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#05009

NO. STATE OF NEBRASKA
OFFICIAL
MAY 18 2005
DEPT. OF JUSTICE

SUBJECT: Whether the Additional State Lottery Fund Distributions to the Compulsive Gamblers Assistance Fund Proposed in LB 332, or as Amended by Pending AM0795 or AM1338, Contravene the Distribution Scheme Established in Neb. Const. art. III, § 24.

REQUESTED BY: Senators Vickie D. McDonald and Ray Janssen
Nebraska State Legislature

WRITTEN BY: Jon Bruning, Attorney General
L. Jay Bartel, Assistant Attorney General

You have each requested our opinion concerning whether LB 332, as originally introduced or as amended by pending AM0795 or AM1338, violates Neb. Const. art. III, § 24. The specific question raised is whether the additional State Lottery fund distributions to the Compulsive Gamblers Assistance Fund proposed under the bill or these amendments are contrary to the distribution scheme established in Neb. Const. art. III, § 24, by the recent passage of Amendment 4. For the reasons set forth below, we conclude that the additional distributions proposed are unconstitutional because they are inconsistent with the specific distribution mechanism established in the Constitution.

I. LB 332 and Its Pending Amendments.

LB 332 as introduced proposes to create the Office of Problem Gambling Services within the Department of Health and Human Services Division of Behavioral Health Services.

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The ballot language for the proposed constitutional amendment, presented as Amendment 4, advised:

> A vote FOR this proposal would provide a conditional guarantee of 10 percent of state lottery proceeds to the Nebraska State Fair Board for operations of the Nebraska State Fair and specify the distribution of the remaining proceeds. Currently, the distribution is made by the Legislature. Under this proposal, after payment of prizes and operating expenses and $500,000 to the Compulsive Gamblers Assistance Fund, the remaining state lottery proceeds would be distributed as follows: (1) 44 1/2% to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act, (2) 44 1/2% to be used for education as the Legislature may direct, (3) 10% to the Nebraska State Fair Board if the most populous city within the county in which the fair is located provides matching funds equivalent to 10 percent of the amount available for transfer to the board, but if the fair ceases operations, this share would be transferred to the state General Fund, and (4) 1% to the Compulsive Gamblers Assistance Fund.
>
> A vote AGAINST this proposal will retain the Legislature's authority to distribute state lottery proceeds.

The amendment was approved by the voters, and amended subsection (3)(a) of art. III, § 24, now provides:

> The Legislature may establish a lottery to be operated and regulated by the State of Nebraska. The proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for the following purposes, as directed by the Legislature:
>
> (i) The first five hundred thousand dollars after the payment of prizes and operating expenses shall be transferred to the Compulsive Gamblers Assistance Fund;
>
> (ii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the Compulsive Gamblers Assistance Fund shall be transferred to the Nebraska Environmental Trust Fund to be used as provided in the Nebraska Environmental Trust Act;
>
> (iii) Forty-four and one-half percent of the money remaining after the payment of prizes and operating expenses and the initial transfer to the

In construing the meaning of art. III, § 24, as amended, certain rules of interpretation must be considered. "Constitutional provisions, like statutes, are not open to construction as a matter of course; construction is appropriate only when it has been demonstrated that the meaning of the provision is not clear and therefore that construction is necessary." *Pig Pro Nonstock Cooperative v. Moore,* 253 Neb. 72, 81, 568 N.W.2d 217, 223 (1997). "Courts must apply and enforce the Constitution as it is written." *State ex rel. Spire v. Public Employees Retirement Bd.,* 226 Neb. 176, 178, 410 N.W.2d 463, 465 (1987). "In construing a constitutional amendment to ascertain the intent of the people adopting it, courts must find such intent in the language of the amendment itself and must not hold that the people intended anything different than the language employed imports." *Sorenson v. Swanson,* 181 Neb. 205, 212-13, 147 N.W.2d 620, 625 (1967). "In determining the meaning of a constitutional provision, [a court] must look to the plain and clear language contained therein." *Banner County v. State Bd. of Equal.,* 226 Neb. 236, 252, 411 N.W.2d 35, 45 (1987).

Applying these principles, the additional distribution of State Lottery proceeds to the Compulsive Gamblers Assistance Fund in LB 332, or as amended under proposed AM0795 or AM1338, is contrary to the distribution scheme mandated by art. III, §24. The constitutional provision requires that lottery proceeds "be appropriated by the Legislature for the costs of establishing and maintaining the lottery" and for various enumerated purposes set forth in subdivisions (i) to (v) of art. III, § 24(3)(a). The purposes specify that, after payment of prizes and operating expenses, the first $500,000 is transferred to the Compulsive Gamblers Assistance Fund, and, after that, specified percentages of remaining funds are to be transferred to the Nebraska Environmental Trust Fund (44 ½ %), for education as directed by the Legislature (44 ½ %), to the State Fair Board (10%), and, finally, the remainder goes to the Compulsive Gamblers Assistance Fund (1%). The intent behind enactment of this distribution scheme was to direct with specificity how the Legislature must distribute lottery proceeds. Prior to the adoption of Amendment 4, art. III, § 24, provided "[t]he proceeds of the lottery shall be appropriated by the Legislature for the costs of establishing and maintaining the lottery and for other purposes as directed by the Legislature." Amendment 4 established a specific distribution formula requiring an initial $500,000 transfer of lottery proceeds after payment of prizes and operating expenses to the Compulsive Gamblers Assistance Fund, followed by certain percentage transfers of remaining funds for specified purposes, and, finally, a directive that the remaining 1 percent of proceeds be transferred to the Compulsive Gamblers Assistance Fund. The additional distribution of State Lottery funds under LB 332,

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Legislature retains discretion to direct how proceeds are used within the confines of the enumerated purposes, not as authority for the Legislature to direct the use of lottery proceeds for other purposes, or outside the specific amounts and percentages established in art. III, § 24(3)(a)(i) to (v) for the purposes specified.

are not "operating expenses" as that term is used in art. III, § 24(3), as this term obviously relates to expenses incurred in establishing and maintaining the State Lottery. Thus, these funds, if not actually used to operate the lottery, would be proceeds otherwise available for distribution pursuant to the scheme set forth in art. III, § 24(3). Thus, the transfer of an additional $500,000 of lottery funds in this manner is inconsistent with the distribution scheme set forth in art. III, § 24, which permits only the initial transfer of lottery proceeds to the Compulsive Gamblers Assistance Fund of $500,000 and the 1 percent remainder transfer required under subsection (3)(a)(v). AM1338, by providing for a transfer of lottery funds in addition to the amounts specified in art. III, § 24(3), is thus contrary to the distribution mechanism established in the Constitution.

IV. Conclusion

Based on the foregoing, we conclude that LB 332, either as originally introduced or as amended by pending AM0795 or AM1338, provides for the distribution of State Lottery funds to the Compulsive Gamblers Assistance Fund in a manner which is inconsistent with the specific scheme established in art. III, § 24.

Very truly yours,

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Approved:

Attorney General

pc: Patrick O'Donnell
Clerk of the Legislature

07-271-21