Syllabus:

1. The definition of "lottery" as used in Article XV, Section 6, Ohio Constitution, includes bingo.

2. Bingo, and other lotteries except for the state lottery, are declared unlawful by Article XV, Section 6, Ohio Constitution; however, no criminal penalty is provided by R.C. Chapter 2915 for bingo operated solely for charitable purposes rather than for profit.

3. The exception from provisions of R.C. Chapter 2915 found in R.C. 2915.01(E) for a "scheme or game of chance designed to produce income solely for charitable purposes when the entire net income after deduction of necessary expenses is applied to such purposes" applies only to activity which applies all of its income, with the sole exception of necessary and reasonable expenses for operation and promotion of said activity, to purposes which are charitable.

4. The phrase "other place of public accommodation, business, amusement or resort" in R.C. 2915.04(A) refers

to places similar in nature to the terms "hotel, restaurant, tavern, store, arena, hall," which precede it in the statute; whether or not a particular place is "public" is a question of fact dependent upon the circumstances which actually govern and surround its use.

5. A corporation may not be formed for the purpose of operating bingo games because such purpose is unlawful under the Ohio Constitution.

: Stephan M. Gabalac, Summit County Pros. Atty., Akron, Ohio
: William J. Brown, Attorney General, January 30, 1975

Your request for my opinion relating to R.C. 2915.01, et q., may be summarized as follows:

1. Does the definition of lottery as used in Article XV, Section 6 of the Ohio Constitution include bingo?

2. If your answer to the above is in the affirmative, does Article XV, Section 6 make bingo unlawful?

3. What do the words "scheme or game of chance designed to produce income solely for charitable purposes when the entire net income after deduction of necessary expenses is applied to such purposes" as used in R.C. 2915.01(E) mean?

4. What is the meaning of the phrase "other place of public accommodation, business, amusement or resort" as used in R.C. 2915.04(A).

5. May a group form two corporations: one, a bingo operating company, and two, a charitable corporation to which the operating company would pay the money after deduction of "necessary expenses"?

At the outset, it is clear that the General Assembly has ated an anomaly by enacting R.C. 2915.01(E) in light of the stitutional prohibition against lotteries. Since there has ı and continues to be litigation pending in Ohio courts ırding "charitable bingo", I am constrained to confine this ıion to a general analysis of the statutory and constitutional ɪisions, while leaving specific situations to be determined local law enforcement officials and the courts according to facts and circumstances involved in individual cases.

Your first question asks if bingo is included in the defin-ın of lottery as used in Article XV, Section 6 of the Ohio ıtitution. As amended July 1, 1973, this provision reads as ows:

"Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State, except that the General Assembly may authorize an agency of the state to conduct lotteries, to sell rights to participate therein, and to award prizes by chance to participants, pro-

vided the entire net proceeds of any such lottery are paid into the general revenue fund of the State." (Emphasis added.)

This provision of the Ohio Constitution permits a single exception to its prohibition of lotteries--the operation of a lottery by the State of Ohio. The language of the 1973 amendment in no way changes the definition of the term "lottery". This term in Article XV, Section 6, is used in a generic sense, and Ohio courts have consistently held that the term includes the related games of keno and bingo. State v. Lisbon Sales Book Co., 176 Ohio St. 482 (1964), appeal dismissed, 379 U.S. 673 (1965); Columbus v. Barr, 160 Ohio St. 209 (1953); Nadlin v. Starick, 24 Ohio Op. 2d 272 (Summit Co. C.P. 1963); Wishing Well Club, Inc. v. Akron, 66 Ohio L. Abs. 406 (Summit Co. C.P. 1951); and Loder v. Canton, 65 Ohio L. Abs. 517 (Stark Co. C.P. 1951).

An example of the broad reach of the term "lottery" as used in Article XV, Section 6, is illustrated by Judge Herbert's statement in State v. Lisbon Sales Book Co., supra, at 486, that "Policy, numbers game and similar gambling activities are in the nature of lotteries".

Therefore in answer to your first question, it is my opinion that the definition of "lottery" as used in Article XV, Section 6, Ohio Constitution, includes bingo.

Your second question asks if Article XV, Section 6, makes bingo unlawful. Article XV, Section 6, is self-executing, prohibits lotteries, and limits the power of the General Assembly to legalize lotteries. In Columbus v. Barr, supra, the court discussed the effect of this prohibition in Syllabus 1 as follows:

"1. By reason of the provisions of Section 6, Article XV of the Ohio Constitution, the General Assembly is without power to legalize, either directly or indirectly, 'lotteries, and the sale of lottery tickets, for any purpose.' "

Previously, in Kraus v. Cleveland, 89 Ohio App. 504 (1950), appeal dismissed, 155 Ohio St. 98 (1951), the Court of Appeals of Cuyahoga County was presented the question of whether the City of Cleveland could license bingo for charity. The City argued that Article XV, Section 6, was not self-executing and therefore could not affect the validity of Cleveland's ordinance which licensed the conduct of schemes of chance operated for charitable purposes. In rejecting this contention, the Court stated at 510 - 511 as follows:

"That case [State v. Parker, 150 Ohio St. 22 (1948)] does not hold that Section 6, Article XV of the Ohio Constitution, is not self-executing. In fact from the full context of the opinion it is clearly indicated that such section is self-executing to the extent that it discloses the public policy of the state to be that 'lotteries, and the sale of lottery tickets, for any purpose whatsoever, shall forever be prohibited in this state.' While there can be no criminal prosecution of one who violates the provisions of Section 6, Article XV of the Constitution, with respect to acts that do not come within the provisions of Section 13064, General Code, until the legislature provides therefor, there being

> no common-law crimes in Ohio, certainly by the same token neither the Legislature of the state nor the council of a municipal corporation has the power to authorize for any purpose, charitable or otherwise, the right to conduct a lottery or sell lottery tickets in direct conflict with such constitutional provision. Such an act or ordinance would be unconstitutional and void." (Emphasis added.)

See also Nadlin v. Starick, supra.

However, cases dealing with licensing of bingo must be distinguished from the present R.C. 2915.02(A) which is a criminal provision rather than a licensing provision. R.C. 2915.02(A) reads as follows:

> "No person shall***(2) Establish, promote, or operate, or knowingly engage in conduct which facilitates any scheme or game of chance conducted for profit;"

R.C. 2915.01(E) defines "scheme or game of chance conducted for profit" as:

> "'Scheme or game of chance conducted for profit' means any scheme or game of chance designed to produce income for its backer, promoter or operator, but does not include any scheme or game of chance designed to produce income solely for charitable purposes when the entire net income after deduction of necessary expenses is applied to such purposes."

In State v. Parker, supra, the Ohio Supreme Court upheld the validity of the Kane amendment to the criminal penalty for engaging in a lottery, G.C. 13064. That amendment added the phrase "for his own profit" to G.C. 13064:

> "Whoever, for his own profit, establishes, opens, sets on foot, carries on, promotes, makes, draws or acts as "backer" or "vendor" for or on account of a lottery or scheme of chance, by whatever name, style, or title denominated or known, whether located or to be drawn, paid or carried on within or without this state, or by any of such means, sells or exposes for sale anything of value, shall be fined not less than fifty dollars nor more than five hundred dollars and imprisoned not less than ten days nor more than six months."

In upholding the constitutionality of this provision, the Court stated at 25 - 26 as follows:

> "Section 13064, General Code, is not in conflict but, so far as it goes, is in harmony with the provisions of the Constitution referred to. It does not authorize or give validity to any gambling transaction. It does impose a fine and imprisonment upon anyone who, in the capacity stated, engages in any of the transactions enumerated in that section 'for his own profit.' "

See also Kraus v. Cleveland, supra.

In enacting R.C. Chapter 2915, the General Assembly has exempted certain types of gambling from the penalties imposed. The language of this chapter does not affirmatively authorize lotteries; it is different from the regulatory plans voided in Kraus v. Cleveland, supra, and Nadlin v. Starick, supra. Bingo is still prohibited by Article XV, Section 6, but the legislature has not provided a penalty for certain violations of Article XV, Section 6. Therefore it is my opinion that all lotteries, including bingo, in Ohio except those conducted by the state are still prohibited by Article XV, Section 6, regardless of whether they are carried on for a charitable purpose; but that there is no penalty provided for charitable bingo, as defined in R.C. 2915.01(E).

Your third question relates to the meaning of the exception from the provisions of R.C. Chapter 2915 provided in R.C. 2915.01(E) for a "scheme or game of chance designed to produce income solely for charitable purposes when the entire net income after deduction of necessary expenses is applied to such purposes". (Emphasis added.)

From the wording of the exception it is clear that the General Assembly excluded from provisions of R.C. Chapter 2915 those activities designed to produce funds for charitable purposes, but only in particular circumstances. As discussed above in my answer to your first and second questions, this statute did not and cannot make any lottery, including charitable bingo, lawful because lotteries are prohibited by the Ohio Constitution.

No definition of "charitable purpose" is provided in Title 29 of the Revised Code. This same term, however, is defined in Ohio tax law to denote which sales are exempt from sales tax. R.C. 5739.02(B)(12) provides that the sales tax does not apply to:

> "Sales of tangible personal property to churches and to organizations not for profit operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation.
>
> "Charitable purposes means the relief of poverty, the improvement of health through the alleviation of illness, disease, or injury, the operation of a home for the aged, as defined in section 5701.13 of the Revised Code, the promotion of education by an institution of learning which maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum, or the promotion of education by an organization engaged in carrying on research in, or the dissemination of scientific and technological knowledge and information primarily for the public.
>
> "Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business." (Emphasis added.)

See also R.C. 5709.121.

I recently had occasion to consider the definition of charity and concluded that a municipality-owned and operated dental clinic which treats indigent residents of the city, but which is reimbursed by the Department of Welfare for some such treatment, is a charitable operation, provided the city derives no profit from the clinic. Opinion No. 74-058, Opinions of the Attorney General for 1974. In that Opinion, I relied upon Planned Parenthood Ass'n. v. Tax Comm'r., 5 Ohio St. 2d 117, 120 (1966) which states as follows:

> "***When the last syllable has been uttered in the quest to define charity (and the attempts have been legion) this hallmark will survive: charity is the attempt in good faith, spiritually, physically, intellectually, socially and economically to advance and benefit mankind in general, or those in need of advancement and benefit in particular, without regard to their ability to supply that need from other sources and without hope or expectation, if not with positive abnegation, of gain or profit by the donor or by the instrumentality of the charity."

See also Carmelite Sisters, St. Rita's Home, v. Board of Review, 18 Ohio St. 2d 41 (1969).

The language of R.C. 2915.01(E) provides an exemption from the penalties upon any "scheme or game of chance conducted for profit" only for "any scheme or game of chance designed to produce income solely for charitable purposes...." (Emphasis added.)

This language is quite similar to that in R.C. 5739.02(B)(12), "operated exclusively for charitable purposes", which has been construed by the courts to apply only to an organization which is purely charitable in nature and not to one which is partly charitable. Thus, where a fraternal organization performs some charitable endeavors as part of its overall program, it was held not to be eligible for exemption from sales tax. See In re Application of American Legion, 20 Ohio St. 2d 121 (1969); Denison University v. Board of Tax Appeals, 173 Ohio St. 429 (1962); In re Application of American Legion, 151 Ohio St. 404 (1949); Wilson v. Licking Aerie, 104 Ohio St. 137 (1922). By analogy, a similar interpretation of the term "solely for charitable purposes" would appear to exclude a dual purpose activity from the exemption in R.C. 2915.01(E). A determination of whether any one particular activity is solely for charitable purposes, however, is a factual question, dependent on the individual circumstances and the nature of the activity and organization.

By considering the language "solely for charitable purposes" with the further requirement "when the entire net income after deduction of necessary expenses is applied to such purposes" (emphasis added), it becomes apparent that the exemption also does not encompass an activity where an unreasonable amount of proceeds is allocated to promotional and operational expenses rather than the actual charitable purposes. Although R.C. Chapter 2915 does not provide any definition of "necessary expenses", the legislative history of the New Criminal Code indicates the legislative intent to permit only reasonable expenses. The Summary

of Technical Committee Comments to Am. Sub. H.B. 511 - The New Ohio Criminal Code, Chapter 2915, 25, 26 (1973) states:

> "'Schemes of chance' and 'games of chance' are defined substantially in terms of existing case law. See, e.g. Westerhaus Co. v. Cincinnati, 165 Ohio St. 327, 59 O.O. 428, 135 N.E.2d 318 (1956); Kroger Co. v. Cook, 24 Ohio St. 2d 170, 53 O.O.2d 382, 265 N.E.2d 780 (1970). The definition expressly excludes schemes or games of chance designed to produce income for charity, provided the entire net income after deduction of necessary expenses is applied to a charitable purpose. For example, Friday night bingo conducted by a church would not be for profit, even though the church grosses, say, $1,000 and nets $850 after paying for necessary supplies and services, provided the entire $850 is applied to the missionary fund or other legitimate, charitable use. On the other hand, if a promoter operates a purportedly charitable raffle which grosses $10,000 and pays, say, $50 to a bona fide charity after deducting $50 for printing the tickets and $9,900 for the promoter's salary, the true 'net' is manifestly not given to charity. If the expenses are unreasonable under the circumstances, they cannot be necessary. Also, the scheme which pays an otherwise reasonable net income to a phony or questionable charity cannot be said to be conducted for charitable purposes * * *." (Emphasis added.)

What is reasonable depends upon the circumstances of each case, and it is therefore impossible for me to incorporate into this Opinion any fixed answers which can be universally applied to all cases. However, examination of specific cases where courts have considered the issue of what are reasonable expenses as part of a charitable fund-raising activity, does provide some general indicia which can be applied, where proper, to determine whether an activity is exempted by R.C. 2915.01(E) from the penalties of R.C. Chapter 2915.

Although there are no reported Ohio decisions in this area, a search of the law in other jurisdictions reveals several cases which have dealt with the issue. In the case of People v. Stone, 24 N.Y. Misc. 2d 884, 197 N.Y. Supp. 2d 380 (1959), the court, in referring to a situation in which the Police Benevolent Association hired a professional solicitor and paid him 45% of his collections, stated at 24 N.Y. Misc. 2d 885 that:

> "* * *philanthropy should be as free as possible from the hard and sometime avaricious bargains of the market place. The money-changers are not entitled to invade and control the temple of charity. It is, therefore, my opinion that -- absent special circumstances to justify it -- the charge made by the defendant, of 45 cents for every dollar collected, is grossly excessive and that his failure to inform the contributing public of this percentage arrangement is a fraud * * *. The fact that the group which hired the defendant is willing to receive but 55 cents on the dollar is, no doubt, a factor that the court should take into account. But the interests of the citizens who are asked for and urged to make contributions to this organization are not to be ignored."

The Iowa Supreme Court, in Jones v. American Home Finding Association, 191 Iowa 211, 182 N.W. 191 (1921), stated that a diversion of one-half of the funds collected to the solicitor was against public policy. In People v. National Cancer Hospital of America, 200 N.Y. Misc. 363, 102 N.Y. Supp. 2d 103 (N.Y. Co. Sup. Ct. 1951), the court enjoined a charitable solicitation campaign holding that failure to disclose the percentage of each contribution going to administrative costs constituted fraud. The court states at 200 N.Y. Misc. 367 that:

> "* * *. No general rule can be laid down as to what percentage of cost might reasonably be employed in any appeal for funds so as not to render untruthful a representation that the contribution is designed for the specified charitable purpose. However, it seems clear to the court that where only 18% of the contribution (or even 36% if we accept the unsupported statement of defendant Levien) remains available for the charity, a representation is false when it states that all this money is going for that purpose without disclosing the amount of the deductions."

The New York Court of Appeals in People v. Gellard, 296 N.Y. 516, 68 N.E.2d 600 (1946), affirmed, without opinion, a lower court conviction for conspiracy to commit fraud where it was found that the fact that only 50% of a charitable solicitation actually went for the charitable purpose, the rest going for the solicitors' salaries, commission and profit, was evidence that the enterprise was not charitable but commercial. The Florida Supreme Court in Finlay v. Florida, 152 Fla. 396, 12 So. 2d 112 (1943), upheld a conviction for false pretenses where a solicitor represented that all funds would go to the charity when in fact three-fourths of each contribution was retained by the solicitor.

Although none of these decisions involves a fund-raising activity utilizing methods at which R.C. Chapter 2915 is directed, similar principles would apply in determining whether an activity falls within the exemption of R.C. 2915.01(E). Thus, if the expenses of operating a scheme or game of chance are unreasonable, the exemption would not apply and the activity would be subject to any provision of R.C. Chapter 2915 applicable to a "scheme or game of chance conducted for profit".

Therefore it is my opinion that the exemption provided in R.C. 2915.01(E) for a "scheme or game of chance designed to produce income solely for charitable purposes when the entire net income after deduction of necessary expenses is applied to such purposes", applies only to activity which applies all of its income, with the sole exception of necessary and reasonable expenses for operation and promotion of said activity, to purposes which are charitable.

Your fourth question concerns a definition of the phrase "other place of public accommodation, business, amusement or resort," as used in R.C. 2915.04. That section reads as follows:

> (A) "No person, while at a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amuse-

ment, or resort shall make a bet or play any game of chance.

(B) No person, being the owner or lessee, or having custody, control, or supervision of a hotel, restaurant, tavern, store, arena, hall, or other place of public accommodation, business, amusement, or resort shall recklessly permit such premises to be used or occupied in violation of division (A) of this section.

(C) This section does not prohibit conduct in connection with gambling expressly permitted by law.

(D) Whoever violates this section is guilty of public gaming, a minor misdemeanor. If the offender has previously been convicted of any gambling offense, public gaming is a misdemeanor of the fourth degree.

(E) Premises used or occupied in violation of division (B) of this section constitute a nuisance subject to abatement pursuant to sections 3767.01 to 3767.99 of the Revised Code."

R.C. 2915.04 prohibits making a bet or playing a game of chance upon premises described in R.C. 2915.04(A) and (B). R.C. 2915.01(B) defines "bet" as "...the hazarding of anything of value upon the result of an event, undertaking, or contingency, but does not include a bona fide business risk." R.C. 2915.01(D) defines "game of chance" as "...poker, craps, roulette, a slot machine, a punch board, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely or wholly by chance."

Therefore, all those activities defined in R.C. 2915.01(B) ("bet") and R.C. 2915.01(D) ("game of chance") are illegal if carried on in premises described in R.C. 2915.04(A) and (B), unless such activities are in connection with gambling expressly permitted by law. It should be noted that R.C. 2915.04 does not distinguish between activity conducted for charitable purposes and activity conducted for profit. Thus, for example, the operation of slot machines or any other game of chance even for a solely charitable purpose in a place of public accommodation is proscribed by R.C. 2915.04. However, the operation of a pari-mutuel betting scheme is not therein made illegal since it is expressly permitted by law elsewhere in the Revised Code. See Summary of Technical Committee Comments to Am Sub H.B. 511 - The New Ohio Criminal Code, Chapter 2915, 26 (1973).

Nowhere in Title 29 of the Revised Code is there a definition of the term "place of public accommodation, business, amusement or resort". Revised Code 4112.01(I) does define a "place of public accommodation" for purposes of R.C. Chapter 4112, Ohio's laws against discrimination. This provision reads as follows:

"(I) 'Place of public accommodation' means any inn, restaurant, eating house, barber shop, public conveyance by air, land, or water, theater, store, or other place for the sale of merchandise, or any other place of public accommodation or amusement where the accommodation, advantages, facilities, or privileges thereof are available to the public."

As a civil remedial rather than penal statute, the Ohio Civil Rights Commission has been able to give the phrase "place of public accommodation" as used in the civil rights law a broad interpretation and as such has held that both a cemetery and a trailer park constitute a place of public accommodation. See Ohio Civil Rights Commission v. Lysyj, 38 Ohio St. 2d 217 (1974); In re Rose Hill Securities Company, 8 Race Relations Law Reporter 749, 754 (Ohio Civil Rts. Commission Case No. 7, May 17, 1963).

Title 29, however, is a criminal statute which must be strictly construed as was former R.C. 2901.35, a criminal statute prohibiting discrimination in places of public accommodation.

R.C. 2901.35 read:

> "No proprietor or his employee, keeper, or manager of an inn, restaurant, eating house, barber shop, public conveyance by air, land, or water, theater, store, or other place for the sale of merchandise, or any other place of public accommodation or amusement, shall deny to a citizen, except for reasons applicable alike to all citizens and regardless of color or race, the full enjoyment of the accommodations, advantages, facilities, or privileges thereof, and no person shall aid or incite the denial thereof.***"

As in Title 29, R.C. 2901.35 did not contain a specific definition of its general phrase "place of public accommodation or amusement". Therefore, in order to interpret the statute, the courts utilized the rule of construction known as ejusdem generis. In Smilack v. Bowers, 167 Ohio St. 216 (1958), the Supreme Court of Ohio, in discussing this maxim of statutory interpretation, stated at 218 as follows:

> "***[W]here general words are used in a statute preceded or followed by words of a particular and specific meaning, such general words are to be limited to embrace those items of the same general kind or class as the ones specifically mentioned."

By applying this rule, the courts held that a public dancing pavilion, Youngstown P. & F. St. Ry. v. Tokus, 4 Ohio App. 276 (1915); a motion picture theater, Guy v. Tri-State Amusement Co. 7 Ohio App. 509 (Mahoning Co. Ct. App. 1917); a public tavern, Puritan Lunch Co. v. Foreman, 29 Ohio Ct. App. 289 (Summit Co. Ct. App. 1918); a confectionary store and ice cream parlor, Fowler v. Benner, 13 Ohio N.P. (n.s.) 313 (Cuyahoga Co. C.P. 1912); constituted places of public accommodation or amusement but a dentist's office was not such an entity, Rice v. Rinaldo, 44 Ohio Op. 286 (Montgomery Co. C.P. 1950) aff'd 67 Ohio L. Abs. 183 (1951) for purposes of said statute. If it is possible to ascertain a pattern from these cases, it appears that most facilities which were open to the general public and offered some form of service, merchandise, or entertainment, fell within the statute's purview.

In the case of R.C. 2915.04(A), the words of particular and specific meaning that precede the general phrase "other place of public accommodation, business, amusement, or resort", are "hotel, restaurant, tavern, store, arena, hall". The application

of the maxim ejusdem generis would restrict application of the general phrase in question to entities of a similar nature as those listed. Although no case law exists interpreting R.C. 2915.04(A), it can be noted that the specific words preceding the general phrase in the statute are similar to the ones used in former R.C. 2901.35. One major difference is the addition of the word "hall" to R.C. 2915.04(A). This term, defined by Black's Law Dictionary as a "building or room of considerable size and used as a place for the meeting of public assemblies, conventions, courts, etc; as, the city hall, town hall", is a much broader term than any other word used in either statute and arguably would encompass any room or building in which a public gathering is held. Thus, despite the strict interpretation which must be applied to this statute, it appears that the same general analysis applicable to former R.C. 2901.35 is probably also applicable to R.C. 2915.04(A).

I must emphasize, however, that it is impossible to provide an exact definition because of the lack of a statutory definition. Whether a particular entity falls within the meaning of the phrase "a place of public accommodation, business, amusement or resort" must be determined by the particular circumstances which actually govern and surround its use. cf. Cleveland v. Carney, 172 Ohio St. 189 (1961). For example a facility which is actually open to the public may cloak itself with some of the appearances of a private place in order to circumvent the legal restrictions on public places. See Gillespie v. Lake Shore Golf Club, Inc., 56 Ohio L. Abs. 222 (Cuyahoga Co. Ct. App. 1950). On the other hand, not all seemingly public places may fall within the class of entities similar to those listed. Therefore, in answer to your question regarding the meaning of the phrase "other place of public accommodation, business, amusement or resort", it is my opinion that it refers to places such as those enumerated in the statute and whether or not a particular place is "public" is a question of fact dependent upon the circumstances which actually govern and surround its use.

Finally you ask if a group can form two corporations, one a bingo operating company and the other a charitable corporation to which the operating company would pay the money after deducting fees and expenses.

The purposes for which a corporation may be formed must be lawful. R.C. 1701.03 states as follows:

> "A corporation may be formed for any purpose or purposes, other than for carrying on the practice of any profession, for which natural persons lawfully may associate themselves, provided that when there is a special provision in the Revised Code for the formation thereunder of a designated class of corporations, a corporation of such class shall be formed thereunder. A corporation for the erection, owning, and conducting of a sanitarium for receiving and caring for patients, medical and hygienic treatment of patients, and instruction of nurses in the treatment of disease and in hygiene is not forbidden by this section." (Emphasis added.)

In answer to your second question, I stated that Article XV, Section 6, Ohio Constitution, makes bingo unlawful. It is therefore my opinion that a corporation may not be formed to operate bingo.

In specific answer to your questions, it is my opinion and you are so advised that:

1. The definition of "lottery" as used in Article XV, Section 6, Ohio Constitution, includes bingo.

2. Bingo, and other lotteries except for the state lottery, are declared unlawful by Article XV, Section 6, Ohio Constitution; however, no criminal penalty is provided by R.C. Chapter 2915 for bingo operated solely for charitable purposes rather than for profit.

3. The exception from provisions of R.C. Chapter 2915 found in R.C. 2915.01(E) for a "scheme or game of chance designed to produce income solely for charitable purposes when the entire net income after deduction of necessary expenses is applied to such purposes" applies only to activity which applies all of its income, with the sole exception of necessary and reasonable expenses for operation and promotion of said activity, to purposes which are charitable.

4. The phrase "other place of public accommodation, business, amusement or resort" in R.C. 2915.04(A) refers to places similar in nature to the terms "hotel, restaurant, tavern, store, arena, hall," which precede it in the statute; whether or not a particular place is "public" is a question of fact dependent upon the circumstances which actually govern and surround its use.

5. A corporation may not be formed for the purpose of operating bingo games because such purpose is unlawful under the Ohio Constitution.