

Opinion No. 87-46

August 21, 1987

OPINION OF: HAL STRATTON, Attorney General

BY: Katherine Zinn, Assistant Attorney General

TO: Ray Shollenbarger, Acting Director, Liquor and Bingo Division, Department of Regulation & Licensing, 224 East Palace Avenue, Villa Rivera Building, 3rd Floor, Santa Fe, New Mexico 87501

QUESTIONS

Whether an individual may conduct bingo games for profit under the exemptions contained in Section 60-2B-13(A) of the Bingo and Raffle Act.

CONCLUSIONS

No.

ANALYSIS

An individual who previously has conducted bingo operations at the New Mexico State Fair under a concessionaire's contract with the Fair has been informed that he will no longer be able to conduct such bingo activity, because he does not fall within any of the provisions of the New Mexico Bingo and Raffle Act, Sections 60-2B-1 through 60-2B-14 NMSA 1978 (1981 Repl. Pamp.). That Act legalizes certain games of chance, such as bingo, when such games are conducted by and for the benefit of, various nonprofit organizations. The State Fair will not renew the individual's concessionaire's contract.

The purpose of the Bingo and Raffle Act is "to make lawful and regulate the conducting of certain games of chance by certain nonprofit organizations." Section 60-2B-2, NMSA 1978 (1981 Repl. Pamp.). Section 60-2B-3, NMSA 1978 (1981 Repl. Pamp.) defines the various nonprofit organizations to which the Act applies. The individual in question contends, however, that he should be allowed to conduct bingo games for profit at the Fair, because Section 60-2B-13(A) exempts him from the provisions of the Bingo and Raffle Act. Section 60-2B-13 reads as follows:

Nothing in the Bingo and Raffle Act shall be construed to apply to:

A. any drawing or any prize at any fair or fiesta held in New Mexico under the sponsorship or authority of the state or any of its political subdivisions or for the benefit of any church, situated and being in this state or for charitable purposes when all the proceeds of the sale or drawing shall be expended within New Mexico for the benefit of that church or charitable purpose, provided such fair or fiesta must have been held on

an annual basis for not less than two years immediately preceding and for a period of not more than 14 consecutive calendar days in each year; or (Emphasis added).

B. any bingo or raffle held by any group or organization as defined in Section 3[60-2B-3 NMSA 1978] of the Bingo and Raffle Act which holds a bingo or raffle only once during three consecutive calendar months and not exceeding four occasions in one calendar year.

The individual in question is not a group or organization defined in Section 60-2B-3, but contends that he would be conducting bingo games at which prizes would be awarded during the course of the New Mexico State Fair. He therefore argues that he may conduct such a game without a license and without any of the other constraints that the Bingo and Raffle Act imposes. We disagree, for two reasons.

First, Section 60-2B-13(B) specifically exempts from the Act bingo games and raffles when certain nonprofit groups conduct them infrequently. This exemption indicates to us that the legislature intended to distinguish "any drawing or any prize" from bingos and raffles. Cf. **Cromer v. J.W. Jones Const. Co.**, 79 N.M. 179, 184, 441 P.2d 219, 224 (Ct. App. 1968) (specific provision on a particular subject controls over a general provision, although the latter is broad enough to include the subject to which the more specific provision relates). Thus, the exemption in Section 60-2B-13(A) is not available here because the individual conducts a bingo game, not a drawing or prize.

Second, we do not believe that the legislature intended the exemptions contained in Section 60-2B-13(A) to provide an outlet for individuals to conduct games of chance for profit. Such an interpretation would directly conflict with the purpose of the Bingo and Raffle Act and would conflict with the prohibitions against illegal gambling contained in the New Mexico Criminal Code. See Sections 30-19-1 through 30-19-15 NMSA 1978 (1984 Repl. Pamp.).

Statutes should be interpreted to avoid any absurd or unreasonable results. **Wells v. County of Valencia**, 98 N.M. 3, 6, 644 P.2d 517, 520 (1982). It is presumed that the legislature is well informed and reasonable and, where possible, courts will interpret legislative enactments in accordance with common sense and reason. **Sandoval v. Rodriguez**, 77 N.M. 160, 163, 420 P.2d 308, 310 (1966). To allow the individual in question to conduct a bingo game for profit at the State Fair would create an absurd result, because the Bingo and Raffle Act was designed specifically to legalize and regulate certain games of chance only when conducted by various nonprofit organizations. The exemptions from the Act set forth in Section 60-2B-13 cannot be construed to allow an individual to conduct such games of chance for profit, even if conducted at fairs or fiestas that the State or its political subdivisions sponsor. Such a result would circumvent the Act's express purpose.

Moreover, when determining legislative intent, it is presumed that the legislature does not enact any legislation contrary to existing law. **Quintana v. New Mexico Department of Corrections**, 100 N.M. 224, 227, 668 P.2d 1101, 1104 (1983); **New**

Mexico Municipal League, Inc. v. New Mexico Environmental Improvement Board, 88 N.M. 201, 206, 539 P.2d 221, 226 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975). Bingo games fall within the definitions of gambling in Section 30-19-1 NMSA 1978 (1986 Cum. Supp.), specifically the definition of "lottery," against which there are criminal prohibitions. That section defines a lottery as an enterprise wherein, for a consideration, participants are given a chance to win a prize. "Consideration" is defined in that section as "anything of pecuniary value required to be paid to the promoter in order to participate in such enterprise."

Under these definitions, the bingo games proposed to be conducted by the individual in question can be generally classified as lotteries. The elements of chance, prize, and consideration are present. Our gambling laws only permit, however, certain games of chance when conducted by charitable or nonprofit organizations. See Section 30-19-6(A) & (D) NMSA 1978 (1984 Repl. Pamp.). These provisions do not permit individuals to conduct bingo games or other lotteries for profit. To do so is a fourth degree felony punishable by eighteen months imprisonment. See Section 30-19-3 and Section 31-18-15(A), NMSA 1978 (1981 Repl. Pamp.).

Section 30-19-6(A) specifically permits drawings for prizes when such drawings are conducted at any fair held in the state and when such drawings are conducted for the benefit of any "church, public library or religious society situate or being in this state, or for charitable purposes when all the proceeds of such fair shall be expended in this state for the benefit of such church, public library, religious society or charitable purposes." Further, such drawings or lotteries are permitted only when the entire proceeds of the lottery or drawing go to the organization or charitable purpose. Therefore, presuming as we must that the legislature did not enact the Bingo and Raffle Act to conflict with the New Mexico criminal statutes proscribing gambling, it is our opinion that an individual cannot, under Section 60-2B-13(A), be allowed to conduct a bingo game for profit at any state fair or fiesta.

It is also a common rule of statutory construction that all parts of an individual section of a statute should be construed as a whole. **Allen v. McClellan**, 75 N.M. 400, 402, 405 P.2d 405, 406-407 (1965). The entire context of Section 60-2B-13(A) is in terms of charitable organizations or churches, to which the proceeds from such drawings or prizes shall go. That section does not allow an individual to retain any profits obtained from conducting any drawing or prize at any state sponsored or authorized fair or fiesta. This restriction further evidences that the legislature intended this exemption to apply only to drawings or prizes held at fairs or fiestas when such drawings or prizes are conducted for the benefit of churches or for other charitable purposes.

We also are aware that exemptions should be construed strictly. **State v. Board of County Commissioners of Lincoln County**, 46 N.M. 472, 131 P.2d 278 (1942). Exemptions to statutes also should be reasonably construed. *Id.* We believe that the exemptions contained in Section 60-2B-13(A) were not designed to aid individuals to conduct what would otherwise be illegal gambling for profit. For the foregoing reasons, it

is our opinion that an individual cannot legally conduct bingo games for profit at the State Fair.

ATTORNEY GENERAL

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