Lotteries: Small Church Raffles or Big Time Gaming?

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Lotteries: Small Church Raffles Or Big Time Gaming?

I. INTRODUCTION

The lengthy history of Nebraska law pertaining to lotteries has its origin in both the Nebraska Constitution and the Nebraska Revised Statutes. Until recently the constitution made it clear that lotteries were frowned upon by the citizens of Nebraska. Prior to 1968, the constitution specifically prohibited the Nebraska Legislature from authorizing games of chance, gift enterprises, or lot-

1. The prohibition against lotteries contained in the original constitution of 1866 provided that, "[t]he Legislature shall never authorize any lottery, or grant any divorce." Neb. Const. art. II, § 22 (1866). In the constitution of 1875 the language of the prohibition was intensified: "The legislature shall not authorize any games of chance, lottery, or gift enterprise, under any pretense or for any purpose whatever." Neb. Const. art. III, § 21 (1875). Although there were no changes in this section as a result of the Constitutional Convention of 1920, it was amended again in 1934 to allow parimutual wagering on horse races. Neb. Const. art. III, § 24 (1934). In 1958 the constitution was expanded further to allow the licensing and regulation of bingo. Neb. Const. art. III, § 24 (1958). In 1962 the constitution was amended to prohibit games of chance, lotteries, or gift enterprises only when "the consideration for a chance to participate involves the payment of money for the purchase of property, services, chance or admission ticket, or requires an expenditure of substantial effort or time." Neb. Const. art. III, § 24 (1962). The last amendment dealing with lotteries occurred in 1968 when the legislature was granted the power to authorize lotteries in specific situations. For the present wording of the constitution pertaining to lotteries, see note 22 and accompanying text infra.

2. See note 1 supra.

3. A game of chance has been defined by the Nebraska Supreme Court:

A game of chance is one in which the result as to success or failure depends less on the skill and experience of the player than on purely fortuitous or accidental circumstances incidental to the game or the manner of playing it or the device or apparatus with which it is played, but not under the control of the player.


4. Defining the terms gift enterprise, lottery, and raffle has created great
teries\textsuperscript{6} where monetary consideration was involved. A 1968 amendment to the constitution gave the legislature the power to authorize and regulate lotteries, raffles, and gift enterprises. However, under the amendment, these games of chance must either be used solely as business promotions or the proceeds must be used solely for charitable or community betterment purposes.\textsuperscript{6} The constitution as amended also requires that the promoters of these games of chance may receive no profit from their operation.\textsuperscript{7} This amendment was first proposed by the legislature during the seventy-seventh legislative session in 1967,\textsuperscript{8} and was later passed by the voters of Nebraska in the 1968 general election.\textsuperscript{9}

The legislature was quick to exercise the authority granted to it by the voters of Nebraska. In 1969 the legislature passed Legislative Bill 691\textsuperscript{10} which is codified in sections 28-964.01 to 28-964.05 of the Nebraska Revised Statutes.\textsuperscript{11} These sections elaborate the specific situations in which games of chance are permitted in Nebraska, and in recent times they have caused great difficulty in

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\textsuperscript{5} The three elements of a lottery are prize, chance, and consideration. State v. Omaha Motion Picture Exhibitors Ass'n, 139 Neb. 312, 314, 297 N.W. 547, 548 (1941). Under this definition many gaming schemes have been held to be lotteries, i.e., pari-mutual betting on horse races, pinball machines, punchboards, slot machines. See § IV of text infra; note 90 infra.
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\textsuperscript{6} For the constitution section on lotteries as it now stands, see note 22 and accompanying text infra.
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\textsuperscript{7} Id.
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\textsuperscript{8} L.B. 36, 1967 Neb. Laws 832.
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\textsuperscript{9} Id. The wording of the provision on the ballot was as follows: Constitutional amendment to permit the Legislature to authorize lotteries, raffles, 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 thereof. Id. at 833.
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\textsuperscript{10} L.B. 691, 1969 Neb. Laws 808.
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\textsuperscript{11} NEB. REV. STAT. §§ 28-964.01 to .05 (Reissue 1975).
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interpretation. The new Nebraska Criminal Code changes the language of these sections to some extent, but the basic meaning remains the same.\(^\text{12}\)

In 1975 the Nebraska Supreme Court was called upon to interpret the statutes in light of the constitutional amendment. *State v. City Betterment Corp.*\(^\text{13}\) was the first, and up to the present, the only supreme court case interpreting the present Nebraska lottery laws. The supreme court in *City Betterment* held: (1) that an organization whose only activity has been the operation of a lottery is not allowed to conduct a lottery in Nebraska;\(^\text{14}\) (2) that the reasonable and necessary expenses incident to the operation of a lottery, such as advertising and the printing of tickets, could be paid from the gross proceeds of the lottery;\(^\text{15}\) and (3) that only the organization conducting a lottery is forbidden from making a profit, that is, the individual promoters, advertisers, and ticket sellers could make a profit, but the organization legally responsible for the operation of the lottery could not.\(^\text{16}\) As will be discussed later in this note, this holding allows the operation of lotteries which the legislature had no intention of authorizing.

A short time after *City Betterment* was decided, the Nebraska Attorney General issued an opinion concerning the legality of punchboards.\(^\text{17}\) The Lancaster County Attorney requested an official opinion as to whether or not punchboards\(^\text{18}\) were prohibited by state statutes or were lotteries, and therefore exempt under the specific situations enumerated in sections 28-964.01 to 28-964.05 of the Nebraska Revised Statutes.\(^\text{19}\) In response to that request, the attorney general issued an opinion stating that punchboards were lotteries and therefore legal if conducted in accordance with sections 28-964.01 to 28-964.05.\(^\text{20}\)

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14. Id. at 582, 250 N.W.2d at 605.
15. Id. at 583, 250 N.W.2d at 606.
16. Id. at 584, 250 N.W.2d at 606.
17. NEB. ATT’Y GEN. OP. No. 48 (March 23, 1977). *City Betterment* was decided on February 9, 1977, and the opinion of the attorney general was issued on March 23, 1977.
18. A punchboard is a device usually made out of a rectangle of cardboard. The rectangle has several holes in it which are covered by paper. Inside each hole is a slip of paper which has written on it a prize or money value. A person participates in the game by choosing a hole and then punching through the paper covering and taking out the slip of paper. The person then receives the prize or money value written on the slip of paper.
20. Id. at 4.
This note will analyze the Nebraska lottery laws as they now stand in light of the City Betterment decision and the recent attorney general's opinion on punchboards. Although the new Nebraska Criminal Code changes some of the gambling statutes, the sections pertinent to this note remain virtually unchanged. The sections of the new Nebraska Criminal Code pertaining to gambling have an effective date of July 1, 1978.21

II. THE NEBRASKA LAW

The Nebraska law on lotteries is contained in both the Nebraska Constitution and the Nebraska Revised Statutes. The Nebraska Constitution as amended in 1968 states:

The Legislature shall not authorize any game of chance, nor any lottery, or gift enterprise where the consideration for a chance to participate involves the payment of money for the purchase of property, services, chance or admission ticket, or requires an expenditure of substantial effort or time; Provided, that it may authorize and regulate other lotteries, raffles, 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.22

This section provides that the legislature cannot authorize games of chance, lotteries, or gift enterprises when the consideration to participate involves the payment of money. The section then goes on to state that the legislature may authorize other lotteries, raffles, and gift enterprises as long as they are intended solely as business promotions or if the proceeds are used solely for charitable or community betterment purposes and without profit to the promoter.23

22. NEB. CONST. art. III, § 24. The section also allows the licensing and regulation of wagering on the results of horse races and the licensing and regulation of bingo games. Id.
23. It might be argued that the constitution as amended does not allow lotteries where monetary consideration is involved. The first phrase specifically states that lotteries, games of chance, and gift enterprises are not allowed when there is monetary consideration. The proviso only allows "other" lotteries, raffles, and gift enterprises. It thus could be argued that the use of the word "other" is exclusive and that only lotteries not involving the payment of money or an expenditure of substantial time are allowed. Thus the statutes allowing lotteries might be unconstitutional if found to permit the payment of monetary consideration. This would give a rather restrictive definition to the term "other," and is clearly not in accordance with the purpose of the proviso. See note 9 supra. But the constitutionality of the Nebraska
The Nebraska Revised Statutes, to some extent, echo the constitution. The pertinent statutes are found in sections 28-964.01 to 28-964.05. These statutes make it clear that only those games of chance, lotteries, raffles, or gift enterprises that are "specifically authorized" by the legislature are legal. The statutes then proceed to enumerate the specific circumstances in which these various games of chance are permitted.

Established businesses may conduct contests and lotteries for the purpose of business promotion if "no fee is required for participation in such contests or lotteries." Nonprofit organizations are authorized to conduct lotteries, raffles, and gift enterprises as long as the organization's "primary activities are conducted for charitable and community betterment purposes" and the proceeds are used "solely for charitable or community betterment purposes and the awarding of prizes to participants." Political subdivisions are also allowed to conduct lotteries "when the proceeds of such lotteries are used solely for community betterment purposes and the awarding of prizes to participants," if they first obtain the approval of their registered voters. It is a misdemeanor to operate a game of chance, lottery, raffle, or gift enterprise that is not specifically authorized by the statutes.

The message of the constitution and the statutes at first glance seems relatively clear, but upon a closer analysis a significant number of difficulties are apparent. This note will deal with four specific difficulties or questions raised by the language employed in the constitution and statutes. Both the constitution and the statutes provide for the regulation of "lotteries, raffles, and gift enterprises." The first question raised, then, is what specifically consti-

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statutes on lotteries has been questioned before. See E. Kitch & H. Perlman, Legal Regulation of the Competitive Process 280 (1972).


tutes a lottery, raffle, or gift enterprise. The constitution and the statutes also require that the "proceeds" be used for charitable or community betterment purposes. The second question raised, then, is does the term "proceeds" mean net proceeds or gross proceeds. The constitution states that the "promoter" cannot receive any profit from the operation of the lotteries, raffles, or gift enterprises. This raises the third question of whether the term "promoter" includes only the organization that is responsible for the operation of the lottery, or whether it also includes the individual persons running the lottery. The last question that this note will deal with is raised by section 28-964.03, which states that a nonprofit organization that operates a lottery, raffle, or gift enterprise must conduct its "primary" activities for charitable or community betterment purposes. The question is, then, how much of a nonprofit organization's conduct may be in furtherance of the lottery, and how much of its conduct must be for charitable or community betterment purposes to be classified as "primary."

III. THE CITY BETTERMENT DECISION

The Nebraska Supreme Court was given its first chance to interpret the Nebraska lottery laws in State v. City Betterment Corp. In 1975 the City Betterment Corporation was incorporated under the Nebraska Nonprofit Corporation Act. The stated purpose of the City Betterment Corporation was to furnish money to help the Central Business District Task Force fund restoration projects in the downtown area of Omaha, Nebraska. This funding was to be accomplished through the operation of a lottery entitled "Big Green." In connection with the operation of this lottery the City Betterment Corporation employed several individuals at a cumulative salary of over $200,000 per year. Several Omaha banks distributed tickets for a one percent commission, while businesses sold tickets for a five percent commission. Other expenses incurred by the City Betterment Corporation included the rental of office space for $1,250 per month and the hiring of a public relations firm to provide advertising at a rate of $1,640 per month.

31. See § IV of text infra.
32. See § III B of text infra.
33. See § III C of text infra.
34. NEB. REV. STAT. § 28-964.03 (Reissue 1975). See also NEB. REV. STAT. § 28-1115 (Supp. 1977) (effective date July 1, 1978).
35. See § III A of text infra.
36. 197 Neb. 575, 250 N.W.2d 601 (1977). The State filed a motion for rehearing in the case. The rehearing was denied on March 18, 1977, but was not reported.
37. NEB. REV. STAT. §§ 21-1901 to 19,109 (Reissue 1974).
38. 197 Neb. at 577, 250 N.W.2d at 603.
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The first "Big Green" lottery drawing was held in October of 1975. It continued in operation until January of 1976 when the district court enjoined its further operation. At the time of the injunction none of the income derived from the lottery had been distributed for charitable or community betterment purposes.

The Nebraska Supreme Court was called upon to interpret the Nebraska Constitution in light of section 28-964.03 which allows a nonprofit organization to conduct lotteries:

Any bona fide nonprofit organization whose primary activities are conducted for charitable and community betterment purposes may conduct lotteries, raffles, and gift enterprises when the proceeds of such activities are used solely for charitable or community betterment purposes and the awarding of prizes to participants.

The issues raised in the Nebraska Supreme Court were: (1) whether an organization whose only activity is the operation of a lottery is an organization whose primary activities are conducted for charitable or community betterment purposes as required by the statutes; (2) whether the term "proceeds" which is used both in the constitution and the statutes means net proceeds or gross proceeds; and (3) whether the term "promoter" as used in the constitution means only the organization conducting the lottery or includes the individual employees and agents which actually operate the lottery.

41. 197 Neb. at 578-79, 250 N.W.2d at 603.
42. See note 22 and accompanying text supra.
44. These were the same issues raised in the Douglas County District Court. 197 Neb. at 579, 250 N.W.2d at 603-04. The case was originally brought by the State of Nebraska and Douglas County on a declaratory judgment action. The State of Nebraska and Douglas County contended: (1) that the City Betterment Corporation was not an organization whose primary activities were conducted for charitable or community betterment purposes, (2) that the term "promoter" as used in the constitution meant all those involved in the operation of a lottery, and (3) that the term "proceeds" as used in the constitution and statutes meant gross proceeds. The Douglas County District Court found for the state and county on the first issue but found for the City Betterment Corporation on the second and third issues. The City Betterment Corporation then appealed the holding of the district court that it was not an organization whose primary activities were conducted for charitable and community betterment purposes, and the state and county cross-appealed on the issues of the meaning of "proceeds" and the meaning of "promoter."
The court was faced with a difficult problem, and there was little clear legislative history. The provisions of other states were of little assistance to the court "because of their great variation in language and because of the fact that none are even reasonably comparable to our own." In its analysis the court relied on only two prior cases, both for well-settled guidelines of statutory interpretation.

A. Primary Activities

The supreme court was first confronted with the issue of whether the City Betterment Corporation's "primary activities" were conducted for charitable or community betterment purposes. Section 28-964.03 provides that a nonprofit organization may conduct lotteries only if the organization's "primary activities are conducted for charitable and community betterment purposes." The issue raised on direct appeal was whether City Betterment Corporation's activities satisfied this test. The supreme court agreed with the lower court that the City Betterment Corporation was a bona fide nonprofit organization, but that its primary activities were not conducted for charitable or community betterment purposes. The court pointed out that although the City Betterment Corporation had appointed committees to select charitable and community betterment projects to receive the proceeds from the lotteries, it had not distributed any of the proceeds to charitable or community betterment projects. It was therefore clear to the court that prior to the issuance of the injunction the sole function of the City Betterment Corporation was operation of the lotteries.

45. There were only 24 pages of recorded hearings and floor debates on Legislative Bill 691 (the constitutional amendment bill) and Legislative Bill 36 (the bill that implemented the statutes).
46. 197 Neb. at 581, 250 N.W.2d at 604. The court appears to be correct in this assertion. Neither the statutes nor the constitutional amendment appear to be modeled after the laws of any other state.
47. The first case cited by the court was State v. Nance, 197 Neb. 95, 246 N.W.2d 868 (1976), for the proposition that a "statute should be construed in the context of the object sought to be accomplished, the evils and mischief sought to be remedied, and the purpose to be served." 197 Neb. at 580, 250 N.W.2d at 604. The second was Ramsey v. County of Gage, 153 Neb. 24, 43 N.W.2d 593 (1950), for the proposition that "[t]he words and terms of a constitutional provision are to be interpreted and understood in their most natural and obvious meaning." Id. at 582, 583, 250 N.W.2d at 605.
49. 197 Neb. at 578, 250 N.W.2d at 603.
50. Id. at 582, 250 N.W.2d at 605.
51. Id. at 579, 250 N.W.2d at 603.
52. Id. at 582, 250 N.W.2d at 605.
The court analyzed the factual situation presented and concluded that City Betterment Corporation's primary activity was the operation of lotteries, and not charitable or community betterment activities. The court surmised that an organization whose only activity is the operation of a lottery is not an organization whose "primary activities" are conducted for charitable or community betterment purposes, even though the lottery itself is conducted for charitable or community betterment purposes.\textsuperscript{53} The court stated that before a nonprofit organization could conduct lotteries it had to have participated in activities other than the operation of a lottery:

When the Legislature required that the "primary activities" of a qualified organization are to be conducted for charitable and community betterment purposes before the organization may conduct lotteries, the logical and reasonable conclusion must be that the primary activities referred to are activities other than the operation of a lottery. The Legislature then limited its authorization to qualified organizations actually conducting activities for charitable and community betterment purposes. It is reasonable to assume that the Legislature intended to require that an organization actually conduct charitable and community betterment activities rather than merely express an intent to conduct them in the future before the organization will be authorized to operate a lottery.\textsuperscript{54}

The court is apparently saying that only as long as an organization is conducting some form of charitable or community betterment activities is it then authorized to operate a lottery.

The State contended that the wording of the statute required that the operation of the lottery should be incidental or secondary to the main or primary charitable activities.\textsuperscript{55} Thus, the State contended that a size comparison was required by the statute. The court bypassed this issue when it stated:

The Legislature failed to impose any specific restrictions as to the size or frequency of any lottery, and there is no reasonable or logical way of comparing or measuring the relative size of activities in such diverse and unrelated fields. The issue is not directly presented in this case, and we therefore do not pass on it.\textsuperscript{56}

The court therefore declined to address a very important issue, that is, whether a nonprofit organization's main activities could be directed to the operation of a lottery while having only incidental charitable and community betterment activities. It would appear that the clear meaning of the statute requires some type of com-

\textsuperscript{53} Id.
\textsuperscript{54} Id. at 581, 250 N.W.2d at 604-05.
\textsuperscript{55} Id. at 581-82, 250 N.W.2d at 605.
\textsuperscript{56} Id. at 582, 250 N.W.2d at 605.
parison. The word "primary" would dictate a primary-secondary comparison. The logical conclusion would be that if the activities of the nonprofit organization were more than fifty percent in furtherance of the lottery, then conducting the lottery, not charitable and community betterment activities, would be the "primary" function of the organization. The problem is that to compare charitable and community betterment activities with the operation of lotteries is a virtual impossibility. As the court stated in City Betterment, there is really "no reasonable or logical way of comparing or measuring the relative size of activities in such diverse and unrelated fields." However, the court's decision to bypass this issue will only give rise to speculation, uncertainty, and future litigation.

B. Proceeds

The second issue raised in City Betterment was whether the term "proceeds" as used in the Nebraska Constitution and section 28-964.03 means "net proceeds" or "gross proceeds." The constitution requires that the "proceeds" of the lottery be used "solely for charitable or community betterment purposes."

Section 28-964.03 requires that the proceeds are to be used "solely for charitable or community betterment purposes and the awarding of prizes to participants." The court was faced with a difficult situation. On one hand, if the court held that "proceeds" meant gross proceeds, the incidental expenses of the lottery, such as the cost of ticket printing and advertising, would have to be donated. On the other hand, if "proceeds" meant net proceeds, then there would be no limitation on how small the net proceeds could be; the organization could spend a large percentage of the proceeds on promotion and salaries and leave only a small percentage for charitable and community betterment activities.

The court stated that because the term "proceeds" was used in both the constitution and the statute it would ordinarily have the same meaning in both. The court rationalized that to interpret

57. Id.
60. 197 Neb. at 583, 250 N.W.2d at 605. The court did not cite any authority for this proposition. Of course the statute was passed by the legislature; however, the constitutional amendment was ultimately passed by the voters of Nebraska even though it was originally proposed by the legislature. See notes 8-11 and accompanying text supra. Al-
the word "proceeds" to mean gross proceeds would not allow the
awarding of prizes, because the constitution only allowed the "pro-
cceeds" to be used for charitable and community betterment pur-
poses. Thus the interpretation that "proceeds" meant gross pro-
cceeds would make the awarding of prizes unconstitutional, even
though the awarding of prizes is specifically allowed in section 28-
964.03.61 From this the court concluded that to make the constitu-
tion and section 28-964.03 read consistently the term "proceeds"
could only be read to mean net proceeds:

If "proceeds" means gross proceeds in the Constitution, then the
statutory provision for prizes would be unconstitutional, because it
goes beyond the constitutional limitations. To interpret the word
to mean gross proceeds in the statute is to assume that the Legis-
lature intended to require that except for prizes, all property,
goods, services, and other expenses of any lottery must be donated,
including advertising and printing of the tickets. There is no indi-
cation of any such intent. If the Legislature had wanted to describe
or restrict the kinds or types of expenses authorized to be deducted,
it could have done so. The Legislature did not make any reference
to expenses. . . . The word "proceeds" in Article III, section 24,
Constitution of Nebraska, and in section 28-964.03, R.R.S. 1943,
means "net proceeds." Reasonable and necessary expenses incident
to the organization and operation of a lottery may be paid from
lottery proceeds.62

though they could be interpreted to have the same meaning there is
no requirement that two separate provisions passed by two separate
bodies would have to be interpreted in the same manner.
61. 197 Neb. at 583, 250 N.W.2d at 605.
62. Id. at 583, 250 N.W.2d at 605-06.
The supreme court apparently overlooked Harriman Inst. of Social
Research, Inc. v. Carrie Tingley Crippled Children Hosp., 43 N.M. 1,
84 P.2d 1088 (1938). The statute in Harriman required that all the
proceeds derived from a lottery be used for charitable purposes. The
court in Harriman held that the phrase "all the proceeds" did not mean
"net proceeds." The court stated:
However, when we give to the language of the exemption, "all
the proceeds," the meaning which a first reading suggests—
"the whole proceeds", "the gross proceeds"—there can be no
doubt the present plan is outlawed under plaintiff's admission
that only a part of the proceeds of the fair is to be donated
to charity.

We are not unmindful that the word "proceeds" has been
given varying meanings in decided cases, dependent upon the
context of the statute or contract in which it is found. Not
infrequently its meaning is controlled by a custom or practice
of the particular trade, business or industry to which the con-
tract employing it relates. . . . But where no ambiguity arises
from the manner of its use, from the context or from a custom
in the trade or business in which employed, the word "pro-
cceeds" alone without the use of a qualifying adjective such
as "gross", "entire" or "all", often has been held to mean
"gross proceeds."
Although the court's analysis is as logical as any, it is clearly not the only argument. The constitution allows lotteries when the proceeds are used solely for charitable and community betterment purposes. It is only logical that if the constitution is going to allow lotteries then it contemplates the awarding of prizes. How can there be a lottery without prizes? From this it would appear that the constitution anticipated the expense of prizes, and therefore the term "proceeds" in the constitution could just as easily mean "gross proceeds after payment of prizes." The court did not state why the term "proceeds" had to mean either gross proceeds or net proceeds and not something between the two terms. One can only speculate as to why the term could have only one meaning exclusive of any other.

The court stated that "[i]f the Legislature had wanted to describe or restrict the kinds or types of expenses authorized to be deducted, it could have done so." However, the legislature did this when it stated that the proceeds could be used solely for charitable and community betterment activities and the awarding of prizes. The court also stated that "[t]he Legislature did not make any reference to expenses." But it is clear that the legislature authorized the deduction of expenses for the purchase of prizes. The court noted that "unless a lottery is conducted and operated within the specific limits and terms of a statutory authorization, it is illegal." The court's interpretation that the term "proceeds" means net proceeds allows lottery expenses that are not "within specific limits and terms of a statutory authorization." The specific statutory authorization of expenses goes to the expense of purchasing prizes and no more.

Although the court's decision appears confusing, the statute and constitutional amendment it had to interpret were even more so. The supreme court held that "reasonable and necessary expenses incident to the organization and operation of a lottery may be paid from lottery proceeds." Therefore the question remains as to what are "reasonable and necessary expenses." Is fifty percent of the gross proceeds a reasonable amount to pay out as expenses?

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63. This was the argument advanced in the Brief by Amici Curiae in Support of Plaintiff's Motion for Rehearing.
64. 197 Neb. at 583, 250 N.W.2d at 605-06.
65. Id. at 583, 250 N.W.2d at 606.
66. Id. at 581, 250 N.W.2d at 604.
67. To some extent this argument was advanced by the state in its Motion for Rehearing and Brief in Support Thereof.
68. 197 Neb. at 583, 250 N.W.2d at 606.
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Is seventy-five percent reasonable? May an organization operate a lottery and pay out ninety percent of the gross proceeds for salaries, advertising, ticket printing, sales commissions, office space, and promotions? These questions can only be answered by future litigation.

C. Promoter

The last issue determined by the supreme court in City Betterment was whether the term "promoter" as used in the constitution encompasses only the organization conducting the lottery, or includes the individual employees, agents, and independent contractors retained by the nonprofit organization. The constitution states that the legislature can authorize lotteries, raffles, and gift enterprises as long as they are conducted "without profit to the promoter." This requirement is purely constitutional.

The State contended that "anyone who advances money, sells tickets, secures financing, helps organize, manages, or in any other way helps to advance a lottery is a promoter of that lottery." The court cited no authority when it held that "the word 'promoter' of a lottery means only the persons or organizations legally responsible for conducting the lottery. It does not include individual employees of the organization or agents or independent contractors retained by the organization to provide services in the conduct of the lottery." In reaching this holding the court used the following reasoning:

In essence, such a definition [that the term "promoter" is not limited to the organization ultimately responsible] would mean that all services would have to be donated, including even the printing of the lottery tickets. Any such interpretation would make it difficult, if not impossible, to hold a legal lottery except for a very small local lottery, and it could make dozens, or even hundreds, of helpful but unwary persons subject to criminal responsibility in the event legal boundaries were breached.

Unlike the holding in the other two issues, this holding raises very few questions; however, it is not without foreseeable problems. The holding would allow a nonprofit organization to hire employees, ticket salesmen, agents, and independent contractors at enormous salaries. Although the nonprofit organization cannot make a prof-

71. 197 Neb. at 583, 250 N.W.2d at 606.
72. Id. at 584, 250 N.W.2d at 606.
73. Id.
it, the people actually conducting the lottery may. It would not take much to visualize a shell corporation set up for the specific goal of making a profit for its employees under the guise of charitable and community betterment activities. It is doubtful that either the legislature or the citizens of Nebraska contemplated a large-scale lottery with the operation handled by a full-time staff of profit making individuals.74

IV. THE OPINION OF THE NEBRASKA ATTORNEY GENERAL ON PUNCHBOARDS

On March 23, 1977 the Nebraska Attorney General issued an opinion on the legality of punchboards.75 The opinion was in response to a question by the Lancaster County Attorney which was stated in the following manner: "Are punchboards to be considered a form of gambling prohibited by state statutes or are those devices exempt under the lottery laws or other statutes?"76 The attorney general was faced with the same problem that the Nebraska Supreme Court was faced with in City Betterment—confusing statutes with very little legislative history.

The opinion first set out the constitution and the applicable statutes, noting that only those "games of chance, lotteries, raffles, or gift enterprises that are 'specifically authorized' by the Legislature are legal."77 The opinion then analyzed the meaning of the word lottery as it is used in the constitution and the statutes. It relied on State v. Omaha Motion Picture Exhibitors Ass'n,78 where the Nebraska Supreme Court defined the meaning of lottery:

It is fundamental in order for a scheme to be a lottery that three elements must exist. First, there must be a distribution of property by chance, commonly referred to as a prize. Second, the prize must be awarded by lot or chance. Third, the participants must have paid consideration for the chance of winning the prize. Unless all three elements are present, the lottery laws have no application.

... When the question presented is one of enforcing criminal responsibility, or of refusing to aid in a transaction alleged to be within the statutory prohibition, the courts will ordinarily construe liberally the provision relating to lotteries so as to include all schemes which appeal to the gambling propensities of men. ... It would be difficult to state with exactness all the plans or schemes that fall within the statutory definitions of lottery. We shall not attempt to do so. The term "lottery" is generic in nature and best left without exact definition. ... Generally speaking, it is a

74. For the pertinent legislative history, see note 95 infra.
75. NEB. ATT'Y GEN. OP. No. 48 (March 23, 1977).
76. Id. at 1.
77. Id. at 2.
78. 139 Neb. 312, 297 N.W. 547 (1941).
scheme which tends to induce one to pay or agree to pay a valuable consideration for a chance to draw a prize.\textsuperscript{79}

Thus the three elements used by the Nebraska Supreme Court in defining lottery are: (1) prize, (2) chance, and (3) consideration.\textsuperscript{80}

Other decisions by the supreme court have also expounded this definition.\textsuperscript{81}

The opinion by the attorney general analyzed the punchboard scheme in light of the definition of a lottery set forth in \textit{Omaha Motion Picture Exhibitors}, and came to the conclusion that punchboards were lotteries:

In our view, there is little doubt but that a punchboard contains the three elements of a lottery, i.e., prize, chance and consideration; and there is little doubt but that a punchboard scheme is one which "tends to induce one to pay or agree to pay a valuable consideration for a chance to draw a prize." There is little doubt, therefore, that a punchboard scheme falls with [sic] the definition of "lottery" as previously defined by the Supreme Court.\textsuperscript{82}

The attorney general then stated that it was his opinion that a punchboard was a lottery and was authorized as long as it was operated under the guidelines of sections 28-964.02 to 28-964.04 of the Nebraska Revised Statutes.\textsuperscript{83} The new Nebraska Criminal Code specifically defines lottery:

\begin{quote}
Lottery shall mean a gambling scheme in which (a) the players pay or agree to pay something of value for chances, represented and differentiated by numbers or by combinations of numbers or by some other medium, one or more of which chances are to be designated the winning ones, (b) the winning chances are to be determined by a drawing or by some other method based on an element of chance, and (c) the holders of the winning chances are to receive something of value . . . .\textsuperscript{84}
\end{quote}

This definition would not appear to limit the definition of lottery to any great extent. Although some of the gambling schemes pre-

\textsuperscript{79} Id. at 314-15, 297 N.W. at 548-49 (citations omitted), quoted in \textsc{Neb. Att'y Gen. Op. No. 48, at 3-4 (March 23, 1977).}

\textsuperscript{80} For a discussion of the elements of a lottery as they pertain to Nebraska, see Meyer, \textit{Analysis of Business Lotteries and Promotions in Nebraska}, 34 \textsc{Neb. L. Rev.} 447, 449-55 (1955). \textit{See also E. Ktch & H. Perlman, supra note 23, at 278-80.}


\textsuperscript{83} Id. \textit{See note 91 and accompanying text infra.}

\textsuperscript{84} \textsc{Neb. Rev. Stat. § 28-1101(6) (Supp. 1977) (effective date July 1, 1978).}
viously held to be lotteries would be limited by this definition, most likely punchboards would still come within the above definition.\textsuperscript{86} 

The attorney general also stated that in his opinion a punchboard, which would ordinarily be a "gambling device" and therefore illegal under section 28-945 of the Nebraska Revised Statutes,\textsuperscript{86} was impliedly exempt from that section by virtue of the exemptions contained in sections 28-964.02 to 28-964.04.\textsuperscript{87} It was the attorney

\textsuperscript{85} See note 90 infra.

It would appear that a punchboard still fits within this definition: (a) the player usually agrees to pay value for chances which are represented by numbers or some other medium, (b) it is based on an element of chance, and (c) the holder of the winning chance receives something of value. The question would be what is a "holder" of a winning chance.

\textsuperscript{86} NEB. REV. STAT. § 28-945 (Reissue 1975).

\textsuperscript{87} NEB. ATT'Y. GEN. Op. No. 48, at 5-6 (March 23, 1977). The opinion stated as follows:

However, the question arises whether the exemptions contained in section 28-964.02 to 28-964.04 also impliedly create an exemption to section 28-945. In our opinion they do.

We believe that if the Supreme Court were faced with the question of whether an entity authorized to conduct a lottery under sections 28-964.02 to 28-964.04 could nevertheless be charged with unlawful possession of gambling devices, that the court would employ this same basic reasoning [as in State v. City Betterment Corp., 197 Neb. 575, 250 N.W.2d 601 (1977)] in determining that such an interpretation "would make it difficult, if not impossible to hold a legal lottery," and it "could make dozens, or even hundreds, of helpful but unwary persons subject to criminal responsibility" due to the fact that it is difficult to conceive of any lottery, as defined by the court, which could operate without the use of some gambling device. We believe that in a prosecution for possession of gambling devices, the court would require an inquiry into the purpose or intent for which an article is to be used, and a violation would only be found where the gambling devices were kept for illegal gambling purposes as opposed to purposes specifically authorized by section 28-964.02 to 28-964.04.

\textit{Id.} This reasoning seems sound. If the legislature meant to authorize lotteries it surely meant to authorize those devices needed to conduct the lotteries.

\textsuperscript{86} NEB. REV. STAT. § 28-945 (Reissue 1975) states in part:

Whoever shall set up or keep any . . . gambling device or gaming machine of any kind or description . . . adapted, devised and designed for the purpose of playing any game of chance for money or property . . . shall upon conviction be punished by a fine of not less than three hundred dollars and not exceeding five hundred dollars, or be imprisoned in the Nebraska Penal and Correctional Complex not exceeding two years. . . . Notwithstanding any other provisions of this section, any mechanical game or device classified by the federal government as an illegal gambling device and requiring a federal Gaming Device Tax Stamp . . . [is] hereby declared to
general's opinion that there was in effect a superceding of section 28-945 by sections 28-964.02 to 28-964.04. The new Nebraska Criminal Code does away with this problem when it states that "[l]ottery tickets and other items used in the playing phases of lottery schemes are not gambling devices within this definition."

The view that punchboards are lotteries is not a novel one. There have been many other gaming schemes determined to be lotteries also. It should be noted that prior to 1968, when the

be illegal and excluded from the exemption granted in this section.

The main device requiring a federal stamp is a "slot" machine. 28 U.S.C. § 4462 (1970). If a slot machine is classified as a lottery, and if the lottery statutes have authorized an exemption to NEB. REV. STAT. § 28-945 (Reissue 1975), then the lottery laws have also authorized slot machines when operated by a nonprofit organization whose primary activities are conducted for charitable and community betterment purposes. It is doubtful that the Nebraska Supreme Court would go this far. For cases holding slot machines to be lotteries, see Keeney v. State, 54 Ga. App. 239, 187 S.E. 592 (1936); Commonwealth v. Rivers, 323 Mass. 379, 82 N.E.2d 216 (1948); State v. Marck, 124 Mont. 178, 220 P.2d 1017 (1950); State v. Crown Cigar Store, 124 Mont. 310, 220 P.2d 1029 (1950); State v. Coats, 158 Or. 102, 74 P.2d 1120 (1938). Contra, Gibson v. Robinson, 127 Fla. 88, 172 So. 476 (1937); Hardison v. Coleman, 121 Fla. 892, 164 So. 520 (1935); Ex parte Pierotti, 43 Nev. 243, 184 P. 209 (1919).

89. See Helen Ardelle, Inc. v. FTC, 101 F.2d 718 (9th Cir. 1939); Brewer v. Woodham, 15 Ala. App. 678, 74 So. 763 (1917); State v. Village of Garden City, 74 Idaho 513, 265 P.2d 328 (1953); State v. Brown, 173 Kan. 166, 244 P.2d 1190 (1952) (punchboards were found to be lotteries per se); State v. Tursich, 127 Mont. 504, 267 P.2d 641 (1954); State v. Crown Cigar Store, 124 Mont. 310, 220 P.2d 1029 (1950). But cf. People v. Trace, 200 Misc. 286, 109 N.Y.S.2d 893 (1951) (punchboard was found not to constitute a lottery because the legislature only meant to include raffles within the term); Boatwright v. State, 118 Tex. Crim. 381, 38 S.W.2d 87 (1931) (punchboard was used only to determine which prize a person had won; this was not a lottery because to get to the punchboard the participant had to first win a game of skill).
90. See State v. Grant, 162 Neb. 210, 75 N.W.2d 611 (1956) (scheme whereby persons who visited automobile dealer's showroom were entitled to register their children's names, which entitled the children to chances on toy automobiles, constituted a lottery even though participants were not required to advance any money or make any purchase, or to be present at the drawing); State v. Fox Beatrice Theatre Corp., 133 Neb. 392, 275 N.W. 605 (1937) ("bank night" at motion picture theaters); State v. Omaha Motion Picture Exhibitors Ass'n, 133 Neb. 39, 274 N.W. 397 (1937) ("bank night" at motion picture theaters); Retail Section of Chamber of Commerce v. Kieck, 126 Neb. 13, 257 N.W. 493 (1934) (retailers issued a free gift coupon with each 25 cent purchase, which coupons were placed in a ballot box and weekly drawings were held; the winners received gift tickets which were re-
definition of lottery was first formulated by the courts, lotteries were illegal in Nebraska no matter how they were operated. A county attorney wishing to stop a gambling operation would charge the operator with a violation of the lottery laws and would have the scheme declared a lottery. Therefore, the definition of lottery arose during a period when it was advantageous to have a scheme declared a lottery, and the broad definition of price, chance, and consideration was used to declare all types of gaming to be illegal. The courts interpreted the term “lottery” broadly in order that any suspect scheme could be brought under control. This broad definition of lottery could now become a catalyst for the growth of the very thing it was designed to discourage. Now that lotteries are legal in specific situations the supreme court might narrow its definition of lottery in order to have these various schemes declared illegal once more. The question remains as to whether the su-

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91. One lower court in New York did not apply the broad definition of lottery to a punchboard and found that the term lottery as commonly used did not include punchboards:

The word “lottery”, as commonly used and understood by popular usage, connotes a sale of tickets to various persons and after such sale, on a certain day a drawing is made of one or more numbers by lot, such numbers so drawn, being the winners of a prize, and the persons holding a ticket corresponding to such numbers being the winner of such prize and all other persons receiving nothing.

That is the popular usage of the word lottery and apparently that is what the Legislature had in mind.

It is the opinion of this court that a “punch board” is not a lottery, that it was not the intention of the Legislature to include “punch boards” in all of the statutes it passed against lotteries.
preme court will continue to apply the broad definition when construing the new lottery laws; however, it would appear that at the present time the attorney general's conclusion that punchboards are lotteries is well-founded and correct given the current definition of lottery.

V. ANALYSIS

The supreme court's decision in City Betterment and the attorney general's opinion on punchboards brings to light many problems with the Nebraska lottery laws. These two recent developments demonstrate that although the legislature had good intentions, the wording of the constitutional amendment and particularly sections 28-964.01 to 28-964.04 of the Nebraska Revised Statutes is far broader than the legislature anticipated. There is little legislative history on the constitutional amendment and the statutes, and as the supreme court said, what little there is, is "not clear." However, the legislative history does demonstrate two important aspects: First, the legislature did not contemplate large scale lotteries, and second, the legislature only intended to authorize raffles and gift enterprises, not the full gamut of schemes included within the term "lottery."

The supreme court's holding in City Betterment allows not only lotteries of the Big Green type, but also allows those of a much larger scale as long as they are conducted primarily for charitable or community betterment purposes. Because the term "proceeds" as used in the statutes has been interpreted to mean only net proceeds, and the term "promoter" has been interpreted to mean only the persons or organizations legally responsible for conducting the lottery, the supreme court's decision allows a nonprofit organization which operates a lottery to pay out salaries to the actual operators of the lotteries, ticket salesmen, and other agents. The only restric-

If the Nebraska Supreme Court were faced with the same situation, it too might determine that it was the legislature's intention to authorize only the common raffle and not all the schemes that fit within the broad elements of prize, chance, and consideration. See note 95 infra.
The holding in Trace was sharply criticized in an informal opinion issued by the New York Attorney General. In referring to the Trace decision the opinion stated:
The Court stated that there were no other decisions in the State on the subject. It overlooked, however, the interpretation placed upon the word "lottery" by the Courts of other States.
In those jurisdictions which have passed upon the subject a punchboard has been held to constitute a lottery. . . . [1963] Op. N.Y. ATT'Y GEN. 84 (citations omitted).
tion is that the expenses must be "reasonable and necessary." This interpretation arguably allows nonprofit organizations to hire full-time operators to operate full-time lotteries. Under section 28-964.04 of the Nebraska Revised Statutes, a city or town in Nebraska could likewise operate lotteries on a large scale.

The legislative history makes it clear that the constitutional amendment and the lottery statutes were aimed at legalizing two distinct areas. The first was the national sweepstakes-type contest. The second area that the amendment and the statutes were aimed at was local raffles of the type operated by churches and civic groups. There is no indication that the legislature anticipated lotteries on a large scale. It appears that the legislature only intended to authorize raffles where the time, effort, and services are donated in the name of charitable and community betterment activities—the type of raffle where the people of a community or organization donate their time to sell tickets and even possibly donate the prizes. The supreme court stated in *City Betterment* that an interpretation that "promoter" meant anyone advancing the lottery "would make it difficult, if not impossible, to hold a legal lottery except for a very small local lottery." The court also stated that "[t]o interpret the word [proceeds] to mean gross proceeds in the statute is to assume that the Legislature intended to require that except for prizes, all property, goods, services, and other expenses of any lottery must be donated, including advertising and printing of tickets." However, the legislative history reveals that this is exactly what the legislature intended. The legislature intended to authorize only the small local raffle where the greater majority of the expenses are donated. Although this appears to be the

92. Neb. Rev. Stat. § 28-964.04 (Reissue 1975). The wording of this section is quite similar to that of § 28-964.03:

Any county, city, or village is hereby authorized to establish and conduct lotteries when the proceeds of such lotteries are used solely for community betterment purposes and the awarding of prizes to participants: Provided, that no county, city, or village shall establish and conduct such a lottery until such course of action has been approved by a majority of the registered voters. . . .


93. 197 Neb. at 584, 250 N.W.2d at 606.

94. *Id.* at 583, 250 N.W.2d at 605.

95. As was stated earlier, the legislative history is lacking in clarity, but a few of the pertinent statements follow. Statements by the principal introducer, Senator Mahoney, concerning both L.B. 36, the 1967 bill to put the constitutional amendment before the people, and L.B. 691, the 1969 bill that implemented sections 28-964.01 to .05 of the Nebraska Revised Statutes are typical:

So I'm trying to reach two areas in this bill. One would be
intention of the legislature as expressed in the legislative history, can it be said that the legislature intended that cities, which are to liberalize and to broaden the entire contest-type situation so that Nebraska would have an opportunity to enter into many of the national contests; and the national organizations that send out the gift contest awards, that they would be able to take off of their printed entry blank the fact that Nebraska can't enter. The second provision on this is the stronger part—this is the easiest part that I just mentioned—the second part, if you'll go back a few years, certain charitable organizations, veterans groups—to bring it closer to home—at certain times throughout the year—the 4th of July—or some type as the Elks or Eagles, Veterans of Foreign Wars, or American Legion, have purchased a car or automobile and then have sold tickets, as we'd call a raffle, and on a certain date this is raffled off.

... it would allow Nebraskans to vote on November, 1968, the opportunity of doing something that people are doing anyway . . . . [B]ut my whole thought in it, through the bill, would be to allow those type of contests that veteran, religious, or other charitable organizations would have the opportunity to have these contests and to sell their tickets and use the funds for betterment projects . . . .

Hearings on L.B. 36 Before the Legislative Comm. on Revenue, 80th Leg., Minutes of Jan. 31, 1967, at 2-3 (remarks by Senator Mahoney). The second part of this constitutional amendment allows people in Nebraska for those Veteran's groups, American Legion and Foreign wars, or any other group or religious organization to have the opportunity for a gift enterprise such as a ticket that they might sell—the charitable organizations—veteran's organizations, possibly on an appliance, or definitely in the area that we have seen an automobile on a particular Holiday such as July 4th. So, my bill has two intentions, one to clarify the National scene, to put Nebraska back into the National contests that the other states enjoy, and the other is to allow the people to vote to make it legal for those veterans and other groups, charitable organizations that now do have this type of contests and it would be called gift enterprises.

[1967] Leg. Rec. 1520 (April 18, 1967) (remarks of Senator Mahoney). I would at least clarify the restrictions against these people from entering the national contests, and also in the gift enterprise or raffles that they have on a local basis.

Id. at 1645 (April 24, 1967) (remarks of Senator Mahoney).

L.B. 691 is a legislative bill which brings about the implementation of a constitutional amendment, which I sponsored in the session two years ago which would allow the particular state of Nebraska to legalize, concerning gift enterprises and this is the word that I used at the time and I use it today. It concerns the various people who on July 4 and Memorial Day, at the present time are having, as we might call it, raffles in another terminology, the sale of tickets for a particular benefit and it is only given in to those organizations who are charitable, fraternal and it extends my constitutional amendment into law . . . . This would allow only those organizations that are fraternal and those that are under veterans organizations and would include those towns or cities that would wish to put on July 4 raffles of cars or something
authorized to operate lotteries under section 28-964.04, must also have all the expenses and services donated? A city clearly could not operate a lottery on such a small scale. If the legislature intended only to authorize the very small raffle, as the legislative history indicates, its words as expressed in the statutes certainly did not indicate such an intention, and in fact conflict with this intention.96

The second important aspect the legislative history demonstrates is that the legislature did not intend to authorize lotteries such as punchboards. It would appear to have been the legislature's intention to authorize only gift enterprises and common raffles, even though the statutes and the constitution specifically state "lotteries, raffles, and gift enterprises." The confusion over the terms is shown in the legislative history where it was stated that raffles and lotteries have the same meaning.97 If the two terms had the similar to this nature . . . .

Hearing on L.B. 691 Before the Legislative Comm. on Government and Military Affairs, 2-3 (Minutes of Mar. 20, 1969) (remarks of Senator Mahoney).

96. From the legislative history it would appear that the purpose of the legislature was to only authorize the small locally operated raffle where most of the time and services are donated. But a city or town could certainly not operate such a raffle without paying for expenses. Of course the City Betterment decision now allows the cities, towns, and villages to pay for the reasonable and necessary expenses.


Many courts have also been confused as to the meaning of the two terms. It appears that a raffle is a species of the genus lottery. The Nebraska Supreme Court stated in State v. Omaha Motion Picture Exhibitors Ass'n, 139 Neb. 312, 297 N.W. 547 (1941), that, "[t]he term 'lottery' is generic in nature and best left without exact definition." Id. at 314, 297 N.W. at 549.

The distinction between a lottery and a raffle was probably best stated in United States v. Baker, 364 F.2d 107, 111 (3d Cir. 1966):

A lottery is a scheme for the distribution of a prize or prizes by lot or chance, the number and value of which is determined by the operator of the lottery. The simplest form of which is the well-known raffle wherein a prize is awarded to the person holding the ticket, the number or name upon which corresponds to that on the counterfoil or ticket stub drawn at random from a container in which have been placed the stubs of all the tickets distributed. A ticket, often referred to as a chance, is usually sold for a fixed price to the buyer.

same meaning in the minds of the legislators, why did they include both terms in the constitutional amendment and the statutes? The legislative history does not give the answer, and any hypothesis would be speculation. One thing is clear, the wording of the constitutional amendment and the statutes as they now stand arguably allows a variety of gaming schemes to be operated under the guise of charitable and community betterment. This result was clearly not foreseen by either the legislature or the citizens of Nebraska.

VI. CONCLUSION

The recent decision by the Nebraska Supreme Court in *State v. City Betterment Corp.*,98 and the opinion by the Nebraska Attorney General on punchboards,99 have exposed some confusing aspects and interesting problems with respect to the Nebraska lottery laws. Under the supreme court’s decision, a nonprofit organization may operate lotteries as long as its primary activities are conducted for charitable or community betterment purposes. Only the net proceeds after the payment of reasonable and necessary expenses must go to charity and community betterment, and the only promoter not allowed to make a profit is the organization which is legally responsible for the lottery’s operation. If the opinion of the attorney general is correct, these nonprofit organizations may conduct gaming schemes such as punchboards as well as common raffles. This clearly could sanction the operation of big time gaming in Nebraska. It is even foreseeable that churches and civic groups could engage in “casino” operations.

Although the legislative history behind the lottery laws lacks clarity in many respects, it is undisputable that large scale gaming was not anticipated by the legislature or the citizens of Nebraska. If the legislature’s purpose was to authorize large scale lotteries and gaming, the laws as they presently exist should stand; however, if the purpose was to only authorize the small local church raffle, the legislature should act quickly to rectify the situation. This could be accomplished by defining the terms as used in the statutes to reflect the legislature’s purpose, rather than leaving these definitions open for judicial interpretation.

Although the legislature has attempted to define lottery in the new Nebraska Criminal Code, the definition, which will take effect on July 1, 1978 unless changed by the legislature, lacks any real

limiting effect and is generally of little value. The legislature should therefore redefine the term "lottery." The terms "proceeds" and "promoter" should also be defined to reflect the intent of the legislature.

Lynn Parker Hendrix '78

100. At the time of the printing of this article the Nebraska Attorney General put together a rough draft of proposed amendments to the lottery laws. The section on nonprofit organizations reads as follows:

Any nonprofit organization holding a certificate of exemption under Internal Revenue Code, section 501, whose primary activities are conducted for charitable and community betterment purposes may conduct lotteries, raffles and gift enterprises. The gross proceeds of such activities may be used solely for charitable or community betterment purposes, awarding of prizes to participants, and of operating such lottery, raffle or gift enterprise; provided, that the expense of operating a lottery, raffle or gift enterprise to be paid out of the gross proceeds of any such scheme shall not exceed twenty-five percent of the gross proceeds of such scheme. For the purpose of this section, the expenses of operating a lottery shall include all costs associated with printing or manufacturing any items to be used or distributed to participants such as tickets or other paraphernalia, all office expenses, all promotional expenses, all salaries of persons employed to operate the scheme, any rental or lease expense, any fee paid to any person associated with the operation of a lottery, raffle or gift enterprise except that prizes awarded to participants shall not be included within the twenty-five percent limitation contained in this section.

This proposal retains the definition of lottery as contained in the new Nebraska Criminal Code. See notes 84-85 and accompanying text supra. Letter from Senator John W. DeCamp to Author (Nov. 30, 1977).