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April 23, 1990

The Honorable Gus Arzberger
Arizona State Senator
Capitol Complex, Senate Wing
Phoenix, Arizona 85007

The Honorable Ruben F. Ortega
The Honorable Mike Palmer
Arizona State Representatives
Capitol Complex, House Wing
Phoenix, Arizona 85007

Re: I90-040 (R90-027)

Dear Senator Arzberger and
Representatives Ortega and Palmer:

You have asked whether the City of Tombstone may issue a casino gaming license authorized by a clause in its 1881 city charter if casino gaming is unlawful under state law. We conclude that any ordinance authorizing casino gaming enacted pursuant to the city charter is in conflict with state gambling laws and is invalid.

The Tombstone city charter is an act of the Eleventh Territorial Assembly, Laws 1881, No. 73, entitled "An Act to incorporate the City of Tombstone." Article II, section 4 of the charter provides in pertinent part as follows:

The Mayor and Common Council shall have power, by ordinance, to provide for the licensing, regulating, restraining, suppressing and prohibiting, or either, any and all hawkers, peddlers, venders of goods and chattels, pawnbrokers, dancecellars or houses, melodeons, shows, showmen, circuses, theatrical

exhibitions, and all kinds of public amusements, whether passage money is charged or not, billiard tables, bowling and ten pin alleys, faro banks, gaming with cards, balls or dice, games of chance, gambling houses, tables or stands, bawdy houses, the sale of spirituous or malt liquors in quantities less than one quart, by keepers of saloons, or any other person or persons, houses of prostitution or assignation, all keepers of restaurants, taverns or inn-keepers, all traveling merchants; . . . and if licensed, to fix the amount of license tax thereon,

This act was in force when Arizona became a state on February 14, 1912.

To effectuate the transition from territorial status to statehood, the Arizona Constitution provided:

All laws of the Territory of Arizona now in force, not repugnant to this Constitution, shall remain in force as laws of the State of Arizona until they expire by their own limitations or are altered or repealed by law;

Ariz. Const. art. XXII, § 2.

The purpose of article XXII, section 2 was to preserve existing rights so that the administration of the law should proceed unaffected by the change in form of government; not to restrain the legislature from enacting new laws. Steinfeld v. Nielsen, 15 Ariz. 424, 468, 139 P. 879, 898 (1914). Thus, a city may exercise all powers authorized by its charter, provided those powers do not conflict with the state constitution or state statutes. Levitz v. State, 126 Ariz. 203, 204, 613 P.2d 1259, 1260 (1980) ("When the subject of legislation is of statewide concern the Legislature has the power to bind all throughout the state including charter cities."); Gardenhire v. State, 26 Ariz. 14, 24, 221 P. 228, 231 (1923); McCarthy v. City of Tucson, 26 Ariz. 311, 313, 225 P. 329, 330 (1924); Prendergast v. City of Tempe, 143 Ariz. 14, 17, 691 P.2d 726, 729 (App. 1984); State v. Jacobson, 121 Ariz. 65, 68, 588 P.2d 358, 361 (App. 1978); Shaffer v. Allt, 25 Ariz. App. 565, 567, 545 P.2d 76, 78 (1976). This principle has been codified in A.R.S. § 9-284(B), which provides that a city charter shall not be "in conflict with the constitution . . . and other general laws of the state not relating to cities." This means that any provision of the Tombstone charter is invalid if it conflicts with the state constitution or the general laws of the state, whether or not the charter existed prior to statehood. See, e.g., McCarthy v. City of Tucson.

In 1987 the legislature enacted chapter 33 of the criminal code related to gambling. Laws 1987 (1st Reg. Sess.) Ch. 71., § 4 (codified as A.R.S. §§ 13-3301 to -3310). The act made all gambling illegal as the "Promotion of Gambling," A.R.S. § 13-3303, or "Benefiting from Gambling," A.R.S. § 13-3304, subject to certain enumerated "Exclusions" which do not permit for-profit casino gaming, A.R.S. § 13-3302.^{1/} The Legislature has declared that these prohibitions against gambling are to have statewide impact:

The legislature finds that the conduct proscribed by this act is against the public policy of this state. It is the purpose of this act, therefore, to establish new prohibitions and provide for enhanced penalties for unlawful gambling activities. The legislature intends that this act be liberally construed to effectuate its penal and remedial purposes.

Laws 1987 (1st Reg. Sess.) Ch. 71, § 1.

A basic constitutional principle is that the power to enact general laws of the state is vested in the legislature. Adams v. Bolin, 74 Ariz. 269, 282-283, 247 P.2d 617, 627-628 (1952). The provisions of Tombstone's charter which purport to authorize the licensure of games of chance and gambling houses are in conflict with the gambling prohibitions of A.R.S. § 13-3301 to 3310. Therefore, the charter provisions are invalid and may not confer such powers on the municipality. See State ex rel. Baumert v. Municipal Court, 124 Ariz. 159, 160, 602 P.2d 827, 828-29 (App. 1979) (holding invalid a city ordinance regulating indecent exposure, but using a definition which conflicted with state statute regulating the same conduct).

Sincerely,



BOB CORBIN
Attorney General

BEE/SS/LPF/mfy

^{1/}A.R.S. § 13-3301(3) provides, in pertinent part:
"'Gambling' means an act of risking or giving something of value for the opportunity to obtain a benefit from a game or contest of chance or skill or a future contingent event"