

# CONSTITUTION OF WEST VIRGINIA

## ARTICLE VI

### The Legislature

## **Lotteries; Bingo; Raffles; County Option**

§36. The legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets in this State; except that the legislature may authorize lotteries which are regulated, controlled, owned and operated by the State of West Virginia in the manner provided by general law, either separately by this State or jointly or in cooperation with one or more other states and may authorize state-regulated bingo games and raffles for the purpose of raising money by charitable or public service organizations or by the State Fair of West Virginia for charitable or public service purposes: Provided, that each county may disapprove the holding of bingo games and raffles within that county at a regular, primary or special election but once having disapproved such activity, may thereafter authorize the holding of bingo games and raffles, by majority vote at a regular, primary or special election held not sooner than five years after the election resulting in disapproval that all proceeds from the bingo games and raffles be used for the purpose of supporting charitable or public service purposes; and that the legislature shall provide a means of regulating the bingo games and raffles so as to ensure that only charitable or public service purposes are served by the conducting of the bingo games and raffles.

**Editor's notes.** - The amendment to this section was proposed by Senate Joint Resolution No. 3, 1983 Regular Session, and ratified on November 6, 1984.

**Purpose.**-- This section provides an exception to the prohibition against lotteries to allow the operation of a lottery which is regulated, controlled, owned and operated by the State of West Virginia in a manner provided by general law. State ex rel. Mountaineer Park v. Polan, 438 S.E.2d 308 (W.Va. 1993).

**Delegation of certain lottery operations constitutional.** - The general law of the State Lottery Act, which calls for the delegation of certain lottery operations so as to effectuate a highly efficient lottery system and the delegation of operational duties to Mountaineer Park pertaining to Mountaineer Magic® video lottery system is constitutionally permissible, pursuant to the "general law" as embodied in the State Lottery Act. Op.Att'y.Gen., Feb. 14, 1991. No. 12

**Unconstitutional delegation of authority.** -- A general delegation of authority by the legislature to the lottery commission under §29-22-9(b)(2), authorizing it to promulgate rules and regulations with regard to "Electronic video lottery systems," is clearly not a sufficient statutory standard which would vest the lottery commission with power to include electronic gaming devices, such as electronic video lottery, as part of the operations of the state lottery; to hold otherwise would violate this section. State ex rel. Mountaineer Park v. Polan, 438 S.E.2d 308 (W.Va. 1993).

Both §29-22-5(a)(3) and §29-22-9(c) allow the lottery commission to select those common state-run lottery games which were included in a lawful delegation of authority by the legislature, and which can be operated in accordance with the exception created under this section.

Thus, because the legislature has not enacted general laws for the regulation, control, ownership and operation of electronic video lottery, and because the legislature failed to prescribe adequate standards in the State Lottery Act to guide the lottery commission in the exercise of the power conferred upon it with respect to electronic video lottery, the lottery commission was without authority under the constitution to establish electronic video lottery. State ex rel. Mountaineer Park v. Polan, 438 S.E.2d 308 (W.Va. 1993).

**Authorized lottery operation.** - The prohibition found in §61-10-1 would not apply to Mountaineer Magic® video lottery system because the system is an "authorized operation" of the Lottery Commission within the meaning of the State Lottery Act and thus exempt from other statutory or regulatory prohibitions. Op. Att'y Gen., Feb. 14, 1991. No. 12.

**Sports betting.**- Sports betting does not include the element of chance as a predominant factor in determining who receives a prize and is not a lottery; therefore the state's constitutional prohibition against lotteries does not apply, and sports betting may be legalized by appropriate legislation. Op.Att'y.Gen., Jan.8,1991. No. 8.

**Video Lotteries.** -- State lottery commission's proposals as to video lotteries were not constitutionally permissible when the equipment would be owned by private enterprises rather than the State of West Virginia. Op. Att'y Gen., April 20, 1993, No. 5.

**Cited** in Pittsburgh Elevator Co. v. West Virginia Bd. of Regents, 172 W.Va. 743, 310 S.E.2d 675 (1983).