

The State of South Carolina



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March 24, 1994

The Honorable Greg Gregory
Senator, District No. 16
513 Gressette Building
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Dear Senator Gregory:

You have asked our opinion concerning the legality of a floating casino that contains over sixty video gambling devices. I first emphasize that in the exercise of our quasi-judicial function to issue opinions, the Office of Attorney General, much like a court, does not investigate disputed facts; instead, this Office must assume the accuracy of the facts presented to us. In formulating a response to your inquiry, we have reviewed some information from the Department of Revenue relative to this matter. We understand that the boat which is the subject of your request allows gambling upon video poker machines by members of the public and that this gambling activity occurs within State territorial waters. We further understand that the video gambling machines located upon this boat are licensed pursuant to S. C. Code Ann. § 12-21-2720 (1993 Cum. Supp.). The additional information that is referenced throughout this opinion has been provided by the Department of Revenue. It is our opinion that the gambling activities upon the boat violate both the State constitutional and statutory prohibitions against lotteries as well as the intent of the Video Game Machines Act (S. C. Code Ann. § 12-21-2770, et seq. (1993 Cum. Supp.)).

I.

This Office has consistently construed S. C. Const. Art. XVII, Section 7, as prohibiting video gambling activities. See Op. Atty. Gen., March 22, 1993; Op. Atty. Gen., October 29, 1990. We continue to adhere to this legal position and advise that the State constitutional prohibition against lotteries applies to video gambling. The statutory provisions prohibiting lottery activities

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in South Carolina also apply to video gambling. S. C. Code Ann. §§ 16-19-10 through 16-19-30 (1976). The mere fact that the gambling activities occur upon a boat does not exempt them from the constitutional and statutory prohibitions against lotteries.

II.

The Video Game Machines Act [Act] was enacted by the General Assembly in 1993 to regulate video gambling activities in South Carolina.¹ The cardinal rule of statutory interpretation is to ascertain and give effect to the legislative intent. Horn v. Davis Electric Contractors, Inc., 307 S.C. 559, 416 S.E.2d 634 (1992); State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987); State v. Salmon, 279 S.C. 344, 306 S.E.2d 620 (1983). Most often, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). However, a statute should be construed in a reasonable manner consistent with the statutory goals, purpose, design and policy of the Legislature. State v. Baker, ___ S.C. ___, 427 S.E.2d 670 (1993); State v. Squires, ___ S.C. ___, 426 S.E.2d 738 (1992). Our Court has instructed that a gambling scheme that seeks to evade the law's intent is an unlawful one. Cf. Darlington Theaters, Inc. v. Coker, 190 S.C. 282, 2 S.E.2d 782 (1937).

One of the broad areas that the Act regulates is that of the location or placement of video gambling machines. In this regard, two related legislative themes are apparent. First, the General Assembly was concerned that large-scale casino-type operations are inimical to public welfare and, thus, concentrations of video gambling machines should be prohibited. In order to accomplish this goal, the General Assembly prescribed three types of regulations. The General Assembly directed that only a limited number of gambling machines could be situated at a single place or premises. Supra, Section 12-21-2804 (A). The General Assembly also prohibited advertising of these gambling machines. Supra, Section 12-21-2804 (B). In addition, the General Assembly required that a business's gambling operations not provide its principal revenue source. Supra, Section 12-21-2804 (A).²

¹ To the extent that this Act purports to authorize constitutionally proscribed lotteries, the Act is unconstitutional.

² I advise that the United States District Court has enjoined the enforcement of this particular provision; nonetheless, the regulation demonstrates the General Assembly's regulatory theme.

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Second, the General Assembly was concerned that gambling activities should not occur within prescribed distances of schools, churches and playgrounds. Supra, Section 12-21-2793. The language of the various provisions of the Act should be construed in a manner consistent with these basic themes.

Section 12-21-2804 (A), as it relates to your inquiry, provides:

No person shall apply for, receive, maintain, or permit to be used, and the commission shall not allow to be maintained, permits or licenses for the operation of more than eight machines authorized under Section 12-21-2720(A)(3) at a single place or premises for the period beginning July 1, 1993, and ending July 1, 1994. After July 1, 1994, the commission may not issue nor authorize to be maintained any licenses or permits for more than five machines authorized under Section 12-21-2720(A)(3) at a single place or premises.

[Emphasis added.] Thus, should the boat be determined to be "a single place or premises," the Act would prohibit the operation of more than eight video gambling machines upon the boat. The term "premises" often refers only to land and the buildings attached to the land. Ford Motor Company v. Unemployment Compensation Board of Review, 79 A.2d 121 (Pa. 1951); Lititz Mutual Insurance Company v. Branch, 561 S.W.2d 371, 373 (Mo. App. 1978); Trustees of Sailors' Snug Harbor v. Feinberg, 135 N. Y. S. 2d 110 (1954); Webster's Third New International Dictionary, 1789 (1976). Moreover, in its most common usage, the term "premises" connotes an area broader than a single room. Kunker v. Abell, 84 N.E. 503, 504 (Ind. 1908). On the other hand, the term "premises" is often considered a very general label that does not have a single definition or fixed meaning; instead, its meaning is to be determined by its particular context. Black's Law Dictionary 1181 (6th ed. 1990); Piper v. Central Louisiana Electric Company, 446 So.2d 939 (La. App. 1984). Regardless whether "a single place or premises" as used in the Act refers only to land and buildings or is used more generally, this phrase must be construed consistent with the Act's apparent purpose and themes. Again, one of these major themes is to avoid large casino-type locations for numerous gambling machines. Consistent with this legislative goal, the Act must be read as prohibiting more than eight gambling machines in a single structure or building. An internal room or partitioned area within a single structure or building does not constitute a discrete place or premises separate from the structure or building itself.

We also doubt that a boat that often changes its location would qualify as a location or "a single place or premises" as

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those terms are used in the Act. The mobility of the boat and, concomitantly, the mobility of the gambling activities occurring on the boat are inconsistent with the regulatory theme of the Act. The General Assembly has authorized these gambling activities only in those locations determined by the General Assembly to be suitable.³

CONCLUSION

No matter how many times the gambling industry protests it's not, video poker is still a lottery prohibited by the State Constitution, until the people vote to change it. No matter how many partitions divide up the poker machines, more than sixty machines on a single boat is a gambling casino, outlawed by the General Assembly just last year. The Queen of Hearts is a king-size casino. A dodge of the law is still a dodge, whatever you call it.

Regardless of what one thinks of gambling -- be it high-tech video poker, floating crap tables or State-run lotteries, there is a larger issue at stake. To circumvent the Constitution or wink at statutes is to insult the public, which has a constitutional right to speak on the issue. To treat the law as a plaything, something to elude, evade or end-run with a partition, is the same as openly disobeying the law. There is no difference. Surely, the gambling industry can wait until the people vote gambling up or down. When we fall for the quick fix of the poker machine or the fast buck of the payoff without the voice of all the people being heard, we undermine the basic principles of the rule of law. Therefore, it is our conclusion that:

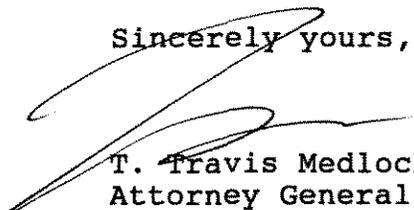
1. The operation of video gambling machines upon a boat situated in South Carolina territorial waters is prohibited by the State constitutional prohibitions against lotteries.
2. The Video Game Machines Act does not allow the operation of sixty or more video gambling machines upon a single boat even if the boat's cabin area is divided by various partitions.

³ The Department of Revenue has formerly interpreted the "single place or premises" language of the Act by adopting a list of flexible considerations to be applied on a case-by-case basis. We do not disagree with this approach; nonetheless, these flexible criteria should not be applied in a manner that defeats the legislative intent. Subdividing a single building or structure with partitions to create so-called discrete "premises" is contrary to the legislative scheme.

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3. We doubt that the Video Game Machines Act contemplates the operation of video gambling machines situated on a mobile water vessel.

Sincerely yours,



T. Travis Medlock
Attorney General

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