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Opinion No. 03-026

Charitable Lotteries: "Annual Event"

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, where a 501(c)(3) organization has offices in six different counties and receives legislative approval for a single fundraising event:

1. May each county office hold a separate fundraising event?

2. Could each county office hold fundraising events that are held concurrently?

OPINIONS

1. and 2. Under this provision, the legislature may approve a single annual event operated for the benefit of a 501(c)(3) organization. The organization, therefore, could not hold six different events that are so widely separated, particularly in time, that they cannot be considered "an annual event." Since the provision does not further define the term "an annual event," however, the General Assembly could specify the duration and scope of the "annual event" for which the approval is given, or could define the term in general law. The General Assembly could define the term to include fundraising activities that occur within a particular time frame, even if they take place in different geographical locations.

ANALYSIS

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 question concerns a single 501(c)(3) organization that has offices in six different counties. The first question is whether this organization, once it has received legislative approval for an "annual event" may hold separate fundraising events in each of the six different offices.

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).

Under Article XI, Section 5, the General Assembly is authorized to approve "an annual event" operated for the benefit of a 501(c)(3) organization. The provision includes no further definition of the term "annual event." The Illinois Court of Appeals found that the term "annual," used in a statute providing that county fair associations that have held annual fairs are eligible to participate in state appropriations, connotes an occurrence or reoccurrence once in each year. *People ex rel. Will County Fair Association v. Standard*, 9 Ill. App. 2d 550, 133 N.E.2d 757 (1956), *rehearing denied* (1956). Legislative history of 2000 House Joint Resolution 2, 2001 Senate Joint Resolution 1, and companion lottery resolutions is also instructive on this issue. These resolutions authorized the language now contained in the amendment to Article XI, Section 5 to be placed on the ballot in the November 2002 election. Senator Cohen, who sponsored 2001 Senate Joint Resolution 1 stressed that "an annual event" refers to a "one-time" event when the joint resolution was approved in the Senate by a two-thirds vote on February 7, 2001. Before the vote took place, there was an attempt to amend the resolution. Senator Cohen 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).

Other legislators, however, noted that an "annual event" is not necessarily limited to activities that are held in one day and one place. For example, at a Senate Judiciary Committee meeting on May 25, 1999, the Committee discussed Senate Joint Resolution 346 and House Joint Resolution 2. Senate Joint Resolution 346, sponsored by Senator Cohen, was discussed first. With regard to charitable lotteries, that resolution contained the following language to be included in the proposed amendment to Article XI, Section 5 of the Tennessee Constitution:

> 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 1999 United States Tax Code or as may be amended from time to time.

Senator Fowler proposed that the resolution be amended to provide that the General Assembly could authorize "an annual event *operated by* a 501(c)(3) organization located in this state *for the benefit of* that organization." In proposing the resolution, Senator Fowler stated:

> . . . but just to make sure that the bill is worded to what you want to get at, protect us from some of the things that perhaps I would be concerned about . . . I was not here during Rocky Top, but the thing about the charitable bingo, I don't remember what all was happening, but apparently charters were being purchased that were kind of defunct and organizations were doing . . . I don't know what all was going on, but when we say in here with respect to the 501(c)(3)s, "for an annual event operated for the benefit of," you could have Harrah's operate something on a one-time event is the way I see it, an annual event could be one-time, could be statewide, it would not necessarily be the little thing at the YMCA that people in Chattanooga go to, but it could be, you know, all over the State, and it could be operated by Harrah's, as opposed to the YMCA holding their little duck race down in the Tennessee River. Would you consider it to be friendly, unfriendly, do whatever you want, but I was thinking "for an annual event operated by a 501(c)(3) organization located in this State for the benefit of that organization, so if the YMCA or the little school or the little church wants to hold their own thing, they can operate, they can

> have one, we would approve it, but we wouldn't wind up with some, everybody across the whole State is somehow electronically or by ticket or purchase participating in an event that's really being run by Harrah's for the local lodge or something like that. I'm just trying to think how all people will try to do things. I just mention that question. Maybe it's your intent to allow that, and if so, then that's fine, if your intent was simply to say the local YMCA or somebody's parish or the child advocacy wants to hold a lottery, to raise money in their community, then that's fine, they out to run it, you know, and they ought to primarily be running it in their local communities . . ..

Senate Judiciary Committee, May 25, 1999, Tape No. 1 (remarks of Senator Fowler).

Senator Cohen did not oppose the amendment, and stated that it was consistent with the type of charitable lottery he intended to include within the resolution. Senator Kyle, however, spoke against the amendment because it could prevent the legislature from approving events that some 501(c)(3) organizations hired another organization to manage. Senator Kyle stated in part:

> . . . If you'll recall, we have to authorize each one of these almost like by private acts, because each one of them has to come up here with a bill saying we want to be able to have our automobile drawing at the golf tournament. And I would suggest to you that we want to have, the more, the cleaner way of doing that in my mind, Senator, is to let the legislature look at the facts of the situation, make the policy call, you know, they do it this way, some organizations may hire somebody to run their events, you know there are people that are in the business of running events.

Senate Judiciary Committee, May 25, 1999, Tape No. 1 (remarks of Senator Kyle). Senator Fowler's amendment was not adopted.

When Senate Joint Resolution 1 was read for the second time in the Senate on February 5, 2001, Senator Herron opposed it. Senator Herron addressed the scope of the Charitable Lotteries Provision. With regard to the term "annual event," Senator Herron stated:

> . . . It's for an annual event. And as Senator Henry has pointed out, annual event's not defined, I initially read that to think, well, it's a one-day thing. But it doesn't say a day-long event, it says annual event. And indeed, Senator Henry, I've enjoyed Memphis in May, and I actually participated in events in Memphis that maybe started in late April. They do May right in Memphis. They start in April some years and go into even June, so that annual event, under the term as constitutionally proposed, could last a month, and as Senator

> Henry said, it could be the annual events, we're going to celebrate June. And somebody else is going to celebrate July. And we'll celebrate August . . ..

Senate Session, February 5, 2001, Tape No. 7 (remarks of Senator Herron).

Senator Cohen reiterated his view of the scope of the Charitable Lotteries Provision:

> . . . But I can assure you that all this does, and the intent and I believe not only the intent but the draftsmanship of it, would allow the Clinic Bowl in Nashville, St Peter's Orphanage in Memphis, and the Duck Race in Knoxville, people like that, to have the opportunity to have an annual event. That is indeed the intent, and I believe it's the language.

Senate Session, February 5, 2001, Tape No. 7 (remarks of Senator Herron). But, beyond giving examples of events that would be allowed under the Charitable Lotteries Provision, Senator Cohen did not provide any further guidance for how the term "an annual event" could be defined to exclude the types of events that Senators Fowler and Herron described. Nor do we think the language of the Charitable Lotteries Provision mandates a narrower definition. For this reason, where a 501(c)(3) organization receives legislative approval for "an annual event" under the Charitable Lotteries Provision, the organization could not hold six different events that are so widely separated, particularly in time, that they cannot be considered a single "annual event." Since the provision does not further define the term "an annual event," however, the General Assembly could specify the duration and scope of the "annual event" for which the approval is given, or could define the term in general law. The General Assembly could define the term to include fundraising activities that occur within a particular time frame, even if they take place in different geographical locations.

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