Circuit Court for Calvert County
Case No. C-04-CV-18-000525

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 79

September Term, 2020

SHAMMY, INC.

v.

BOARD OF COUNTY COMMISSIONERS
FOR CALVERT COUNTY, MARYLAND

Shaw Geter,
Gould,
Wilner, Alan M. (Senior Judge),
Specially Assigned,

JJ.

Opinion by Wilner, J.

Filed: February 16, 2021

BACKGROUND

This case takes us, once again, into the arcane world of legalized gambling in Calvert County, which has a long history. *See CCI Entertainment v. State*, 215 Md. App. 359 (2013). We are dealing here with a narrow issue of statutory construction that arises from and governs a quest to engage in a significant form of such gambling – instant electronic bingo.

Bingo is a game of chance, the roots of which can be traced back to the 16th Century. In its traditional form, as it developed and at one point was copyrighted in the United States, each player received a paper card containing a grid of five rows of five squares each. The five vertical columns were headed, from left to right, with a letter (B for column 1, I for column 2, N for column 3, G for column 4, and O for column 5). On each square was a preprinted number (1 through 15 in column 1, 16 through 30 for column 2, etc., ending with 60 through 75 for column 5). The middle square was unmarked; it was a "free space."

The host called out lettered numbers, from B to O, 1 to 75, at random, and the players marked their card if there was a match. The first player who was able to find five matched numbers in a row – vertically, horizontally, or diagonally – called out "bingo." Once those matches were verified, that player won a prize of some sort, usually money. Because winning was, and remains, purely a matter of chance rather than skill, bingo is considered a form of gambling. Indeed, current Maryland law regards bingo as both a

"gaming device" and a "gaming event." *See* Md. Code, Criminal Law Article (CL), §§ 12-101 (d)(2) and 12-101 (e)(6).

In the halcyon days gone by, bingo in that form was tolerated as a harmless parlor game or as an acceptable moneymaker when run by charitable organizations, mostly church groups but others as well, such as PTAs and fire departments. When prizes were awarded, the payouts were modest, the game took some time to complete so there was somewhat of a social element to it, and, when run by charities, it was for a good cause. That began to change when casinos commercialized the game, made the prizes more lucrative, and created several new versions of the game. It came under increased scrutiny by Federal, State, and local authorities when, through computer technology, it could be played electronically.[1] That developed into what became known as "instant bingo" and "instant electronic bingo."

Instant bingo was described in this case as involving a ticket or pull tab that a player purchases from an employee of the bingo parlor or from a machine. It is instant because the player's success or lack thereof is revealed instantly simply by looking at the ticket or tab. It varies from the traditional version in that it is not a competition among several players as to who first completes five contiguous matches but merely whether the

[1] One aspect of the concern that developed is exemplified by the Legislature's reference in CL § 12-301(3) to the prospect of a player playing more than 54 bingo cards at the same time.

ticket or pull tab purchased by a player has a winning combination on it. In that sense, it is not unlike buying a lottery ticket.

Instant electronic bingo is yet a further deviation. It has a much closer affinity to slot machines, which are more heavily regulated, or not allowed at all, in part because of increasing concern that developed over the involvement of organized criminal enterprises in that business. As we shall see, a critical part of the laws dealing with bingo in Calvert County is the legislative determination that instant bingo, including instant electronic bingo, despite its close affinity to slot machines, as defined in CL, § 12-301, be regarded as bingo and not as slot machines. *See* CL § 13-705 (a).

In Maryland, the initial focus was principally, but not entirely, on five counties where commercial gambling of this kind was well-entrenched – Anne Arundel, Prince George's, Charles, Calvert, and St. Mary's. *See Clerk v. Chesapeake Beach Park*, 251 Md. 657 (1968); *State v. 158 Gaming Devices*, 304 Md. 404 (1985); and *CCI Entertainment v. State*, *supra*, 215 Md. App. 359. The focus is now Statewide.[2] The current laws governing commercial bingo operations in Calvert County are found mostly in CL Title 13, Subtitle 7.

[2] The most conspicuous aspect of State control over legalized gambling at the local level in Maryland is the utter lack of uniformity in it. The laws regulating that activity, including bingo, are contained in CL Title 13 which, in addition to two brief general subtitles, contains 24 individual subtitles, one for each county and Baltimore City. Although there are some similarities in those subtitles, what predominates are the differences in what is allowed from one county to another.

CL § 13-705 (b) requires a person to obtain a license from the county commissioners before conducting bingo in the county. [Hereafter in this Opinion, we shall refer to the county commissioners as "the county."] There are seven classes of bingo licenses, each of which is subject to one or more kinds of limitation on its operation. The limitations deal with the number of players who can participate, ranging from 500 to no limit, the amount of payout allowed ($100 except for the Class NG beach license), and the days or months they can operate.

With respect to the Class NA, NB, and NC licenses, there is nothing in the law that could be read as tying their operation to any particular location in the county. Indeed, because Shammy is currently operating under a Class NB license in Solomons, Md., we may fairly infer that there is no geographical limit as to where in the county Class NA, NB, or NC licensees may be permitted to operate, other than what may be stated in the particular license. That was confirmed by the county at oral argument before us. The other four – Classes ND, NE, NF, and NG – each have the word "beach" after the capital letters and, as to them, CL § 13-705 (e) says that they "may be operated within the town limits of North Beach or Chesapeake Beach."

The Class NG beach license is unique in that there is no limit on the number of players or on the payout, it can operate throughout the year and on Sunday afternoon, and it can operate instant bingo. The question is whether it is limited to North Beach and Chesapeake Beach.

Appellant Shammy, Inc., trading as Island Bingo, operates a bingo parlor in Solomons under a Class NB Bingo License. As noted, that allows Shammy to conduct bingo, but limits the operation to a seating or player capacity of not more than 500 persons, limits the payout to $100, does not allow the conduct of bingo games on Sundays, and does not allow instant bingo, at least not expressly, as is the case with the Class NG beach license. CL § 13-709 permits the county to adopt regulations to govern the conduct or play of bingo, the issuance of bingo licenses, the fees to be charged for bingo licenses, the determination of the election districts and precincts in which bingo may be conducted, and the setting of fees.

This case arose when Shammy wanted to continue its operation in Solomons without the restrictions attached to a Class NB license and with the ability to conduct instant bingo. The parties agree that eliminating the restrictions on the number of players and the amount of allowable award and the prohibition of Sunday operations requires a Class NG beach license, which is why Shammy says it applied for one. The direct dispute is over whether a Class NG beach license is required in order to conduct instant bingo and whether that license is restricted to operations within the town limits of North Beach and Chesapeake Beach and thus not allowed for Shammy's operation in Solomons. Lurking in the shadow of that dispute is the 800-pound gorilla in this case – instant *electronic* bingo.

There is agreement between Shammy and the county that conducting instant electronic bingo requires a license from the State Lottery and Gaming Control Commission [hereafter "Gaming Commission"], which has taken the position that a prerequisite for such a license in Calvert County is a county Class NG beach license. That is not a problem or issue for the county, but it is for Shammy. If Shammy's ultimate goal is to be able to conduct instant bingo, whether electronic or non-electronic, which it does not deny, it needs a Class NG beach license which, according to the county, is not available for Shammy's operation in Solomons. As we shall explain, in the circumstances of this case, that is a matter of statutory construction.

CL § 13-705 (e)(1)(vii), together with the introductory clause, provides:

> "The county commissioners may issue the following licenses:
>
> (vii) a Class NG beach license, for bingo that:
>
> 1. does not have a limitation on seating or player capacity;
> 2. *may be operated within the town limits of North Beach or Chesapeake Beach; and*
> 3. may be operated throughout the year." (Emphasis added).

The precise question is whether the language "may be operated within the town limits of North Beach of Chesapeake Beach" is restrictive or merely permissive: when read in conjunction with the provisions governing the other licenses. Does it mean (1) that a bingo operation under a Class NG beach license is allowed *only* in those two beach communities and not anywhere else in the county, or (2) that a Class NG beach license

can be operated anywhere in the county and the reference to those beach communities is merely permissive?

In October 2018, appellant filed a request for a Class NG beach license along with a request for a hearing.[3] Although it was then operating in Solomons under a Class NB Bingo License, Shammy acknowledged that 60 electronic gaming devises were then being used at its facility. The county regarded that license as unique in Calvert County by allowing a Class NG beach licensee to operate instant bingo, including, if approved by the Gaming Commission, on electronic gaming devices and took the view that the law limited that authority to parlors in Chesapeake Beach and North Beach. Asserting that an actual controversy existed as to whether the county had any authority to issue a Class NG beach license for a location other than in Chesapeake Beach or North Beach, the county filed a complaint, followed by an amended complaint, for declaratory judgment to construe and declare the rights, status, and legal relations of the parties under § 13-705(e) (1)(vii) and declare that the county may only issue a Class NG beach license for bingo parlors operating within the town limits of Chesapeake Beach or North Beach.

Shammy filed an answer (1) admitting that it had never operated in Chesapeake Beach or North Beach, (2) refusing to respond to other factual allegations and to what it regarded as conclusions of law, and (3) asserting, without any supporting detail, that the

[3] Six years earlier, appellant presented a request for an electronic gaming device license. It is not entirely clear what happened with respect to that request other than it was not granted.

plaintiff's claims were barred by estoppel, illegality, laches, waiver, and statute. It asked that the court find that (1) a Class NG beach license is not restricted to Chesapeake Beach and North Beach; (2) that a Class NG beach license is discretionary and may be issued anywhere in the county; (3) that the county not issue electronic bingo licenses but only a Class NG beach license that provides for greater seating capacity, higher cash awards, and Sunday operations, which is what Shammy requested, (4) that a license to conduct electronic instant bingo is issued by the Gaming Commission, and (5) grant further relief the court finds necessary.

A month later, Shammy filed a counter-complaint in which it set forth the legislative history regarding bingo parlors in Calvert County and explained why, in its view, the facts and conclusions recited in the county's complaint were inaccurate. It asked that the court enter a judgment declaring that Shammy qualifies for issuance of a Class NG beach license, deny the county's request for a declaratory judgment, enter a declaratory judgment in Shammy's favor, and order the county to issue Shammy a Class NG beach license. The county filed an answer to the counter-complaint.

Both sides filed pre-trial statements. Shammy's principal point was that the county was confusing Class NG beach licenses issued by the county, which merely removed the limitations on the number of players and days of operation, with instant electronic bingo, which, as noted, requires a separate license issued by the Gaming Commission. It argued that the sole function of the county was to issue a Class NG beach

license, which it agreed was a prerequisite to the Gaming Commission's consideration of whether to issue an instant electronic bingo license, but which could be issued for any location in the county and was not restricted to the two beach communities. The result of the county seeking a declaratory judgment rather than holding a hearing on Shammy's application was "the denial of Defendant's due process rights and a bad faith attempt to misuse the declaratory judgment remedial process as a substitute for the Commissioner responsibilities under law." Aside from the general claim of denial of due process, nowhere in the statement (or in its answer to the complaint or amended complaint) did Shammy indicate how the statutory limitation of the Class NG beach license violated due process or any other provision of the U.S. or Maryland Constitution.

After an evidentiary hearing, the Circuit Court agreed with the view of the county and entered a declaratory judgment declaring that, pursuant to CL § 13-705 (e), the county "MAY ONLY ISSUE a Class NG beach license for bingo parlors operating or to operate within the town limits of North Beach and Chesapeake Beach" and denied Shammy's counter-complaint for declaratory judgment. The court construed the language that referred to the Class ND, NE NF, and NG licenses as "beach" licenses and, unlike the other licenses, stated where they could operate as a legislative determination that they could operate only in those towns.

DISCUSSION

Shammy presents two main arguments in this appeal: (1) that the county's resort to a declaratory judgment action rather than holding a hearing on Shammy's application for the Class NG beach license denied Shammy due process of law by depriving it of its property interest in the continuing use of instant bingo machines; and (2) the court's determination that the Class NG beach license was restricted to bingo parlors within the town limits of North Beach or Chesapeake Beach was erroneous and violated Shammy's Constitutional right to equal protection. The county responded that the first complaint was not raised below and, as to the second, that the equal protection issue was not raised below and that the court's ruling was correct.

Denial of a Hearing

Although Shammy did assert in a brief and very general fashion that the county's refusal to grant its request for a hearing on its application for a Class NG beach license denied it due process of law, Shammy never articulated a clear basis for that allegation. Rather than reject its complaint on the ground of waiver, however, we shall consider and reject it on its merits.

As we observed, the issue of whether a Class NG beach license is restricted to North Beach or Chesapeake Beach depends on the construction of the language in CL § 13-705 (e)(vii). If the county is correct in its view that the license is so restricted, it would be legally unable to issue the license for use in Solomons, and any hearing would simply have led to an administrative rejection of the application, for which judicial

review could, and likely would, then be sought. As noted, the language at issue also appears in the Class D, E, and F beach licenses, and the same issue could arise with regard to them. The county had a reasonable and substantial interest in getting an authoritative judicial answer, an answer Shammy also sought in its counter-complaint.

Md. Code, Courts Article, § 3-406 gave it that ability. That statute permits any person whose legal relations are affected by a statute to have determined any question of construction or validity arising under a statute and obtain a declaration of rights, status, or other legal relations under it. That is what the county chose to do, as, indeed, Shammy did as well through its counter-complaint. That provides the same relief, quicker and likely less expensive than first resorting to an administrative proceeding that, given the county's position, could have led only to an outcome unfavorable to Shammy. Shammy had its hearing, before a judge. We fail to see how that alternative route presents any Constitutional due process violation, especially considering that, in its counter-complaint, Shammy also asked for declaratory relief in that action.

Correctness of the Declaratory Judgment

We have already framed the dispositive issue: was the language in CL § 13-705 (e) (vii) "may be operated within the town limits of North Beach or Chesapeake Beach" intended as a mandate that the license could *only* be operated in one of those two places or simply to *permit* it to operate there? The rules of statutory construction are clear. As most recently articulated by the Court of Appeals in *Hoang v. Lowery*, 469 Md. 95, 119

(2020), the ultimate objective is to extract and effectuate the intent of the Legislature in enacting the statute, which begins with examining the plain language it used.

If the language "is unambiguous and clearly consistent with the statute's apparent purpose," we apply the statute "as written without resort to other rules of construction. *Id.* We do not, however, analyze statutory language in a vacuum but "in the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute." *Id.* If the language is ambiguous and may be subject to more than one interpretation, we look to the statute's legislative history, structure, and "overarching statutory scheme in aid of searching for the intention of the Legislature." *Id.*

We start with the language in the context of the statutory scheme to which it belongs. The language in question here does not stand alone. It is a small part of all of CL § 13-705 (e), which sets out the seven classes of licenses, four of which contain the same language at issue here. Shammy asks us to look at legislative history, and we shall do so to see what it reveals. As a preface, we may take judicial notice that Calvert County is a rural area. Its entire population is about 92,500. The eastern boundary of the county abuts the Chesapeake Bay, so there are lots of beaches in the county. What sets North Beach and Chesapeake Beach apart is that they are the only incorporated towns in the county. Chesapeake Beach is the largest town, with a population of 5,960; North Beach has a population of just over 2,600.

We begin our legislative search with Chapter 651 of the 1979 Laws which, in its Constitutionally required title, stated that it was for the purpose of "creating a new class of bingo licenses in Calvert County; *specifying certain geographic areas in which certain licensees shall be located*;" and providing that certain licenses shall not permit the playing of bingo prior to a certain time on Sunday. (Emphasis added). The law amended Article 27, § 259A of the Md. Code, which then was the Article dealing with criminal law. The amendment allowed the county to issue six kinds of bingo licenses – Class NA through Class NF. The Class NA, NB, and NC licenses were referred to merely by their initials. The Class ND, NE, and NF added the word "beach" to the name and, in a later provision of the law, referred to them as "beach bingo" licenses.

The law specified as to each of the six the maximum number of players and seating capacity and the license fee the county could charge. The law stated that the Class ND and NE beach bingo licenses "shall permit the operation of such licensed game within the town limits of North Beach or Chesapeake Beach" from May 1 to September 30 each year and that the Class NF beach bingo license permits year-round operation in those two towns.

Four years later, Chapter 277 of the Laws of 1983 further amended § 259A to create the Class NG beach license. That license was identical to the Class NF beach license, except that there was no limit on player or seating capacity and the license fee was $5,000 instead of the $3,000 charged for the NF license.

Neither the 1979 law nor the 1983 law mentioned "instant" bingo. The Senate Judicial Proceedings Committee Report on the 1983 bill said that the purpose of the bill was merely to create a new class of bingo license "that has no limit on seating capacity and may operate year round."

Instant bingo came into the law in 1994 when the Legislature added in a new subsection (a) to § 259A the provision that "bingo includes the game of instant bingo for a Class NG beach license." *See* 1994 Md. Laws, Ch. 743. Since then, instant bingo has been limited to the Class NG beach license.

As part of the enactment of the Criminal Law Article in 2002, which was a product of the on-going general code revision project, Article 27 was repealed and the laws dealing with gambling were moved to the new Article. Former Art. 27 § 259A became CL § 13-705. *See* 2002 Md. Laws, Ch. 26. Some of the text of § 259A was modified to conform to the new style manual for legislative drafting. Two such changes are relevant here, to a point. Subsection (a) of Art. 27, § 259A, which had read "'bingo' includes the game of instant bingo for a Class NG beach license" was redrafted to read "instant bingo conducted under a Class NG beach license is considered to be bingo," and "shall permit the operation of such licensed game" in the two towns became "may be operated within the town limits" of those towns.

Shammy sees a substantive change in that redrafting – going from "shall" to "may" – which makes the issue relevant for our consideration. What makes it ultimately

irrelevant is the clear intent by the General Assembly that the revised text *not* be regarded as a substantive change. The Court of Appeals has long taken the view that "a change in a statute as part of a general recodification will ordinarily not be deemed to modify the law unless the change is such that the intention of the Legislature to modify the law is unmistakable." *Tipton v, Partners*, 364 Md. 419, 442 (2001), citing *Duffy v. Conaway*, 295 Md. 242, 257 (1983). That is because the principal function of code revision "is to reorganize the statutes and state them in simpler form" and thus "changes are presumed to be for the purpose of clarity rather than a change in meaning." *Id.*

The Revisor's Note to CL § 13-705 states that "[t]his section is new language derived *without substantive change* from former Art. 27, § 259A." (Emphasis added). The italicized portion of that statement was reinforced by the uncodified Section 13 of Ch. 26 stating, "that it is the intention of the General Assembly that, except as expressly provided in this Act, this Act shall be construed as a nonsubstantive revision, and may not otherwise be construed to render any substantive change in the criminal law of the State." That express statement by the Legislature in Section 13 of Chapter 26 confirms that no substantive change was intended. Accordingly, the shift in language from what appeared in former Art. 27 § 259A to what now appears in CL § 13-705 has no substantive effect.

We come finally to the enactment of Chapter 603 in 2012, which, according to its title, was, in part, for the purpose of "authorizing the operation of certain electronic bingo

games using electronic machines," subject to certain limitations. That is where the Gaming Commission was given the authority to regulate the operation of electronic gaming devices and their operators, including the power to license owners and operators of such devices and determine whether a gaming device is a legal one being operated in a lawful manner. *See* CL, § 12-113.

We are left with this construct. Under CL § 13-705(a), a game of instant bingo may be conducted in Calvert County only under a Class NG beach license issued by the county. It follows then that the Gaming Commission may issue an instant electronic bingo license for a Calvert County operation only to the holder of a Class NG beach license.

We turn then to the critical issue of whether the Class NG license is restricted to North Beach and Chesapeake Beach. In discerning the intent of the Legislature on that issue, we start with the proposition that, if the reference to the two incorporated towns was merely permissive, as Shammy insists, it would have been unnecessary. There seems to be no impediment to the Class NA, NB, and NC licenses being issued to operators in those two towns, and, indeed, the county confirmed that to be the case at oral argument before us.

None of this appeared to be an issue prior to the legislative restriction of instant bingo to the Class NG beach license, coupled since 2012 with the restriction to that Class of instant electronic bingo. We find two provisions already noted to be most telling

regarding legislative intent. The first is in the title to Chapter 651 of the 1979 Laws – the Act that created the Class NA, NB, NC, ND, NE, and NF licenses, three of which had the language at issue here and the other three did not. Art. III, § 29 of the Maryland Constitution requires that "every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title." The Court of Appeals has held "that the title of an act is relevant to ascertainment of its intent and purpose is well settled." *MTA v. Balto. Co. Revenue Auth.*, 267 Md. 687, 695-95 (1973); *Wheeling v. Selene Finance*, 246 Md. App. 255, 270, n. 4 (2020).

As noted, the title to that Act said that it was for the purpose of creating a new class of bingo license in Calvert County and "specifying certain geographic areas in which certain licenses *shall be located*." (Emphasis added). Coupled with that is the authority granted the county by CL § 13-709 to adopt regulations governing the election districts and precincts in which bingo may be conducted. Those provisions do not, of themselves, limit the Class ND, NE, NF, and NG beach licenses to the two incorporated towns, but they surely give the county the authority to do so. That authority carried over to the 1983 Act that created the Class NG beach license. As the county points out, the intent to restrict those licenses to North Beach and Chesapeake Beach is implied from adding the word "beach" to the identification of those licenses, for there would be no other purpose for doing so; at least none has been proposed.

There are special and legitimate reasons why the county might want to restrict the Class NG beach license in particular to the two towns. It alone can operate on Sunday; it alone may be operated year-round; it alone has no limit on seating or player capacity; and it alone may conduct instant bingo and, if authorized by the Gaming Commission, instant electronic bingo. Keeping that kind of operation out of the more rural areas of the county can be said to serve a legitimate public policy authorized by law and transgressing none of Shammy's Constitutional rights.

We follow the lead of the Court of Appeals as expressed in *Chesapeake Amusements v. Riddle*, 363 Md. 16, 32 (2001), quoting from *Gaither v. Cate*, 156 Md. 254, 258-59 (1929) and construe CL § 13-705 (e) as "an expression by the Legislature of the policy of the State in respect to the construction of gambling statutes generally and requires the courts to construe statutes prohibiting and penalizing [and, we add, limiting] the use of gambling devices liberally, so as to prevent the mischiefs which the Legislature sought to repress."

JUDGMENT AFFIRMED; APPELLANT TO PAY THE COSTS.