

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

LITTLE VIKE'S ATHLETIC	)	Docket 390	Page 156
ASSOCIATION AUXILIARY, INC.,	)		
A Non-profit Organization,	)	DECLARATORY JUDGMENT	
	)		
Plaintiff,	)		
	)		
vs.	)		
	)		
NEBRASKA DEPARTMENT OF REVENUE,	)		
AND DONNA KARNES, TAX	)		
COMMISSIONER, et al,	)		
	)		
Defendants.	)		

Now, this matter came on for trial on March 15, 1985, upon the pleadings and files. The parties were represented by their respective counsel. Evidence was adduced and briefs now having been presented and the Court being duly advised in the premises finds as follows:

1. That the Court has jurisdiction of the parties and subject matter hereto.
2. That the petitioner herein is a non-profit corporation organized and existing under the laws of the State of Nebraska and as a part of its activities is licensed by the Nebraska Department of Revenue to sell pickle cards pursuant to the Nebraska Bingo And Lottery Control Act.

Dept. of Justice

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State of Nebraska

3. Under the Nebraska Bingo and Lottery Control Act the Department of Revenue and its tax commissioner are charged with the licensing and enforcement of the provisions of the Nebraska Bingo and Lottery Control Act. The other defendants are the City of Omaha and the city prosecutor of the City of Omaha. Plaintiff's activities take place in the City of Omaha.

4. The issue to be decided in this lawsuit is whether the distributor's pickle card tax imposed pursuant to Section 9-184 R.R.S. 1943 is to be included within the definition of "allowable expenses" under Section 9-185 R.R.S. 1943 as a cost of purchasing such cards by a licensed non-profit organization operating a pickle card lottery. This Court finds that the pickle card ~~tax~~ imposed pursuant to Section 9-184 is included in allowable expenses under Section 9-185.

5. Plaintiff argues that since subsection 1 of Section 185 separately lists "allowable expenses" and "remission of proper taxes" as lawful purposes of use of pickle card receipts that the distributor's tax in Section 9-184 is in addition to the ten percent of the gross proceeds which may be used to pay the

expenses of operating such lottery under subsection (2) of Section 9-185. The argument is without merit. First of all, the operator of the pickle card lottery neither pays directly or is liable for the Section 9-184 tax. The tax is on the distributor and is included in the distributor's price to the operator of the lottery. While the price of the pickle card unit is increased by the tax, it is not a tax on an operator such as the plaintiff and is not remitted as a tax by the operator. Moreover, subsection (5)(a) of Section 9-185 provides that "allowable expenses" includes "all costs associated with the purchasing, printing, or manufacturing of any items to be used or distributed to the participants such as tickets or other paraphernalia..." The tax which is included in the purchase price of the unit is merely a cost associated with the purchase of the pickle cards. What then is meant by "remission of taxes" set forth in Section 9-185? Under subsection (5)(a) Section 9-185, operators may have salaried persons requiring payment of FICA taxes, unemployment taxes, sales or use taxes on rental equipment, sales or use taxes on promotional items, and possibly taxes on personal property used solely for the lottery purposes. In any event, operators of a pickle card lottery do not "remit" any tax pursuant to Section 9-184. The distributor does.

6. The Court finds generally for the defendants and against the plaintiff, that the prayer of the plaintiff should be denied in its entirety and that plaintiff's petition should be dismissed at plaintiff's cost.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the distributor's pickle card tax imposed pursuant to Section 9-184 R.R.S. 1943 is included within the definition of "allowable expenses" under Section 9-185 R.R.S. 1943 and is not in addition to the ten percent of the gross proceeds limitation which may be used to pay the expenses of operating such a lottery under Section 2 of Section 9-185.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the regulations of the Nebraska Department of Revenue interpreting the sections involved are proper in every respect and that the Nebraska Department of Revenue had the authority to make such interpretation by regulation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff's petition should be and hereby is dismissed at plaintiff's cost.

Dated this 9th day of May, 1985.

BY THE COURT:



District Judge