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The State of South Carolina

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June 29, 1994

Mr. A. Crawford Clarkson, Jr.
Chairman
Department of Revenue and Taxation
301 Gervais Street
Columbia, SC 29201

Re: 1994 Amendments Concerning Video Games

Dear Mr. Clarkson:

You have requested an opinion on several aspects of the 1994 amendment to §12-21-2720. That amendment provides as follows:

> The [Department of Revenue] shall not issue a license for the operation of a video game with a free play feature which is located on or intended to be located on a watercraft or vessel plying the territorial waters of this State.

Your questions are as follows:

1. Does the proposed State Code amendment concerning coin-operated machines on watercraft affect: (1) existing licenses; (2) vessels/watercraft permanently docked; (3) vessels/watercraft which temporarily dock?

2. Should refunds be issued on portions of the license tax for any operation rendered unlawful by the passage of this legislation?

BRIEF ANSWER

Section 39 of the 1994-95 General Appropriations Bill prohibits the licensing of video games with a free play feature on watercraft or vessels. The legislation does not affect the machine license if it is removed from such watercraft.

Request Letter

When a vessel or watercraft is permanently docked and no longer capable of transportation within existing waters, then it no longer meets the definition of watercraft. Therefore, one could conceivably license machines located in such an establishment without violating the proposed legislation.

Provisions of this legislation would apply to those watercraft which temporarily dock and would prevent them from receiving licenses to operate video machines on such vessels even when docked.

No refund is necessary for any unused portion of the license tax since the machines are still licensed and could be placed within other appropriate establishments.

STATEMENT OF FACTS

The 1994-1995 State Appropriations Bill amends the South Carolina Code of 1976 by adding the following provision as §12-21-2720:

> The Department [Department of Revenue] shall not issue a license for the operation of a video game with a free play feature which is located or intended to be located on a watercraft or vessel plying the territorial waters of this State.

This amendment was approved by the House-Senate conference committee and is awaiting final approval by the Governor.

"Vessel" or "watercraft" may be defined as a vehicle for or capable of transportation on navigable waters. See, e.g., Trinidad Corp. v. American S.S. Owners Protection & Indem. Assoc., C.A.N.Y., 229 F.2d 57, 58.

DISCUSSION

Whether the proposed amendment requires the Department of Revenue and Taxation to revoke existing licenses issued pursuant to §12-21-2720 (1993 Cum. Supp.) does not appear to be an issue. The issue is whether an operator who currently operates licensed machines on a watercraft or vessel plying the waters of South Carolina may continue to do so. The machines are not licensed for a particular location. An operator can move licensed machines from one place to another as long as they comply with local and State statutes. Courts on both the federal and state level have upheld the constitutionality of regulating video games as part of a

state's valid police powers. See generally, Alois V. Gross, Annotation, Validity and Construction of Statute or Ordinance Regulating Commercial Video Game Enterprises, 38 A.L.R. 4th 903 (1985).

The Supreme Court of South Carolina has held that "[t]he State's power to suppress gambling is practically unrestrained." Army, Navy Garrison v. Plowden, 281 S.C. 226, 228, 314 S.E.2d 339, 340 (1984). The fact that video machines may have been licensed for a period extending until 1995 or 1996 is immaterial to the State's power to change its policy regarding the machines, since a license to conduct a gambling operation confers no property right. Id. at 229, 314 S.E.2d at 340.

There is thus no question as to the State's authority to make a previously licensed gambling operation illegal as of the date of the act. However, there still remains the question of legislative intent to do so based on the pending amendment.

Representative Scott Richardson introduced the amendment on March 10, 1994, in order to ban video poker machines from boats in this state. Richardson's intent on the proposed legislation was for it to take effect July 1. Bill Aims to Keep Poker At Distance, The State (South Carolina), March 11, 1994, at 3B. Indeed, this legislation was introduced to deal with a problem represented by a highly publicized video gambling operation upon the vessel known as the Queen of Hearts, which was floating with numerous video gambling devices in South Carolina waters. Id.

As the Supreme Court of South Carolina has held,

> A statute must be construed in light of its intended purpose; and if such purpose can be reasonably discovered in its language, the purpose will prevail over the literal import of the statute, for the dominant factor in the rule of construction is the intent, not the language, of the legislature.

Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548, 550 (1956) (citations omitted). In this instance, the use of the phrase "shall not issue" creates some degree of ambiguity as to whether all such devices are to be prohibited after July 1, 1994. Such being the case, the reference to the intent as expressed by the sponsor of the bill, stated contemporaneously with its introduction, should be given great weight. Sutherland Statutory Construction §48.15 (5th Ed. 1992). See also, Galvan v. Press, 347 U.S. 522, 527 (1954) (sponsor's statement during the legislative process cast "a weighty

gloss" on the words of the act); Exxon Corp. v. Hunt, 481 A.2d 271, 277 (N.J. 1984) (sponsor's statements "deserve particular deference"); Manchester Sand and Gravel v. So. Windsor, 524 A.2d 621 (Conn. 1987).

In addition, there is no question that it is appropriate to consider the general circumstances which gave rise to the statute. See Sutherland, supra, §48.03; Crescent Mfg. Co. v. S.C. Tax Commission, 129 S.C. 480, 124 S.E. 761 (1924); City of Spartanburg v. Blalock, 223 S.C. 252, 76 S.E.2d 360 (1953); Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 ("history of the period in which the Act was passed may be considered"). Accordingly, taking together the circumstances which gave rise to the Act, the language of the Act, and its stated purpose as expressed by its sponsor, there can be little question that the General Assembly intended to ban video gambling devices from watercraft effective July 1, 1994, regardless of whether the machines had previously been licensed and were then operating on watercraft.

The next issue is whether a permanently docked vessel or watercraft is subject to the provisions of this amendment. If a vessel is permanently docked then it is no longer capable of plying the State's waters and thus becomes a fixture of the dock or mooring. The meaning of the word "permanent" in a statute is often construed according to its nature and in its relation to subject matter. City of Lakeland v. Lawson Music Co., Inc., Fla. App., 301 So.2d 506, 508. No distinction could be drawn from a dockside restaurant or any other structure built on or moored to a permanent fixture. Therefore, as long as the operator complies with local and state ordinances it would appear that a vessel permanently docked or moored could have licensed machines.

Those vessels temporarily docked are prohibited from having licensed machines since they are still capable of plying in navigable waters and presumably do so from time to time. The phrase "plying in navigable waters" does not mean that a vessel must, at every moment of injury, have been actually in motion in navigable waters. McKie v. Diamond Marine Co., C.A.Tex., 204 F.2d 132, 134.

The final question of whether fees for licenses found invalid should be refunded need not be addressed. The machine license issued pursuant to §12-21-2720(A)(3) (1993 Cum. Supp.) is still valid; the only change is that the operator must comply with the new requirement as to where those machines can be placed. The licenses are for the individual machines and do not sanction a

particular location. The operator is responsible for locating his machines in areas which are permitted by local and state statute.

CONCLUSION

The legislature fully intended to "pull the plug" on poker machines on watercraft in South Carolina which are not permanently docked. In our opinion, that is exactly what the General Assembly did. Rather than eight machines on board a boat, this legislation now mandates that there be zero. Accordingly, whether such watercraft are temporarily docked or plying the waters of South Carolina, Section 39, assuming it is approved by the Governor, prohibits the operation of such poker machines upon such watercraft as of July 1, 1994.

With best regards, I am

Very truly yours,

T. Travis Medlock