards or other kinds of boards with numbers concealed thereon for the purpose of gaming or chance), and [12-21-2710](#) (unlawful possession and operation of gambling devices)).

However, the distributors and store operators who sell these type of cards maintain that such games may be legally possessed and sold in this State. The argument often made by the purveyors of these cards is that these games are merely "promotional" in nature and are consistent with the promotional games authorized by the General Assembly under [S.C. Code Ann. § 61-4-580](#) (West Supp. 2000) (holders of beer or wine permits may permit game promotions including contests, games of chance or sweepstakes where a) the game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service; b) no purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize; and c) all materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation).

Our Office has asserted that the so-called game "promotions" connected with the sale of these two minute phone cards are mere ruses to avoid our anti-gambling laws, particularly since the phone cards are never sold without the attached game pieces. True promotional games, such as those offered by McDonald's and other legitimate business concerns, are always brief or temporary in duration, and the vast majority of the consumer product or service is always sold with no game of chance involved. It is highly unlikely that these two-minute phone cards which you reference are ever sold

without an attached game piece, since the purchaser is really buying the opportunity to win a prize, rather than a phone card costing fifty cents a minute.

*2 The legality of these types of “promotional” telephone or game cards is now the subject of litigation between the card distributors and our Office, as well as SLED. State law does not authorize this Office, by issuing an opinion, to attempt to supersede any pending litigation. Therefore, opinions cannot be issued on matters pending in court. However, I trust this information will be of some assistance.

This letter has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain
Very truly yours,

Nathan Kaminski, Jr.
Senior Assistant Attorney General

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