Amendment D: The Gambling Issue

Cooperative Extension South Dakota State University

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Amendment D: The Gambling Issue
The proposed amendment to the Legislative Article III, Section 25 is offered by the Legislature. A “yes” vote favors passage of the amendment.

Overview of the amendment

- It deletes the provision authorizing the Legislature to allow only religious, charitable and similar organizations to engage in games of chance, lottery and gift type fund raising activities.
- It deletes requirements that all proceeds be devoted to educational, charitable, patriotic, religious or other public spirited uses.

In place of provisions deleted, the following are substituted:
- The Legislature may authorize games of chance limited to wagering on coin operated gaming machines, bingo, lotteries and card games.
- All fees and taxes must be collected by the state and deposited in the general fund.
- The governing board of the county or municipality cannot issue licenses for games of chance until the voters, in a local election by majority vote, have authorized the governing board to issue such licenses.
- The Legislature may enact legislation prescribing penalties, rules, regulations etc. that it may deem necessary to enforce this section.

Proposed changes examined

The proposed elimination of exclusive right of religious and other similar public spirited organizations to undertake fund raising gambling activities changes their status to the same constitutional restrictions as profit making establishments.

The proposed amendment does not allow certain games of chance such as dice and roulette; however, a 1970 law restricts such organizations to bingo and lotteries anyway. All other types of gambling, including coin operated gambling devices, are illegal under present law. Presumably these laws will be constitutional if the amendment passes. To open the way for profit making license applicants, the Legislature would have to change present statutes. Passage of the amendment does not automatically ensure that constitutionally approved gambling will be legal by law.

The local governing body may not issue a license to any applicant to conduct games of chance unless the issuance of licenses has been approved by the majority of those voting in either a county, municipal or a combined county-municipal election. Neither the present constitution nor state law requires approved nonprofit groups to obtain a license or permit, and none of the proceeds are subject to tax. Under the proposed amendment non-profit organizations would be treated as other license applicants. The Legislature would be empowered to pass legislation specifying different classes of license applicants.

It should be carefully noted that the amendment wording on the local option vote is whether the local governing body may issue gambling licenses. If the local vote is favorable, the governing body may issue as many licenses as to as many applicants as it deems advisable, subject to any restrictions the Legislature may impose. The amendment does not require a public vote upon each license.

The amendment stipulates that all taxes and fees must be deposited in the general fund. In addition $125,000 is transferred each year from the special racing fund to the general fund. Counties in which the parimutuel certificate system is licensed to operate receive a sum equivalent to 10% of the total paid to the state treasury, up to $25,000 for each licensee in the county. The racing commission grants one additional day of racing to any track when proceeds are paid into a scholarship trust fund administered by the board of regents.

Arguments supporting passage

The arguments for passage of an amendment to liberalize gambling are both philosophical and pragmatic.

On the philosophic side the proponents argue that gambling flourishes in spite of laws to the contrary. Gambling, they say, is a form of crime in which the victim is a willing accomplice; in this sense, if there is no victim there is no crime. They say that gambling makes criminals of people who otherwise are law abiding citizens and that apprehension and punishment usually do not reform the participants, only making them more careful.

Proponents also claim there are many similarities between gambling, which is illegal, and speculating in the land, stock or commodity markets which is legal.

The practical arguments center around what supporters see as benefits to the entire state. They maintain that passage of the proposed amendment will enhance the state's tourist trade and add revenues to the state treasury. They also suggest that new jobs will be created, not only directly in gaming activities but indirectly in recreation businesses and those hosting tourists. As a result of liberalized gambling in North Dakota, tourism and state revenues reportedly have risen.

There are no accurate estimates of either the additional state revenues that might accrue to the state and the additional employment that would result from liberalized gambling. Proponents refer to the amount of sales tax currently collected in South Dakota from illegal gambling activities as an indicator; it is reported to be in the neighborhood of a half million dollars annually. A part of these revenues is, no doubt, from taxes and licenses on bets on the outcome of sports events, off track betting on horse races, elections and similar illegal betting. Such gambling activities would still be illegal under the proposed amendment.

Proponents also refer to the revenues collected in South Dakota from parimutuel horse and dog racing. In the 5-year period from 1977 to 1981 an average $1,842,162 was transferred each year from the special racing fund to the general fund. Counties in which the parimutuel certificate system is licensed to operate receive a sum equivalent to 10% of the total paid to the state treasury, up to $25,000 for each licensee in the county. The racing commission grants one additional day of racing to any track when proceeds are paid into a scholarship trust fund administered by the board of regents.

Arguments opposing passage

Critics of the proposed amendment oppose it for pragmatic, philosophical and moralistic reasons.

First, but not necessarily the most important, they question the ambiguity of the amendment's wording. It states: "The voters of any county, municipality or a combination thereof, shall by local option upon the approval of a majority of voters, voting in an election thereon, approve or..."
disapprove issuance of licenses by the county or municipal government body, to permit wagering on coin operated gaming machines, bingo, lotteries and card games." The next paragraph authorizes the Legislature to legislate penalties, rules, regulations and safeguards.

The wording indicates that the local governing body could issue licenses to permit gambling only if approved by the voters in a local election. The electors do not vote on whether certain kinds of gambling shall be legal in the county and/or municipality. Only the Legislature can make that decision.

The first paragraph of the amendment states, "it shall be lawful for the Legislature to authorize by law games of chance which are limited to wagering on coin operated gaming machines, bingo, lotteries and card games."

To carry the argument further, critics claim there is nothing any place in the amendment to stop the Legislature from authorizing an agency of state government to conduct a statewide lottery or to issue a statewide license to an individual or organization to conduct gambling activities. The Legislature is not required by the amendment to pass laws specifying that gambling is legal only if a license has been issued locally or that a license must be issued at all.

The final interpretation of these points can only be made by the Supreme Court, if the amendment passes.

Opponents maintain that liberalized gambling will increase public costs for law enforcement and welfare. Some studies have shown that gambling is most prevalent among lower-income people. Some will be lucky, by the laws of chance, and may improve their economic status. By the same laws of chance, however, others will lose and might even become a burden on society.

Critics also maintain that the lure of "easy money" will attract undesirable people to the state and thereby place an additional burden upon law enforcement agencies and the court system, which can only result in higher local taxes. State revenues from gambling might increase but at the expense of larger tax payments at the local level, since the amendment stipulates that "all fees and taxes derived by games of chance shall be collected by the state and deposited in the general fund." Opponents also reject the argument that people will gamble, whether legal or not, and the state might as well tax gambling. Licensing to sell hard drugs would also raise revenue, but desirable ends do not justify undesirable means, they say.

When the North Dakota example of how liberalized gambling can increase tourism and state revenues is brought up, opponents reply that if we want to duplicate their experience, we don't need to pass the proposed amendment. The provisions of the North Dakota constitution are identical to ours at the present time. Their statutes regulating charitable gambling are more liberal than ours, primarily the allowance of the game of twenty-one (also called black jack). North Dakota also imposes a license and fees on some types of gambling.

As a matter of personal philosophy some critics of the amendment believe it is inappropriate to fund public services from such activities. They believe that if the services provided by government are worthy they should be financed through the tax system which distributes the burden more equitably. If people desire services they should be willing to pay for them, they say.

The moralistic arguments opposing the amendment are based in part on the "work ethic" which they believe is one of the pillars of western civilization. They believe that personal success should not be achieved at the turn of a card or a number drawn at random, but that success depends upon disciplined work habits, rationality, prudence and thrift. They believe that if the values fostered by gambling become general throughout the entire population, the foundations of our economic system might crumble.

Some moralists also argue that gambling tends to foster superstitious beliefs and magical practices, that "Lady Luck" replaces God as a deity.

The present and proposed texts

The following is the complete text of the present Section 25.

The Legislature shall not authorize any game of chance, lottery or gift enterprise, under any pretense, or for any purpose whatever provided, however, it shall be lawful for the Legislature to authorize by law, bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service club, volunteer fire departments 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, religious or other public spirited uses.

The following is the text of the proposed Section 25.

The Legislature shall not authorize any game of chance, lottery or gift enterprise, under any pretense, or for any purpose whatever provided, however, it shall be lawful for the Legislature to authorize by law games of chance which are limited to wagering on coin operated gaming machines, bingo, lotteries and card games.

All fees and taxes derived by games of chance shall be collected by the state and deposited in the general fund.

The voters of any county, municipality or combination thereof, shall by local option upon approval of a majority of the voters, voting in an election thereon, approve or disapprove the issuance of licenses by the county or municipality governing body, to permit wagering on coin operated gaming machines, bingo, lotteries and card games.

The Legislature may provide by law certain such penalties, rules, regulations and safeguards as it may deem necessary for the enforcement of this section.

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