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Opinion No. 03-025

Annual Event for Several 501(c)(3) Organizations

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.

Under this provision:

1. Could several small charitable organizations combine to hold an annual event for the benefit of a 501(c)(3) corporation?

2. If the answer to Question 1 is yes:

a. Would all of the organizations combining to hold the annual event have to be 501(c)(3) organizations?

b. Could the combination include no 501(c)(3) organizations?

c. Could there be a combination of organizations some of which are and some of which are not 501(c)(3) organizations?

3. If the answer to Question 1 is yes, would it be permissible to share the net proceeds with more than one 501(c)(3) corporation, or does Article XI, Section 5 limit the proceeds to be used for the benefit of only one 501(c)(3) corporation?

OPINIONS

1. Under the Charitable Lotteries Provision, the General Assembly may authorize a combination of several different organizations to operate an event involving a lottery, so long as the

event is for the benefit of a 501(c)(3) organization. This combination could include just 501(c)(3) organizations, no 501(c)(3) organization, or a group that includes both 501(c)(3) organizations and other organizations.

3. Under the Charitable Lotteries Provision, the General Assembly could approve an annual event held for the benefit of more than one 501(c)(3) organization. The 501(c)(3) organizations that will share the net proceeds must be specified in the legislative approval. None of these organizations would be allowed to benefit from any other annual event held the same year.

ANALYSIS

1. and 2. Organizations Operating an Event for the Benefit of a 501(c)(3) Organization

This opinion concerns the scope of the clause in Article XI, Section 5 of the Tennessee Constitution that permits a fundraising event involving a lottery in certain circumstances. Article XI, Section 5, as recently amended, provides in relevant 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.

(Emphasis added) (the "Charitable Lotteries Provision"). The first question is whether several small charitable organizations could combine to hold an annual event for the benefit of a 501(c)(3) organization. The second question is whether a group of charitable organizations combining to hold such an event must all be 501(c)(3) organizations, whether the group could include no 501(c)(3) organizations, or whether the group could include both 501(c)(3) organizations and non-501(c)(3) organizations.

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).

The Charitable Lotteries Provision refers only to an annual event "operated for the benefit of" a 501(c)(3) organization. It is silent regarding the organization or organizations that actually operate the event. This Office has concluded that the General Assembly may authorize some other

organization besides the 501(c)(3) organization actually benefitting from the event to conduct an annual event involving a lottery so long as the event is for the benefit of a 501(c)(3) organization. Op. Tenn. Atty. Gen. 03-014 (February 5, 2003). Similarly, we think that, under the Charitable Lotteries Provision, the General Assembly may authorize a combination of several different organizations to operate an event involving a lottery, so long as the event is for the benefit of a 501(c)(3) organization. This combination could include just 501(c)(3) organizations, no 501(c)(3) organization, or a group that includes both 501(c)(3) organizations and other organizations.

3. Organizations Benefitting from the Annual Event

The third question is whether the net proceeds from an annual event involving a lottery could be shared by more than one 501(c)(3) organization. The Charitable Lotteries Provision refers to "an annual event held for the benefit of *a* 501(c)(3) organization . . .." (Emphasis added). Under rules of statutory construction, the singular includes the plural and the plural the singular, except when the contrary intention is manifest. Tenn. Code Ann. § 1-3-104(c); 2A *Sutherland Statutory Construction* § 47.34 (6th Ed. 2000). Courts in other states have used rules of statutory construction when construing a state constitution. *See, e.g., Kottel v. State,* 312 Mont. 387, 60 P.3d 403, 407 (2002); *Matter of Retirement Benefits of Yetka*, 554 N.W.2d 85, 91 (Minn. Ct. App. 1996). Under this rule of statutory construction, we think a court would conclude that the phrase "annual event held for the benefit of a 501(c)(3) organization" includes an event held for the benefit of one or more 501(c)(3) organizations. Therefore, under the Charitable Lotteries Provision, the General Assembly could approve an annual event held for the benefit of more than one 501(c)(3) organization. The 501(c)(3) organizations that will share the net proceeds must be specified in the legislative approval. Only one annual event may be held each year for the benefit of any particular 501(c)(3) organization. Op. Tenn. Atty. Gen. 03-014 (February 5, 2003). None of the organizations benefitting from a single event held for the benefit of several 501(c)(3) organizations, therefore, would be allowed to benefit from any other annual event held the same year.

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