



ALAN WILSON  
ATTORNEY GENERAL

April 17, 2024

The Honorable Christopher J. Murphy, Member  
South Carolina House of Representatives  
310-C Blatt Building  
Columbia, SC 29201

Dear Representative Murphy:

You seek an opinion regarding whether a “lottery ticket delivery service [may] operate legally in South Carolina.” By way of background, you provide the following:

[I]ottery ticket courier services currently offer in-state delivery solutions in sixteen U.S. states, as well as the District of Columbia and Puerto Rico. Such platforms allow customers the opportunity to securely reserve official state lottery tickets through a computer, tablet, or smartphone. Serving as an extension of the existing state lottery retailer framework, lottery couriers support the delivery of lottery products to non-traditional players by reaching new customers where they are.

Your request letter argues that lottery courier services are not prohibited in South Carolina, just as they have been deemed not prohibited in these other states.

You state the following as part of your argument:

[t]he South Carolina Education Lottery Act does not regulate the business model utilized by lottery couriers. The most analogous modern parallel is the UberEats model. UberEats is not a restaurant. It does not hold any licenses (or permits) to prepare food. Rather, UberEats obtains food requests from willing customers through its platform. Uber Eats then buys the food for the customers directly from the restaurant. Finally, UberEats facilitates the delivery of the food to the customer, charging a convenience fee to the customer for its efforts.

Similarly, lottery couriers are not licensed retailers. Rather, as recognized by one of the few jurisdictions that regulates courier activities, couriers do not act as “retailers” but rather as a delivery service designed to “purchase State Lottery tickets on behalf of individuals within the State and deliver those tickets to those individuals in the State”. N.J. Rev. Stat. § 5:9-14.3. In other words, the courier platforms simply connect willing adult customers with the retailers who are licensed to sell the product that the customers seek.

Your letter also references two opinions of the Attorney General and argues that these opinions are not on point to the question posed. The first opinion is Op. S.C. Att’y Gen., 1989 WL 406094 (Jan. 10, 1989). This is referenced below as the “Gossett” opinion. You argue the following:

[i]n 1989, this office was called upon to render an opinion regarding the legality of certain types of activities relating to lottery tickets. Since that situation is clearly distinguishable from the business model described in this opinion, the opinion in Gossett, . . . does not provide a barrier to the activities described in this letter.

The situation described in Gossett predated the creation of the South Carolina Education Lottery. In Gossett, lottery tickets were bought from a lottery in another state, then transported back across state lines into South Carolina for resale or delivery. The business model of crossing state lines to introduce lottery tickets into a jurisdiction where such products were not then legal would have violated both state and federal law. See, e.g., S.C. Code Ann. §§ 16-19-10 through 16-19-30; 18 U.S.C. § 1301.

The business model set forth herein is entirely distinguishable from that in Gossett. Importantly, lottery sales are now permitted in South Carolina. All orders are obtained from customers geolocated to be physically present within the state. Tickets are purchased in cash from retailers licensed by the South Carolina Education Lottery. Further, all ticket printing, scanning and fulfillment processes occur within the state.

For those reasons, the Gossett decision does not bar the courier model in South Carolina.

We understand, however, that the “Gossett” opinion has been cited by the Lottery Commission as prohibiting lottery courier services under present state law. We will address this opinion below.

Likewise, your letter distinguishes Op. S.C. Att’y Gen., 2019 WL 4729535 (Sept. 13, 2019) with respect to the question at hand. You state:

[i]n 2019, this office rendered an opinion relating to lottery ticket transfers within the state. As this situation is entirely different from the scenario described in that letter, that opinion does not bar ticket delivery services in this state.

In Smith, . . . this office wrestled with the legality of ticket transfers for the purposes of avoiding offset.

Modern lottery statutes bar underage play, and generally permit the state to offset specified lottery prizes paid directly by the state lottery against player debts such as unpaid child support which are contained in the state's databases. See, e.g., S.C. Code

Ann. §§ 59-150-21(D) (prohibiting sales to or prizes unlawfully claimed by minors); 59-150-330 (allowing unpaid taxes, delinquent child support, and other obligations to be offset from lottery winnings).

Such legal restrictions and adverse consequences could be too easily circumvented by profit-seeking third parties offering to claim prizes for compensation. Some jurisdictions have referred to these third parties as "10 percenters", referring to the typical payment the claimant gets for helping a legitimate winner avoid prize offsets.

The legal opinion from this office in Smith sought to analyze and address ambiguities in lottery law and rules relating to such "10 percenter" claims. But here, courier tickets are owned by the original ordering party, and that party's name is printed on the ticket itself.

For those reasons, the Smith decision does not bar the courier model in South Carolina.

Your question is as follows: ". . . whether lottery ticket delivery services are legally allowed by South Carolina law." As will be seen below, the Lottery Act does not expressly speak to nor address lottery courier services. Such services are neither expressly prohibited nor authorized by the Lottery Law.

#### Law/Analysis

First of all, we agree entirely with your analysis regarding the Gossett and Smith opinions. Neither of these opinions speak to the question at hand, i.e. whether lottery ticket delivery services are legally allowed by South Carolina state law. The Gossett opinion predated the creation of the South Carolina Lottery. The opinion addressed the issue of whether it was legal at the time to buy lottery tickets in another state and sell or deliver them in South Carolina. There was no state lottery in South Carolina when the Gossett opinion was issued. We there concluded that such a transaction violated South Carolina law. We stated: "A plain reading of Sections 16-19-20 and 16-19-30 of the Code indicates that the scheme in Spartanburg whereby an individual pays a courier service a fee in order for the service to buy a lottery ticket in another state which is then delivered back to the purchaser is in violation of such provisions." (emphasis added). However, the question here is whether a lottery courier service is authorized by the very same state law now making the lottery legal in South Carolina and regulating the South Carolina Education Lottery. The two questions are entirely different and should not be conflated.

Likewise, the Smith opinion is not on point. As your letter indicates, the question at hand does not involve "10 percenter" claims. Instead, "courier tickets are owned by the original ordering party, and that party's name is printed on the ticket itself."

In short, neither of these two opinions resolves your question. These opinions should not be cited as prohibiting the kind of lottery courier service described in your letter. While the

question of a present day lottery courier service is an open one, these opinions do not answer that question.

We turn now to the present Lottery law. In 2000, voters approved a state-run lottery as an amendment to Art. XVII, § 7 of the South Carolina Constitution. In pertinent part, such constitutional provision states that “[o]nly the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law.” (emphasis added). In other words, the Constitution contemplates that the Legislature must regulate operation of the State Lottery.

Pursuant to Act No. 59 of 2001 (codified at § 59-150-10 et seq.), the General Assembly enacted the South Carolina Education Lottery Act (“the Act”) in order to implement Art. XVII, § 7, as amended. It is the Act, as well as the regulations and policies of the Lottery Commission, which must be consulted in an effort to address your question.

The Act provides that lottery proceeds must be used for educational purposes and programs. Created by the Act is the South Carolina Lottery Commission to implement the State lottery. See § 59-150-60. Pursuant to § 59-150-80, the Commission is authorized to “appoint and provide for the compensation of an executive director. . . .” The executive director of the commission “shall direct and supervise all administrative and technical activities as provided for in this chapter, regulations promulgated pursuant to the Administrative Procedures Act, and policies and procedures adopted by the board.” Pursuant to § 59-150-60(A)(20), the Commission is authorized to “regulate the conduct of lottery games . . . and other matters necessary or desirable for the efficient and effective operation of the lottery for the convenience of the public.” In short, the powers of the Lottery Commission are quite broad.

Moreover, pursuant to § 59-150-150, the Lottery Commission is required to “develop and maintain a statewide network of lottery retailers to serve the public convenience and promote the sale of tickets or shares and the playing of lottery games as defined in Section 59-150-20(7) while ensuring the integrity of the lottery operations, games, and activities.” Importantly, § 59-150-160(B) states explicitly that “[l]ottery game tickets must be sold only by the lottery retailer named on the lottery retailer certificate.” Section 59-150-70(D)(2) makes clear that all sales for lottery tickets must be for cash only. Payment by checks, credit cards, charge cards, or other forms of deferred payment and payment by debit card are prohibited.”

Section 59-150-210 further regulates ticket sales. A ticket may not be sold at a price other than that set by the Commission. However, tickets may be purchased and given as a gift. Subsection (c) of § 59-150-210(C) provides that a lottery retailer may not sell a game ticket except from the locations listed in the retailer’s contract. Further, tickets may not be sold to persons under eighteen but may be gifted by persons eighteen or older to persons of any age. Cancellation, denial, revocation, or rejection of renewal of a lottery retailer contract may be done if the executive director or his designee determines such “is in the best interest of the lottery, the public welfare, or the State of South Carolina. . . .” Section 59-150-180(B).

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Pursuant to R. 44-20.10, the Lottery Commission has delegated to the Executive Director “the authority to issue lottery retail sales licenses as provided in Section 59-150-150(A). the license “is a privilege and does not create a property interest and is not a legal right.”

As your letter indicates, all lottery ticket purchases must occur “in person at the licensed retailer location, utilizing cash to obtain the tickets in question.” Your argument, however, is that a lottery courier service is not a “retailer” under the Act and that the Act “does not regulate lottery couriers. You argue that there is no “sale” of lottery tickets by the courier service. See Op. S.C. Att’y Gen., 1984 WL 159818 (Jan. 31, 1984) [a “sale” requires “a contract or agreement between two parties by which a seller, in consideration of payment or a promise of payment of a certain price in money, transfers to a buyer the possession of property.”]. Again, rather than selling tickets, you liken a lottery courier to a food delivery service such as UberEats or Door Dash. See Malzberg v. Josey, 282 A.3d 1109, 1111-12 (N.J. 2022) [“The UberEats app allows food delivery service providers and restaurants to connect with each other so that they can fulfill orders placed by consumers.”]. Your view is that “. . . the courier platforms simply connect willing adult customers with the retailers who are licensed to sell the product that the customers seek.” While your argument in this regard has merit, as witnessed by the number of states where lottery courier services are operating, we are unaware that the Lottery Commission has ever ruled on the question of whether a lottery courier service is or is not a “retailer” for purposes of the Act. The Lottery law, as written, requires a face-to-face transaction between a purchaser of a lottery ticket and a licensed retailer and may or may not contemplate a third party go-between. However, that decision would be up to the Lottery Commission, based upon the facts. As the agency responsible for enforcement of the Act, it is up to the Lottery Commission to determine who is a “retailer” and who is not. See Logan v. Leatherman, 290 S.C. 400, 403, 351 S.E.2d 146, 148 (1986) [construction of a statute by the agency charged with executing it is entitled to most respectful consideration and should not be overruled without cogent reasons]. § 59-150-150(A) [“The Commission shall develop and maintain a statewide network of lottery retailers to serve the public convenience and promote the sale of tickets or shares and the playing of lottery games . . . while ensuring the integrity of the lottery operations, games, and activities.”].

Colorado provides a good example of a state where its Lottery Commission approved a lotter courier service. A recent Report by the Colorado State Auditor stated:

[s]ince 1983, when the Colorado Lottery began selling its first games, lottery tickets have only been available for purchase in-person at brick-and-mortar licensed lottery retailers, such as grocery stores, convenience stores, and gas stations, as well as at Lottery offices and lottery-owned kiosks.

However, in 2019, a new type of business began operating in Colorado that allows customers to order lottery tickets from a business known as a “courier through the courier’s website or app.” The courier then purchases the tickets from their licensed lottery retailer’s brick-and-mortar store and delivers the tickets to the customer either

electronically or through the courier's website, electronically through the courier's app, or in hard copy through the mail.

According to Lottery documentation, the first company that intended to operate under the courier sales model in Colorado approached the Lottery in 2018, made a presentation to the Lottery Commission in June, 2019, and began operating in November 2019.

See Colorado Office of the State Auditor, Colorado Lottery pp. 11-12 (November 2023).

In short, the South Carolina Education Lottery Act does not expressly prohibit, nor even address lottery courier services. Nothing in the Act mentions "couriers", but specifies that lottery tickets must be purchased in person for cash from an authorized retailer (at a brick-and-mortar store). As discussed above, neither the Gossett opinion (nor the Smith opinion) addresses the legality of lottery courier services.

We note as a matter of historical significance that some form of a lottery courier service sought recognition at the very outset of the operation of the South Carolina Education Lottery. Apparently, a "shuttle and package delivery service" (G&E Limousine Shuttle) attended a forum conducted by the South Carolina Lottery in October, 2001, shortly before the South Carolina Lottery was to be implemented (in January, 2002). The purpose of G&E's attendance at the forum was to "find out G&E might be able to provide the lottery with courier service." See 2001 WLNR 1410754 (The State, October 11, 2001) ("Companies Look To Cash In On Lottery"). It is unclear what G&E proposed specifically, or what the business was told at the forum, or whether or not there was any indication from Lottery officials that such activity was permitted or not. We are unaware of whether the Gossett opinion was cited as prohibiting a lottery courier service under the South Carolina Lottery Law. If it was, that would have been incorrect. Needless to say, the Act regulating the Lottery was not changed or modified as a result of the request concerning lottery courier services. Thus, the issue posed by you has been around since the South Carolina Education Lottery was created.

A general on-line publication discusses the status of lottery courier services in the United States today. See Joyce, "Regulatory Review: Lottery Courier Services in the U.S." (February 16, 2024). There, it was stated as follows:

[1]ottery courier services are third party companies that enable consumers to purchase digital lottery tickets through mobile accounts or applications. Couriers fulfil lottery ticket orders on behalf of their patrons from licensed state lottery retailers, the latter of which is typically unaffiliated with and independent from couriers. In this blog, we take a look at lottery courier services in the United States and give you a glimpse of some of the applicable regulatory framework in states where lottery courier services are explicitly regulated and subject to licensing conditions.

**What's the State of Regulatory Activity for Lottery Courier Services Across the US?**

Much like other forms of gaming, state regulators have the authority to either explicitly regulate or prohibit such lottery courier services. However, such services are unregulated in most states – that is, not addressed by state law or regulations.

As your letter indicates, lottery courier services are currently operating in a number of states.

It is apparent there is presently no express prohibition in the South Carolina Lottery Act or in Lottery Regulations, concerning lottery courier services. Such regulation would thus be within the jurisdiction of the South Carolina Lottery Commission or its Executive Director and a court would afford deference to the Lottery Commission's analysis.

**Conclusion**

As discussed above, neither the Gossett opinion, nor the Smith opinion, in any way resolves the question of whether lottery courier services are legal or should be authorized in South Carolina. That is a matter for the Lottery Commission to determine, unrelated to our previous opinions. In order for the Lottery Commission to assess whether lottery courier services are warranted, the South Carolina Education Lottery Act must be examined. That Act did not even exist at the time the Gossett opinion was issued. Thus, these opinions have no bearing on the question you present.

Our examination of the South Carolina Education Lottery Act reveals that the Act does not expressly address lottery courier services. There is, in short, no express prohibition of lottery courier services in the Act. Absent any express prohibition, it would be a matter for either the General Assembly or the Lottery Commission, pursuant to authority delegated to it, to address. For example, the New Jersey Legislature, by statute, has expressly authorized lottery courier services to operate in that state. See N.J.S.A. 5:9-14.3. In a number of other states, lottery courier services are operating, but are unregulated, apparently with the approval of state regulators or lottery commissions.

As discussed above – at the time the South Carolina Education Lottery was to go into effect – a business inquired of the Commission regarding the possibility of a lottery courier service. There is no indication as to the guidance this business was given. However, if the Gossett opinion was, in that circumstance, cited as precluding a lottery courier service, that conclusion was incorrect.

In other words, it is up to the Lottery Commission – the agency to whom the Lottery's regulatory authority has been delegated by the General Assembly – rather than this Office, as to whether lottery courier services will be permitted, based upon the Commission's examination of the South Carolina Education Lottery Act, as well as the policies and procedures of the Commission. As noted, such a determination has been made by the Lottery Commissions in other states. As we document above, a presentation was made by a lottery courier service to Colorado officials before that service began operating in Colorado.

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In summary, the South Carolina Lottery Commission would need to resolve the factual issue of whether a lottery courier is more akin to a “retailer” under the Act or an “UberEats” delivery service. This Office cannot make such a factual determination in an opinion. The Commission would also adjudge whether a lottery courier service is consistent with the Act’s purpose. In other words, any opinion by this Office as to whether a lottery courier service may operate in South Carolina would, in effect, supersede the Lottery Commission’s regulatory authority under the Act. A court will give deference to the Commission as the agency which enforces the Act. Logan, supra. However, we respectfully request that our 1989 Gossett opinion not be used as part of any decision by the Lottery Commission.

Sincerely,

A handwritten signature in blue ink, appearing to read "R.D. Cook", with a stylized flourish extending to the right.

Robert D. Cook  
Solicitor General