ALAN WILSON
ATTORNEY GENERAL

October 11, 2017

Captain Chad Brooks
Pickens County Sheriff's Office
216 C. David Stone Rd.
Pickens, SC 29671

Dear Cpt. Brooks:

We appreciate you reaching out to our Office regarding the legality of gambling in the context of a "Monte Carlo-style" casino night held by a private organization as a charity fundraiser.

Let it be known that the South Carolina Attorney General's Office unequivocally and resolutely holds to its long-standing position that such gambling events are illegal under the law of this state, no matter how noble the cause. *See, e.g., Op. S.C. Att'y Gen.*, 1997 WL 811909 (December 4, 1997) (concluding that the South Carolina Law Enforcement Officers' Association could not legally hold a fund-raising raffle under then-current law, even to fund a line-of-duty death benefit). We have opined on this matter on several occasions, so we will only summarize some of the relevant law here, while reiterating that we stand by the reasoning and conclusions of each of those opinions. *See, e.g., Op. S.C. Att'y Gen.*, 2011 WL 782313 (February 18, 2011) The primary purpose of this opinion is to reiterate our commitment to upholding the law on this subject as set out in the Constitution of South Carolina and expounded by the South Carolina Supreme Court. *See Darlington Theatres, Inc. v. Coker, et al.*, 190 S.C. 282, 292, 2 S.E.2d 782, 786 (1939); *see also Harvie v. Heise*, 150 S.C. 277, 287, 148 S.E. 66, 69 (1929).

The voters of South Carolina have enshrined the prohibition of lotteries and games of chance, with certain narrow exceptions, into the South Carolina Constitution. S.C. Const. art. XVII, § 7 provides, in relevant part:

> Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law.
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> . . .
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> The game of bingo, when conducted by charitable, religious, or fraternal organizations exempt from federal income taxation or when conducted at recognized annual state and county fairs, is not considered a lottery prohibited by this section.
>
> A raffle, if provided for by general law and conducted by a nonprofit organization for charitable, religious, fraternal, educational, or other

> eleemosynary purposes, is not a lottery prohibited by this section. The general law must define the type of nonprofit organization authorized to operate and conduct a raffle, provide standards for the operation and conduct of raffles, provide for the use of proceeds for religious, charitable, fraternal, educational, or other eleemosynary purposes, provide penalties for violations, and provide for other laws necessary to ensure the proper functioning, honesty, and integrity of the raffles. If a general law on the conduct and operation of a nonprofit raffle for charitable purposes, including the type of organization allowed to conduct raffles, is not enacted, then the raffle is a lottery prohibited by this section.

S.C. Const. art. XVII, § 7 (emphasis added). Accordingly, any examination of a contemplated lottery or game of chance must begin with these constitutional mandates in mind. The inclusion of specific exceptions here implicitly invokes "[t]he canon of construction, "*expressio unius est exclusio alterius*" or "*inclusio unius est exclusio alterius*" [which] holds that "to express or include one thing implies the exclusion of another, or of the alternative." *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black's Law Dictionary 602 (7th ed. 1999)). Indeed, as our Office has previously opined regarding lotteries specifically, "it goes without saying that the General Assembly may not permit what the Constitution expressly prohibits." *Op. S.C. Att'y Gen.*, 1997 WL 811909 (December 4, 1997); *cf. Alexander v. Martin*, 192 S.C. 176, 6 S.E.2d 20 (1939) ("The licensing of these machines by the State Tax Commission cannot make a lawful machine out of a gambling device, and the payment of the license does not authorize the operation of machines which come within the prohibition of [state law].").

While this Office cannot set out a definitive list of all factual scenarios which constitute illegal gambling, we have thoroughly discussed the relevant law in our prior opinions. *See, e.g., Op. S.C. Att'y Gen.*, 2011 WL 782313 (February 18, 2011) (discussing the three-part test set out by the South Carolina Supreme Court in *Darlington Theatres, Inc. v. Coker, et al.*, 190 S.C. 282, 292, 2 S.E.2d 782, 786 (1939).). For the purposes of your question, we note specifically that our Office has previously opined that "our Supreme Court, at least on one occasion, interpreted the amusement or entertainment as having value to the person engaged in the activity." *Id.* This opinion relied in part upon the 1929 case of *Harvie v. Heise*, where the Court stated "the amusement or entertainment furnished the player is worth something to him if it constitutes the inducement for him" to continue playing the game of chance, which in that instance was a slot machine. *Harvie v. Heise*, 150 S.C. 277, 287, 148 S.E. 66, 69 (1929). Our Supreme Court elaborated on this holding ten years later in *Alexander v. Martin*, where it described a gaming machine where "contingent upon the score recorded for a player, free games are awarded." *Alexander v. Martin*, 192 S.C. 176, 6 S.E.2d 20 (1939). The Court concluded:

> Therefore, it is clear that the lure and inducement to the player to operate the machine is the chance of occasionally being allowed to play a game or games

> without additional cost. This feature, we think, clearly pertains to a game of chance. And this is true, whether the machine is played for amusement or for other returns, such as money.

Id. (citing *Harvie v. Heise*). For that reason, where a casino-style event attempts to circumvent South Carolina gambling laws by removing the element of a material or monetary prize but attempts to preserve the feel of a casino with the betting of chips in poker, roulette, or similar games of chance that allow a person to continue playing if they win, it is the opinion of this Office that such an event still violates state law. *See Op. S.C. Att'y Gen.*, 2011 WL 782313 (February 18, 2011).

While this result may seem harsh given the charitable motives of many persons involved, it is the duty of this Office to uphold the rule of law in this state. The people of this state have enshrined the prohibition on gambling in our state's constitution, with narrowly-limited exceptions. S.C. Const. art. XVII, § 7. This provision has been amended before, and it is the prerogative of the people to do so again, if they desire. *See, e.g.,* Act No. 3, 2015 S.C. Acts 26 (amending S.C. Const. art. XVII, § 7). But until such an amendment is passed, our Office is duty-bound to ensure that the state's constitution, as currently written, is not rendered a nullity merely because it leads to an unpopular result in this instance.

We note that this advisory opinion is based only on the question presented, the current law, and the information which you provided to us. This opinion is not an attempt by this Office to establish or comment upon public policy. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in this matter. You may also choose to petition a court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. *See* S.C. Code Ann. § 15-53-20 (2005). If it is later determined that our opinion is erroneous in any way, or if you have any additional questions or issues, please do not hesitate to contact our Office.

A copy of this opinion is being provided to Adam Whitsett, Esq., as Chief Counsel for the South Carolina Law Enforcement Division.

Sincerely,

David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General