

The State of South Carolina



Office of the Attorney General

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July 18, 1988

The Honorable C. David Stone
Sheriff, Pickens County
P. O. Box 491
Pickens, South Carolina 29671

Dear Sheriff Stone:

As you are aware, your letter of June 8, 1988 to Attorney General Medlock has been referred to me for response. In that letter, you have requested that this Office provide you with an opinion on the following question:

Whether a bingo game, operated by a management company under an agreement with a charitable organization holding a valid bingo certificate, is a "work of necessity or charity" such as would come within the exception set forth in 1976 S. C. Code, Section 53-1-40?

In pertinent part, Section 53-1-40 states that:

"On the first day of the week, commonly called Sunday, it shall be unlawful for any person to engage in worldly work, labor, business of his ordinary calling or the selling or offering to sell,....any goods or merchandise or to employ others to engage in work, labor, business or selling or offering to sell any goods, wares or merchandise, excepting work of necessity or charity."

It seems clear that the operation on Sunday of bingo games, where persons are employed to pass out cards, collect monies and perform various other functions, would violate

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the basic provisions of Section 53-1-40. Thus, as you have correctly surmised, the dispositive issue is whether the operation of a bingo game can be deemed a "work of necessity or charity."

Of particular interest here is the matter of Knights of Columbus Council No. 3884 v. Mulcahy, 154 Conn. 583, 227 A.2d 413, (1967), where the plaintiff, a non-profit, fraternal organization operated Sunday bingo games, the proceeds of which were devoted to retiring the debt on and maintaining the plaintiff's building. In light of the Connecticut statute, which prohibited any "secular" business on Sunday, the Court considered whether the bingo games were "charitable" in nature. In deciding that they were not, the Court held that the conduct in which the plaintiff was engaged was clearly the conduct of a secular business on Sunday. Characterizing the plaintiff's bingo game as a "profitable business venture solely designed to secure a substantial part of the wherewithal to maintain its building," the Court held that there was no claim, nor could there be that the operation of the games was a work of necessity or charity. Knights of Columbus, supra, pp.417.

Although, in Knights of Columbus, the proceeds of the bingo games were devoted to uses which were, arguably, non-charitable, that case is, nevertheless, instructive in that the Court's decision is consistent with general principles of law which hold that to constitute a charity, the act done must itself be a charitable act. See 83 C.J.S., Sunday, Section 11, p.815. Moreover, "the dedication to charity of funds or proceeds raised by the transaction of prohibited acts or matters on Sunday is not of itself sufficient to bring such transactions within the exception of works of charity." Ibid.

Thus, even if the proceeds in Knights of Columbus had been, unquestionably, devoted to charitable causes, the operation of the bingo games on Sunday still would have been violative of the law. The same principle applies to the bingo operation about which you have inquired where, presumably, the charitable organization uses the bingo game proceeds for various philanthropic causes. By reason of the aforementioned principle, the operation of the bingo games on Sunday would not be "works of charity" such as would come within the exception set forth in Section 53-1-40, CODE.

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A work of necessity has been defined as a matter that is real, urgent and something more than that which is merely desirable. 83 C.J.S., Sunday, Section 11, p.813. Such work has also been held to be that which is "reasonably necessary for the worker to perform to save himself from some unforeseen or irreparable injury or loss, or necessary for the welfare of the community in which he resides, viewed in light of the facts and circumstances existing at that time." State v. Solomon, 245 S.C. 550, 141 S.E.2d 818, (1965). It seems clear that it could not be reasonably argued that the operation of the bingo games, in this instance, is work that is urgent, or, necessary for the prevention of some unforeseen or irreparable injury, or, necessary for the welfare of the community. Consequently, the operation of the bingo games on Sunday would not come within the statutory meaning of a "work of necessity."

CONCLUSION

The bingo operation which you have described must discontinue its business at midnight Saturday as the operation of bingo games is not a work of necessity or charity within the meaning of the provisions of Section 53-1-40, CODE.¹

I trust that you will find the foregoing information to be responsive to your question. Please contact me if I can be of further assistance.

Very truly yours,

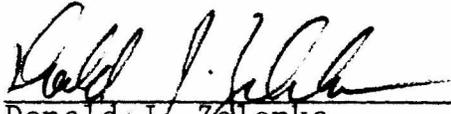

Wilbur E. Johnson
Assistant Attorney General

¹ It should be noted that Section 53-1-5, CODE, provides that the provisions of Chapter 1, governing Sundays, holidays and other special days, do not apply after the hour of 1:30 P.M. on Sunday.

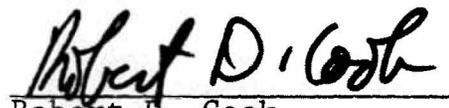
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