

OPINION NO. 74-057

Syllabus:

The State Lottery Commission may, by arrangement with the Ohio Expositions Commission provide for (a) the sale of lottery tickets, (b) drawings to determine state lottery prize winners, and (c) the award of state lottery prizes at the 1974 Ohio State Fair.

To: Victor Lucas, General Manager, Ohio Expositions Commission, Columbus, Ohio

By: William J. Brown, Attorney General, July 18, 1974

Your request for my opinion reads as follows:

"On behalf of the Ohio Expositions Commission, I respectfully request a formal Attorney General's Opinion as to the legality of the following proposals:

"1. Staging, by the State Lottery Commission, before a Grandstand audience, on August 29, 1974, at the 1974 Ohio State Fair, the drawing to determine the prize winners from among those lottery ticket purchasers from the week of August 20-27;

"2. Again, on August 29, 1974, and subsequent to the drawing again, staging a second drawing to determine cash awards to be distributed among 6 to 12 semi-finalists who will have been previously chosen and who will be present and perhaps participating in this second drawing at the Fairgrounds;

"3. For approximately two hours prior to and during the aforementioned drawings, having members of the Ohio Expositions Commission's staff sell currently valid lottery tickets to persons in attendance at the Fair. Persons purchasing these lottery tickets will, it is proposed, become eligible for something akin to 'door prizes', with the winners to be selected by drawing subsequent to the drawings outlined above. The door prizes will consist of such things as automobiles and other merchandise. The sale of these particular lottery tickets will end upon conclusion of the aforementioned drawing ceremonies."

Statutory authority for the operation of the new state lottery is outlined in R.C. Chapter 3770. The State Lottery Commission, created by R.C. 3770.01, is directed in R.C. 3770.03 to promulgate rules and regulations for the conduct of the lottery. That Section provides in pertinent part:

"The state lottery commission shall promulgate rules and conditions under which a state-wide lottery may be conducted. Subjects covered in such rules shall include but need not be limited to:

"(A) The type of lottery to be conducted;

"(B) The prices of tickets in the lottery;

"(C) The number and size of prize disbursements, the manner and frequency of prize drawings, and the manner in which payment shall be made to holders of winning tickets;

"(D) The locations at which lottery tickets may be sold, the manner in which they are to be sold, and the licensing of lottery sales agents;

"(E) The manner in which lottery sales revenues are to be collected;

"(F) The amount of compensation to be paid licensed lottery sales agents;

"(G) All other areas relating to the efficient and economical operation and administration of a statewide lottery consonant with the public interest.

" * * * * *
 (Emphasis added.)

In addition, R.C. 3770.02 authorizes the director of the State Lottery Commission to make arrangements for any person to perform such functions and services in connection with the operation of the lottery as he may deem necessary to carry out R.C. Chapter 3770. It follows that the Commission and its director are vested with general authority to provide for the operation of the lottery, including such aspects as the sale of lottery tickets as well as prize drawings.

Your specific questions require attention to R.C. 1711.09 which states that:

"County agricultural societies, independent agricultural societies and the Ohio expositions commission shall not permit during [a] fair, or for one week before or three days thereafter, any dealings in spirituous, vinous, or malt liquors, or at any time allow or tolerate immoral shows, lottery devices, games of chance, or gambling of any kind, including pool selling and paddle wheels, anywhere on the fairgrounds; and shall permit no person at any time to operate any side show, amusement, game, or device, or offer for sale any novelty by auction or solicitation, on such fairground who has not first obtained from the director of agriculture such license as is provided by section 1711.11 of the Revised Code.

" * * * * *

The issue to be resolved then is whether R.C. 1711.09 applies to activities related to the conduct of the state lottery, so as to prohibit prize drawings or the sale of lottery tickets on the fairgrounds. Such a conclusion must be arrived at unless it is determined that the General Assembly, in authorizing the Commission to provide for the manner and frequency of prize drawings, intended such general authority to operate as an exception to the specific prohibition in R.C. 1711.09.

With respect to conflicts between statutes, R.C. 1.51 provides:

"If a general provision conflicts with a special or local provision, they shall be con-

strued, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail."

The above language codifies a series of decisions recognizing a presumption that specific statutes are not impliedly repealed by the enactment of a later general statute. See, for example, McDermott v. Irwin, 148 Ohio St. 67, 69 (1947); State v. Jackson, 36 Ohio St. 281, 286 (1880). However, it has also been held that in determining whether an earlier special provision has been repealed, either in whole or in part, it is necessary to consider any change in underlying constitutional provisions between the earlier enactment and the later general statute. Ex parte Van Hagan, 25 Ohio St. 426, 430 (1894). And it has been held that when the General Assembly of Ohio has entered upon a general policy of legislation, general statutes declaring that policy repeal by implication all other statutes in conflict therewith. The State, ex rel. Enos v. Stone et al., 92 Ohio St. 63, 66, 69 (1915).

At the time R.C. 1711.09 was amended in 1968 to forbid lottery devices and gambling of any kind on fairgrounds of the Ohio Expositions Commission, Article XV, Section 6, Ohio Constitution, prohibited all forms of lotteries in this state. The language of R.C. 1711.09 reflected this prohibition. On this point it should be noted that my predecessor ruled in Opinion No. 1082, Opinions of the Attorney General for 1933, that G.C. 9884-4 (R.C. 1711.09), which at that time prohibited county agricultural societies from allowing gambling of any kind on their fairgrounds, did not prohibit pari-mutuel wagering. He reasoned that such activities were made legal by the enactment of G.C. 1079-8 (R.C. 3769.08) and were, therefore, not subject to existing statutory prohibitions.

In the general election of 1973 the voters of Ohio approved an amendment to Article XV, Section 6, Ohio Constitution. That Section now reads:

"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, provided the entire net proceeds of any such lottery are paid into the general revenue fund of the state. (1973 Amendment emphasized.)

The constitutional prohibition against state conducted lotteries having been eliminated, the General Assembly enacted Am. H.B. 990, eff. 11-21-73, to provide for the state lottery, granting the State Lottery Commission broad rule-making powers in all "areas relating to the efficient and economical operation and administration of a statewide lottery consonant with the public interest." R.C. 3770.03(G). It is clear then that the attitude of the State of Ohio toward state operated lotteries has changed markedly since the enactment of R.C. 1711.09 to prohibit lotteries on various fairgrounds. In line with the above discussed principles, that statutes must be construed consistent with the

constitutional provisions they are designed to effect, it follows that R.C. 1711.09 does not operate to restrict the sale of state lottery tickets, prize drawings for the state lottery, or the distribution of monetary awards to state lottery prize winners, if conducted by the State Lottery Commission pursuant to R.C. Chapter 3770, on the fairgrounds of the Ohio Expositions Commission.

In answer then to your first two questions, the State Lottery Commission may provide, by agreement with the Ohio Expositions Commission, for drawings to be held at the 1974 Ohio State Fair to determine prize winners in the state lottery.

With respect to your third question, I would first note that R.C. 3770.08(B) prohibits persons other than licensed lottery sales agents from selling lottery tickets. Therefore, the eligibility of staff members of the Ohio Expositions Commission's staff to sell lottery tickets under the proposed plan is subject to the provisions of R.C. 3770.05 concerning the licensing of lottery sales agents. However, properly licensed lottery sales agents may sell lottery tickets at the Ohio State Fair pursuant to an agreement with the Ohio Expositions Commission.

Although the third question is not absolutely clear, it implies, and I assume, that any "door prize" drawing would be conducted by the State Lottery Commission pursuant to R.C. Chapter 3770 and the rules adopted by the State Lottery Commission under R.C. 3770.03. Based on this assumption, and the reasoning above applied, R.C. 1711.09 does not operate to restrict such drawing on the fairgrounds of the Ohio Expositions Commission.

Going beyond the type of drawing, your third question also contemplates award of "door prizes" in the form of merchandise to winners. Although the question is, in the first instance, one for the State Lottery Commission, and is not before me at this time, it appears that the State Lottery Commission is only authorized by R.C. Chapter 3770 to award money prizes. Throughout that Chapter, and particularly in R.C. 3770.07, the statute refers to "prize disbursement," the "payment" of prize awards, and "prize money", all of which would contemplate a monetary prize, as opposed to the award of merchandise.

In specific answer to your questions, it is my opinion, and you are hereby advised, that the State Lottery Commission may, by arrangement with the Ohio Expositions Commission provide for (a) the sale of state lottery tickets, (b) drawings to determine state lottery prize winners, and (c) the award of state lottery prizes at the 1974 Ohio State Fair.