

No. 31540 – *State of West Virginia ex rel. Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia v. West Virginia Economic Development Authority, a public corporation*

and

**FILED**  
**December 8, 2003**  
**RORY L. PERRY II, CLERK**  
**SUPREME COURT OF APPEALS**  
**OF WEST VIRGINIA**

No. 31541 – *State of West Virginia ex rel. Rev. Jim Lewis and John Cooney v. West Virginia Economic Development Grant Committee; West Virginia Economic Development Authority; City of Charleston; Kanawha County Commission; City of Huntington; and Ohio County Commission*

and

No. 31564 – *Greenbrier County Coalition Against Gambling Expansion and Cabell County Coalition Against Gambling Expansion, unincorporated associations, v. West Virginia Lottery Commission and John Musgrave, its Director*

*West Virginia Racing Association, Intervenor*

Albright, Justice, concurring:

I write separately to make two points.

First, I do not believe that a “lottery” is fully described by syllabus point one, *State ex rel. Mountaineer Park v. Polan*, or syllabus point four, *State v. Hudson*, adopted as syllabus points six and seven in the Court’s opinion in the case *sub judice*. I believe that the critical question for decision in the instant proceeding was whether a state “lottery,” as authorized by the state’s constitution, could be conducted electronically in the myriad ways

provided by so-called video poker machines. In view of the determination by the Legislature that such electronic devices qualify as a lottery under the constitution and our duty to exercise due restraint, indulge every reasonable construction and resolve any reasonable doubt in favor of the constitutionality of a legislative enactment, I believe it was necessary for this Court to uphold the video lottery law. Moreover, the rapid development of electronic commerce by which many things formerly conducted on paper are now accomplished electronically commended the Legislature's action to our favorable consideration.

Second, while this Court has declined to find the video lottery constitutionally impermissible, that should not be seen as an endorsement by this author of the manner in which the system has been permitted to develop statewide. The specter of video coffee houses and other video poker outlets, sometimes it seems on every street corner, and widespread and rather unseemly advertising of the availability of video lottery demeans the state and our people. It is my earnest hope that the authorities responsible for the administration of this system will rigorously restrain the exposure of our people and our state to the appearance that the state has become one huge gambling hall.