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Michael S. Houdyshell
Secretary, Department of Revenue
455 East Capitol Ave.
Pierre, SD 57501

OFFICIAL OPINION 24-02

Re: Official Opinion Concerning Residency for Purposes of State Video
Lottery Regulations

Dear Sec. Houdyshell,

In your capacity as Secretary of the Department of Revenue you have requested an official opinion from the Attorney General's Office on the following questions:

QUESTIONS:

- 1.) Does the term "resident," as used in SDCL § 42-7A-43, require the South Dakota Lottery to take steps beyond verification of a residential address to confirm whether an applicant for a video lottery operator license is a resident of the State?
- 2.) Do the requirements of SDCL § 42-7A-43, pertaining to partnerships or corporations, apply generally to all similar business entities, or do those requirements apply only to partnerships and corporations?

ANSWERS:

- 1.) The South Dakota Lottery is required to take whatever steps are necessary to be satisfied that an applicant for a video lottery operator license is a resident of South Dakota.

- 2.) The requirements of SDCL § 42-7A-43 apply only to partnerships or corporations, and do not apply to other legal entities.

FACTS:

As allowed by S.D. Const. Art. III, § 25, South Dakota operates video lottery as one aspect of the overall State lottery. The South Dakota Lottery (Lottery) is administered by the State Lottery Commission, a division of the Department of Revenue. SDCL § 42-7A-2. The Lottery is responsible for licensing all video lottery manufacturers, distributors, establishments, and operators. SDCL § 42-7A-41.

State law places certain requirements and restrictions upon any person or entity holding a video lottery license, including video lottery machine operators. SDCL §§ 42-7A-13, 42-7A-14, & 42-7A-43. A video lottery machine operator is "any individual, entity, partnership, corporation, or association that places video lottery machines or associated equipment for public use in this state." SDCL § 42-7A-1(17). One of the requirements imposed upon a video lottery machine operator is to be a resident of the State. SDCL § 42-7A-43. Prior to issuing a license, the Lottery performs background investigations on any applicant. SDCL § 42-7A-43; *see also* ARSD § 48:02:02:01.

The Music & Vending Association has raised questions concerning the interpretation of SDCL § 42-7A-43 related to the residency of applicants, and the statute's application to partnerships and corporations.

IN RE QUESTION 1:

Based upon the above facts, you have asked whether the residency requirement of SDCL § 42-7A-43 requires the Lottery to take steps beyond verification of a residential address to confirm whether an applicant for a video lottery operator license is a resident of the State?

SDCL § 42-7A-43 states:

Any person licensed as a video lottery machine manufacturer, distributor, operator, or lottery retailer shall submit to a background investigation. This includes each partner of a partnership and each director and officer and all stockholders of five percent or more in a parent or subsidiary corporation of a video lottery machine manufacturer, distributor, operator, or lottery retailer. A video lottery machine manufacturer or distributor shall meet the same requirements of subdivisions 42-7A-13(1) to (4), inclusive, and § 42-7A-14. *A video lottery machine operator shall meet the same requirements of §§ 42-7A-13 and 42-7A-14, in addition to being a resident of the State of South Dakota and, if a*

partnership or corporation, the majority of ownership interest shall be held by residents of the state or by a public company or its subsidiary licensed as a video lottery machine operator pursuant to chapter 42-7A prior to January 1, 1997, and traded on any market regulated or recognized by the United States Securities and Exchange Commission. A copy of any disclosure statement involving ownership of the public company required to be filed with the United States Securities and Exchange Commission shall be filed with the lottery commission. A lottery retailer shall meet the same requirements of §§ 42-7A-13 and 42-7A-14. Any applicant for any license under this chapter has the burden of proving his or her qualifications to the satisfaction of the commission and executive director. The commission may adopt rules pursuant to chapter 1-26 to establish additional requirements to preserve the integrity and security of the lottery.

(emphasis added).

When interpreting state law, “the language expressed in the statute is the paramount consideration.” *Olson v. Butte County Comm’n*, 2019 S.D. 13, ¶ 5, 925 N.W.2d 463, 464 (quoting *Goetz v. State*, 2001 S.D. 138, ¶ 15, 636 N.W.2d 675, 681). “When the language in a statute is clear, certain and unambiguous, there is no reason for construction. . . . When we must, however, resort to statutory construction, the intent of the legislature is derived from the plain, ordinary and popular meaning of the statutory language.” *In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12, 907 N.W.2d 785, 789 (citations omitted).

The term “resident” is not defined in SDCL ch. 42-7A. While residency has been defined in State law for several other specific purposes (i.e. voting residency as defined in SDCL § 12-1-4, residency for purposes of tuition rates established in SDCL § 13-53-23.1, residency for purposes of hunting and fishing established in SDCL § 41-6-10), no generally applicable definition of “resident” or “residency” exists. Because the Legislature has not provided a specific definition of “resident” for purposes of SDCL ch. 42-7A, it is my opinion that the ordinary, plain, and generally accepted definition of the term is applicable in the interpretation of SDCL § 42-7A-43. *Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12.

Webster’s dictionary defines a “resident” as “living in a place for some length of time,” and alternatively as “on who resides in a place.” *Resident*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2014). “Reside” is defined as “to dwell permanently or continuously.” *Reside*, Merriam-Webster’s Collegiate Dictionary (11th ed. 2014). Black’s Law Dictionary similarly defines “resident” as “someone who lives in a particular place” or “someone who has a home in a particular place.” *Resident*, Black’s Law Dictionary (10th ed. 2014).

Considering these definitions, I conclude that “resident” as used in SDCL ch. 42-7A means a person who lives in South Dakota and has chosen to make the state their permanent or continuous home. Some may argue for a more specific definition of “resident,” but if the Legislature had intended such a definition, it could have defined “resident” in a more detailed way. It did not, and I am not at liberty to read additional items into the statute. *Holborn v. Deuel County Board of Adjustment*, 2021 S.D. 6, ¶ 35, 955 N.W.2d 363, 378 (citing *Martinmass v. Engelmann*, 2000 S.D. 85, ¶ 49, 612 N.W.2d. 600, 611).

Each applicant has the burden to prove their qualifications for licensure “to the satisfaction of the [Lottery].” SDCL § 42-7A-43. “All applicants ... must provide all information required” for licensure. ARSD § 48:02:03:01. The Lottery is authorized to conduct investigations for purposes of licensure, and any person licensed by the Lottery must submit to a background investigation. SDCL §§ 42-7A-43 & SDCL § 42-7A-25. The Lottery may not issue a license until it is satisfied that the applicant meets the requirements for licensure. ARSD §§ 48:02:02:01 and :02.

Based on the above, it is my opinion that the Lottery is required to take those steps necessary to become “satisfied” (as per ARSD §§ 48:02:02:01 and :02) that an applicant for a video lottery operator license lives in South Dakota and has chosen to make this state their permanent or continuous home.

You have indicated the application that perspective operators submit to the Lottery requires each applicant to provide their address, and to verify that they are a resident of South Dakota. By submitting the application, the applicant certifies that all the information provided is correct. You also state that the Lottery communicates with the applicant during the application process to ensure that all required information is provided. During this process, the Lottery may request a copy of an applicant’s driver’s license and may perform various database or internet searches to verify an applicant’s residential address. Those steps are reasonable efforts on behalf of the Lottery to become satisfied as to an applicant’s residency. If the application materials, or the application process, raise questions about an applicant’s status as a resident, further investigation may be required for the Lottery to be satisfied that the applicant is indeed a resident of South Dakota.

IN RE QUESTION 2:

You have also asked whether the requirements of SDCL § 42-7A-43, pertaining to partnerships or corporations, apply generally to all similar legal entities or only to partnerships and corporations?

SDCL § 42-7A-43 has been set out in full above. Relevant to your second question, if the applicant is “a partnership or corporation,” the statute requires “the majority of ownership interest shall be held by residents of the state.” SDCL § 42-7A-43.

As noted above, the language of a statute is the paramount consideration when interpreting the statute. *Olson*, 2019 S.D. 13, ¶ 5. When the language of the statute is clear and certain, I am left simply to declare the meaning of the unambiguous language. *In re Wintersteen Revocable Trust Agreement*, 2018 S.D. 12, ¶ 12.

State law authorizes the formation of partnerships (SDCL ch. 48-7A) and corporations (SDCL ch. 47-1A), as well as limited liability companies (SDCL ch. 47-34A), limited partnerships (SDCL ch. 48-7), limited liability partnerships (SDCL § 48-7A-1001), and limited liability limited partnerships (SDCL § 48-7-1106). The text of SDCL § 42-7A-43, however, only references “partnership[s]” and “corporation[s],” and is silent as to the statute’s application to the remaining legal entities.

Based on the plain and clear language of the statute, it is my opinion that the requirement of SDCL § 42-7A-43 is limited only to partnerships and corporations. I am not at liberty to read additional items into the statute. *Holborn*, 2021 S.D. 6, ¶ 35. The statute has no application to other legal entities allowed to be organized under State law. If the Legislature intends for the statute to apply to those other entities, it must amend the statute to specifically reference them.

I conclude that SDCL § 42-7A-43 requires the majority of the ownership interest of partnerships and corporations must be residents of South Dakota. The plain language of the statute does not place the same requirement on the ownership interest of other legal entities.

CONCLUSION

I conclude that the Lottery is required to take those steps necessary for it to be satisfied that an applicant for a video lottery operator license meets the requirements of licensure found in statute and administrative rule. This includes the requirement that an applicant be a resident of the State. If questions arise during the application process as to an applicant’s qualifications, then further steps to investigate that concern may be warranted. Further, it is my opinion that the requirement that a majority of the ownership interest of an applicant be residents of South Dakota, as per SDCL § 42-7A-43, applies only to partnerships and corporations.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/SRB/dd