

1952

Charitable Lotteries—Injunction—Ohio Constitution

Eugene Selker

Follow this and additional works at: <https://scholarlycommons.law.case.edu/caselrev>

 Part of the [Law Commons](#)

Recommended Citation

Eugene Selker, *Charitable Lotteries—Injunction—Ohio Constitution*, 4 W. Rsrv. L. Rev. 88 (1952)

Available at: <https://scholarlycommons.law.case.edu/caselrev/vol4/iss1/15>

This Recent Decisions is brought to you for free and open access by the Student Journals at Case Western Reserve University School of Law Scholarly Commons. It has been accepted for inclusion in Case Western Reserve Law Review by an authorized administrator of Case Western Reserve University School of Law Scholarly Commons.

general records compiled for use in the ordinary course of business of a transit company, though placed in the hands of an attorney, did not come within the attorney-client privilege and had to be produced for purposes of deposition.⁹ The court in the principal case, in following the reasoning of these decisions, held that since the defendant asked for the names and addresses of persons known to the plaintiff at the time of the accident, this information was not privileged.¹⁰

The *Hyde* and *Keough* cases serve as an indirect limitation on the *Schoepf* case since they permit records which contain the names of possible witnesses to be subpoenaed. The principal case seems to be a logical extension of the *Hyde* and *Keough* cases.

RONALD PENNER

CHARITABLE LOTTERIES — INJUNCTION — OHIO CONSTITUTION

In a taxpayer's suit to enjoin the expenditure of tax funds in issuing lottery licenses it was held that a Cleveland municipal ordinance¹ authorizing the city to license lotteries conducted for charitable purposes is unconstitutional because in conflict with the Ohio Constitution, Article 15, Section 6.²

The Ohio Constitution since its adoption in 1851 has provided that "lotteries and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this state."³ Prior to 1943, Ohio General Code Sections 13063 and 13064 subjected to punishment anyone who promoted a lottery or sold or disposed of a lottery ticket. In that year these sections were amended by the addition of the words "for his own profit."⁴ This addition seems to condone the operation of a lottery for charitable purposes.⁵

Under the home rule provision of the Ohio Constitution,⁶ it seems that municipal imposition of penalties for the operation of charitable lotteries, despite the absence of punitive state legislation, is constitutional.⁷ However, as decided in the principal case, a municipal ordinance purporting to authorize a charitable lottery is unconstitutional.⁸

The question arises whether there can be enforcement of the constitu-

⁹ However, any records or reports which are made or come into existence as a result of an accident are privileged in the hands of an adverse party and the other side can not compel their production. *In re Shoup*, 154 Ohio St. 221, 94 N.E.2d 625 (1950); *In re Keough*, 151 Ohio St. 307, 85 N.E.2d 550 (1949); *In re Hyde*, 149 Ohio St. 407, 79 N.E.2d 224 (1948). See also OHIO GENERAL CODE § 11551 in regard to the obtaining of books and writings in the possession of the opposing party.

¹⁰ While the court does not expressly state that the plaintiff's knowledge of the names in question is analogous to corporate records kept for general purposes, the implication is unavoidable.

tional prohibition of lotteries in the continued absence of state or municipal punitive legislation.

Generally, prohibitive and restrictive provisions similar to the prohibition of lotteries found in the Ohio Constitution are self-executing⁹ and have been enforced by courts independent of legislative action.¹⁰

The court in the principal case states that Article 15, Section 6 of the Ohio Constitution is self-executing to the extent that it discloses the public policy of the state, and anything done in violation thereof is void.¹¹

When the general welfare demands it, courts of equity have granted

¹ CLEVELAND MUN. CODE §§ 2925-11 to 2925-22 ("bingo" ordinance).

² *Kraus v. City of Cleveland*, 89 Ohio App. 504, 96 N.E.2d 314 (1950), *appeal dismissed*, 155 Ohio St. 98, 97 N.E.2d 549 (1952).

³ OHIO CONST. Art. 15 § 6. As to what constitutes a lottery see 25 OHIO JUR. 811 (1932) and cases cited therein.

⁴ 120 Ohio Laws 663. OHIO GENERAL CODE § 13064, as amended, has been held constitutional and not in conflict with OHIO CONST., Art. 15 § 6, but, so far as it goes, in complete harmony with that provision. *State v. Parker*, 150 Ohio St. 22, 80 N.E.2d 490 (1948), overruling *Disabled American Veterans v. O'Neill*, 43 Ohio L. Abs. 479 (1945).

⁵ *Jamestown Lions Club v. Smith*, 45 Ohio Op. 157 (1951).

⁶ OHIO CONST. Art. 19, § 3.

⁷ *Disabled American Veterans v. O'Neill*, 43 Ohio L. Abs. 479 (1949) *Cf. State v. Schwabie*, 53 Ohio L. Abs. 264, 272, 84 N.E.2d 768, 773 (1948).

⁸ *Accord*, *Gimbel v. Peabody*, 114 N.J.L. 574, 178 Atl. 62 (1935); *Seattle v. Chin Let*, 19 Wash. 38, 52 Pac. 324 (1898).

⁹ A constitutional provision is said to be self-executing where no legislation is necessary to give it effect. *State ex rel Russell v. Bliss*, 156 Ohio St. 147, 101 N.E.2d 289 (1951); *Datesh v. State*, 23 Ohio N.P. (N.S.) 273, 279 *et seq.* (1920); *Sheets Mfg. Co. v. Neer Mfg. Co.*, 4 Ohio N.P. (N.S.) 201, 212 (1906); 11 AM. JUR. 688, *Constitutional Law* § 71 (1937). Although the absence of a penalty is a factor indicating that a provision is not self-executing, it is not conclusive. *Shipp v. Rodes*, 196 Ky. 523, 245 S.W. 157 (1922).

¹⁰ In the usual case enforcement by the courts is in an indirect or negative manner where the parties are before the court on some collateral matter. *Succession of Gabisso*, 119 La. 704, 44 So. 438 (1907) (prohibition of miscegenation held to preclude one from inheriting as a spouse); *Datesh v. State*, 23 Ohio N.P. (N.S.) 273 (1920) (violation of a constitutional prohibition of the sale of intoxicating liquor held to be an "unlawful act"). However, there are cases of direct affirmative enforcement. *Mutual Orange Distributor v. Agricultural Prorate Commission of California*, 35 F. Supp. 108 (1940) (commerce clause of the federal Constitution held self-executing); *State ex rel Kellogg v. Kansas Mercantile Ass'n*, 45 Kan. 351, 25 Pac. 984 (1891) (corporation deprived of charter in quo warranto proceeding for violation of constitutional prohibition of lotteries); *Shipp v. Rodes*, 196 Ky. 523, 245 S.W. 157 (1922) (constitutional prohibition of the receipt of more than a stipulated sum as compensation for official services of public officers enforced against a sheriff).

¹¹ *Kraus v. City of Cleveland*, 89 Ohio App. 504, 511, 96 N.E.2d 314, 317 (1950). The Ohio Supreme Court has said that Ohio Const. Art. 15, § 6 is not self-executing in the sense of providing a penalty for a violation thereof. *See State v. Parker*, 150 Ohio St. 22, 25, 80 N.E.2d 490, 492, (1948).