

N.D.A.G. Letter to Tomac (March 30, 1992)

March 30, 1992

Honorable Steven W. Tomac
State Senator
Route 1, Box 36
St. Anthony, ND 58566

Dear Senator Tomac:

Thank you for your October 7, 1991, letter concerning a private public-spirited organization running a lottery. I apologize for the delay in responding.

N.D. Const. art. XI, § 25 states as follows:

Section 25. The legislative assembly shall not authorize any game of chance, lottery, or gift enterprises, under any pretense, or for any purpose whatever. However, the legislative assembly may authorize by law bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of such games of chance are to be devoted to educational, charitable, patriotic, fraternal, religious, or other public-spirited uses.

The first sentence states the general rule that the Legislature may not authorize any game of chance, lottery, or gift enterprise. The second sentence creates an exception to that rule. It states that the Legislature may authorize certain categories of organizations to conduct games of chance. There is no exception authorizing any group to conduct a lottery or gift enterprise.

We all recognize that a lottery is a game of chance. However, not all games of chance are lotteries. The constitutional committee deliberately listed lottery as a separate game with a separate prohibition. When the exception was drafted, no exception was made for those two specifically listed games of chance. Thus, the Legislative Assembly may not authorize any entity to conduct a lottery or gift enterprise.

Sincerely,

Nicholas J. Spaeth

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