

Zoning Litigation; Bingo Referendum

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POSTSCRIPTS

Zoning Litigation

A common problem facing those who are attempting to expand parochial school facilities is the opposition raised by residential owners in the area chosen for new school sites. Most opposition operates through objections based upon zoning ordinances designed to restrict building construction.¹ This problem of attempted exclusion has been solved in some jurisdictions by demonstrating the invalidity of the zoning ordinance that grants arbitrary power² or discriminates between public and private schools.³ Furthermore, courts tend to enjoin or circumvent the enforcement of a zoning ordinance that operates to exclude churches and accessory schools,⁴ if at all possible.⁵

In a recent case⁶ this opposition through zoning ordinance was solved by a strict construction of the statute. The Archbishop owned property in a "AA" zoning district developed entirely for country or suburban residential living. As educational buildings were a permissible use, dependent upon the consent of the local zoning board, the Archbishop applied for approval to build a parochial school on the property. The

board withheld its consent and the lower court affirmed the determination.

The Pennsylvania Supreme Court found that the reasons assigned for the refusal bore no relation to the zoning ordinance's standard of health, safety, morals and general welfare of the community. The court found that it was improper to deny the contemplated use because of a desire to conserve and stabilize property values. Such considerations did not further "... the health or the morals or the safety or the general welfare of the township or its inhabitants or property owners. . . ."⁷

The lower court had taken into consideration the fact that the township would have to make expenditures due to the consequent necessity of widening streets, building sidewalks and installing street lights; that the site for the school did not meet the recommended minimum area requirements for public schools promulgated by the Pennsylvania Department of Public Instruction; and that the Archbishop had a more suitable site. However, none of these considerations were standards found in the ordinance to guide the granting or refusal of an application. Furthermore, there was no evidence to support the finding that increased traffic would affect the health, safety, morals and general welfare of the township.

It is interesting to note that it was not until the final appeal to the highest court was taken that the petition prevailed. Perhaps this is some indication that zoning litigation of this type should not be abandoned until the last appeal is exhausted.

¹ See *State ex rel. Wisconsin Lutheran High School Conference v. Sinar*, 267 Wis. 91, 65 N.W. 2d 43 (1954), *appeal dismissed*, 349 U.S. 913 (1955). See 1 CATHOLIC LAWYER 153 (April 1955).

² *Roman Catholic Archbishop v. Baker*, 140 Ore. 600, 15 P. 2d 391 (1932).

³ *Roman Catholic Welfare Corp. v. City of Piedmont*, 45 Cal. 2d 325, 289 P. 2d 438 (1955).

⁴ *Mooney v. Village of Orchard Lake*, 333 Mich. 389, 53 N.W. 2d 308 (1952).

⁵ *Diocese of Rochester v. Planning Board*, 1 N.Y. 2d 508, 136 N.E. 2d 827 (1956). See, 31 ST. JOHN'S L. REV. 318 (1957).

⁶ *In re O'Hara's Appeal*, --- Pa. ---, 131 A. 2d 587 (1957).

⁷ *Id.* at ---, 131 A. 2d at 597.

Bingo Referendum

The New York State Constitution presently prohibits all forms of gambling except pari-mutuel betting which the Legislature is specifically empowered to permit.¹ The 1957 Legislature recently approved a constitutional amendment which would allow certain organizations to conduct bingo or lotto on a limited basis.² This amendment will be voted upon by the people at the general election to be held in November, 1957.³

If approved by a majority of those voting thereon, the Constitution, as amended, will permit any city, town or village to authorize the conduct of bingo games by enacting a local law which must be approved by a majority of the electors of such municipality. If approved on the local level, then only bona fide religious, charitable or non-profit organizations of veterans, volunteer firemen and similar non-profit organizations may conduct bingo games.⁴

Prior to conducting the games, the authorized organization must obtain a license from the local municipal body.⁵ The organization must file an application with the local body showing, *inter alia*, that it is a bona fide organization which is permitted by the Constitution to conduct bingo games; the officials of the organiza-

tion; those members who will conduct the games; the place where the games are to be held; that the entire net proceeds will only be used for the organization's purpose and that no one shall receive any remuneration for participating in these games.⁶

If the organization meets these requirements, the local governing body will then issue it a license, good for a maximum period of one year.⁷ The organization must pay a license fee of ten dollars for each occasion on which bingo will be held within the maximum period.⁸ Each organization can hold no more than six bingo games in any one month.⁹ Furthermore, the licensee may not advertise the time or location of the bingo games nor the prizes that are offered except upon one limited sign placed on the premises where the bingo games are held.¹⁰ No organization may charge more than a one dollar admission fee. This fee must entitle the purchaser to at least one card, good for all regular games. In addition, special cards at a maximum fee of one dollar may be sold entitling the purchaser to participate in all special games.¹¹ Each participant may purchase as many additional regular and special cards as he deems fit.

No single prize may exceed two hundred

¹ N.Y. CONST. art. I, §9.

² A. Int. No. 386, S. Int. No. 198. This proposed amendment was previously approved by the 1955 Legislature and forwarded to the 1957 Legislature for a second approval pursuant to the constitutional amending process. See 1 CATHOLIC LAWYER 159 (April 1955).

³ A. Int. No. 386, S. Int. No. 198.

⁴ *Ibid.*

⁵ N.Y. GEN. MUNIC. LAW §480.

⁶ *Ibid.* If the premises on which bingo is to be held are rented, the name, occupation, and address of the lessor, the amount of the rent to be charged and the fact that the lessor is of good moral character and has not been convicted of a crime must be stated. If the lessor is a corporation then the same must be given of all the officers and stockholders who own 10% or more of the stock.

⁷ *Id.* §§481-82.

⁸ *Ibid.*

⁹ *Id.* §487.

¹⁰ *Id.* §490.

¹¹ *Id.* §489.

and fifty dollars in value and no series of prizes may exceed one thousand dollars in value.¹² All games, including the awarding of prizes must be completed before midnight of the day when the games were commenced.¹³ No one under eighteen is allowed to participate in any bingo game unless accompanied by an adult. Nor may any alcoholic beverage be sold on the premises during the conduct of these bingo games.¹⁴

The local governing body has, in the first instance, the duty of supervising and controlling the operation of bingo games within its jurisdiction. Therefore each organization conducting bingo games must file with the municipal clerk within fifteen days after *each* game a detailed list of the gross receipts, expenses incurred, the disposition of both and a complete list of prizes offered and awarded.¹⁵ Anyone who conducts bingo who is not an authorized organization or receives any remuneration for operating such games or diverts any of the net proceeds of the bingo games from the purposes of the organization is guilty of a misdemeanor.¹⁶

In addition to the local governing body, the Legislature has created a State Lottery Control Commission to supervise the operation of bingo games throughout the state.¹⁷ This Commission will consist of a chairman and eight members, appointed by the Governor on a bipartisan basis with the consent of the State Senate. Both the

local governing body and the State Lottery Control Commission have the authority to revoke any license, after notice and hearing, for violating any of the provisions relating to the operation of bingo games.¹⁸ Furthermore, they have the right to enter any premise where games are conducted or where the necessary equipment is stored, at any time, for the purposes of inspection.¹⁹

The State Lottery Control Commission has the authority to formulate additional rules and regulations concerning the issuance of licenses and the conduct of bingo games.²⁰ Furthermore, the Commission is designated as the appeal board for grievances against the local governing authority.²¹

The Commission is authorized to investigate alleged violations or evasions of the licensing law and to issue subpoenas therefor.²²

The local governing authority of each municipality may amend or repeal any of the local laws which authorize the holding of bingo games without the consent of the voters of such municipality. Such law shall only become operative not earlier than thirty days after its enactment.²³ These are the basic provisions of New York's proposed bingo laws. It is to be noted that they are most similar to New Jersey's Legalized Games of Chance laws.²⁴

Gambling is not essentially evil nor is

¹² A. INT. NO. 386, S. INT. NO. 198; N.Y. GEN. MUNIC. LAW §489.

¹³ N.Y. GEN. MUNIC. LAW §489.

¹⁴ *Id.* §§486-87.

¹⁵ *Id.* §§484, 491.

¹⁶ *Id.* §495.

¹⁷ N.Y. EXECUTIVE LAW §§430-39.

¹⁸ *Id.* §§433-35. See text at note 7 *supra*.

¹⁹ N.Y. GEN. MUNIC. LAW §484.

²⁰ N.Y. EXECUTIVE LAW §435.

²¹ *Ibid.*

²² *Id.* §437.

²³ N.Y. GEN. MUNIC. LAW §497.

²⁴ N.J. REV. STAT. §5:8-24 (Supp. 1954).

bingo evil in itself.²⁵ The moral problems surrounding gambling are basically rooted in and flow from the individual himself. Nevertheless, granting this, many would further argue that bingo is undesirable in that it attracts criminals and criminal participation, defrauds the players and tends to become a big business.²⁶

It is submitted, however, that New York, although allowing legalized gambling on a limited basis, has enacted sufficient measures to prevent commercialized gambling. Under the proposed bingo laws, it will be difficult, if not impossible, for organized crime, criminals and other undesired elements to participate in the operation of bingo games. Furthermore, the proposed law will prevent organized syndicates from operating and diverting the proceeds of such games to their use. If, under the rigid supervision of the local and state-wide authorities, the present laws prove inadequate, they are empowered to enact laws of a more stringent nature.

MEDICAL LAW (*Continued*)

tice?" The mentality of modern man leads him to search for breadth, unity and simplicity; beginning with an established point of departure, he wishes to deduce all the rest, and arrive at a goal which is fixed by

²⁵ See Ludwig & Hughes, *Bingo, Morality and the Criminal Law*, 1 CATHOLIC LAWYER 8, 12, 16, 18 (Jan. 1955).

²⁶ *Id.* at 20.

the very nature of things and which is clearly in view. It thus becomes easier to gain a mastery over the great number of problems which remain to be solved. We hope that you will succeed in bringing this breadth, unity and simplicity to the treatment of the juridic problems which you are forced to deal with nowadays as doctors. If you do this, you will indeed have accomplished great and useful things.

It remains for Us only to wish that your work make encouraging progress and be highly successful. You will certainly not reach your goal in a few days; but you will get closer to that goal, and you will doubtless be aided by the Truth, Wisdom and Knowledge of God. As a token of these blessings from God, We give Our Apostolic Benediction to you, and to all who benefit from your learning and devotion.

DEMOCRATIC STATE (*Continued*)

present themselves are infinitely various and while those forms recur in a multitude of combinations that may encourage, fascinate, interest or even appal, the dilemma itself seems always to be conditioned by the answer that you will choose to give the central question, what is the purpose and what the value of human personality? The huge engines that society constructs must serve some purpose that lies outside the fame of their inventors or the delight of their engineers in the spectacle of their technical accomplishment. Do not let us forget that Law is one of those engines.