

Supreme Court
No. 2004-210-M.P.

In re Advisory Opinion to the Governor :
(Casino).

Summary

At the request of His Excellency Donald L. Carcieri, Governor of the State of Rhode Island and Providence Plantations, Justices of the Supreme Court gave an advisory opinion about the constitutionality of legislation dealing with a proposed casino in the Town of West Warwick. The enactment at issue, G.L. 1956 chapter 1.9 of title 41, entitled “The Rhode Island Gaming Control and Revenue Act,” (Casino Act), provides comprehensive guidelines for a casino operation. The Casino Act also calls for a statewide ballot question asking the voters of this state: “Shall there be a casino in the Town of West Warwick operated by an Affiliate of Harrah’s Entertainment in association with the Narragansett Indian Tribe?” (referendum question). Section 41-9.1-9. The Governor’s request asked: “Do the question and the legislation’s establishment of a privately-operated casino violate the [Rhode Island] constitutional prohibition” on lotteries in this state except those lotteries operated by the state or those previously permitted by the General Assembly. See R.I. Const. art. 6, sec. 15.

First, the Supreme Court justices concluded that, although the Governor’s request for an advisory opinion was flawed procedurally, they would issue an advisory opinion because of the social and constitutional importance surrounding the Casino Act. Addressing the merits of the Governor’s request, the justices concluded that the referendum question and the Casino Act as a whole were constitutionally defective. The justices said that the lottery prohibition in R.I. Const. art. 6, sec. 15 applied because the proposed casino was a lottery operation that would host

various lottery games. The referendum question and the Casino Act were invalid because they would have authorized a private organization, Harrah's, to operate the lottery facility in violation of R.I. Const. art. 6, sec. 15. Also, a casino such as the one proposed in the Casino Act had not previously been approved.

Finally, the justices concluded that R.I. Const. art. 6, sec. 22 did not cure the constitutional defects associated with the referendum question and the Casino Act. Article 6, section 22, entitled "Restriction of gambling," provides:

"No act expanding the types of gambling which are permitted within the state or within any city or town therein or expanding the municipalities in which a particular form of gambling is authorized shall take effect until it has been approved by the majority of those electors voting in a statewide referendum and by the majority of those electors voting in a referendum in the municipality in which the proposed gambling would be allowed."

Although art. 6, sec. 22 provides for the expansion of certain types of gambling in Rhode Island, it does not repeal the lottery restriction contained in art. 6, sec. 15. The justices read art. 6 and art. 22 together and concluded that: (1) the expansion of all forms of gambling in this state may be undertaken only after receiving approval in accordance with art. 6, sec. 22, and (2) the expansion of lotteries within this state must meet the additional requirements set forth in art. 6, sec. 15, (state operation or prior approval). Therefore, because the Casino Act and the referendum question violated sec. 15, both were unconstitutional.