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# OHIO LEGISLATIVE SERVICE COMMISSION

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**To:** The Honorable Dave Greenspan  
Ohio House of Representatives

**From:** Cody Weisbrodt, Attorney *CW*

**Date:** March 26, 2019

**Subject:** State Lottery Commission's authority to offer sports betting

## **State Lottery Commission not prevented from offering sports betting**

You asked LSC for information on the State Lottery Commission's authority to operate sports betting under current Ohio Law. To briefly answer your question, it appears that nothing in the Ohio Constitution or the Lottery Law would prevent the State Lottery Commission from creating and operating a sports betting lottery. The Constitution generally is understood to prohibit gambling, but state-conducted lotteries are permitted so long as the entire net proceeds are deposited into a fund to benefit public education in Ohio. The Lottery Law grants broad authority to the Commission to adopt rules governing lottery games, and lotteries conducted under the Lottery Law are exempt from the Gambling Law. A sports betting lottery would be subject to the constitutional requirement that the entire net proceeds from the game be used to benefit education, and the Commission would have to adopt rules to govern the sports betting game. Further discussion can be found below.

### **Lotteries under the Ohio Constitution**

Article XV, Section 6 of the Ohio Constitution generally prohibits lotteries in Ohio. "Lottery" as used in the Constitution is not defined and thus subject to interpretation. The Ohio Supreme Court previously has interpreted the term "lottery" to mean a game in which consideration is given, a prize is awarded, and the winner of the prize is determined by chance.<sup>1</sup> This generally has been understood to mean that the Ohio Constitution broadly bans gambling of any kind in Ohio. However, the Constitution also provides three exceptions to this rule: (1) authorized state-conducted lotteries, (2) authorized and regulated bingo conducted by charitable organizations for charitable purposes, and (3) authorized casino gaming at four casino facilities.<sup>2</sup> Although the Court previously has noted that Article XV, Section 6 of the

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<sup>1</sup> *Westerhaus Co. v. Cincinnati*, 165 Ohio St. 327, 338-339 (1956).

<sup>2</sup> Ohio Const., art. XV, sec. 6.

Constitution is not self-executing generally, to the extent that it contains no penalties for violations of it, the Court has held that the provision is self-executing as a declarative limitation on the General Assembly's power to authorize gambling beyond that permitted by the Constitution.<sup>3</sup> Therefore, if sports betting is not a lottery conducted by a state agency, charitable bingo, or casino gaming, a court could hold that the General Assembly may not authorize it in statute.

### **Sports betting as an “authorized and state-conducted lottery”**

Because the term “lottery” is not defined in the Ohio Constitution, sports betting could potentially be conducted as part of the Ohio Lottery, provided that the State Lottery Commission has the authority to conduct a sports betting lottery. One neighboring state, West Virginia, has passed legislation legalizing sports wagering as a part of the West Virginia Lottery.<sup>4</sup> A sports betting lottery would be subject to the restrictions placed on the lottery in the Constitution. The Constitution allows the General Assembly to authorize an agency of the state to conduct lotteries, and requires that the entire net proceeds from the lottery be paid into a fund to support public education in Ohio.<sup>5</sup> Therefore, the Commission may be able to conduct a sports betting lottery in Ohio so long as the Commission is authorized to conduct the lottery and the net proceeds from sports betting are collected and distributed as the Constitution requires.

### **State Lottery Commission has broad authority to create lotteries**

It appears that nothing in the current Lottery Law would prevent the State Lottery Commission from creating and operating a sports betting lottery. The Lottery Law does not define the term “lottery,” and grants the Commission broad authority to adopt rules under which the state lottery is to be conducted.<sup>6</sup> For example, the Lottery Law permits the Commission to adopt rules addressing such broad topics as the type of lottery to be conducted, the prices of tickets in the lottery, and the “number, nature, and value of prize awards, the manner and frequency of prize drawings, and the manner in which prizes shall be awarded to holders of winning tickets.”<sup>7</sup> The Commission potentially could act under this authority to adopt rules creating a sports betting lottery, with the number, nature, and value of prize awards based on determinations made by lottery players as they relate to the performance of athletes or teams in sports events.

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<sup>3</sup> *City of Columbus v. Barr*, 160 Ohio St. 209 (1953).

<sup>4</sup> W.V. Acts 2018, S.B. 415, effective March 3, 2018.

<sup>5</sup> Ohio Const., art. XV, sec. 6(A).

<sup>6</sup> R.C. 3770.03.

<sup>7</sup> R.C. 3770.03(A).

## State lottery generally exempt from the Gambling Law

Sports betting as it is usually conducted with a player paying money for a chance to win a prize would be an illegal scheme of chance prohibited under the Gambling Law.<sup>8</sup> However, the Lottery Law specifically states that Chapter 2915 of the Revised Code, which contains the Gambling Law, “does not apply to, affect, or prohibit lotteries conducted pursuant to this chapter.”<sup>9</sup> Under this provision, schemes of chance like sports betting that would be illegal under Ohio’s Gambling Law are exempted from that law if conducted under the Lottery Law.

### Conclusion

Although the Ohio Constitution has been understood to prohibit gambling generally in Ohio, lotteries are permitted so long as the lottery is conducted by the state and the entire net proceeds from the lottery are deposited into a fund to benefit public education in Ohio. Because the Lottery Law grants broad authority to the State Lottery Commission to conduct lotteries and the lotteries are exempt from the Gambling Law, it appears that the Commission may be able to create and operate a sports betting lottery under Ohio law. The Commission would need to adopt rules to govern a sports betting lottery, and the entire net proceeds from the sports betting lottery would be required to be deposited into a fund to support public education in Ohio.

If you have questions about the contents of this memorandum, or want to discuss this issue further, feel free to contact me at [cody.weisbrodt@lsc.ohio.gov](mailto:cody.weisbrodt@lsc.ohio.gov) or (614) 728-9238.

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<sup>8</sup> R.C. 2915.01(C) and 2915.02(A)(2).

<sup>9</sup> R.C. 3770.03(C).