

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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January 17, 2003

Opinion No. 03-004

Ordinance prohibiting sale of lottery tickets

QUESTION

Whether a local government may pass an ordinance prohibiting the sale of lottery tickets anywhere within its jurisdiction?

OPINION

It is our opinion that unless and until the General Assembly enacts legislation implementing a state lottery, which would include authorization for the sale of lottery tickets statewide, a local government may enact an ordinance prohibiting the sale of lottery tickets within its jurisdiction.

ANALYSIS

You have asked whether a local government may enact an ordinance prohibiting the sale of lottery tickets anywhere within its jurisdiction. State law authorizes municipalities, among other things, to:

(22) [d]efine, prohibit, abate, suppress, prevent and regulate all acts, practices, conduct, businesses, occupations, callings, trades, uses of property and all other things whatsoever detrimental, or liable to be detrimental, to the health, morals, comfort, safety, convenience or welfare of the inhabitants of the municipality, and exercise general police powers;

(23) [p]rescribe limits within which business occupations and practices liable to be nuisances or detrimental to the health, morals, security or general welfare of the people may lawfully be established, conducted or maintained[.]

Tenn. Code Ann. § 6-2-201(22) and (23) (mayor-aldermanic charter). *See also* Tenn. Code Ann. § 6-19-101(22) and (23) (city manager-commission charter); § 6-33-101 (modified city manager-council charter); § 7-3-101 (metropolitan government); and § 5-1-118(c) (counties without zoning regulations in effect throughout the county).

However, it is well established that a municipality, by ordinance, may not contravene the established principles of the common law or the Constitution or the statutes of the State. *See Bartlett v. Hoover*, 571 S.W.2d 291, 292 (Tenn. 1978). Thus, whether a local government may enact an ordinance prohibiting the sale of lottery tickets within its jurisdiction depends upon whether such an ordinance would conflict with any state constitutional provision or state law.

Tenn. Code Ann. § 39-17-506 currently provides that “[a] person commits an offense who knowingly makes or aids in the making of any lottery. However, a person who owns or possesses in this state a lottery ticket originating from a state in which a lottery is lawful does not make or aid in the making of a lottery as prohibited by this section, if such ticket is not owned or possessed for the purpose of resale.” Pursuant to this statutory provision, the making of a lottery, including the sale of lottery tickets, is currently prohibited under state law. Therefore, a local ordinance prohibiting the sale of lottery tickets within the local government’s jurisdiction would not be in conflict and would be permissible.

This prohibition against the making of a lottery contained in Tenn. Code Ann. § 39-17-506 is derived from Article XI, Section 5 of the Tennessee Constitution. As a result of the November 5, 2002 election, that provision was amended and now provides as follows:

The Legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this State, except that the legislature may authorize a state lottery if the net proceeds of the lottery’s revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state. The excess after such allocations from such net proceeds from the lottery would be appropriated to:

- (1) Capital outlay projects for K-12 educational facilities;
- and
- (2) Early learning programs and after school programs.

Such appropriation of funds to support improvements and enhancements for educational programs and purposes and such net proceeds shall be used to supplement, not supplant, non-lottery educational resources for education programs and purposes.

All other forms of lottery not authorized herein are expressly prohibited unless authorized by a two-thirds vote of all members elected to each house of the General Assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time.

A state lottery means a lottery of the type such as in operation in Georgia, Kentucky and Virginia in 2000, and the amendment to Article XI, Section 5 of the Constitution of the State of Tennessee

provided for herein does not authorize games of chance associated with casinos, including, but not limited to, slot machines, roulette, wheels, and the like.

The state lottery authorized in this section shall be implemented and administered uniformly throughout the state in such manner as the legislature, by general law, deems appropriate.

(Emphasis added).

This amendment to Article XI, Section 5 creates an exception to the general prohibition against lotteries and authorizes the General Assembly to establish a state lottery. The language of the amendment makes it clear, though, that such exception is not self-executing and, instead, requires the legislature to implement a state lottery by general law. No such legislation has been enacted by the General Assembly. Thus, it is our opinion that unless and until the legislature enacts legislation implementing a state lottery, which would include authorization for the sale of lottery tickets statewide, a local government may enact an ordinance prohibiting the sale of lottery tickets within its jurisdiction.

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