



ALAN WILSON
ATTORNEY GENERAL

August 17, 2011

The Honorable James H. Harrison
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Harrison:

You seek an opinion concerning the “legality of a business plan involving a golf contest in which participants compete against one another during a given time period (e.g., 3 months) by attempting to place a shot closest to the hole (the ‘Golf Promotion’).” By way of background, you state that the proposed Golf Promotion will generally be structured as follows:

1. Participating golf courses will enter into an agreement with the entity conducting the golf contest (the “Promoter”).
2. A par three hole (the “Contest Hole”) will be selected by the Promoter from each participating golf course to be used in the contest. The holes will be selected such that each Contest Hole is of approximately the same distance.
3. The flagstick used on each Contest Hole will be marked with measurements and color coded.
4. Video equipment will be installed near each Contest Hole to record and verify each golf shot.
5. Golfers who wish to participate in the golf contest (“Participating Golfers”) will be required to pay a contest entry fee (e.g., \$5.00) before beginning their round of golf.
6. Each Participating Golfer will be given the opportunity to hit one golf ball from the tee box to the pin located on the Contest Hole.
7. If a Participating Golfer lands a golf ball close to the pin on the Contest Hole, the golfer will be required to place the marked flagstick on the green such that the video equipment can record the distance from the pin to the golf ball.
8. At the end of each time period (e.g. 3 months), the videos will be reviewed to ascertain and verify which Participating Golfer succeeded in landing his or her golf shot closest to the pin on the Contest Holes.

9. At the end of each time period (e.g., 3 months), the Participating Golfer with the golf shot closest to the pins of the Contest Holes will win a cash prize (e.g., between \$5,000 and \$10,000, depending upon the number of Participating Courses).
10. In the event that the Promoter is unable to determine which of two or more golf shots is the closest to the pin, the prize will be divided equally among the tying Participating Golfers.

You reference previous opinions of this Office, including *Op. S.C. Atty. Gen.*, November 1, 2006 (“Chuck a Puck”); February 2, 2006; and September 5, 1995 in support of the argument that the Proposed Golf Promotions is not a lottery. Thus, it is your conclusion that

[i]n contrast to a lottery, it therefore appears clear that the Golf Promotion as described hereinabove would not constitute a lottery as such is prohibited by South Carolina law. Although the Golf Promotion does involve the offering of a prize, and the payment of money for an opportunity to win the prize, the third element of a lottery, as articulated in *Darlington*, is not present. The object of the Golf Promotion, which is analogous to the golf contest considered by this office in its November 1, 2006 opinion, is to come as near as possible to the target pin on each Contest Hole. A Participating Golfer’s success in the contest is based entirely on the skills of an individual player. The players are presented with an equal challenge, with each determining his fortune by his own skill. As recognized in the November 1, 2006 opinion, “such a contest – whether it be golf or horseshoes – involves skill, based upon strength, agility or practice.” Here, the proposed Golf Promotion demonstrates that it is a game of skill and thus not violative of South Carolina’s gambling laws. To this end, I respectfully request that your Office reiterate its longstanding position and opine that the proposed Golf Promotion, as described herein, is primarily a game of skill, does not constitute a lottery, and is not violative of the South Carolina gambling laws.

Law / Analysis

We concur in your conclusion that, based upon the facts as we understand them, the proposed Golf Promotion is not a lottery. Both the February 2, 2006 and November 1, 2006 Opinions fully support this conclusion. In each of these opinions, the object was to come closest to the designated target. We deemed this object to be primarily dependent upon skill rather than chance.

In *Johnson v. Collins Entertainment Co., Inc.*, 333 S.C. 96, 508 S.E.2d 575 (1998), our Supreme Court, by a 3-2 split on the Court, stated that the term “lottery” as used in the prohibition contained in the South Carolina Constitution (Art. XVII, § 7) “is a term of art and video gaming devices do not come within the plain and ordinary meaning of ‘lottery’ because they do not involve a drawing and ‘tickets’ or other indicium of entitlement to a prize.” 333 S.C. at 104, 508 S.E.2d at 579. The Court

concluded that a lottery is a form of gambling and reaffirmed the Court's earlier holding in *Darlington Theatres v. Coker*, 190 S.C. 282, 2 S.E.2d 782 (1939), which held that the three elements of a lottery are

1. the offering of a prize;
2. the payment of money or other consideration for the opportunity to win a prize;
3. the awarding of the prize by chance.

In an Opinion, dated March 24, 1986, we concluded that the game of golf is primarily one of skill and that a proposed golf tournament does not constitute a lottery. There, we said the following:

[i]nasmuch as the proposed golf tournament appears to be a game of skill, as opposed to a game of chance, such tournament would not constitute a lottery.

Accord., Op. Atty. Gen., August 10, 1990 [proposed golf tournament not a lottery]. See also, *People v. Cohen*, 160 Misc. 10, 289 N.Y.S. 397 (1936) [golf is a game where skill is so essential, it cannot be said to be a game of chance "even though occasionally an unskilled player may make a lucky shot."].

While we readily acknowledge that the question whether a hole-in-one contest constitutes a lottery is subject to considerable dispute, compare *Las Vegas Hacienda, Inc. v. Gibson*, 7 Nev. 25, 359 P.2d 85 (1961) [hole-in-one contest predominantly game of skill] with *Cobaugh v. Klick-Lewis, Inc.*, 561 A.2d 1248 (Pa. 1989) (Popovich, J. dissenting) [making a hole in one "... is such a fortuitous event that skill is almost an irrelevant factor], we have, nevertheless, concluded such contests are lotteries. See *Op. S.C. Atty. Gen.*, August 29, 2003; September 5, 1995.

Notwithstanding this conclusion concerning hole-in-one contests, however, we have found that a golf contest which declares the winner to be the person hitting a golf shot closest to the pin is not a lottery. In *Op. S.C. Atty. Gen.*, February 2, 2006, we stated:

[b]ased upon all the foregoing authorities, we conclude that the plan set forth in your letter would likely be held by a court not to violate South Carolina's gambling laws. In terms of the element of skill, we deem the Dutch Fork plan more akin to the traditional golf tournament than to the hole-in-one contest addressed in our September 5, 1995 opinion. A contest which offers a prize to a golfer or golfers who can place one or more golf shots closest to the hole is, in reality, a condensed version of the game of golf which has as its object hitting the ball in the hole in the least number of shots possible. Such is primarily a game of skill

This same reasoning was employed in the November 1, 2006 opinion involving the "Chuck a Puck" hockey promotion. In that opinion, we explained:

[i]n our opinion, the "Chuck a Puck" contest appears to be analogous to the golf contest [in the February 2, 2006], outlined above. The object of the "Chuck a Puck" promotion, like that of the golf contest, is to come as near as possible to a target. As a general proposition, such a contest – whether it be golf or horseshoes – involves skill, based upon strength, agility or practice. As stated in *Brown v. Bd. of Police Comr's of City of L.A.*, 136 P.2d 617, 619 (1943), "[i]t may be admitted that competitive shooting at a target is a game of skill."

... Accordingly, it is our opinion based upon the additional information provided, and the analogy of our February 2, 2006 Opinion, that a court would likely determine that the "Chuck a Puck" contest, as outlined above, is primary a game of skill and thus not violative of the South Carolina gambling laws.

Conclusion

Based upon the information which you have provided us, it is our opinion that the Golf Promotion referenced in your letter is not a lottery and is not violative of South Carolina's gambling laws. The object of this contest is to award as the winner the person who hits the golf shot closest to the pin. Consistent with our opinions over many years concerning the game of golf, such a contest is primarily one of skill. This contest is, in reality, little different from a golf tournament. Accordingly, based upon the facts before us, we do not believe such a contest constitutes a lottery or violates South Carolina's gambling laws. See, *Op. S.C. Atty. Gen.*, February 2, 2006.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert D. Cook".

Robert D. Cook
Deputy Attorney General

RDC/an