The State of South Carolina

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January 10, 1989

The Honorable Holman C. Gossett, Jr.
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
Spartanburg, South Carolina 29301

Dear Solicitor Gossett:

Questions have been referred to this Office concerning a scheme in Spartanburg whereby an individual pays a courier service a fee in order for the service to buy a lottery ticket in another state which is then delivered back to the purchaser. This Office has been asked whether such a scheme is in violation of this State's laws prohibiting lotteries.

Pursuant to Article 17, Section 7 of the State Constitution "(n)o lottery shall ever be allowed or be advertised by newspapers, or otherwise, or its tickets be sold in this State." An exemption for bingo is provided by such provision. See also: Section 52-17-20 of the Code. Section 16-19-20 of the Code states "(w)hoever shall be adventurer in or shall pay any moneys or other consideration or shall in any way contribute unto or upon account of any sales or lotteries ..." is guilty of adventuring in lotteries. The statute most often referenced pertaining to lotteries is Section 16-19-30 of the Code which states:

> (i)t shall be unlawful to offer for sale any lottery tickets or to open or keep any office for the sale of lottery tickets....

For the violation of such provision a fine not exceeding ten thousand dollars is provided. This Office in prior opinions has stated that a scheme which attempts to evade the terms of the statutes

prohibiting lotteries is suspect. See: Opinions dated January 21, 1974 and March 30, 1982. As stated by the South Carolina Supreme Court in Darlington Theaters, Inc. v. Coker, 190 S.C. 282, 2 S.E.2d 782 (1939),

> (a) plan which openly seeks to avoid the terms of a statute is a lawful one, but one which seeks to evade the statute is an unlawful one.

190 S.C. at 299.

The test of whether a scheme is an evasion of the law or an avoidance of it is a question of fact.

Research by this Office has not revealed any cases in this State in which Sections 16-19-20 or 16-19-30 have been interpreted as to facts similar to the referenced scheme in Spartanburg. Also, I am unaware of any prior opinions of this Office construing such a factual situation. However, in an opinion of this Office dated December 1, 1986 I recognized this State's long-standing public policy against gambling and gaming in rejecting the view that parimutuel betting does not constitute a lottery. Such view is consistent with the recognition by our State Supreme Court in Army Navy Bingo, Garrison #2196 v. Plowden, 281 S.C. 226, 314 S.E.2d 339 (1984) that there is no fundamental right to gamble protected by the Federal Constitution and that the State's authority to counter gambling is "practically unrestrained."

A plain reading of Sections 16-19-20 and 16-19-30 of the Code indicates that the scheme in Spartanburg whereby an individual pays a courier service a fee in order for the service to buy a lottery ticket in another state which is then delivered back to the purchaser is in violation of such provisions. As referenced, Section 16-19-20 prohibits an individual from adventuring in or paying money or in any way contributing to a lottery while Section 16-19-30 prohibits offering lottery tickets for sale or keeping or opening any office for the sale of lottery tickets.

With best regards, I am

Sincerely yours,

T. Travis Medlock
Attorney General

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