

John C. Frieden*
Michael J. Unrein
Randall J. Forbes*
Kevin M. Fowler
Brenda L. Head



Eric I. Unrein**
Clinton E. Patty
Matthew R. Bergmann
Timothy D. Resner

1414 Ashworth Place, Suite 201, Topeka, Kansas 66604 • www.fuflaw.com

Tel: 785-354-1100 • Toll Free: 888-293-4916 • Fax: 785-354-1113

*Also admitted in Missouri **Also admitted in Illinois

cpatty@fuflaw.com

TESTIMONY

By
CLINT PATTY

Before the
HOUSE APPROPRIATIONS COMMITTEE
Regarding HB 2537

March 17, 2016

Dear Chair Ryckman and Members of the Committee:

I am here today on behalf of my client, the Kansas Star Casino in Mulvane, Kansas. The Kansas Star wants to make it clear that it has no issue with the resumption of racing in Kansas. However, we do oppose any effort to lift the current prohibition under the Kansas Expanded Lottery Act ("KELA") on the operation of any slot machines in Sedgwick County. Any such legislation that would seek to lift that prohibition with a "revote" on slots amounts to a broken promise to voters. On August 7, 2007, Sedgwick County held the statutory referendum on the placement of electronic gaming machines in the county and the voters rejected the placement of such machines. There is no provision under KELA to allow for a "re-vote" once the voters reject placement of electronic gaming machines at pari-mutuel locations. K.S.A. 74-8743 was considered to give the citizens of Sumner and Sedgwick Counties a one-time vote on the issue and now clearly prohibits the Kansas Lottery from operating such machines in Sedgwick County.

Statutory and Regulatory Certainty Are Essential for Businesses Operating in Kansas

Legislation to reverse the 2007 election outcome sends a signal to companies here and elsewhere that doing business in Kansas is unstable and insecure regardless of elections, contracts or existing commitments. Statutory and regulatory certainty and stability are cornerstones of commerce and economic development. The Kansas Star followed the rules set forth in the Kansas Expanded Lottery Act, and complied with every aspect of the law and every step required by the Kansas Lottery, Kansas Racing and Gaming Commission and the Lottery Gaming Facility Review Board. Following the vote in Sedgwick County, the Kansas Lottery Commission initiated a competitive bidding process for the four zones, including a casino to be placed in the south central gaming zone with the location to be in Sumner County. As part of the process, experts were hired by the Kansas Lottery and the Lottery Gaming Facility Review Board to make revenue projections. All revenue forecasts were based on one casino to be located

in the Sumner County with no electronic gaming machines allowed in Sedgwick County. Kansas Star made its 300 million dollar investment based, in part, on its reliance that the State would comply with the statutory prohibition on placing electronic gaming machines anywhere in Sedgwick County. The Kansas Star has continued its commitment to the state by investing many millions more over the past five years in upgrades, improvements and maintenance to provide our guests with the best entertainment experience possible.

The Kansas Star's proposal for a destination casino resort faced stringent scrutiny from these agencies as well as from state-hired consultants. The fact that the population center of south central Kansas – Sedgwick County – was ineligible for a casino or slots at the track played a major role in the size, scope and quality of amenities at the facility that was proposed and built. Knowing that Sedgwick County would not have casinos or slots at the track, we built a facility conveniently located at exit 33 of the Kansas Turnpike that was large enough to serve the entire south central Kansas market as well as to attract out of state visitation. Given the Kansas Star's level of commitment to the State of Kansas and the region it is fundamentally unfair to allow the rules to be changed in the middle of the game.

Any Statute Allowing a Revote in Sedgwick County Triggers an Immediate \$100 Million Penalty Clause Against the State of Kansas and Other Remedies

The KELA and four lottery gaming management contracts have a penalty clause that is immediately triggered if the state authorizes any new gaming venues prior to July 1, 2032. As the legislature has now been warned on six different occasions in fiscal notes, including the current fiscal note, from the state's budget directors, allowing a revote in Sedgwick County would trigger the penalty clauses in all four gaming facility management contracts. The penalty is a refund of all privilege fees paid plus 10% interest compounded annually. At present, this amounts to more than \$100 million.

Finally, the Kansas Star's Management Contract also stipulates that if the state enacts a statute that allows for a revote in Sedgwick County, the Manager's remedies would not be restricted to the recovery of the privilege fee plus interest. Common law damages for violating the Management Contract could range in the hundreds of millions of dollars for the Kansas Star in the loss of anticipated profits, and jeopardize the viability of the gaming facility in Sumner County. Unlike governmental functions, operation of a lottery gaming facility is clearly proprietary in nature and as such the State of Kansas is liable for damages caused by its breach of contract like any private contract party. *In the Matter of Midland Industries*, 237 Kan. 867, 869 (1985), citing, *Carroll v. Kittle*, 203 Kan. 841, 457 P.2d 21 (1969).

Conclusion

While the Kansas Star does not oppose reactivation of the racing industry in Kansas which can be done today under existing law, we do not favor changing the rules after the Kansas Star met the state's statutory, licensing and contractual requirements to invest a minimum of \$225 million and develop a large destination resort with significant amenities. I thank you for your time and consideration and am glad to stand for questions.