



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 17, 1995

Ms. Charlotte Grassmann
Business License Administrator
Finance Department
City of Beaufort
P. O. Drawer 1167
Beaufort, South Carolina 29901-1167

Jeffrey M. Spencer

Dear Ms. Grassmann:

Your concern is the authority of the City of Beaufort with respect to charging fees for the operation of video games machines. You note that "a local retail amusement company ... is stating that we, the municipality, can not charge both a machine license (permit) fee ... and a business license (privilege) fee for doing business in our municipality." Further, you indicate:

[t]here is confusion over section 12-21-2746 which allows a municipality to levy a license tax on the business taxed under this article (the retail amusement company). Then 12-21-2720 authorizes a maximum fee of \$150 on machines licensed by the state. Does this change from business (privilege) license to a fee on machines generate conflict between a business license and the statutory fee?

At this time we charge the retail amusement company a machine sticker fee of \$150 owe machine, then they also must maintain an annual business license for their retail business revenue which is generated by the leasing fees and

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commissions they receive from the operating entity (parlor/store/bar). We also require the operating entity to report 100% of revenue generated from the operating of the machines.

S. C. Code Ann. Section 12-21-2746 is part of Article 19 of Chapter 21 of the Code entitled "Coin-Operated Machines and Devices and Other Amusements." Section 12-21-2746 provides:

[m]unicipalities and counties may levy a license tax on the business taxed under this article, but in no case may a tax so levied by the State before March 28, 1956.

Section 21-21-2720 provides for the licensure of certain machines from the South Carolina Department of Revenue "for the privilege of making use of the machine in South Carolina ...". Subsection (A)(3) relates to "a machine of the nonpayment type, in-line pin game, or video game with a free play feature ...", the latter being the type of machine which is the focus of your question. Subsection (A) imposes a state license tax of \$3,000 upon such machines.

Section 21-21-2720(B), in addition, authorizes municipalities to impose a license tax upon such machine. That subsection states:

[n]o municipality may limit the number of machines within the boundary of the municipality. A municipality may by ordinance impose a license fee on machines licensed pursuant to subsection (A)(3) of this section in an amount not exceeding ten percent of the license fee imposed pursuant to subsection (A) for the equivalent license period.

The authority for a municipality to impose a business license tax is set forth at Section 5-7-30. That Section provides in pertinent part:

[e]ach municipality of the State, in addition to the powers conferred to its specific form of government, may enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, ... [to] levy a business license tax on gross income

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Recently, the Supreme Court of South Carolina decided the case of Crenco Food Stores, Inc. v. The City of Lancaster, South Carolina, ___ S.C. ___, 457 S.E.2d 338 (1995) which answers your question. A copy is enclosed for your information. There, the Court confronted the issue of whether a municipality could impose a business license tax upon the revenues of video game machines (video poker) in addition to the tax upon the machines themselves as authorized by Section 12-21-2720(B).

At the time the tax upon the machines was imposed by the municipality in Crenco, the maximum tax upon a machine was fifteen dollars. The Court there stated the issue in the case as whether

it [City of Lancaster] is entitled, in addition to the \$15 license fee per machine to impose a licensee fee tax on each business for the gross income from poker machines. We disagree.

The Court explained that "[t]he applicable statutes do not permit Lancaster to impose a license fee on gross receipts from these machines." To the contrary, noted the Court,

S.C. Code Ann. Sec.5-7-30 (Supp.1993) permits municipalities to "levy a business license tax on gross income" only to the extent it is not inconsistent with the general law of the State. Lancaster's attempt to levy a tax on a business' gross income pursuant to Sec. 5-7-30 conflicts with the general law applicable to fees on video poker machines.

The pertinent statutes are S.C. Code Ann. Secs. 12-21-2720 and 12-21-2746 (1993 Supp.). Section 12-21-2720 sets forth the maximum license fee per machine Lancaster is permitted to impose "for the privilege of making use of the machines" which all parties concede is \$15. Section 12-21-2746, entitled "Levy of additional local license tax," provides as follows:

Municipalities ... may levy a license tax on the business taxed under this article, but in no case may a tax so levied exceed one-half of the amount levied by the State before March 28, 1956

The license tax levied by the State prior to March 28, 1956

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was \$25. Accordingly, under Sec. 12-21-2746, the maximum license tax per business Lancaster may charge is one-half of \$25.00 or \$12.50. Accordingly, Lancaster's attempt to impose a per business fee based upon gross income from the video machines conflicts with the general law set forth in Sec. 12-21-2746 permitting a maximum \$12.50 per fee. ...We reverse the judgment below to the extent the court held Lancaster could impose only a \$15 per machine license fee. A \$12.50 fee per business is also permissible under Sec. 12-21-2746.

The Court in Crenco observed that Act No. 164 of 1993 Part II had changed the maximum amount a municipality could impose upon each machine from fifteen dollars to three hundred dollars every two years. Cities are thus now able to impose up to \$150 per machine per year. However, the case clearly interprets the various statutes which you have referenced as not permitting municipalities to impose a license tax upon revenues from a machine in addition to the \$150 fee or tax upon the machine itself.

Having said that, I would point out that Section 12-21-2720 was again amended by Part II, Section 67 of the 1995 Appropriations Act (Act No. 145). Item H of Section 67 reads as follows:

[t]he license fees permitted by subsection (b) and (d) may be imposed in addition to applicable local business license fees on gross income as authorized by statute. (emphasis added)

This item, as I understand it, was vetoed by the Governor on June 13, 1995. The question of the validity of the Governor's veto is presently pending before the Supreme Court of South Carolina in its original jurisdiction, the matter having been heard and now awaiting decision. Thus, the issue is presently in litigation. Therefore, as of now at least, the Crenco decision is still the last word on your question and the Court has spoken to the effect that municipalities presently have no authority to impose a license tax on revenues from video games machines such as you reference in your inquiry.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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.

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With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph
Enclosure