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STATE OF NEBRASKA
OFFICIAL
MAY 21 1991
DEPT. OF JUSTICE

DATE: May 20, 1991

SUBJECT: AM 1444 to LB 795; Constitutionality of Proposed Statutory Provisions Which Would Allow a City to Use Lottery Proceeds for Acquisition, Purchase, and Maintenance of a Professional Baseball Organization

REQUESTED BY: Senator Jacklyn J. Smith
Nebraska State Legislature

WRITTEN BY: Don Stenberg, Attorney General
Dale A. Comer, Assistant Attorney General

LB 795 would amend the existing Nebraska County and City Lottery Act in various respects. AM 1444 to that bill would, in turn, amend LB 795 to provide that a city of the metropolitan class which conducts a local option lottery has authority to use a portion of the lottery proceeds "for the acquisition, purchase and maintenance of a professional baseball organization." You are concerned with the constitutionality of that amendment in light of Article III, Section 24 of the Nebraska Constitution, and that concern prompted your Opinion request to this office. We believe that the amendment in question is constitutional under our State Constitution.

Article III, Section 24 of our State Constitution provides, in pertinent part:

> The Legislature shall not authorize any game of chance, nor any lottery, or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time, except that it may authorize and regulate other lotteries, raffles,

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> and gift enterprises which are intended solely as business promotions or the proceeds of which are to be used solely for charitable or community betterment purposes without profit to the promoter of such lotteries, raffles, or gift enterprises.

You first ask whether the use of lottery proceeds for the acquisition, purchase, and maintenance of a professional baseball franchise is within a reasonable interpretation of "community betterment" as required by Article III, Section 24.

The portion of Article III, Section 24 which pertains to lotteries for community betterment purposes was added to our State Constitution in 1968. State v. City Betterment Corporation, 197 Neb. 575, 250 N.W.2d 601 (1977). There are no cases from the Nebraska Supreme Court which interpret "community betterment" as it is used in Article III, Section 24 of the Nebraska Constitution. Moreover, as we noted in Opinion of the Attorney General No. 52, March 17, 1983, a review of the legislative history of both the constitutional amendment and its enacting legislation does not assist in defining "community betterment purposes." However, it is clear that the "words and terms of a constitutional provision are to be interpreted and understood in their most natural and obvious meaning." State v. City Betterment Corporation, supra, 197 Neb. at 582, 583, 250 N.W.2d at 605. Therefore, as we did in our Opinion in 1983, we must analyze the phrase "community betterment" in its natural and obvious sense.

In Opinion of the Attorney General No. 52, March 17, 1983, we stated:

> Websters Third New International Dictionary, Unabridged Edition, 1967 defines "betterment" as the making or becoming better: improvement as: an improvement of an estate that makes it better and more valuable than mere repairs would do, an improvement that does more than restore to a former good condition, the replacement in accounting of an existing asset with one of greater cost or superior value. That same volume variously defines "community" including the following: A body of individuals organized into a unit or manifesting unusual awareness of some unifying trait: a state or commonwealth.

As a result, "community betterment" involves improvement of a body of individuals such as a city or county that makes that governmental unit better or more valuable than before.

We believe that the acquisition, purchase, and maintenance of a professional baseball organization would fit within that broad

definition of community betterment. The presence of a professional baseball team in a community could lead to the improvement of that community in a number of ways. For instance, major employers might be attracted to the community because of the increased recreational possibilities, or commerce within the community might be enhanced because individuals attending games would shop or spend time there. Consequently, we believe that the acquisition, purchase, and maintenance of a professional baseball franchise would fit under the broad parameters of Article III, Section 24 of the Nebraska Constitution.

You also ask whether the use of lottery proceeds, as proposed in AM 1444, would fall within the term "community betterment" as that term is defined by Neb.Rev.Stat. § 9-604 (Reissue 1987). We believe that this question, in effect, asks us to interpret an existing statute which we cannot do for the reasons stated in our Opinion No. 157 to Senator Beutler, dated December 20, 1985. However, we would note that, if the Nebraska County and City Lottery Act is amended as contemplated by AM 1444, then use of the proceeds of a lottery for the purposes proposed in that amendment would be permissible under the Act even if such a use did not fit under the definition of community betterment set out in Neb.Rev.Stat. § 9-604.

Sincerely yours,

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05-08-14.91

cc: Patrick J. O'Donnell
Clerk of the Legislature

APPROVED BY:

Attorney General