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No. 8283

FIRST QUESTION PRESENTED

Does Article XV, section 4, of the Oregon Constitution permit the expenditure of Oregon State Lottery revenues to provide debt collection services to other state agencies?

ANSWER GIVEN

No. Article XV, section 4, restricts the use of revenues to certain specified purposes, which do not include providing debt collection services to other agencies.

SECOND QUESTION PRESENTED

May staff and other resources of the Oregon State Lottery provide debt collection services to other state agencies if other than revenues are used to pay for those resources?

ANSWER GIVEN

Yes.

THIRD QUESTION PRESENTED

Must the Oregon State Lottery be paid in advance for its costs in providing the debt collection services?

ANSWER GIVEN

Yes.

DISCUSSION

Section 5 of HB 2320 (2007) amends ORS 461.715^{1/} to facilitate the collection of debts owing to the judicial branch of state government. Among other provisions, the bill would require the following of the Oregon State Lottery^{2/} (OSL): Before paying out any portion of a prize that exceeds \$600, OSL would check the winner's name and social security number against a computer database of debtors who are delinquent on debts owing to a state court or other arm of the Judicial Department. If a winner turns up in the database, OSL would notify the debtor and the State Court Administrator (SCA) and hold the prize for up to 30 days to allow the SCA to serve a notice of garnishment. In addition, OSL would establish and operate a data match system using automated data exchanges with the SCA to identify the delinquent debtors. HB 2320 does not require the SCA or any other revenue source to pay OSL for its expenses in administrating this program. We understand that OSL is unable to estimate those costs at this time, but it appears those costs would be significant.

To answer your questions, we must construe and apply Article XV, section 4, of the Oregon Constitution, which was approved in 1984 through the initiative process. The objective in interpreting constitutional provisions adopted by that means "is to discern the intent of the voters." *See Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993). To do so, we are to apply essentially the same method of analysis that the Oregon Supreme Court applies in the construction of a statute. *Stranahan v. Fred Meyer, Inc.*, 331 Or 38, 61, 11 P3d 228 (2000); *Ecumenical Ministries v. Oregon State Lottery Comm.*, 318 Or 551, 560, 871 P2d 106 (1994).

Accordingly, we start with Article XV, section 4's text and context, with text being the best evidence of the people's intent. *PGE v. Bureau of Labor and Industries (PGE)*, 317 Or 606, 610, 859 P2d 1143 (1993). In interpreting text, we consider statutory and judicial rules of construction "that bear directly on how to read the text," such as "not to insert what has been omitted, or to omit what has been inserted," and to give words of common usage their "plain, natural and ordinary meaning" ("plain meaning"). *Id.* at 611; ORS 174.010. We also consider any relevant case law that has interpreted that text. *Stranahan*, 331 Or at 61. The context of a constitutional provision approved by the initiative includes related ballot measures before the people at the same election; related constitutional provisions that were in effect at that time; and case law interpreting those provisions. *Id.* at 62 n 15; *Ecumenical Ministries*, 318 Or at 560 n 8. If the people's intent is clear from text and context, the analysis ends there. The Supreme Court, however, has cautioned against ending analysis of an initiated measure without considering its history. *Stranahan*, 331 Or at 64.

The history of an initiated constitutional provision includes information that was available to the people at the time they approved the measure and that discloses their understanding of it. *Ecumenical Ministries*, 318 Or at 560 n 8. That information includes the ballot title, explanatory statement, and arguments for and against the measure included in the Voters' Pamphlet, as well as contemporaneous news reports and editorials on the measure. *Id.* The relevance of particular information depends on its objectivity and the degree to which it reveals the people's understanding. *Stranahan*, 331 Or at 65 (citing *LaGrande/Astoria v. PERB*, 284 Or 173, 184 n 8, 586 P2d 765 (1978)).

1. Debt Collections Services Funded by Lottery Revenues

Your first question is whether Article XV, section 4, would permit the use of state resources that are funded by lottery revenues to carry on the program required by HB 2320.

Article XV, section 4, subsections (3) and (4)(d) provide in relevant part:

(3) * * * *All proceeds* from the State Lottery, including interest, but *excluding costs of administration* and payment of prizes, shall be used for any of the following purposes: creating jobs, furthering economic development, financing public education in Oregon or restoring and protecting Oregon's parks, beaches, watersheds and critical fish and wildlife habitats.

* * * * *

[(4)](d) There is hereby created within the General Fund the Oregon State Lottery Fund which is continuously appropriated *for the purpose of administering and operating the Commission and the State Lottery*. * * *. (Emphases added.)

Thus, lottery proceeds may be used for only three purposes: (1) the costs of administering and operating the Commission and OSL; (2) the payment of prizes; and (3) economic development, public education and the restoration and protection of specified outdoor resources. The last two purposes unquestionably do not include the collection of debts owed to other state agencies. As to the first, *Ecumenical Ministries* holds that the phrase “administering and operating” concerns “the ‘expense’ or ‘costs’ of the internal implementation and management of the lottery.” *Ecumenical Ministries*, 318 Or at 567. That almost certainly does not include collecting debts owed to other state agencies. We conclude that a program of that nature is not an OSL administrative function and may not be funded with OSL proceeds.

2. Debt Collection Services Funded by other than Lottery Revenues

Agreements by which one agency provides services for the benefit of another agency ordinarily require that the benefiting agency cover the costs of the agency providing the services. *See* ORS 283.110(1). Your second question is whether OSL could administer a debt collection program consistent with Article XV, section 4, if another agency paid the collection program costs.

The constitutional provision that is potentially relevant to that question is also in Article XV, section 4(4)(d) and includes some of the language quoted in connection with your first question:

[(4)](d) There is hereby created within the General Fund the *Oregon State Lottery Fund* which is continuously appropriated for the purpose of administering and operating the Commission and the State Lottery. The State Lottery shall

operate as a *self-supporting* revenue-raising agency of state government *and no appropriations, loans, or other transfers of state funds shall be made to it*. The State Lottery shall pay all prizes and all of *its expenses* out of the revenues it receives from the sale of tickets or shares to the public * * *. (Emphasis added.)

Article XV, section 4(4)(d) authorizes OSL to use lottery revenues to pay the costs of administering and operating the lottery. The answer to your question depends on whether the phrase “no appropriations, loans, or other transfers of state funds shall be made to it” was intended only to prohibit OSL’s receipt of other state money *to administer and operate the lottery* or was intended more broadly to prohibit OSL’s receipt of other state money for *any* purpose, including payment under an interagency agreement for performing activities that are not administering or operating the lottery.

To determine the meaning of that clause, we begin with its text and context, giving words of common usage their plain meaning. *PGE*, 317 Or at 611. One agency’s payment to another agency for services rendered or to be rendered is neither an “appropriation” nor a “loan,” so only “other transfers of state funds” could apply. The term “transfer” is used as a noun and is a word of common usage. The senses of the word that come closest to fitting the circumstances here are:

1 a : the conveyance of right, title, or interest in either real or personal property from one person to another by sale, gift, or other process **b :** the removal or acquisition of property by mere delivery with intent of the parties involved to transfer the title * * * **2 :** an act, process or instance of transferring : TRANSFERENCE <proposal for ... a ~ of populations on a voluntary basis—*Current History*> <finds occasion for the ~ of his loyalty to a new cause> * * *. WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY at 2427 (unabridged 2002).

“Transferring”, as used in definition **2**, is a form of the verb “transfer.” The senses of the verb that are potentially most applicable to the circumstances here are:

[1] **c :** to cause to pass from one person or thing to another : TRANSMIT * * * <no way in which he could ~ his own memories of European civilization into the Indian mind –Willa Cather> * * * **2 :** to make over or negotiate the possession or control of (a right, title, or property) by legal process usu. for a consideration : CONVEY <to preserve the farm intact he ~s it to one heir> <*transferred* a part of their holdings ... for \$25,000 worth of stock –Marquis James>.” *Id.*

The senses most closely tailored to transfers of money contemplate a change in ownership, but the ownership of state funds is vested in the state regardless of their appropriation, loan or other conveyance to individual agencies. *See, e.g.*, ORS 182.112 (agency acquiring interest in property takes title in name of state). Therefore, we would not expect the people to have understood “transfers” to necessarily entail a change in ownership.

The prohibited “transfers” are “other” than “appropriations” and “loans.” According to the interpretative maxim *ejusdem generis*, when a law lists specific classes of things and also refers to them in general, the general statement only applies to the same kind of things as those specifically listed. That maxim suggests that the people would have understood “other transfers” to be similar in kind to appropriations and loans. It seems to us that the salient characteristic common to appropriations and loans is that they provide funds that OSL could expend to operate the State Lottery. By contrast, another agency’s payments for debt collection services would provide no money for lottery operations, but merely cover the costs of non-lottery operations. Application of the maxim to Article XV, Section 4(4)(d) thus suggests that the constitutional provision would allow OSL to administer a debt collection program if the costs of the program were paid by another agency from non-lottery funds.

The meaning of “transfers” that best applies to the circumstances is general, namely, the passing of money. The relationship between “transfers,” appropriations and loans that is implied by “other” suggests that the people intended for no other state money to be made available to operate the lottery.

Regarding context, the language at issue is the second clause in a sentence comprised of two clauses. The first clause specifies: “The State Lottery shall operate as a *self-supporting* revenue-raising agency of state government * * *.” (Emphasis added.) Requiring that the lottery be “self-supporting” is yet another way to mandate that only lottery proceeds be used to pay the cost of the program, i.e., prizes and proper administrative expenses. The two clauses are joined by “and”, which implies a connection between the self-supporting requirement and the prohibition on other state fund transfers. *See* WEBSTER’S at 80. The sentence that follows the language at issue also seems to be concerned solely with ensuring that OSL be self-supporting, because it requires that OSL pay “all of *its* expenses” with State Lottery proceeds (emphasis added). Neither provision imposes or implies any restriction on the payment of expenses that are not properly chargeable to lottery operations.

The context of “no appropriations, loans, or other transfers of state funds shall be made to it” suggests that the people’s only concern was that costs properly chargeable to the Lottery be paid with Lottery proceeds and not with any other state funds. Moreover, the connection between the self-supporting requirement and the prohibition on other fund transfers that is implied by joining them in a single sentence is obvious if the latter were intended to prohibit OSL from receiving other state money to administer and operate the lottery. On the other hand, any connection between the self-supporting requirement and prohibiting OSL from using other state funds for non-lottery functions would seem tenuous at best.

We have also reviewed the measure’s ballot title, explanatory statement, and the arguments for and against the measure that were included in the Voters’ Pamphlet. We find nothing that helps answer this question.

In sum, the people would likely have understood the term “transfers” to have its most general meaning, namely, the movement of state funds to OSL. All other provisions of Article XV, section 4(4)(d)’s text, and its context, would have tended to cause the people to read the language at issue as a prohibition on using other than lottery proceeds to administer and operate the lottery.

Moreover, an absolute prohibition on receiving any other state funds would have been an obscure way to prohibit OSL from providing services under interagency agreements, which would have been such a prohibition’s real significance. That is, for present purposes and disregarding Article XV for the moment, the universe of activities in which a lottery agency might potentially engage may be sorted into two types: (1) lottery activities; and (2) non-lottery activities. The universe of uses to which OSL might put other state funds may likewise be sorted into two types: (1) paying for OSL to engage in lottery activities; and (2) paying for the OSL to engage in non-lottery activities. Article XV prohibits OSL from using lottery funds for non-lottery activities, which means OSL could engage in those activities only if they were paid for with other state funds. At a minimum, Article XV unquestionably prohibits OSL from receiving other state funds to pay for lottery activities, which means other state funds would have no value to OSL unless they could be used to pay for non-lottery activities. Thus, the sole practical result of a total ban on the receipt of other funds would be a prohibition on the use of OSL staff or other resources for non-lottery activities regardless of funding. We think it is unlikely that the people intended that meaning.

For those reasons, and while not without doubt, we conclude that the staff and other resources of OSL may provide debt collection services to another state agency if the cost is fully paid with other than lottery revenues.

3. Must Lottery be paid in advance for its costs in providing the Debt Collection Services?

Finally, you ask if it makes a difference for purposes of Article XV, section 4, whether the SCA pays OSL in advance or not until after lottery proceeds have first been used to pay the salaries and other expenses of a debt collection program.

The analysis is not unique to Article XV, but is common to all state funds that are constitutionally dedicated to a specific purpose or purposes. We applied the applicable principle in 48 Op Atty Gen 345 (1997). The Oregon Department of Transportation (ODOT) had used constitutionally dedicated Highway Funds to pay for the start-up costs and ongoing ODOT administrative expenses of two programs that did not come within the scope of the constitutional dedication. Revenue generated by the programs was to be used to repay the start-up costs and administrative expenses.

In reliance on *State ex rel Sprague v. Straub*, 240 Or 272, 400 P2d 229, 401 P2d 29 (1965), *Rogers v. Lane County*, 307 Or 534, 771 P2d 254 (1989) and *Automobile Club of Oregon v. State of Oregon*, 314 Or 479, 840 P2d 674 (1992), we concluded that dedicated Highway Funds could not be used to finance the costs of administering a non-highway program even though the Fund was to be repaid:

The use of Highway Funds to pay for a nonhighway program, i.e., a program generating revenue for a nonhighway purpose, is a diversion of funds from the constitutionally allowable uses. 48 Op Atty Gen at 348.

We conclude that the SCA would need to pay OSL in advance for the cost of the services that would be required by HB 2320 to avoid an unconstitutional diversion of lottery funds.

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^{1/} ORS 461.715 currently provides:

- (1) The Oregon State Lottery Commission, by rule, shall develop procedures whereby:
 - (a) Before paying any portion of a lottery prize in excess of \$600, the lottery commission shall check the name and Social Security number of the person entitled to payment against a computer database containing the names and Social Security numbers of obligors who are delinquent in paying child support obligations.
 - (b) When the person is listed in the database, the lottery commission shall:
 - (A) Place a 30-day hold on any payment to the person;
 - (B) Inform the person of the hold; and
 - (C) Notify the Division of Child Support of the Department of Justice that a delinquent obligor has won a lottery prize or is entitled to payment on a lottery prize.
 - (c) If a garnishment proceeding is initiated within the 30-day hold period, the lottery commission shall continue to hold any payment to the person pending disposition of the proceeding.
 - (d) If a garnishment proceeding is not initiated within the 30-day hold period, the lottery commission shall make payment on the prize to the person at the end of the 30-day hold period or when the division notifies the lottery commission that a garnishment proceeding will not be initiated, whichever is sooner.
- (2) The lottery commission shall establish and operate a data match system using automated data exchanges with the division that identifies delinquent child support obligors. Any information necessary to identify delinquent obligors and hold a payment on a prize shall be available to the lottery commission through the data match system.

(3) The Department of Justice and the Oregon State Lottery Commission shall enter into an agreement regarding the procedures required by subsections (1) and (2) of this section.

^{2/} For clarity, we will use "OSL" to connote the agency and "State Lottery" or "lottery" to connote the program.