ALAN WILSON
ATTORNEY GENERAL

February 27, 2019

The Hon. Walt Wilkins
Thirteenth Judicial Circuit Solicitor
305 E. North St., Ste. 325
Greenville, SC 29601

Dear Solicitor Wilkins:

We received your request for an opinion on the legality of casino nights in light of the constitutional and legislative amendments which legalized charitable raffles. This opinion sets out our Office's understanding of your question and our response.

Issue:

Our Office has opined previously on the legality of casino nights, most recently in a pair of opinions issued in 2017. *See Ops. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017) & 2017 WL 5053041 (October 27, 2017). These opinions affirmed our Office's "long-standing position that such gambling events are illegal under the law of this State." *Id.* We supported this affirmation with a discussion of relevant provisions of the South Carolina Constitution, our State's Code of Laws, and decisions of the South Carolina Supreme Court. *Id.* However, these opinions did not discuss the express reference to casino nights contained in Section 33-57-100(C)(2). *Cf. id.* That subsection reads in full:

> No person shall conduct a fundraising event commonly known and operated as a "casino night", "Las Vegas night", or "Monte Carlo night" involving live individuals playing roulette, blackjack, poker, baccarat, or other card games, or dice games, unless the event is conducted only for entertainment purposes and no prizes, financial rewards, or incentives are received by players.

S.C. Code Ann. § 33-57-100(C)(2) (Supp. 2018). You have asked that we revisit the question addressed in our 2017 opinions in light of this language.

Law/Analysis:

We believe that a court faced with your question would conclude that the 2015 constitutional amendment and accompanying legislation which legalized charitable raffles, including Subsection 33-57-100(C)(2), did not alter the law related to casino night events in South Carolina as discussed in the 2017 opinions of this Office. *See Ops. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017) & 2017 WL 5053041 (October 27, 2017). Our October 27,

2017 opinion regarding Riverboat Casino Nights did reference the charitable raffle amendments in its closing paragraph:

> Fortunately, charitable institutions in South Carolina may choose from any number of abundant legal fundraising methods which are available to them. In addition to the more traditional methods of sponsorships, dinners, silent auctions, and simply asking for donations, the voters of South Carolina even have amended the Constitution to allow bingo and raffles for charitable purposes, when those events are conducted in compliance with state law. *See, e.g.*, Act No. 3, 2015 S.C. Acts 26 (amending S.C. Const, art. XVII, § 7). But where a particular fundraising method constitutes an illegal lottery, "we 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." *Op. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017).

Ops. S.C. Att'y Gen., 2017 WL 5053041 (October 27, 2017) (emphasis added). This reference alluded to a narrow construction of the charitable raffle amendments which did not impact the legal analysis in the remainder of the opinion. *Cf. id.* That opinion omitted any discussion of the specific language of Section 33-57-100 for this reason, but we appreciate this opportunity to expand upon it here. After careful review, we affirm the reasoning and conclusions of those prior opinions.

1. Constitutional Amendment

As discussed more fully in prior opinions of this Office, "[t]he voters of South Carolina have enshrined the prohibition of lotteries and games of chance, with certain narrow exceptions, into the South Carolina Constitution." *Op. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017) (citing S.C. Const. art. XVII, § 7). Our Office consistently has opined that "Monte Carlo-style" casino nights as traditionally conducted "are illegal under the law of this state, no matter how noble the cause." *Id.* (citing *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)).[1]

Raffles also fell under this prohibition until our State's constitution was amended in 2015. *Cf. id., Op. S.C. Att'y Gen.*, 2004 WL 1557095 (June 23, 2004). As currently written, Section 7 of Article XVII of the South Carolina Constitution reads in full:

[1] The reasons for this conclusion are discussed more fully in those prior opinions, and today's opinion should be read in that context. *See, e.g., Op. S.C. Att'y Gen.*, 2017 WL 5053041 (October 27, 2017).

> Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must be used first to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the "Education Lottery Account", and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for educational purposes as the General Assembly provides by law.
>
> 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. In 2004 our Office opined on the meaning of the term "educational purposes" found in this section of the South Carolina Constitution, and that opinion summarized some of the relevant rules of constitutional construction established by our State's highest Court:

> In interpreting constitutional amendments, the Court applies rules similar to the interpretation of statutes. *McKenzie v. McLeod*, 251 S.C. 226, 161 S.E.2d 659 (1968). Constitutional amendments should be construed so as to effectuate the purpose for which obviously intended. *Holland v. Kilgo*, 253 S.C. 1, 168 S.E.2d 569 (1969). The fundamental principle in construction of the Constitution is that the will of the Legislature and of the people in adopting constitutional amendments should be given effect. *Ansel v. Means*, 171 S.C. 432, 172 S.E. 434 (1934). Words of the Constitution are presumed to be used in their ordinary and

> popular meaning. *State v. Broad River Power Co.*, 177 S.C. 240, 181 S.E. 41 (1935). Moreover, construction of the Constitution adopted by the General Assembly in the enactment of statutes is entitled to weight. *Evans v. Beattie*, 137 S.C. 496, 135 S.E. 538 (1926). *See also, McDowell v. Burnett*, 92 S.C. 469, 75 S.E. 873 (1912). However, a court is not at liberty to change the wording of a constitutional provision through interpretation. *Neel v. Shealy*, 261 S.C. 266, 199 S.E.2d 542 (1973).

Op. S.C. Att'y Gen., 2004 WL 2451472 (October 7, 2004).

Prior opinions of this Office have construed amendments to Article XVII, Section 7 narrowly. For example, a 2004 opinion addressed to Representative Becky Richardson considered whether "changes to the Constitution and South Carolina Code relating to lotteries" had altered the law such that "churches and non-profit organizations [could] conduct raffles for the purposes of fund raising." *Op. S.C. Att'y Gen.*, 2004 WL 1557095 (June 23, 2004). That opinion, which predated the 2015 charitable raffle amendments, described prior amendments to the lottery prohibition thus:

> Of course, Art. XVII, § 7 of the Constitution was amended recently to authorize (together with certain forms of bingo, which were authorized by constitutional amendment in 1974) the South Carolina Education Lottery as an exception to South Carolina's continuing constitutional prohibition against lotteries. A favorable vote was conducted in 2000 and the General Assembly ratified the people's decision the following year.
>
> The fact that the State-run lottery and bingo are the only exceptions contained in Art. XVII, § 7 reinforces the conclusion that other forms of lottery are clearly prohibited by South Carolina law. It is well recognized that "the canon of construction 'expressio unius est excluso alterius' holds that to express or include one thing implies the exclusion of another, or the alternative." *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000).

Id. That opinion affirmed that raffles remained unlawful under the "continuing constitutional prohibition" of Section 7 of Article XVII under the same analysis set out in prior opinions of our Office. *Id.* (citing, *inter alia, Op. S.C. Att'y Gen.*, 1970 WL 16733 (February 21, 1970)).

Consistent with the reasoning and conclusion of our 2004 opinion addressed to Representative Richardson, it is the opinion of this Office that the 2015 charitable raffle amendment to Section 7 of Article XVII simply created a third narrow exception to the

"continuing constitutional prohibition against lotteries." *See Op. S.C. Att'y Gen.*, 2004 WL 1557095 (June 23, 2004). Accordingly, we also believe that the amendment effectively preserved the constitutional prohibition in all other respects. *See id.*

Turning to the question presented in your letter, our Office consistently has concluded that casino nights as traditionally conducted fall under this constitutional prohibition. *See Ops. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017) & 2017 WL 5053041 (October 27, 2017). Because the 2015 amendment preserved this prohibition in all respects other than establishing an exception for charitable raffles under certain conditions, we believe that these prior opinions remain an accurate description of the law in South Carolina with respect to casino nights. *Id.; see also Op. S.C. Att'y Gen.*, 2005 WL 2250210 (September 8, 2005) (recognizing that our Office "will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed").

2. Statutory Language

The Legislature codified the general law providing for charitable raffles in Chapter 57 of Title 33 of the South Carolina Code. S.C. Code Ann. § 33-57-100 et. seq. (Supp. 2018). The General Assembly defined a "raffle" for the purposes of that chapter to "mean[] a game of chance in which a participant is required to pay something of value for a ticket for a chance to win a prize, with the winner to be determined by a random drawing or similar process whereby all entries have an equal chance of winning." § 33-57-110(11). The Legislature included the language you reference in your request in Section 33-57-100, and that Section reads in full:

> (A) A lottery or raffle of any type whatsoever is unlawful unless it is authorized by the following:
>
> (1) Chapter 150, Title 59, the Education Lottery;
>
> (2) Article 24, Chapter 21, Title 12, Charitable Bingo; or
>
> (3) Chapter 57, Title 33, Nonprofit Raffles for Charitable Purposes.
>
> (B) It is the intent of the General Assembly that only qualified tax-exempt entities, which are organized and operated for charitable purposes and which dedicate raffle proceeds to charitable purposes, shall operate and conduct raffles as authorized by this chapter.
>
> (C)(1) Nothing in this chapter may be construed to allow electronic gambling devices or machines of any types, slot machines, video poker or similar

> electronic play devices, or to change or alter in any manner the prohibitions regarding video poker or similar electronic play devices in Chapter 21, Title 12 and Chapter 19, Title 16.
>
> (2) No person shall conduct a fundraising event commonly known and operated as a "casino night", "Las Vegas night", or "Monte Carlo night" involving live individuals playing roulette, blackjack, poker, baccarat, or other card games, or dice games, unless the event is conducted only for entertainment purposes and no prizes, financial rewards, or incentives are received by players.
>
> (3) No events with an electronic device or machine, slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races are authorized.
>
> (D) Except for raffles conducted by the South Carolina Lottery Commission pursuant to Chapter 150, Title 59 or Charitable Bingo authorized by Article 24, Chapter 21, Title 12, the provisions of this chapter provide the sole means by which activities associated with conducting raffles are authorized. The provisions of this chapter must be narrowly construed to ensure that tax-exempt entities conducting a nonprofit raffle pursuant to this chapter are in strict compliance with the requirements of this chapter.

§ 33-57-100 (emphasis added). The remainder of Chapter 57 goes on to prescribe specific limitations and requirements for the operation of charitable raffles. §§ 33-57-120 et. seq. We understand the question here to be whether the language "unless the event is conducted only for entertainment purposes and no prizes, financial rewards, or incentives are received by players" may fairly be read to permit casino nights under certain circumstances. *See* § 33-57-100(C)(2).

This author's research has not identified any reported South Carolina case which addresses your question directly. It appears that a court faced with this question would rely upon the rules of statutory construction to give effect to the intention of the Legislature in codifying the various statutes set out above. As this Office has previously opined:

> The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S., E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language

> used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005).

Turning to the text of Section 33-57-100, we observe first that the General Assembly included an express rule of construction in Subsection (D). There the Legislature mandated that "[t]he provisions of this chapter must be narrowly construed to ensure that tax-exempt entities conducting a nonprofit raffle pursuant to this chapter are in strict compliance with the requirements of this chapter." § 33-57-100(D). As discussed earlier, Chapter 57 also contains a statutory definition of a raffle: "a game of chance in which a participant is required to pay something of value for a ticket for a chance to win a prize, with the winner to be determined by a random drawing or similar process whereby all entries have an equal chance of winning." § 33-57-110(11). The chapter also defines "nonprofit gaming supplies and equipment" to mean items "customarily used in the conducting of raffles, including raffle tickets, and other apparatus or paraphernalia used in conducting raffles." § 33-57-110(5). Additionally, the standards found throughout the chapter apparently contemplate the conduct of raffles as described in the definitions. *See, e.g.*, § 33-57-130(A) ("Each nonprofit raffle shall continue for not more than nine months from the date the first raffle ticket is sold."); § 33-57-140(M) ("The purchase price for a raffle ticket may not exceed three hundred dollars."); § 33-57-150(B) (enumerating allowable expenses in connection with a charitable raffle). Taken together, these provisions cannot be read to provide for the conduct of casino nights except through a convoluted and tortured construction of numerous provisions of Chapter 57. Such a construction would be contrary to the legislative mandate that the chapter "be narrowly construed to ensure . . . strict compliance" therewith. § 33-57-100(D).

Secondly, we observe that the structure of this code section supports a reading Subsection 33-57-100(C)(2) which preserves a prohibition rather than removes one. *See* § 33-57-100. The Legislature placed the casino night reference immediately after a subsection which expressly preserves the law prohibiting video poker, § 33-57-100(C)(1); and immediately before a subsection which expressly prohibits (among other forms of gambling) slot machines and sports betting, § 33-57-100(C)(3). These three subsections form the entirety of Subsection 33-57-100(C). *Id.* When read in the broader context of the statute which established that certain charitable raffles would become lawful, Subsection (C) stands out as a clear expression that the Generally Assembly intended that these other specific forms of gambling would remain unlawful.

For these reasons we believe that the Legislature included Subsection (C) in the statute providing for the lawful conduct of charitable raffles in order to avoid a misconstruction that casino nights, video poker, or other popular forms of gambling had become lawful as well. It may be fair to read the language of Subsection 33-57-100(C)(2) such that it contemplates that some casino-themed events would not be illegal under South Carolina law. But we believe the language here is an attempt to describe events which are not casino nights as traditionally conducted, and which were not illegal prior to the passage of the Act.[2] Therefore, we believe that a court would conclude that Subsection 33-57-100(C)(2) was intended to preserve, not to alter, the law related to casino night events in South Carolina.

3. A Statute Cannot Authorize What the Constitution Prohibits

Finally, even if the language of Section 33-57-100(C)(2) could fairly be read to purport to legalize fundraising casino nights as traditionally conducted, our Office has opined in the context of South Carolina gambling law that a statute cannot permit what the constitution prohibits. *Op. S.C. Att'y Gen.*, 2004 WL 1557095 (June 23, 2004). In the 2004 opinion addressed to Rep. Richardson discussed above, which predated the constitutional amendment to allow charitable raffles, this Office specifically discussed a prior version of Section 61-2-180 which purported to authorize such raffles. *Id.* After noting that "any statute enacted by the General Assembly must be presumed to be constitutional," our 2004 opinion continued:

> At the same time, it must be recognized that "the General Assembly may not permit what the Constitution expressly prohibits." *Op. S.C. Atty. Gen.*, December 4, 1997. While the Supreme Court has recognized that a legislative construction of the Constitution is entitled to weight, *Bradford v. Richardson*, 111 S.C. 205, 97 S.E. 58 (1918), at the same time it must be recognized "[t]hat which is prohibited by the Constitution cannot be authorized by the legislature ...." *Beatty v. Wittekamp*, 171 S.C. 326, 172 S.E. 122 (1933). As the Court noted in *Scroggie v. Bates*, 213 S.C. 141, 48 S.E.2d 634 (1948), "[u]nder no circumstances can this Court agree to the suggested proposition that by repeated violations of the Constitution, the Legislators may thus amend that instrument." And, as the Court stated in *Richardson v. Town of Mt. Pleasant*, 350 S.C. 291, 566 S.E.2d 523

[2] We must observe once again that there are "myriad permutations of fundraising events designed for all intents and purposes to be a gambling event but which are constructed in some way in an effort to evade the anti-gambling laws of this state." *Op. S.C. Att'y Gen.*, 2017 WL 5053041 (October 27, 2017). For that reason, "this Office cannot set out a definitive list of all factual scenarios which constitute illegal gambling." *Op. S.C. Att'y Gen.*, 2017 WL 4707542 (October 11, 2017). Instead, when presented with a particular factual scenario our prior opinions have analyzed whether the elements of an illegal lottery were present. *See id.*

> (2002), words used in the State Constitution must be given their "plain and ordinary" meaning.

We also noted that "our Supreme Court has held that a license to operate a game or machine otherwise illegal does not serve to legalize such activity." *Id.* (internal citations omitted). That opinion went on to conclude that "[w]hile such a statutory provision is presumed constitutional until set aside by a court, we are of the opinion that a court would declare such provision to be unconstitutional." *Id.*

We believe that casino nights as traditionally conducted remain unlawful under the "continuing constitutional prohibition" of Section 7 of Article XVII for reasons explained earlier in this opinion. *See discussion, supra.* Therefore, even if Section 33-57-100(C)(2) were read to purportedly cause them to be lawful, we would be bound to conclude that such a reading is contrary to the South Carolina Constitution. *See* S.C. Const. art XVII §7; *see also Op. S.C. Att'y Gen.*, 2004 WL 1557095 (June 23, 2004). Of course, such a reading is not required, and for the reasons explained earlier in this opinion we do not believe it is justified. *See discussion, supra.* But whether justified or not, "our Supreme Court has consistently recognized that a constitutional interpretation is to be preferred over an unconstitutional one." *Op. S.C. Att'y Gen.*, 2005 WL 1383357 (May 2, 2005). Therefore, even if a court were to conclude that Section 33-57-100(C)(2) could fairly be read to legalize casino nights, we believe that this construction still would be rejected in favor of a reading consistent with the South Carolina Constitution.

Conclusion:

In conclusion, it is the opinion of this Office that the charitable raffle amendments contained in the South Carolina Constitution and Section 33-57-100 et. seq. were carefully constructed and narrowly tailored for the sole purpose of exempting such raffles from the constitutional prohibition under very specific conditions set out in that legislation. These amendments need not and should not be read to exceed or to violate the constitutional amendment which enabled their passage. Instead, when read in the context of the charitable raffle statute as a whole, we believe that the better reading of Section 33-57-100(C)(2) is that the Legislature intended to preserve, not alter, the law related to casino night events in South Carolina as discussed in the 2017 opinions of this Office. Therefore we affirm the reasoning and conclusions of those prior opinions as accurate statements of the law in the absence of additional legal precedent or legislative amendment.

Sincerely,

David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General