

STATE OF SOUTH DAKOTA

OFFICE OF

THE ATTORNEY GENERAL

September 12, 2012

Robert W. Klimisch
Yankton County State's Attorney
410 Walnut Street, Suite 100
Yankton, SD 57078

OFFICIAL OPINION NO. 12-03

Re: Legality of Bingo Simulcasting With Prize Pool

Dear State's Attorney Klimisch:

You have requested an official opinion from this office regarding the following questions:

QUESTION 1: Whether a qualified organization that complies with 22-25-25 may legally conduct bingo by linking multiple locations together through video simulcasting a bingo session with a single prize pool?

QUESTION 2: If the answer to Question 1 is "yes," whether that answer changes if the bingo session is conducted by multiple qualified organizations?

ANSWER: Assuming the provisions of SDCL ch. 22-25 are met, a single qualified organization or multiple qualified organizations may legally conduct bingo games at multiple locations through video simulcasting, and the entity or entities may pool revenues obtained at each location to award prizes.

FACTS: The Yankton County State's Attorney's Office has been approached by a charitable organization which desires to link multiple locations for the purpose of conducting bingo. A bingo session would be conducted by the organization or in conjunction with other organizations in full compliance with state law. Only organizations qualified to conduct bingo under SDCL 22-25-25 would participate; all prizes would be generated from the card/package sales at the multiple locations; a traditional bingo game would be conducted at one location and simulcast to all other locations through a video feed via the Internet or similar transmission service; and no actual wagering over the Internet or similar transmission service would take place. The bingo participants' activities would be unchanged, except any prize awarded would be based upon revenues received from participants at all locations. The net revenues generated from a bingo session would be used to benefit the organization, consistent with state law. If multiple qualified organizations participated in conducting bingo, the net revenues from the bingo session would be divided as agreed upon by the participating organizations.

IN RE QUESTION NO. 1:

Gambling is illegal in South Dakota except as allowed under art. III, § 25 of the South Dakota Constitution and as authorized by the state Legislature. "The elements of gambling are generally recognized as consideration, prize and chance." *Midwestern Enterprises, Inc. v. Stenehjem*, 625 N.W.2d 234, 236 (N.D. 2001). The South Dakota Supreme Court, in *Bayer v. Johnson*, 349 N.W.2d 447, 449 (S.D. 1984), defined a "game of chance" for constitutional purposes as "a contest wherein chance predominates over skill."

In 1970, the people of South Dakota amended our constitution by adding a proviso authorizing games of chance by public-spirited organizations. The relevant portion of art. III, § 25 provides:

[I]t shall be lawful for the Legislature to authorize by law, bona fide veterans, charitable, educational, religious or fraternal organizations, civic or service clubs, volunteer fire departments, or such other public spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are devoted to educational, charitable, patriotic, religious, or other public spirited uses.

Subsequent to this constitutional authorization, the Legislature permitted public-spirited organizations to conduct two games of chance, lotteries and bingo, upon compliance with certain statutory prerequisites. These provisions are codified in SDCL ch. 22-25.

For the purpose of public-spirited gaming, SDCL 22-25-23 defines bingo as follows:

As used in this chapter, the term, bingo, is that game in which each player is supplied a card, board, or electronic bingo device containing five adjoining horizontal and vertical rows with five spaces in each row each containing a number or figure therein, except for the central row with four spaces, each containing a number or figure therein and the word, free, marked in the center space thereof. Upon announcement by the person conducting the game of any number or figure appearing on the player's card, board, or electronic bingo device, the space containing the figure or number is covered by the player. If the player covers all five spaces in any horizontal or vertical row, covers four spaces and the free space in a five space diagonal row, or covers the required combination of spaces in some other preannounced pattern or arrangement, the combination of spaces covered constitutes bingo. The player to first announce bingo is awarded money, merchandise, or some other consideration by the person conducting the game. For purposes of this section, an electronic bingo device does not include any device which may be activated for play by a player inserting coins, tokens, tickets, vouchers, or similar objects of value or which is capable of dispensing coins, tokens, vouchers, tickets, or any similar object of value.

No state entity is charged with regulating public-spirited gaming. Rather than establishing a formal regulatory scheme, the Legislature chose to set forth minimum general requirements necessary to legally conduct lotteries and bingo. SDCL 22-25-25 provides the general requirements a public-spirited organization must comply with to legally conduct bingo. Conducting bingo in violation of SDCL 22-25-25 is a class 2 misdemeanor. SDCL 22-25-26. SDCL 22-25-25 currently provides:

The game, bingo, as defined in § 22-25-23, or lottery, as defined in § 22-25-24, may not be construed as gambling or as a lottery within the meaning of § 22-25-1, if:

(1) The bingo game or lottery is conducted by a bona fide congressionally chartered veterans organization; a religious, charitable, educational, or fraternal organization; a local civic or service club; a political party; a volunteer fire department; a local industrial development corporation as defined in § 5-14-23; or a political action committee or political committee on behalf of any candidate for a political office which exists under the laws of the State of South Dakota;

(2) The proceeds therefrom do not inure to the benefit of any individual;

(3) No separate organization or professional person is employed to conduct the bingo game or lottery or assist therein;

(4) No compensation of any kind in excess of the state minimum wage per hour or sixty dollars, whichever is greater, in value is paid to any person for services rendered during any bingo session in connection with the conduct of the bingo game or in consideration of any lottery. However, the provisions of this subdivision do not apply to games or lotteries conducted in connection with any of the following events: a county fair conducted pursuant to § 7-27-3, the state fair conducted pursuant to chapter 1-21, or a civic celebration recognized by resolution or other similar official action of the governing body of a county, municipality, or village;

(5) No prize in excess of two thousand dollars is awarded at any one play of bingo;

(5A) The actual value of any lottery prize is stated before any chances for the lottery are sold. A lottery prize of a stated amount of dollars in value may be given to a person who sells a winning lottery ticket or share as long as the winning lottery ticket or share is selected at random;

(6) The organizations authorized under subdivision (1) of this section, before conducting a bingo game or before selling any chances for a lottery give thirty days' written notice of the time and place thereof to the governing body of the county or municipality in which it intends to conduct the bingo game or lottery, and the governing body does not pass a resolution objecting thereto. However, any organization that conducts a lottery and tickets or shares for such lottery are sold state-wide shall provide written notice of such lottery pursuant to this subdivision only to the secretary of state and to the governing body where the drawing for such lottery is held. A municipality pursuant to § 9-29-5 may by ordinance prohibit within the municipality the sale of lottery tickets or shares for such lottery issued pursuant to this section; and

(7) No organization authorized to conduct a bingo game or lottery under subdivision (1) of this section may enter into any lease or agreement with any other person or organization to provide equipment or services associated with the conduct of a bingo game or lottery. However, this subdivision does not apply to any lease or agreement with a distributor licensed pursuant to §§ 22-25-28 to 22-25-51, inclusive, to provide bingo or lottery equipment and supplies.

This office has previously construed the provisions of SDCL §§ 22-25-23 and 22-25-25 to authorize bingo only in its traditional format: with an individual or individuals calling numbers or figures and participants marking or daubing the numbers on their cards, boards, and now electronic devices. What the charitable organization is seeking to do in this case does not depart from how a bingo game is traditionally conducted. Nothing in the bingo definition or general requirements mandates that the person calling a bingo game be physically present at each location where the game is being conducted. Further, nothing prevents the pooling of revenues from participants at different locations playing the same bingo game to award prizes. SDCL 22 25 25(5) only places a limit on the maximum prize awarded at any one play of bingo.

Thus, in my opinion, a qualified public-spirited organization which complies with the requirements of SDCL §§ 22 25-23 and 22-25-25 may legally utilize simulcast broadcasting to conduct bingo at multiple locations. Further, the organization may utilize revenues from each of those locations to determine the amount available for awarding prizes, as long as no prize exceeds the maximum amount authorized under SDCL 22-25-25(5).

The above opinion is subject to two qualifications, one technical and the other legal. First, the organization must overcome the technical difficulty of assuring that the player who first announces bingo is awarded the money, merchandise, or other consideration consistent with SDCL 22-25-23. Second, the organization must ensure that bingo sessions conducted by simulcasting are not located in municipalities which have enacted regulations under SDCL 9 29-5 to restrict or prohibit bingo conducted in this manner.

Further, nothing in this opinion should be construed or interpreted as stating that a qualified public-spirited organization may legally conduct a bingo game or session through the use of the Internet or similar types of interactive communications devices or software. Such use of the Internet or similar services, systems, or networks to place wagers or play bingo would require specific legislative authorization.

IN RE QUESTION 2:

There is no requirement in SDCL ch. 22-25 that precludes qualified public-spirited organizations from agreeing to jointly conduct a lottery or bingo session. I am aware of lotteries being conducted as part of a multiple-organization fund-raising effort. My answer to Question 1 does not change if

the bingo session being simulcast is conducted by multiple qualified organizations, as long as each organization complies with SDCL ch. 22-25.

Very truly yours,

Marty J. Jackley
Attorney General

MJJ/JPH/jkp