

1973 S.C. Op. Atty. Gen. 304 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3629, 1973 WL 21081

Office of the Attorney General

State of South Carolina

Opinion No. 3629

September 25, 1973

***1 Re: No. 57—Criminal**

Honorable Frank Fowell
Sheriff
Richland County
1400 Huger Street
Columbia, South Carolina 29201

Dear Sheriff Powell:

Section 5–11 of the South Carolina Code of Laws has been amended to read as follows:

No carnival to which games of chance or gambling devices are attached shall exhibit in this State. Provided, games of chance involving skill shall be permissible at recognized State and county fairs; provided, further, no cash prize shall be awarded. Act Bearing Ratification No. 578.

You request that we advise you as to whether or not the amendment to Section 5–11, which is italicized above, radically changes that statute, and if so, who is to determine what constitutes a ‘game of chance involving skill.’

The amendment, of course, does change Section 5–11; prior to the amendment, a carnival could not lawfully operate at all if it had games of chance or gambling devices. Now, a carnival having games of chance may lawfully exhibit in South Carolina if the games of chance involve skill and no cash prize is awarded. However, a carnival to which gambling devices are attached still may not lawfully operate in this State.

Regarding the term ‘game of chance involving skill,’ the word ‘chance’ means ‘something which happens unpredictably without discernable human intention or observable cause [[Webster, Seventh New Collegiate Dictionary](#), ‘Chance’ at 138]; and ‘skill’ means ‘the ability to use one’s knowledge effectively and readily in execution or performance: technical expertise.’ *Id.* ‘Skill’ at 815. A ‘game of chance’ is one in which the element of chance predominates over the element of skill while a ‘game of skill’ is one in which the element of skill predominates over the element of chance. [State v. Stroupe](#), 238 N.C. 34, 76 S.E.2d 313. Where, therefore, a carnival displays and permits the use of a ‘game of chance’ which involves, to any degree, an opportunity for one to use either his knowledge or his technical expertise, the carnival may lawfully operate if no cash prize is offered. Whether skill is involved or not must be determined initially by the law enforcement officer and ultimately by a judicial fact finder, *e.g.* a jury. Sincerely,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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