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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 3, 2000

The Honorable Andre Bauer
Senator, District No. 18
Post Office Box 142
Columbia, S. C. 29202

Re: Informal Opinion

Dear Senator Bauer:

You have requested an opinion on the following question:

> "If a South Carolina based company operates a game of chance, coin-operated device, or any other gaming device in a neighboring state, is it unlawful for another company (providing that the two companies have no corporate connection) to buy back the validated ticket(s) or prize(s) from that player within the State of South Carolina?"

The circumstances which you describe in your letter involve a South Carolina company placing gambling devices, otherwise illegal under South Carolina law, in another state where they are used by players to win tickets or prizes. These tickets or prizes are then brought into South Carolina where the gambler receives a cash payout representing the player's winnings.

This appears to 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), § 16-19-50 (keeping unlawful gaming tables), and § 12-21-2710 (unlawful possession and operation of gambling devices)). It also appears to constitute an attempt to circumvent the neighboring state's prohibition against cash payoffs to gamblers using certain types of gaming devices. Such an artifice would be unlawful and would subject the individuals or corporate entities employing it to criminal prosecution, not only in South Carolina, but in the neighboring state where the gambling devices are located.

The fact that two separate South Carolina companies or corporations may be involved in this scheme would not absolve either, and both companies would be subject to additional prosecution under the charge of criminally conspiring to engage in an unlawful act. State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952) (In prosecution for conspiracy to set up a lottery known as the numbers

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Robert Lotti,

game, if an overt act in pursuance of the conspiracy is committed in a jurisdiction other than that where the combination was made, the conspirators may be prosecuted in the place where the overt act was committed.)

It is primarily the province of the State within its police power to regulate gambling activity. See Army Navy Bingo, Garrison No. 2196 v. Plowden, 281 S.C. 226, 228, 314 S.E.2d 339, 340 (1984) (There is no fundamental right to gamble, and the State's power to suppress it is practically unrestrained.). See also Posadas DePuerto Rico Assocs. v. Tourism Co. of Puerto Rico, 478 U.S. 328 (1986) (The majority of the fifty states prohibit casino gambling, and a state has a substantial interest in the health, safety and welfare of its citizens in doing so.); Casino Ventures v. Stewart, 183 F.3d 307 (4th Cir. 1999) (State gambling restrictions are aimed at promoting the welfare, safety, and morals of South Carolinians, and represent a well-recognized exercise of state police power.); Holliday v. Governor of South Carolina, 78 F.Supp. 918 (W.D.S.C.), aff'd, 335 U.S. 803 (1948) (recognizing that it is the public policy of the State of South Carolina to suppress gambling and that gambling in all forms is illegal).

The possession and use of video gaming machines in South Carolina became illegal on July 1, 2000. 1999 S.C. Act No. 125; See Westside Quik Shop, Inc. v. Stewart, 2000 WL 823346 (S.C. Sup. Ct., June 21, 2000); Joytime Distrib. and Amusement Co. v. State, 338 S.C. 634, 528 S.E.2d 647 (1999). At the same time, S.C. Code Ann § 16-19-60 (West 2000), under which video game machine operators were previously authorized to make non-machine cash payoffs, was repealed, thereby making any cash payoffs derived from gambling on these devices illegal under S.C. law. 1999 S.C. Act No 125, Part I, § 8.

The fact that these video gaming machines or other gaming devices are gambled on in one state, while the cash payoffs to the gamblers occur in another, in no way insulates those perpetrating such a scheme from criminal prosecution in one or both states. It has long been recognized that acts done outside a jurisdiction, but intended to produce and producing "detrimental effects" or violations of its criminal laws within it, justify a state in punishing the perpetrators of these acts as if the crime were committed entirely within its jurisdiction. Strassheim v. Daily, 221 U.S. 280, 285, 31 S.Ct. 558, 560, 55 L.Ed. 735 (1911). See also Skiriotes v. Florida, 313 U.S. 69, 76, 61 S.Ct. 924, 929, 85 L.Ed.1193 (1941) (Even though the locus of the offense occurred outside the state's territory, a Florida citizen was properly convicted under state law prohibiting the use of diving equipment in taking sponges from the Gulf of Mexico, where the exercise of state jurisdiction did not conflict with any federal authority, the rights of a citizen of another state were not involved, and the question was solely between the person convicted and his own state.).

The principal that the crime is regarded as having been committed where the consequences occur, regardless of where certain elements of the crime may take place, has been applied in South

Carolina. State v. Morrow, 40 S.C. 221, 18 S.E. 853, 859 (1893) (Where acts done by the defendant outside the state with the intention of procuring an illegal abortion ultimately took effect within the state, even though the defendant himself did no act within the state to accomplish this illegal objective, the state court where the acts took effect could properly exercise jurisdiction over the person of the defendant and the subject matter of the offense charged.) See also State v. Hill, 19 S.C. 435 (1883) (Where one steals goods in another state and converts them to his own use in South Carolina, our courts have jurisdiction over the offense.); State v. McCann, 167 S.C. 393, 166 S.E. 411 (1932) (Thief bringing goods stolen in one county or state into another may be indicted in either.).

In the final analysis, South Carolina's anti-gambling statutes involve an important state interest directed at preventing illegal behavior connected with various forms of gambling and precluding the use and possession of gambling devices, including video gaming machines. Westside Quik Shop, Inc. v. Stewart, 2000 WL 823346 (S.C. Sup. Ct., June 21, 2000); State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 525 S.E.2d 872 (2000). Placing gambling devices for use outside state territory with the ultimate intent and effect of making cash payoffs in South Carolina based on winnings derived from the use of these out-of-state machines will be viewed as a device employed to evade South Carolina's laws prohibiting this conduct and will be prosecutable.

Federal statutory law may also be relevant to these circumstances. Federal law subjects to criminal penalty anyone who conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling business. 18 U.S.C. § 1955. Additionally, a federal statute, commonly known as the Travel Act, 18 U.S.C. § 1952, makes it an offense to travel in interstate commerce or to use the mail or any facility in interstate commerce, with the intent, among other things, to "promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity." "Unlawful activity" is defined, in part, as including any business enterprise involving gambling in violation of the laws of the state in which it is committed, or of the United States. The Gambling Devices Transportation Act, commonly referred to as the Johnson Act, 15 U.S.C. §§ 1171 - 1178, may also come into play, depending upon how the gambling devices are used and the destination to which they are shipped. Of course, any questions dealing with the applicability of such federal provisions to the situation you addressed should be directed to the United States Attorney.

Based on the foregoing authorities, it is my opinion that a scheme, such as that described in your letter, where video game machines or other gambling devices are placed and used in an adjoining state which allows their possession, but with the intent to offer to gamblers who come to South Carolina cash payoffs based on tickets or prizes won in the adjoining jurisdiction, would subject those engaged in such an enterprise to criminal prosecution, not only in this State, but in the adjoining jurisdiction, and potentially under federal law as well. Should you become aware of any

effort on the part of any person, company, or corporation to effectuate such a scheme, please report this immediately to this Office.

This letter is an informal opinion only. It 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

NKjr/kkf