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Opinion No. 03-036

Allocation of Net Proceeds of Lottery Revenues

QUESTION

Under Article XI, Section 5 of the Tennessee Constitution, "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." Does this provision authorize the General Assembly to implement a lottery before it has approved a program for financial aid that sets forth details regarding scholarships and eligibility?

OPINION

The provision does not require the General Assembly to approve a program for financial aid that sets forth details regarding scholarships and eligibility before it may implement a lottery. We think that the General Assembly has "allocated" the funds for educational purposes as required by Article XI, Section 5 of the Tennessee Constitution once it has placed them in a separate fund to be used only for the educational purposes set forth in that provision.

ANALYSIS

This opinion addresses whether, under Article XI, Section 5 of the Tennessee Constitution, the General Assembly may implement a lottery before it has approved a program that establishes how net proceeds are to be allocated. Article XI, Section 5 of the Tennessee Constitution, as recently amended, provides in relevant part:

> 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:

> (1) Capital outlay projects for K-12 educational facilities; and
>
> (2) Early learning programs and after school programs.
>
> 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 . . ..

(Emphasis added). The real question is what action by the legislature would meet the constitutional requirement that net proceeds of a lottery be allocated to provide financial assistance to Tennesseans to attend post secondary educational institutions in Tennessee. For example, has the requirement been satisfied by a statute setting up a lottery and setting aside the net proceeds to be used for the purposes required by the Constitution, or must the General Assembly establish a complete program, including scholarship amounts and eligibility, before it may authorize a state lottery?

This question must be addressed in the context of proposed legislation. Amendment No. 1 to House Bill 0001 sets forth the "Tennessee Education Lottery Implementation Law." This amendment creates the Tennessee Education Lottery Corporation run by a board of directors authorized to employ a chief executive officer. The corporation, through its directors and chief executive officer, is authorized to set up the regulatory and contractual framework to operate a state lottery, including a network of vendors to sell lottery tickets. Under proposed Tenn. Code Ann. § 4-51-111, all lottery proceeds are the property of the corporation. Amendment 1 to House Bill 0001, Section 2, Proposed Tenn. Code Ann. § 4-51-111(a)(1). The corporation is authorized to pay its operating expenses and to distribute prizes from lottery proceeds. The statute establishes a "lottery for education account" in the state treasury. Amounts remaining in the account at the end of each fiscal year do not revert to the general fund. The state treasurer is required to invest money in the account for the sole benefit of the account, and all earnings attributable to such investments are to be credited to the account. Each quarter, the corporation must transfer net lottery proceeds for the immediately preceding quarter to the state treasury for credit to the account.

Proposed Tenn. Code Ann. § 4-51-111(c) outlines budgeting and use of net lottery proceeds. Net lottery proceeds are a separate budget category. Subdivision (3) provides:

> It is the intent of the general assembly that appropriations from the lottery for education account shall be for educational programs and purposes only in accordance with Article XI, Section 5 of the Constitution of Tennessee. Such net lottery proceeds shall be used to supplement, not supplant, existing resources for educational programs and purposes.

Appropriations from the account not committed during the fiscal year are credited to the account and retained there until allocated and appropriated as provided in subsection (c) of the statute, discussed above. Amendment 1 to House Bill 0001, Section 2, Proposed Tenn. Code Ann. § 4-51-111(d). The lottery for education account must be accounted for separately from other funds in the treasury and will not revert to the general fund. Amendment 1 to House Bill 0001, Section 2, Proposed Tenn. Code Ann. § 4-51-111(d). No program or project started from net lottery proceeds may be continued from the general fund. Instead, such programs must be adjusted or discontinued according to available net lottery proceeds unless the General Assembly by general law establishes eligibility requirements and appropriates specific other funds within the general appropriations act. No deficiency in the account may be replenished by reducing any non-lottery reserve of general funds, nor may any surplus in the account be reduced to correct any non-lottery deficiencies in sums available for general appropriations. *Id.*, at Proposed Tenn. Code Ann. § 4-51-111(e).

The Tennessee Education Lottery Implementation Law, therefore, provides for the organization and startup of a lottery. It also provides that net proceeds of the lottery will be kept in a separate account in the state treasury and used only for educational purposes in accordance with Article XI, Section 5 of the Tennessee Constitution. But it does not establish a financial aid, capital project, early learning, or after school program for which net proceeds will be spent. Legislation creating these programs is being developed separately from the implementation law. The question is whether, under Article XI, Section 5 of the Tennessee Constitution, the implementation law by itself satisfies the condition that net proceeds from the lottery be "allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state," or whether the General Assembly must enact legislation outlining the financial assistance and other programs in detail before a state lottery may be authorized.

Article XI, Section 5 does not define the term "allocated." 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. Darnel*, 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 legislative history of 2000 House Joint Resolution 21 and 2001 Senate Joint Resolution 1, which placed recent amendments to Article XI, Section 5 of the Tennessee Constitution on the 2002 ballot, does not address this issue. But the lottery provision was always discussed in conjunction with a financial aid program. The term "allocate" is defined as follows:

> 1. To designate for a special purpose; set apart. 2. To distribute according to plan; allot. 3. To determine the location of; locate.

The American Heritage Dictionary, 95 (2d Coll. Ed. 1985). We think that the General Assembly has "allocated" the funds for educational purposes as required by Article XI, Section 5 of the Tennessee Constitution once it has placed them in a separate fund to be used only for the educational purposes set forth in that provision. *See, e.g., State ex rel. Haynes v. District Court of First Judicial District*, 106 Mont. 470, 78 P.2d 937, 942 (1938) ("There is a very decided difference between an appropriation and an allocation.") Thus, for example, we think Amendment No. 1 to House Bill 0001 satisfies the constitutional requirement that net proceeds from lottery revenues be "allocated" to the educational purposes listed in Article XI, Section 5 of the Tennessee Constitution. The provision does not require the General Assembly to approve a program for financial aid that sets forth details regarding scholarships and eligibility before it may implement a lottery.

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