Bingo

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The West Virginia Legislature on February 8, 1968, passed a law authorizing bingo. The law stated that licenses to play bingo were to be issued to certain enumerated charitable and fraternal organizations, provided that the profits from the game were to be devoted to a lawful purpose. It gave a detailed framework for a licensing authority, defined parties qualified for a license, gave an explanation of how the games were to be conducted, and made possible the enforcement of the new law.

Enrolled Committee Substitute for House Bill Number 259.

Although the law was vetoed by Governor Hulett C. Smith, it is still important to examine it because of this legislative expression that bingo for charitable purposes can be made legal by the legislature. In the West Virginia Constitution the legislature is specifically forbidden from authorizing a lottery. The legislature is given, and has exercised, the power to pass a law to prohibit lotteries. Thus, to constitutionally legalize bingo, the legislature must surpass the obstacle of its being a lottery. However, with the existing constitutional provision forbidding lotteries in West Virginia, it appears that the playing of bingo is illegal, and any law passed attempting to legalize bingo, even for a charitable purpose, would be unconstitutional.

The legislature embodied in the bill a legislative finding that bingo is not a lottery or gift enterprise. The definition of a lottery is extremely broad. The Random-House Dictionary of the English Language defines lottery as follows: "[A] gambling game or method of raising money, as for some public, charitable, purpose in which a large number of tickets are sold and a drawing is held for certain prizes, (2) any scheme for the distribution of prizes, (3) any

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9 This is a new section for the West Virginia Law Review. It is limited to West Virginia legislation. It is designed to provide a summary and analysis of the most significant recent acts of the West Virginia Legislature. Since these recent acts are not yet published in the West Virginia Code, all cites are to the chapter in the Acts of the West Virginia Legislature.

1 W. VA. CONST. art. 6, § 36. "The legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this state."

2 W. VA. CODE ch. 61, art. 10 § 11 (Mich 1966).

3 Enrolled Committee Substitute for House Bill Number 259.
happening or process that is or appears to be determined by chance.” The Encyclopedia Britannica examines the theory of lotteries and concludes that “[d]espite their illegality and the fact that lottery tickets are barred from the mails, lotteries in various guises flourish on both sides of the Atlantic. In the United States, the popular forms came to be bingo, and in the big cities, policy or the numbers game.”4

The legislature itself defines bingo by saying that it is that game commonly known as bingo or lotto.5 Lotto is defined in terms equally as broad as bingo. The Encyclopedia Britannica in tracing the history of lotto describes it as a lottery game played in many variants and under many different names. Lotto developed into keno, a game consisting of a card with 25 squares and 90 numbers, the numbers being selected by a device which gave out numbered balls permitting only one to come out at a time. Keno is almost identical to bingo except that only 75 numbers are used for bingo and the center square on the bingo card is a free number.6

The courts have likewise determined that bingo is a lottery. The usual definition of a lottery given by the courts is a scheme for the distribution of prizes by chance, with the amount of return someone is to receive for the amount contributed depending on chance, three main elements of a lottery have been delineated, namely distribution of prizes according to chance for a consideration.7 The West Virginia Supreme Court of Appeals has not been presented with a question of whether bingo is a lottery, but they have defined lottery as the distribution of prizes by chance, and stated that the word lottery was to be liberally construed.8 The West Virginia Court has held the following to be a lottery: a raffle,9 a punch board,10 and the purchase of a ticket to a theater and subsequent give away based on this, known as “bank night.”11

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4 Encyclopædia Britannica 999 (1960) (emphasis added).
5 Enrolled Committee Substitute for House Bill Number 259.
7 See, e.g., J. C. Martin Corp. v. Federal Trade Comm’n, 242 F.2d 530 (7th Cir. 1957); State v. Hudson, 128 W. Va. 655, 37 S.E.2d 553 (1946).
9 Id.
10 State v. Hudson, 128 W. Va. 655, 37 S.E.2d 553 (1946). This is the leading West Virginia case on lotteries, stating that a lottery exists even though skill, judgment, or research is to some extent a part of the game.
States with constitutional provisions similar to that of West Virginia have held that the authorization of bingo is unconstitutional. Texas held that bingo is a lottery within the meaning of their constitution and therefore illegal. Montana held that the legislature could not authorize lotteries in the form of a punch board because lotteries were forbidden by their constitution.

Even more persuasive, it has been held in other states with constitutional provisions similar to those of West Virginia that the fact that the lottery is authorized for the benefit of a charitable organization has no effect on its constitutionality. Ohio held that the authorization of bingo for a charitable purpose by a municipality was unconstitutional. Both Washington and Wisconsin reasoned that if an exception be made for charity, this may influence other unwarranted exceptions, therefore no lottery is to be permitted. And Michigan has held that "the law draws no distinction between commercial and charitable lotteries, each being malum prohibitum."

It naturally follows that a directive by an official of government that the law not be enforced against bingo games is as unconstitutional as a law to this effect itself would be.

The bill as passed by the West Virginia legislature authorizing bingo was therefore probably unconstitutional, as would be any law which authorizes a lottery. One might surmise that Governor Smith reached a like conclusion justifying his veto. If there is demand to legalize bingo for a charitable purpose, it appears that the method for accomplishing this would have to be by constitutional amendment.

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