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Bingo, Testamentary Restraint on Marriage, Zoning Restrictions

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POSTSCRIPTS

Bingo

In recent months, bingo playing has been resumed in New York City. Ostensibly, the games are conducted in accordance with the conditions set forth in a 1952 Court of Appeals decision. This has precipitated a situation that caused Mayor Wagner to request the Corporation Counsel of the City of New York to submit a memorandum on the legal status of the game under the laws presently applicable in New York City.

The Corporation Counsel's memorandum noted that bingo is illegal only if it comes within the definition of the term "lottery" as contained in section 1370 of the Penal Law. By virtue of that section, three elements are essential to a lottery, *i.e.*, chance, payment of a consideration for the chance, and the awarding of a prize. [*People v. Shafer*, 160 Misc. 174, 289 N.Y.S. 649, *aff'd*, 273 N.Y. 475, 6 N.E. 2d 410 (1936)].

Bingo always involves the elements of chance and the awarding of a prize. The legality of the game, therefore, usually revolves around whether or not consideration was paid for playing. In this regard, the memorandum discusses the case of *People v. Burns*, 304 N.Y. 380, 107 N.E. 2d 498 (1952). The Elks Club of Niagara had presented a vaudeville show, for which an admission was charged, which was followed by a "free" bingo game. The Court of Appeals held that since the entertainment was worth the price of admission and nineteen persons who had not attended the entertainment were permitted to play without charge, there was not sufficient evidence to show that consideration for the chance, as re-

quired by the Penal Law, was present.

The decision in the *Burns* case does not present a new concept of law. It merely applies the existing law to the particular facts under review.

Although the law is clear, its enforcement presents difficulties since the initial judgment as to the absence or presence of the statutory element must be made by the Police Department in each case.

The Corporation Counsel noted that under these circumstances the memorandum was intended ". . . as a statement of general principles and not as the expression of a conclusive rule for determination of the legality or illegality of all Bingo games."

See *Bingo, Morality and the Criminal Law*, 1 CATHOLIC LAWYER 8 (Jan. 1955); *id.* at page 159 (April 1955).

Testamentary Restraint on Marriage

The Supreme Court of the United States refused to review *Gordon v. Gordon*, ___ Mass. ___, 124 N.E. 2d 228, *cert. denied*, 75 Sup. Ct. 875 (1955), which held that a provision in a will revoking gifts to any of the testator's children who married a "person not born in the Hebrew faith" is valid [See 1 CATHOLIC LAWYER 243, 244 (July 1955)]. In that case, the testator's son married a woman not born in the Hebrew faith who, after the marriage, became a convert to Judaism and attempted to prove that the conversion, by Hebrew law, dated back to the birth of the convert. The Supreme Judicial Court of Massachusetts held the conversion to be ineffectual, regardless of the

validity of that provision of Hebrew law, because the woman was not a "person born in the Hebrew faith" at the time of the marriage. The Massachusetts court also rejected arguments that judicial enforcement of the condition would be a violation of the Constitutional guarantees of religious freedom afforded by the First and Fourteenth Amendments.

Zoning Restrictions

In an article 78 proceeding to review the Town Board of Brighton's refusal to permit the erection of a Catholic church building,

the court held that the constitutionality of the zoning regulations could not be raised in such a proceeding. [Diocese of Rochester v. Planning Board of Town of Brighton, 207 Misc. 1021, 141 N.Y.S. 2d 487 (Sup. Ct. Monroe Co. 1955)]. See 1 CATHOLIC LAWYER 64 (January 1955); *id.* at page 254 (July 1955).

The Diocese of Rochester has appealed from the order dismissing the proceeding and, in addition, has commenced a new action for a declaratory judgment, the purpose of which is to obtain a decision on the constitutional questions involved.
