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Opinion No. 03-014

Charitable Lotteries: "For the Benefit of a 501(c)(3) Organization"

QUESTIONS

Article XI, Section 5 of the Constitution of Tennessee, as amended, provides in part:

> All other forms of lottery not authorized herein are expressly prohibited unless authorized by a two-thirds vote of all members elected to each house of the General Assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time.

1. Under this provision, may the General Assembly authorize some other organization to conduct an annual event involving a lottery so long as it is for the benefit of a 501(c)(3) organization?

2. Under this provision, must an event involving a lottery be for the exclusive benefit of a 501(c)(3) organization, or may some other organization share in the benefits?

OPINIONS

1. Yes. As a practical matter, however, since only one annual event may be held each year for the benefit of any particular 501(c)(3) organization, the General Assembly may want to ensure that the organization for whose benefit an event is to be held is aware of or consents to the event before the General Assembly approves it.

2. Under this provision, all of the net proceeds of a fundraising event involving a lottery must be distributed to a 501(c)(3) organization. No organization other than a 501(c)(3) organization could share in the net proceeds raised by the event.

ANALYSIS

This opinion concerns the interpretation of recent amendments to Article XI, Section 5 of the Tennessee Constitution empowering the General Assembly to authorize a lottery event for the benefit of certain charitable organizations. Article XI, Section 5, as recently amended, now provides:

> The legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state, except that the legislature may authorize a state lottery if the net proceeds of the lottery's revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state. The excess after such allocations from such net proceeds from the lottery would be appropriated to:
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> (1) Capital outlay projects for K-12 educational facilities; and
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> (2) Early learning programs and after school programs.
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> Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for educational programs and purposes.
>
> ***All other forms of lottery not authorized herein are expressly prohibited unless authorized by a two-thirds vote of all members elected to each house of the General Assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time.***
>
> A state lottery means a lottery of the type such as in operation in Georgia, Kentucky and Virginia in 2000, and the amendment to Article XI, Section 5 of the Constitution of the State of Tennessee provided for herein does not authorize games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels, and the like.
>
> The state lottery authorized in this section shall be implemented and administered uniformly throughout the state in such manner as the legislature, by general law, deems appropriate.

(Emphasis added). The questions in this opinion specifically concern the italicized paragraph. The first question is whether, under this paragraph, the General Assembly may authorize some other organization to conduct an annual event involving a lottery so long as it is for the benefit of a 501(c)(3) organization. We assume the question refers to an event entirely planned and put on by

an independent organization, without any authorization by a 501(c)(3) organization, with the net proceeds from the event to be donated to the 501(c)(3) organization.

The first rule of interpreting a constitutional provision is to give effect to the intent of the people who adopted it. *Gaskin v. Collins*, 661 S.W.2d 865 (Tenn. 1983). This intent is derived from the language of the provision. *Id.* The words are given their ordinary and inherent meaning. *State ex rel. Cohen v. Darnell*, 885 S.W.2d 61 (Tenn. 1994). If the words are unclear, then other sources of interpretation may be utilized. *Shelby County v. Hale*, 200 Tenn. 503, 292 S.W.2d 745 (1956) (proceedings of a constitutional convention); *State v. Cloksey*, 37 Tenn. 482 (1858) (debates and journals of convention); *Gaskin v. Collins, supra* (history and circumstances preceding adoption of provision). Furthermore, constitutions must be read as a whole. *Davis v. Williams*, 158 Tenn. 34, 12 S.W.2d 532 (1928).

Under Article XI, Section 5 of the Tennessee Constitution as amended, the General Assembly is expressly authorized to establish a state lottery that meets specified conditions. "All other forms of lottery not authorized" in the provision are prohibited "unless authorized by a two-thirds vote of all members elected to each house of the General Assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state . . .." The provision, therefore, refers only to an annual event "operated for the benefit" of a 501(c)(3) organization. It does not require that the organization operate or even sponsor the event. For this reason, the General Assembly may authorize some other organization to conduct an annual event involving a lottery so long as it is for the benefit of a 501(c)(3) organization.

As a practical matter, however, Article XI, Section 5 as amended allows the General Assembly to approve only one annual event to be operated for the benefit of any one 501(c)(3) organization. The legislative history of 2001 Senate Joint Resolution 1 confirms this interpretation. Before the Senate passed the resolution by a two-thirds vote on February 7, 2001, there was an attempt to amend the resolution. Senator Cohen, who sponsored the resolution, opposed the amendment and stated, in part:

> . . . and I would submit that the better course is not to amend, to leave the proposition as it is, as it was passed by the previous General Assembly, not to risk this and put this into the courts but to let the people vote on it, and to preserve the opportunity for 501(c)(3)s such as the Clinic Bowl, the Rubber Ducks in Knoxville, St. Peter's Orphanage and other educational charitable institutions to have by a two-thirds vote if the wisdom of the General Assembly, if it should so deem it, the opportunity to help those folks on a *one-time event. One time is what I intend, one time is what the sponsor will say here, is what annual means, one time, once a year, for legislative intent.* I yield to the Speaker.

Senate Session, February 7, 2001, Tape No. 8 (remarks of Senator Cohen) (emphasis added). Since only one annual event, therefore, may be operated for the benefit of any one 501(c)(3) organization,

the General Assembly may wish to ensure that the organization for whose benefit an event is to be held is aware of or consents to the event before the General Assembly approves it.

The second question is whether, under this provision, an event involving a lottery must be for the exclusive benefit of a 501(c)(3) organization, or whether some other organization could share in the benefits. Based on the principles of construction outlined above, as well as the legislative history of the two authorizing resolutions discussed above, we think the natural meaning of the phrase "an annual event operated for the benefit of a 501(c)(3) organization" means a fundraising event, the net proceeds of which are all distributed to a 501(c)(3) organization. No organization other than a 501(c)(3) organization could share in the net proceeds raised by the event.

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