

Legally Flawed Lottery Amendment

by Jerry Cox

When it comes to the state lotteries amendment, even if a voter reads every word of the proposed amendment, he/she won't know what he/she will be approving if he votes "yes." The wording of the proposal is simply too vague.

The proposal is legally flawed and even the most learned legal scholar can't know what will be authorized if the amendment passes. The legal questions all flow from one simple, but significant omission – the key word in the proposal – lotteries – is NOT defined.

This major omission was brought to the attention of the proponents by the Attorney General when they submitted the language to the Attorney General for his review. The proponents redrafted the proposed amendment and resubmitted it to the Attorney General. Even though other changes were made to the proposal, the proponents failed to include a definition of lotteries.

Is it typical to include a definition? Absolutely! Our constitution and statutes are filled with legal definitions that help the courts, law enforcement and ordinary citizens know what is allowed and what is prohibited. One of the primary supporters of this proposal is Lieutenant Governor Bill Halter. During the 2007 legislative session, Halter championed another lottery proposal and tried to get the legislature's support. Did the 2007 proposal contain a definition? Absolutely! The failure to include a definition now raises many questions.

What is meant or intended by the proponents? How will the term "lotteries" be interpreted by the legislature or the courts? There is no way for the Arkansas voters to know. The proponents could have defined the term and made it clear to the legislature, the courts, and the voters of Arkansas what was intended. The proponents *could* have included language that limited "lotteries" to traditional lottery games and specifically *excluded* video lottery terminals or casino-type games. Since the omission was brought to the attention of the proponents and they failed to make any changes, it is logical to assume that the proponents want an unrestricted definition of lotteries. This opens the door for video lottery terminals and casino games in Arkansas.

Could a lottery really be defined to include casino games? Yes!

When interpreting Arkansas' current ban on lotteries, the Supreme Court has ruled that 3 elements are needed to be a lottery: consideration, chance and a prize. With such a broad definition, many games, including casino-type games, have been banned from Arkansas because they were controlled by chance and thus could be considered a lottery. With no definition to limit them, the courts and the legislature will only need to follow past precedent and authorize any game of chance as a "lottery."

We only need to look to other states to find other courts and other legislatures to find examples of "broad" definitions of lottery. In other states with similar language, the courts have ruled that video lottery terminals are included in the definition of lotteries. Video lottery terminals look like and operate much like a slot machine, but are included in the definition of a "lottery" and thus permitted.

Although not widely accepted, the courts in at least one state ruled that "lotteries operated by the state," included the operation of a casino. Arkansas voters have rejected casino gambling on a number of occasions. Now, because of a legally-flawed proposal, the voters may approve casino gambling without even knowing it is on the ballot!

Will the voters of Arkansas be approving casino gaming if they vote for the proposed lotteries amendment? No one knows for sure, because the proponents intentionally left the legal door wide open.

It is also interesting to note that by authorizing the legislature to establish state lotteries, the proposal not only opens the door for more than one lottery, but arguably, multiple *types of lotteries*. The state can operate a power-ball lottery, a lotto, pick-3 or pick-4 lotteries, scratch-off lotteries, and a multitude of other types of lotteries.

Even though the lack of a definition is a critical legal loophole, there are other legal questions that remained unanswered. Many crucial decisions are not spelled out in the proposal, but are left to the discretion of the legislature.

For example, Arkansas voters won't know who will receive scholarships, what schools will be approved, or even how much money will be available for scholarships, because the proponents left all of those decisions to the legislature. The legislature is directed to establish criteria to determine who is eligible to receive the scholarships and grants. Will it be based on financial need, academic merit, or other criteria? What schools can the scholarship recipients attend? Will some two-year colleges be left out? Can the scholarship be used at a vocational training center or is it just the four-year universities that will reap any financial benefit?

How much money will be available? The proposal directs that proceeds from the lotteries are to be used to pay the operating expenses, including all prizes, and to fund scholarships or grants. What if 95% of the proceeds are "needed" for operating expenses? Remember that ALL COSTS are paid before any scholarships are awarded – the unlimited prizes, the advertising, the fees for stores that sell tickets or provide the games, the salaries of state employees to "supervise" the games are "costs."

No minimum amount is required to be used for scholarships and thus there is no guarantee that most of the proceeds will be eaten up by the "operating expenses."

Finally, the legislature will be free to change the conditions and terms of the lottery every two years as they choose. One year the scholarships or grants may be awarded based on financial need and the next year the rules could change and academic merit could be the standard. Two-year or technical colleges may be allowed one year and not the next.

Arkansans may want a lottery, but they should know what they are getting. This proposal has too many unanswered legal questions that leave the voter in the dark and unaware of what they are approving.

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