

to this particular point in that particular case.

THE CHAIRMAN: Delegate Gleason.

DELEGATE GLEASON: The point I make is that we here are going to decide on the recommendation of your Committee. We are going to base our decision, I presume, on the basis of the meaning of those words that you say that word has. That's why I think we have got to be extremely careful as to what that meaning really is because that will have an effect on court decisions.

DELEGATE SHERBOW: I cannot answer you as to what court decisions may be because by the time this constitution is presented to the people next May, that will already have been decided. Lotteries are lotteries as the definition generally is understood. You asked what the individual views of members would be. All I can say to you is it was our consensus that bingo as now presently played is not a part of the lotteries as are generally understood.

THE CHAIRMAN: Delegate Mosner.

DELEGATE MOSNER: Judge Sherbow, wasn't most of the information you gave here this afternoon available to the Eney Commission? If so, why do you think they voted overwhelmingly to delete it from the constitution?

DELEGATE SHERBOW: Obviously not because this case arose long after the Eney Commission had adjourned and published its report. It is a case growing up in Anne Arundel County. If the case had started prior to that, I doubt very much if they had it.

But the Eney Commission was very careful in its report to point this out. It was not saying lottery was good or bad. It simply had concluded that they were not going to put this into the constitution.

THE CHAIRMAN: Delegate Cardin.

DELEGATE CARDIN: Delegate Sherbow, I wonder if you would define for me lottery in a different sense. The gasoline and food store lotteries as I would term them obviously are a give away. And so is the chance that you gamble that you will get the second half or the duplicate of something for which you are looking. Is that a lottery?

DELEGATE SHERBOW: No, that is not a lottery but for a totally different reason. The give-aways at the gasoline stations are on a totally different ground.

There you, the individual, give nothing. You do not buy a lottery ticket. You give up nothing of value. You do not do anything except go to a place where they give you something in the nature of a ticket. You are not even required to buy anything. Therefore, these distinctions occur. One, they may cross state lines. It does not violate the federal laws. You could not take a lottery ticket across the state lines. You could not have them given publicity by radio and television because they would then be violating federal laws. These are items which are totally different. Just as when you are lucky enough to catch the home run hitter at a ball game and happen to have his name picked simply out of a hat. You have given nothing of value. You have not even bought anything. You have not put down any money. In lottery, you give up the money on the chance that you may be one who will obtain something. That is the distinction.

The federal government has gone a step further since you remind me of it. They are now in the process of passing through the Senate and House, it has already passed one, ready for the other, a prohibition against federal banks even selling these lottery tickets because they consider them of that nature.

THE CHAIRMAN: Delegate Cardin.

DELEGATE CARDIN: Then the chief distinction is in order for it to be lottery there must be purchase by the individual.

DELEGATE SHERBOW: Or giving of something of value. It does not have to be a purchase. If you said to me that before I could participate in your give-away, I had to actually do something which required me to give up something of value, even if it is a purchase, that would be invalid.

To make it legal, you have to give me something which is completely for nothing. Saying I come to your gas station you hand me the ticket, you cannot make me buy gas.

THE CHAIRMAN: Delegate Cardin.

DELEGATE CARDIN: One last question. Is there any possibility of a change in opinion, a judicial opinion, of the definition of lottery.

DELEGATE SHERBOW: Well, if you ask me what are the courts going to do at any given time, I could never answer you. I can only say the greatest saving grace in American life is the fact in our Constitution we have little words like in-