

Approved _____

Date

2/21/83

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at _____
Chairperson

11:00 a.m. ~~XXXX~~ on February 17, 1983 in room 254-E of the Capitol.

All members were present, ~~except~~

Committee staff present: Fred Carman, Assistant Revisor of Statutes
Russell Mills, Legislative Research
Emalene Correll, Legislative Research
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee: Robert T. Stephan, Attorney General, State of Kansas
Alan F. Alderson, General Counsel, Department of Revenue
Nancy E. Freund, Attorney, Department of Revenue

The Chairman called the meeting to order. He stated that at his request the Attorney General and representatives from the Department of Revenue were present to express their views concerning SB98 and SB99, dealing with bingo.

The Attorney General appeared. His prepared remarks were distributed and are attached. (Attachment #1) He said that first, because of the rather loose regulatory system presently in the law, the bingo business is being infiltrated by large bingo parlors or casinos. The Attorney General stated that second, the bingo laws are not being adequately enforced because of lack of funding at the state level and lack of commitment at the local level. He said that finally, he was concerned about organized crime, that the Kansas Bureau of Investigation has identified organized crime figures connected with some bingo operations in Kansas. The Attorney General answered questions from the committee

The Chairman called the committee's attention to a report which he had distributed, a Report on Kansas Legislative Interim Studies to the 1977 Legislature (Part II), Legislative Bingo Investigation Study Committee. (Attachment #2).

The Chairman introduced Alan F. Alderson next. He distributed copies of his Memorandum to the committee, dated February 17, 1983, concerning Bingo Enforcement Recommendations. (Attachment #3) It stated that the major problems occurring with the enforcement of the bingo law are due to the proliferation of the "bingo parlors" or "casinos." Due to the fact that the Department of Revenue had been asked to advise the committee the memorandum dealt with suggested changes in order to adequately enforce the bingo laws: statutory changes, personnel and additional costs.

Nancy E. Freund also assisted in answering questions directed to the Revenue Department from the committee.

The Chairman appointed a sub-committee composed of Chairman, Senator Winter; Members, Senator Vidricksen and Senator Francisco. The Chairman directed that the sub-committee work with committee staff, the Attorney General's staff, and the Revenue Department staff, and report back with some concrete recommendations for the committee to consider within two weeks.

Senator Morris moved that the Minutes of February 9, 1983, be approved. 2d by Senator Meyers. Motion carried.

The meeting adjourned at 12:00 noon.



JW
February 17, 1983
Attachment #1

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

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TESTIMONY OF ATTORNEY GENERAL ROBERT T. STEPHAN
BEFORE THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

SENATOR EDWARD F. REILLY, Jr., CHAIRMAN

RE: House Bill No. 2066 Relating To Bingo

February 17, 1983

Dear Mr. Chairman and Members:

I appreciate this opportunity to comment on the state of bingo operations in Kansas. Since 1975, Kansas constitutional and statutory law has permitted bingo games to be run by various non-profit religious, charitable, fraternal, educational and veterans organizations. After only 12 months of experience with bingo, a 1976 legislative study concluded that bingo was a big and growing business in Kansas.

Bingo generates millions of dollars in gross receipts. Dollars which are delivered in cash. It produces hundreds of thousands of dollars in tax revenues, most of which are returned to local units of government. With nearly 700 licensees, bringing in approximately \$24.3 million dollars, it is time, in my opinion, for the Kansas Legislature to re-examine both the premise of legalized bingo and the enforcement of the regulatory scheme established to control it.

Although my office is not charged with enforcement of bingo regulation, both my office and the KBI receive complaints regarding bingo operations and I am concerned about the trends I see in the bingo business. My concerns center on three related problems:

First, because of the rather loose regulatory system presently in the law, the bingo business is being infiltrated by large bingo parlors or casinos. The small weekly church basement bingo game may be a thing of the past. Bingo parlors and casinos can keep bingo games running 24 hours a day, seven days a week. Greater prize money draws more players to the big parlors and the small bingo games run independently of these parlors may be suffering. The recent decline in the number of licensees may be attributable to this market change. In short, the legislative goal of making bingo available for charitable

fund raising has turned into a thriving enterprise for bingo parlor owners who charge substantial rentals for use of the premises and bingo equipment. I cannot help but think that charitable organizations might benefit from a different regulatory scheme which restricts the profits and influence of the off-premise bingo casinos.

Second, the bingo laws are not being adequately enforced for lack of funding at the state level and lack of commitment at the local level. I am advised that the Department of Revenue sorely needs investigators and auditors to enforce even the limited restrictions now imposed on bingo games. This is not surprising. Whether the legislative objective is control of the bingo games, the proceeds produced thereby or the determination of the tax obligations arising from the games, one simply cannot rely upon an "honor system." Where thousands of dollars in cash change hands every week, the opportunities for fraud and tax evasion are substantial. State agencies or local governments charged with responsibility to enforce bingo laws and tax collections must be adequately funded to seek out and prosecute those who violate the laws. For this reason I would endorse the efforts of the Department of Revenue in seeking funding for state enforcement of bingo laws. Moreover, I hope the Legislature will thoughtfully consider 1983 House Bill No. 2066 which would

require local authorities to assist in the enforcement of bingo laws and would restrict the use of bingo tax proceeds, returned to local governments, for the payment of law enforcement expenses.

Finally, I am concerned about organized crime. The loosely regulated bingo industry in Kansas, with its millions of dollars in gross cash receipts must be attractive prey for big time crime. Bingo is legalized gambling. And where gambling occurs organized crime becomes interested and, in some instances, involved.

✓ The Kansas Bureau of Investigation has identified organized crime figures connected with some bingo operations in Kansas. The present regulatory scheme effectively prevents the state from documenting these criminal connections and discovering crime. Without strict, comprehensive and well-funded regulation and law enforcement, we have created an ideal climate for crime. Stiffer registration, licensing and auditing requirements and adequate enforcement of each, are needed to prevent criminal involvement and to discover it when it occurs.

Bingo in Kansas is big business. It means big money. And I think the way it is currently handled by the state encourages crime. Bingo needs greater scrutiny than it currently receives. And only the legislature can enact the necessary

regulation and provide adequate funding for enforcement. I encourage the committee to consider a complete and serious review of bingo in Kansas.

Thank you for your attention and this opportunity to comment. If you have questions, I would be happy to respond at this time.

Attachment #2
2/17/82

RE: PROPOSAL NO. 8 - BINGO STUDY*

On May 5, 1976, the Legislative Coordinating Council adopted a resolution which provided in part:

"Be it resolved by the Kansas Legislative Coordinating Council, that: The Legislative Coordinating Council shall appoint or designate a special bipartisan committee, to be called the Legislative Bingo Investigation Study Committee, of seven members of the Legislature to make a legislative study, inquiry and investigation of the licensing, regulation, administration and operation of bingo in Kansas. Such legislative study, inquiry and investigation is to consider whether the laws of the State of Kansas are adequate and being administered in such a manner to carry out the legislative intent of the Constitution of the State of Kansas with respect to bingo. Such legislative study, inquiry and investigation shall encompass not only the legality and validity of licensing, regulation and operation of bingo in Kansas and the administration of the laws relating to bingo, but shall examine, inquire into and investigate the application and distribution of the proceeds and receipts of bingo. . . ."

The above resolution also authorized the Legislative Bingo Investigation Study Committee to exercise compulsory process, pursuant to the provisions of K.S.A. 46-1001 through 46-1017, and the inherent powers of the Legislature in conducting its investigation under Proposal No. 8.

Overview

In 1971, the Kansas Legislature amended K.S.A. 21-4302, a criminal code statute which defines terms used in subsequent statutes relating to gambling, in an attempt to legalize the operation of certain games of bingo. In general, the 1971 amendments excluded bingo games or games with

* House Bill No. 2045 accompanies this report.

REPORT ON KANSAS LEGISLATIVE INTERIM STUDIES

to the

1977 LEGISLATURE

PART II
(of 2 Parts)

LEGISLATIVE BINGO INVESTIGATION STUDY COMMITTEE

Filed With the Legislative Coordinating Council

December, 1976

comparable characteristics from the statutory definition of a "bet" if such games were conducted by organizations exempt from the payment of taxes under specified paragraphs of section 501(c) of the Internal Revenue Code of 1954. The 1971 amendments also excluded money paid by participants in such games of bingo from the statutory definition of "consideration."

In 1972, the Kansas Supreme Court found it necessary to consider the 1971 amendments to K.S.A. 21-4302 in terms of Article 15, Section 3 of the Kansas Constitution which provides: "Lotteries and the sale of lottery tickets are forever prohibited." In State v. Nelson, 210 Kan. 439, the Court reaffirmed that the law of this state is that a lottery has three essential elements, namely, consideration, prize and chance. The Court then found that the definition of "consideration" with reference to the 1971 amendment to K.S.A. 21-4203, which excluded money paid by participants in games of bingo or similar games, was void as being in conflict with the Constitution as construed by the Court.

In 1974, the Legislature submitted a constitutional amendment relating to bingo to the electorate. The 1974 amendment, now Article 15, Section 3a of the Kansas Constitution, provides: ". . . the legislature may regulate, license and tax the operation or conduct of games of 'bingo,' as defined by law, by bona fide nonprofit religious, charitable, fraternal, educational and veterans organizations."

Responding to voter approval of the 1974 constitutional amendment, the 1975 Legislature enacted K.S.A. 1976 Supp. 79-4701 et seq., statutes which provide for licensing, regulating and taxing the operation or conducting of bingo by organizations which qualify for a license under the law. Thus, games of bingo which are conducted pursuant to K.S.A. 1976 Supp. 79-4701 et seq. are exempted from the general prohibition against lotteries contained in Article 15, Section 3 of the Kansas Constitution. The "bingo act" became effective on April 1, 1975.

It was against this background that the Legislative Bingo Investigation Study Committee conducted its investigation and study of the operation of bingo in Kansas.

The Committee held four meetings in Topeka, hearing representatives of the Department of Revenue, the Attorney General, and fraternal and veterans organizations; members of the public; the District Attorneys of Wyandotte and

Sedgwick counties; law enforcement officials from Sedgwick and Shawnee counties; the managing director of the Wichita Crime Commission; and a member of the Legislature. In addition, the Committee held a two-day meeting in Kansas City during which testimony was taken under oath from 35 individuals and a two-day meeting in Wichita during which testimony was taken under oath from 38 persons.* The Committee issued two subpoenas compelling individuals to appear to present testimony under oath.

The Committee reviewed material relating to the administration of the bingo laws of the state, relevant rulings issued by the Secretary of Revenue, proposed rules and regulations, background material prepared by the Legislative Counsel and other material prepared by staff. The members also received and reviewed written communications from persons who participate in games of bingo.

During the course of its study, the Legislative Bingo Investigation Study Committee accumulated a large amount of material relating to the operation, proceeds and expenditures of organizations licensed to conduct games of bingo, particularly licensees conducting such games in Wyandotte and Sedgwick counties. This material is available for the use of members of the Legislature in the office of the Legislative Counsel or in the Kansas Legislative Research Department.

Committee Findings

As a result of its study under Proposal No. 8, the Legislative Bingo Investigation Study Committee has made findings concerning the administration of the laws relating to bingo, the operation of games of bingo by licensed organizations, the development of so-called "bingo parlors," and statutory deficiencies. These findings are summarized below.

* Transcripts of the Kansas City and Wichita meetings prepared by a certified court reporter are on file with the Secretary of State as required by K.S.A. 46-1011. Copies are available in the Kansas Legislative Research Department and the office of the Legislative Counsel.

Licensed Bingo Operations

Bingo is, in fact, a big business in Kansas. After 14 months of operation under the bingo laws, the Department of Revenue had issued 850 bingo licenses and had collected \$21,250 in license fees.

In the period, June 1975 to May 1976, 8,244 gross receipts tax returns were filed with the Department by bingo licensees. These returns indicated total gross receipts from bingo operations during the period to be \$12,807,635. The two percent gross receipts tax remitted pursuant to K.S.A. 1976 Supp. 79-4704 during the period was \$256,424. (The two percent gross receipts tax is distributed to counties or cities in which bingo is played for deposit to the general fund of such counties or cities.) During the June 1975 to May 1976 period, approximately \$384,230 in retail sales tax was collected from bingo operations.

Early in December, the Department of Revenue reported to the Committee that the latest figures indicated gross receipts from bingo in FY 1976 were \$13,993,000 and gross receipts tax collections were \$279,258. For the first three months of Fiscal Year 1977, gross receipts taxes in the amount of \$76,523 were collected by the Department.

Not only is bingo a big business in Kansas, it appears to be a growing business. In May 1975, \$645,900 in gross receipts from bingo were reported to the Department of Revenue. In May 1976, \$1,716,200 in gross receipts were reported. In May 1975, \$12,918 in gross receipts tax was collected as compared with \$34,324 collected in May of 1976. Thus, tax collections grew approximately 165 percent in a 12-month period.

Bingo Parlors

Some organizations licensed to operate games of bingo own no premises on which bingo can be conducted. Others have premises which are inadequate in size to conduct games that are competitive with other bingo operations in the area. Thus, holders of bingo licenses rent or lease premises on which to conduct bingo sessions. In some instances, premises are leased or rented because the off-premise location is considered to be more likely to attract bingo participants due to easy access, parking, security, etc.

The result of off-premise operation of bingo sessions in some areas has been the development of the so-called bingo parlor -- a location where bingo is played six or seven days a week. Prior to a May 18, 1976, ruling by the Secretary of Revenue, as many as three licensees were operating sessions of bingo at one location in a day.

While the conducting of bingo on successive days in one location by several licensees is not unlawful, the Committee found that practices not in accord with the intent of the Legislature as well as clearly unlawful practices had developed in connection with bingo parlors in some areas.

Rental Agreements. Extremely high rents are being charged at a few of the so-called bingo parlors. In some instances, rent is based on a percentage of the bingo proceeds. Such uncontrolled rental arrangements have the effect of encouraging the owner, lessor or sub-lessor of a building to get into bingo as a business.

In Kansas City, Kansas, the Committee found the prevailing range of rents charged by parlor operators to be from \$300 to \$650 per session (25 games of bingo). One licensee, in approximately one year's time, had a gross profit, before rent, from bingo proceeds of approximately \$24,000 but, in that same period of time, paid out approximately \$23,000 in rent.

In the Wichita, Kansas area, rents charged by bingo parlor operators ranged from approximately \$100 per session of bingo to \$400 per session, depending on the time of the week and the location of the bingo parlor.

Operators of bingo parlors in Kansas City and Wichita have entered into percentage arrangements with licensees whereby the parlor operator received 50 percent and, in some cases, as much as 90 percent of the net proceeds of bingo after payment of prizes and taxes.

In Wichita, one parlor operator who started with an alleged investment of approximately \$80,000 in building and equipment was charging licensees 90 percent of their net proceeds from bingo as rent. (These agreements were amended to 85 percent on April 18, 1976.) During the period from July 1975, through June 1976, the parlor operator received as his share of the net proceeds of bingo, the sum of \$79,534.56, while the three licensees involved received only

\$9,112.24 during the same period. It appears that there were approximately \$285,000 in gross receipts from bingo at this location during the period, with approximately 65 percent of the gross proceeds paid as prizes to the players and a little over \$12,000 paid in sales and gross receipts taxes to the State of Kansas.

Generally, parlor operators furnish the premises on which bingo is played and all equipment and supplies necessary for conducting bingo games in return for the rent paid by a licensee organization. The parlor operators generally retain all control of and profits from the concession stands or snack bars located on the rented premises.

The Committee found that some operators of bingo parlors have actively solicited organizations which might qualify for a bingo license to secure such a license and to conduct bingo sessions at their parlor.

Participation in Management of Bingo. K.S.A. 1976 Supp. 79-4706(b) states: "No person except a bona fide member of the sponsoring organization may participate in the management or operation of the game [bingo]." The Committee found instances in which the operator of a bingo parlor or his employees had unlawfully managed or operated games of bingo. In addition, the Committee found that nominal membership by the parlor operator or his employees in the sponsoring organization is a subterfuge for actual management or operation by or on behalf of a parlor operator.

In Kansas City, Kansas, the Committee found a bingo parlor paying a licensed sponsoring organization a flat amount of \$300 per month, provided the licensee sponsored bingo games at the operator's parlor. The parlor operator retained all of the licensee's bingo proceeds and reported and paid the sales and gross receipts taxes for the licensee on forms completed and signed by the parlor operator. The Committee found many instances in which the bingo parlor operator, on behalf of the licensee, prepared tax returns and forwarded tax monies from bingo proceeds to the state. Such operators would usually retain custody of all the proceeds from sessions of bingo and remit the amount the parlor operator calculated to be the licensee's share of the proceeds to the licensee monthly. Such remittance sometimes did and sometimes did not include an accounting of expenditures from the proceeds.

The Committee found considerable evidence that bingo parlor operators and their employees became members of organizations licensed to conduct bingo solely for the purpose of operating, managing and conducting the games of bingo sponsored by the licensee at the parlor operator's premises. Such members did not attend meetings of the sponsoring organization or participate in any other activities of the organization. In some instances, the membership fees for the parlor operator or his employees were paid out of bingo proceeds. The latter was especially true when the sponsoring organization was affiliated with a state or national organization.

Complaints were made to the Committee that employees or families of employees of bingo parlor operators play bingo on the operator's premises and frequently win some of the larger prizes.

Ownership. In Kansas City, the Committee found that a bingo parlor had been operated by a corporation formed by an individual who served as nominee and "front" for the actual owner and operator of the parlor. Shortly after the Committee began its investigation into bingo operations, the actual operator of the bingo parlor sold his interest and had a third individual, who allegedly was given a 25 percent business interest therein, form a new corporation for him. This individual was instrumental in the formation of a new veteran's post which immediately applied for a bingo license to operate bingo games at premises leased by the new corporation. Efforts by Committee staff to obtain the names of the principals who were the real parties in interest in the real estate leased by the second corporation resulted in tracing ownership to individuals who apparently reside in the vicinity of Hackensack, New Jersey. Several requests for the names and residences of the actual owners of the property met with no response. The record title to the property is in the name of a corporation which, apparently, is a nominee of other limited partnerships and corporations, the principals of which evidently elect to remain anonymous.

Organizations Formed to Conduct Bingo

During the investigation carried out pursuant to Proposal No. 8, the Committee found that since enactment of the bingo statutes in 1975, some new Kansas organizations which

are affiliated with national organizations have been formed for the apparent primary purpose of procuring a bingo license and conducting games of bingo.

Dormant veterans organizations have been reactivated; organizations with no history of auxiliaries have formed auxiliaries; and, in one instance, a church, which has no formal structure or regular schedule of services, has been established by a minister who obtained his "ordination" by mail from a church in California. All these organizations have obtained licenses to conduct bingo.

The Committee found that some veterans organizations have chartered new local posts in Kansas seemingly for the purpose of procuring bingo licenses. In some instances, operators of bingo parlors were closely associated with the formation of a local post which, on obtaining a license to conduct bingo, commenced operation of bingo sessions on the parlor operator's premises. In at least one instance, a newly activated local post paid as high as 90 percent of its net proceeds from bingo as rent to a parlor operator whose agents were active in the formation of the post.

In one instance, a newly organized veteran's post, which leased a former grocery store where bingo games were operated, was advanced \$10,000 to \$15,000 to remodel the store by an individual who was supposedly employed by the post as a "maintenance man" and who had been instrumental in the formation of the post. The money was advanced without evidence of formal action on the "loan" by the post membership or any promissory note or other formal record of the indebtedness.

In Wichita, the Committee found that a former nightclub had been leased by a reactivated veteran's organization, the commander of which was the son of the owner of the premises. A post auxiliary was formed with the sister of the post commander as one of the principal officers. A subsidiary society of the post was also organized. The commander of the veteran's post was also the finance officer of the subsidiary society. The post, the auxiliary and the subsidiary society each qualified as bingo licensees under the present law and, thus, each was able to conduct two bingo sessions per week on the leased premises.

After approximately one year's operation, the above noted post, the auxiliary and the subsidiary society purchased the leased premises from the owner for \$442,000 on a

20-year payout basis. The Committee was supplied no evidence that this transaction was proposed and approved at formal membership meetings. Minutes of the meetings at which the purchase was supposedly discussed indicate that membership action was after the fact, i.e., a ratification of the action taken by the officers after the purchase agreement had been signed. Under the terms of the sale, it appears that the post will be paying all taxes and insurance on the premises together with an annual payment of \$44,054.28 in principal and interest. Testimony indicated the only activity currently being carried on by the post at this location is conducting of bingo, the post having abandoned all food service and related activities.

Regulatory Authority

The responsibility for administering the bingo laws of the state is vested with the Secretary of Revenue pursuant to K.S.A. 1976 Supp. 79-4701 et seq. Under this authority, the Secretary has issued several revenue rulings which relate to interpretation of the bingo laws. The Secretary has also promulgated rules and regulations which will be before the 1977 Legislature for review. The Committee reviewed both the rules approved by the Attorney General and the rules submitted by the Secretary to the Attorney General which the latter found the Secretary without authority to adopt under existing law.

As a result of its investigation into the operation of bingo in Kansas and the administration of the laws which provide for licensing and regulating the operation and conduct of bingo, the Committee finds that additional statutory authority is needed by the Secretary of Revenue to carry out his responsibilities under the law. The bill which accompanies this report embodies the Committee recommendations resulting from this finding.

Statutory Change

In reviewing the bingo statutes enacted in 1975, the Committee found them to be unclear in some respects. For example, in State, ex rel., v. Kalb, 218 Kan. 459, the Kansas Supreme Court made it clear that the constitutional provision relating to bingo creates no separate class of nonprofit organizations which are eligible for licenses to operate

bingo. Rather, the constitutional amendment and, thus, K.S.A. 1976 Supp. 79-4701 require that religious, charitable, fraternal, educational and veterans organizations as defined by law must also be nonprofit organizations as defined by law in order to be eligible for a license to operate games of bingo. Although the Court has so construed K.S.A. 1976 Supp. 79-4701, the Committee believes that the statute should be clarified.

The members found that other statutes need to be amended to reflect changes in the law which the Committee believes, after its investigation and study under Proposal No. 8, are necessary to carry out the intent of the Legislature relative to bingo. Those changes the members believe necessary to accomplish this end are reflected in the bill which accompanies this report and are explained in the comments on the bill which appear later in the report.

Recommendations

As a result of its investigation and study the Legislative Bingo Investigation Study Committee recommends that various of the bingo statutes and one criminal code statute be amended. The Committee further recommends that two new statutes be enacted and one existing statute be repealed. H.B. 2045, which embodies these recommendations, was prepared by the Committee which recommends that, after consideration by the appropriate committees of the 1977 Legislature, the bill be enacted.

In order to assist the Legislature in its deliberations on H.B. 2045, a section-by-section summary of the bill is included below. The comments on each section include a notation of the Committee's purpose in proposing the statutory changes or new legislation which appear in each section.

Bill Summary

Section 1

This section amends K.S.A. 21-4302, a statute which defines terms used in subsequent criminal statutes relating to

gambling. The proposed amendments to K.S.A. 21-4302(1) delete the reference to games of chance with characteristics comparable to bingo in order to clarify that the exception to a "bet" is only bingo as provided by Article 15, Section 3a of the Kansas constitution. Other changes make it clear that only those games of bingo conducted by organizations licensed by the state pursuant to state law are included in the exception.

The change in K.S.A. 21-4302(3) clarifies that money paid by participants in lawful games of bingo is not "consideration" as that term relates to gambling or to prohibited lotteries.

New language in the statute conforms with or references that used in the bingo statutes.

Comment. K.S.A. 21-4302 was amended by the 1971 Legislature to include language relating to bingo in an attempt to legalize games of bingo conducted by certain organizations. In State v. Nelson, the Kansas Supreme Court held that the 1971 amendments were unconstitutional. After adoption of the constitutional amendment relating to bingo, the 1975 Legislature enacted the bingo statutes which appear in Chapter 79 but did not amend K.S.A. 21-4302. Thus, the Committee amendments would resolve any conflict in the statutes as to the type of organizations which can be licensed to conduct bingo and make it clear that only those games of bingo conducted pursuant to Chapter 79 are exempt from the gambling laws of the state.

New Section 2

This section creates the crime of illegal bingo operation and provides that such crime is a class A misdemeanor. The new statute is made a part of and supplemental to the criminal code in order that it become a part of such code.

Comment. K.S.A. 1976 Supp. 79-4709, currently a part of the "bingo act" which is repealed by H.B. 2045, defines illegal bingo operation as operating games of bingo without a license or in violation of "this act" or rules and regulations adopted pursuant thereto. While Section 1 provides that operation, management or conduct of an unlicensed bingo game, as well as participation therein, can be prosecuted under the gambling statutes, some of which carry a felony

penalty, New Section 2 permits prosecution as a class A misdemeanor for violations of the "bingo act" or rules and regulations adopted under the act.

Testimony presented to the Committee indicated that it is difficult to prosecute certain violators under the provisions of K.S.A. 1976 Supp. 79-4709 which is considered to be somewhat restrictive by virtue of being a part of the "bingo act." In clarifying the language of the gambling statutes to permit certain prosecutions under their provisions, the Committee feels there should still be a statute which permits prosecution as a misdemeanor for violation of the "bingo act" and rules and regulations adopted pursuant thereto.

Section 3

This section amends K.S.A. 1976 Supp. 79-4701, the statute which defines terms used in the bingo laws. The Committee amendments amplify the definitions of nonprofit religious, charitable, fraternal, educational and veterans organizations which appear in paragraphs (b) through (f) of the statute. The new language generally follows Internal Revenue Service interpretations of requirements which must be met by an organization to qualify for the appropriate tax exempt status under Section 501(c) or (d) of the Internal Revenue Code. Thus, the Secretary of Revenue is given clear guidelines to follow in making a determination as to whether an organization which makes application for a license to conduct bingo qualifies under the law. Paragraph (g) of the statute is repealed by H.B. 2045.

Comment. In State, ex rel., v. Kalb, the Kansas Supreme Court construed both Article 15, Section 3a of the constitution and the provisions of K.S.A. 1976 Supp. 79-4701 to mean that an applicant organization must be both a nonprofit organization as indicated by its 501(c) tax exempt status and a bona fide religious, charitable, fraternal, educational or veterans organization as those terms are defined by statute. Thus, the Committee amendments make it clear that each type of organization must be a nonprofit organization.

During its study, the Committee also found that some organizations which are eligible for tax exempt status choose not to acquire such status; that changes in the Internal Revenue Code require the addition of 501(c) subparagraph

references and, in one instance, a reference to 501(d) if those organizations contemplated by the statute are to be able to qualify as bingo licensees; and that the present statutory definitions are in some cases too broad and in others too restrictive to carry out the intent of the Legislature to allow certain organizations to conduct bingo.

Accordingly, the definition of "religious organization" is restricted by the amendatory language, the definition of "charitable organization" is expanded, and the definition of "veterans organization" is expanded by the Committee amendments. The Secretary of Revenue is given the responsibility to determine whether an applicant for a license is, in fact, an organization which is organized and operated as a bona fide organization of the type under which a license is sought. The Secretary is also given the authority to make a determination that the applicant organization is a nonprofit organization if it has not chosen to seek an exemption from the payment of federal income taxes.

Section 4

The amendments to K.S.A. 1976 Supp. 79-4702 contained in Section 4 of H.B. 2045 are primarily technical in nature.

Comment. The Committee amendments are intended to make it clear that the authority of the state extends to all aspects of bingo. Testimony presented to the Committee indicated that there is some question as to where the authority to regulate some aspects of bingo rests. The new language in Section 4 correlates with amendments to Section 10.

Section 5

This section amends K.S.A. 1976 Supp. 79-4703 by adding new criteria which must be met by organizations which seek a license to conduct games of bingo. New language appearing as subsection (b) provides that no bingo license may be issued to an organization if any of its officers, directors or officials have been convicted of or have pled guilty or nolo contendere to any of the crimes enumerated in (b) (1) through (4).

Provisions added to new subsection (c) require an organization which plans to conduct games of bingo on leased

premises to submit a written lease to the Secretary for his approval. Guidelines are established for the Secretary to follow in determining whether such lease agreement should be approved.

Other language added to K.S.A. 79-4703 as part of new subsection (c) requires notification to the Secretary of Revenue: (1) when a licensed organization plans to conduct bingo away from its licensed location, and (2) of a change in the officers, directors or officials of such organization. The latter notification is to include the sworn statements of any new officers, directors or officials as required by the Secretary.

A major policy change which would result from enactment of the Committee amendments to K.S.A. 1976 Supp. 79-4703 is the requirement that a local organization affiliated with a national organization be in existence for at least 18 months prior to making application for a license to conduct bingo.

Comment. In general, the Committee amendments to K.S.A. 1976 Supp. 79-4703 are the result of the Committee's findings concerning bingo parlors and the formation of local organizations for the sole purpose of obtaining a license to conduct bingo. It became clear during the Committee study that the lease of facilities for bingo in some areas has resulted in allowing individuals to profit from the game. This, the members believe, is not the intent of the Legislature or of the voters who ratified the amendment which authorizes bingo.

In order to control this problem, the Committee believes it necessary to regulate the rents paid by organizations licensed to conduct bingo. The members further believe it is desirable to discourage the formation of organizations for the sole purpose of obtaining a bingo license, both through lengthening the time such organizations must exist in Kansas and through preventing persons who have been involved in certain criminal acts from participating in a leadership position in such organizations.

Section 6

The amendments to K.S.A. 1976 Supp. 79-4704 which appear in Section 6 of H.B. 2045 increase the gross receipts tax on bingo from two to three percent.

Comment. The Committee concluded that the present and anticipated cost to the state of administration of the bingo laws of the state should be met from the gross receipts tax imposed by K.S.A. 1976 Supp. 79-4704. A later section of H.B. 2045 provides for the distribution of such taxes.

Section 7

The amendments to K.S.A. 1976 Supp. 79-4705 are technical amendments.

Section 8

This section of H.B. 2045 makes a number of changes in K.S.A. 1976 Supp. 79-4706. The major policy changes which would result from the Committee amendments are: allowing the spouse of a member or an auxiliary member of an organization to participate in conducting bingo games; prohibiting the owners, lessors or sublessors or their employees from playing or assisting with the conduct of bingo on the premises leased by such persons for bingo; prohibiting persons who have committed certain crimes from participating in the operation of bingo; reducing the total prizes which may be awarded by a licensee in any one day from \$1,750 to \$1,200; restricting the games of bingo played at a given location to those conducted by one licensee; requiring the licensee to obtain the names and addresses of winners of bingo prizes; and placing restrictions on the actions of licensees and lessors in regard to advertising, contests other than bingo, and the use of equipment and services.

Comment. Many of the proposed amendments which appear in Section 8 arise from the Committee's finding that abuses have resulted from the development of bingo parlors. Several of the new restrictions are directed toward keeping a parlor operator from offering inducements to conduct bingo on his premises. Others are directed toward separating the parlor operator or his employees from games of bingo played on the operator's premises.

Two of the policy changes set out in Section 8 are intended to make the conduct of bingo more competitive. Small organizations in particular testified to the burden placed on a few members by allowing only members of the organization holding a license to participate in the conduct

of bingo. Organizations with limited facilities find it difficult to compete with those which can accommodate larger crowds since the latter can usually award the statutory maximum in prizes.

Section 9

Amendments to K.S.A. 1976 Supp. 79-4707 contained in Section 9 would give the Secretary of Revenue the authority to suspend a bingo license.

Comment. At present, the Secretary can only revoke a bingo license if the licensee violates the bingo laws or rules and regulations. Authority to suspend a license for a specified time would allow the Secretary to take less drastic action than revocation on minor violations. The Secretary indicated his support for such additional authority.

Section 10

The Committee amendments to K.S.A. 1976 Supp. 79-4708 make it clear that the Secretary of Revenue's authority to adopt rules and regulations extends to all aspects of the administration of bingo.

Comment. In reviewing the rules and regulations relating to bingo submitted by the Secretary for approval, the Attorney General found the Secretary's authority to adopt certain of the proposed regulations to be inadequate. The Committee believes that it should be clear that the Secretary's authority to regulate extends to all aspects of licensed bingo operations, including the participants therein.

Section 11

The amendments contained in Section 11 correlate with the amendment to K.S.A. 1976 Supp. 79-4704 which would increase the bingo gross receipts tax to three percent. Changes arising from new language in Section 11 would result in the deposit of the additional one percent of tax in the state general fund. The two percent which presently is returned to counties and cities under the statute would continue to be so returned in the same manner.

Comment. The Committee believes that some of the cost to the state for administration of the bingo laws of the state should be recovered through taxes on bingo operations. The members concluded that the imposition of an additional one percent of tax was preferable to transferring all of the gross receipts tax to the state. The Committee considered, but rejected, the creation of a bingo fee fund, concluding that the state's share of the gross receipts tax should be deposited in the general fund rather than be earmarked for bingo.

New Section 12

This section creates a new statute which provides for a bingo refund fund from which the Secretary of Revenue may refund license fees or taxes. The section sets a statutory limit of \$10,000 on the refund fund.

Comment. This type of fund simplifies the administrative handling of refunds.

Respectfully submitted,

December 30, 1976

Representative John Hayes, Chairman
Legislative Bingo Investigation
Study Committee

Sen. Bob Storey, Vice-Chairman
Sen. Dan Bromley
Sen. John Crofoot

Rep. Carlos Cooper
Rep. Ben Foster
Rep. Patrick Hurley

HOUSE BILL No. 2045

By Legislative Bingo Investigation Study Committee

Re Proposal No. 8

1-10

0015 AN ACT concerning bingo; relating to the regulation, licensing
0016 and taxation of the management, operation and conduct of
0017 games of bingo; creating certain funds; declaring certain acts
0018 to be crimes and providing a penalty therefor; amending K.S.A.
0019 21-4302 and K.S.A. 1976 Supp. 79-4701 to 79-4708, inclusive,
0020 and 79-4710 and repealing the existing sections; also repealing
0021 K.S.A. 1976 Supp. 79-4709.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. K.S.A. 21-4302 is hereby amended to read as fol-
0024 lows: 21-4302. (1) A "bet" is a bargain in which the parties agree
0025 that, dependent upon chance, one stands to win or lose something
0026 of value specified in the agreement. A bet does not include:

0027 (a) Bona fide business transactions which are valid under the
0028 law of contracts including but not limited to contracts for the
0029 purchase or sale at a future date of securities or other commodi-
0030 ties, and agreements to compensation for loss caused by the
0031 happening of the chance including, but not limited to contracts of
0032 indemnity or guaranty and life or health and accident insurance;

0033 (b) Offers of purses, prizes or premiums to the actual contes-
0034 tants in any bona fide contest for the determination of skill,
0035 speed, strength, or endurance or to the bona fide owners of
0036 animals or vehicles entered in such a contest;

0037 (c) A lottery as defined in this section;

0038 (d) Any bingo game or a game of chance with comparable
0039 characteristics by or for participants *managed, operated or con-*
0040 *ducted in accordance with the laws of the state of Kansas* by an
0041 organization exempt from tax under paragraphs (3), (4), (7), (8)
0042 and (10) of subsection (e) of section 501 of the internal revenue

0043 code of 1954, as amended; if no part of the gross receipts derived
0044 from such activity inures to the benefit of any private share-
0045 holder, member or employee of such organization; except as
0046 compensation for actual expenses incurred by him in the conduct
0047 of such activity and provided that such game is conducted or
0048 operated by the officers, employees or members of such organi-
0049 zation without compensation therefor other than that to which the
0050 officer, employee or member is entitled for the performance of his
0051 regular duties; and not by agreement or contract with any other
0052 person or organization for which any consideration or compen-
0053 sation is provided *licensed by the state of Kansas to manage,*
0054 *operate or conduct games of bingo.*

0055 (2) A "lottery" is an enterprise wherein for a consideration the
0056 participants are given an opportunity to win a prize, the award of
0057 which is determined by chance.

0058 (3) "Consideration" as used in this section means anything
0059 which is a commercial or financial advantage to the promoter or a
0060 disadvantage to any participant.

0061 Mere registration without purchase of goods or services; per-
0062 sonal attendance at places or events, without payment of an
0063 admission price or fee; listening to or watching radio and televi-
0064 sion programs; answering the telephone or making a telephone
0065 call and acts of like nature are not consideration.

0066 As used in this subsection, the term "consideration" shall not
0067 include sums of money paid by or for participants in any bingo
0068 game or a game of chance with comparable characteristics as
0069 defined by subsection (d) of this section *managed, operated, or*
0070 *conducted in accordance with the laws of the state of Kan by*
0071 *any bona fide nonprofit religious, charitable, fraternal, educa-*
0072 *tional or veteran organization licensed to manage, operate, or*
0073 *conduct bingo games under the laws of the state of Kansas* and it
0074 shall be conclusively presumed that such sums paid by or for said
0075 participants were intended by said participants to be for the
0076 benefit of the *sponsoring* organizations described in subsection
0077 (d) of this section for the use of such *sponsoring* organizations in
0078 furthering the purposes of such *sponsoring* organizations, as set
0079 forth in paragraphs (3), (4), (7), (8) and (10) in the appropriate

paragraphs of subsection (c) or in subsection (d) of section 501 of the internal revenue code of 1954, as amended, and as set forth in K.S.A. 1976 Supp. 79-4701, as amended.

(4) A "gambling device" is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

(5) A "gambling place" is any place, room, building, vehicle, tent or location which is used for any of the following: Making and settling bets; receiving, holding, recording or forwarding bets or offers to bet; conducting lotteries; or playing gambling devices. Evidence that the place has a general reputation as a gambling place or that, at or about the time in question, it was frequently visited by persons known to be commercial gamblers or known as frequenters of gambling places is admissible on the issue of whether it is a gambling place.

New Sec. 2. (1) Illegal bingo operation is the management, operation or conduct of games of bingo in violation of the laws of the state of Kansas pertaining to the regulation, licensing and taxing of games of bingo or rules and regulations adopted pursuant thereto. Illegal bingo operation is a class A misdemeanor.

(2) This section shall be a part of and supplemental to the Kansas criminal code.

Sec. 3. K.S.A. 1976 Supp. 79-4701 is hereby amended to read as follows: 79-4701. As used in this act the words and phrases herein defined shall have the following meaning unless the context otherwise requires:

(a) "Bingo" means a game in which each participant must pay a charge and a prize or prizes are awarded to the winner or winners in which each participant receives one or more cards each of which is marked off into twenty-five (25) squares arranged in five (5) horizontal rows of five (5) squares each and five (5) vertical rows of five (5) squares each, with each square being

designated by number, letter or combination of numbers and letters, and *only* the center square designated with the word "free" with no two (2) cards being identical, with the players covering squares as the operator of such game announces a number, letter or combination of numbers and letters appearing on an object selected by chance, either manually or mechanically from a receptacle in which have been placed objects bearing numbers, letters or combinations of numbers and letters corresponding to the system used for designating the squares, with the winner of each game being the player or players first properly covering a predetermined and announced pattern of squares upon the card being used by such player or players.

(b) "Nonprofit religious organization" means any organization, church, body of communicants, or group, gathered in common membership for mutual support and edification in piety, worship, and religious observances, or a society of individuals united for religious purposes at a definite place *and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization, and which religious organization maintains an established place of worship within this state and has a regular schedule of services or meetings at least on a weekly basis and has been determined by the secretary of revenue to be organized and created as a bona fide religious organization and which has been exempted from the payment of federal income taxes as provided by section 501(c)(3) or section 501(d) internal revenue code of 1954, as amended, or determined to be organized and operated as a bona fide nonprofit religious organization by the secretary of revenue.*

(c) "Nonprofit charitable organization" means any organization which is *organized and* operated for the relief of poverty, distress, or other condition of public concern within this state *or for financially supporting the activities of a charitable organization as hereinbefore defined or for conferring direct benefits on the community at large and of which no part of the net earnings inures to the benefit of any private shareholder or individual member of such organization and has been determined by the secretary of revenue to be organized and operated as a bona fide charitable*

0154 organization and which has been exempted from the payment of
 0155 federal income taxes as provided by sections 501(c)(3), 501(c)(4),
 0156 501(c)(5), 501(c)(6) and 501(c)(7) internal revenue code of 1954, as
 0157 amended, or determined to be organized and operated as a bona
 0158 fide nonprofit charitable organization by the secretary of revenue.

0159 (d) "Nonprofit fraternal organization" means any organiza-
 0160 tion within this state which exists for the common benefit,
 0161 brotherhood, or other interests of its members and is authorized
 0162 by its written constitution, charter, articles of incorporation or
 0163 bylaws to engage in a fraternal, civic or service purpose within
 0164 this state and has been determined by the secretary of revenue to
 0165 be organized and operated as a bona fide fraternal organization
 0166 and which has been exempted from the payment of federal income
 0167 taxes as provided by section 501(c)(8) or section 501(c)(10) inter-
 0168 nal revenue code of 1954, as amended, or determined to be
 0169 organized and operated as a bona fide nonprofit fraternal organi-
 0170 zation by the secretary of revenue.

0171 (e) "Nonprofit educational organization" means any public or
 0172 private elementary or secondary school or institution of higher
 0173 education which has been determined by the secretary of revenue
 0174 to be organized and operated as a bona fide educational organi-
 0175 zation and which has been exempted from the payment of federal
 0176 income taxes as provided by section 501(c)(3) internal revenue
 0177 code of 1954, as amended, or determined to be organized and
 0178 operated as a bona fide nonprofit educational organization by the
 0179 secretary of revenue.

0180 (f) "Nonprofit veterans' organization" means any organiza-
 0181 tion within this state or any branch, lodge, or chapter of a national
 0182 or state organization within this state, the membership of which
 0183 consists exclusively of individuals who qualify for membership
 0184 because they were or are members of the armed services or forces
 0185 of the United States, or an auxiliary unit or society of such a
 0186 non-profit veteran's organization the membership of which con-
 0187 sists exclusively of individuals who were or are members of the
 0188 armed services or forces of the United States, or are cadets, or are
 0189 spouses, widows or widowers of individuals who were or are
 0190 members of the armed services or forces of the United States, and

0191 of which no part of the net earnings inures to the benefit of any
 0192 private shareholder or individual member of such organization,
 0193 and has been determined by the secretary of revenue to be organ-
 0194 ized and operated as a bona fide veterans organization and which
 0195 has been exempted from the payment of federal income taxes as
 0196 provided by section 501(c)(4) or 501(c)(19) internal revenue code
 0197 of 1954, as amended, or determined to be organized and operated
 0198 as a bona fide nonprofit veterans organization by the secretary of
 0199 revenue.

0200 (g) "Nonprofit organization" means any organization which
 0201 is exempt from taxation under paragraphs (4), (5), (6), (7) and (8)
 0202 of subsection (e) of section 501 of the internal revenue code of
 0203 1954, as amended.

0204 Sec. 4. K.S.A. 1976 Supp. 79-4702 is hereby amended to read
 0205 as follows: 79-4702. The power to regulate, license and tax the
 0206 management, operation or and conduct of and participation in
 0207 games of "bingo" by bona fide nonprofit religious, charitable,
 0208 fraternal, educational and veterans' organizations is hereby
 0209 vested exclusively in the state and shall be exercised as provided
 0210 in this act.

0211 Sec. 5. K.S.A. 1976 Supp. 79-4703 is hereby amended to read
 0212 as follows: 79-4703. (a) Any bona fide nonprofit religious, chari-
 0213 table, fraternal, educational or veterans' organization desiring to
 0214 manage, operate or conduct games of "bingo" within the state of
 0215 Kansas may make application for a license therefor in the manner
 0216 herein provided. Application for licenses required under the
 0217 provisions of this act shall be made to the secretary of revenue
 0218 upon forms prepared by the attorney general secretary of revenue
 0219 or his or her designee and shall contain:

0220 (a) (1) The name and address of the organization;

0221 (b) (2) the particular place or location for which a license is
 0222 desired; and

0223 (c) (3) a sworn statement verifying that such organization is a
 0224 bona fide nonprofit religious, charitable, fraternal, educational or
 0225 veterans' organization authorized to operate within the state of
 0226 Kansas signed by the presiding officer and secretary of the
 0227 organization; and

0228 (4) such other information as may be required by the secretary
0229 of revenue.

0230 (b) No bingo license shall be issued to any bona fide nonprofit
0231 religious, charitable, fraternal, educational, or veterans' organi-
0232 zation if any of its officers, directors, or officials:

0233 (1) has been convicted of, has plead guilty to or plead nolo
0234 contendere to a felony under the laws of this state, or any other
0235 state, or of the United States;

0236 (2) has been convicted of, has plead guilty to or plead nolo
0237 contendere to a violation of gambling laws of any state or the
0238 gambling laws of the United States, or shall have forfeited bond to
0239 appear in court to answer charges for any such violation, within
0240 the ten (10) years immediately prior to the date of such organiza-
0241 tion's application for a license;

0242 (3) has been convicted of, has plead guilty to or plead nolo
0243 contendere to being the keeper or is keeping a house of ill fame, or
0244 other crime or misdemeanor opposed to decency and morality or
0245 shall have forfeited bond to appear in court to answer charges for
0246 any such violation;

0247 (4) at the time of application for renewal of a bingo license
0248 issued hereunder would not be eligible for such license upon a
0249 first application.

0250 Such (c) An application for licenses required under the provi-
0251 sions of this act shall be accompanied by a fee of twenty-five
0252 dollars (\$25) and if such organization is to conduct bingo on any
0253 leased premises, said terms of the lease shall be reduced to
0254 writing and a copy of the lease shall be submitted to the secretary
0255 of revenue. The secretary of revenue shall have the power and
0256 authority to approve or disapprove any lease submitted. No lease,
0257 which has been approved by the secretary of revenue, shall be
0258 amended, modified or renewed in any manner until such amend-
0259 ments, modifications or renewals of said lease have been ap-
0260 proved by and are on file with the secretary of revenue. No lease
0261 shall have a rental cost more than the fair and reasonable rental
0262 value as determined by the secretary of revenue; but, in no event
0263 shall the rental cost for any session of bingo exceed fifty percent
0264 (50%) of the net proceeds for said session after payment of prizes

0265 and taxes or the fair and reasonable rental value determined by
0266 the secretary of revenue for any session of bingo, whichever is the
0267 lesser. Any rent beyond that which is fair and reasonable for rental
0268 of a premises for the purpose of managing, operating or conduct-
0269 ing games of bingo as determined by the secretary of revenue shall
0270 not be approved. Each license issued prior to July 1, 1975, shall
0271 expire at midnight on June 30, 1976; and Each license issued after
0272 such date shall expire at midnight on June 30 following its date of
0273 issuance. A licensee may hold only one license and that license is
0274 valid for only one location: ~~Provided, That.~~ However, any licen-
0275 see may operate or conduct games of bingo on, not to exceed five
0276 (5) days in any one year, at locations other than that specified in
0277 the license and if any licensee does operate or conduct games of
0278 bingo under this provision at a location other than that specified
0279 in the license, such licensee shall submit a written notification to
0280 the secretary of revenue, at least three (3) days prior to operating
0281 or conducting bingo at the change of location. Licenses issued
0282 under the provisions of this act shall not be transferred or as-
0283 signable. If any organization licensed to play bingo changes any
0284 of its officers, directors or officials during the term of its bingo
0285 license, such organization shall report the names and addresses of
0286 such individuals to the secretary of revenue immediately with the
0287 sworn statement of each such individual as required on forms
0288 furnished by the secretary of revenue. No organization which
0289 denies its membership to persons for the reason of their race,
0290 color, or physical handicap, shall be granted or allowed to retain a
0291 license issued under the authority of this act. Except for nonprofit
0292 adult care homes licensed under the laws of the state of Kansas,
0293 no license shall be issued to any organization under the provi-
0294 sions of this act which has not been in existence continuously for
0295 a period of five years immediately preceding the date of making
0296 application for a license and in the case of fraternal and veterans'
0297 organizations which have not had during such entire five-year
0298 period a dues-paying membership in Kansas engaged in carrying
0299 out its objects. However, once a local organization has been in
0300 existence continuously for a period of eighteen (18) months im-
0301 mediately preceding the date of making application for a license

0302 such five-year requirement shall not apply to a *such* local organi-
 0303 zation which is affiliated with and chartered by a national orga-
 0304 nization which meets this five-year requirement. The licensee
 0305 shall display the license in a prominent place in the vicinity of the
 0306 area where it is to conduct "bingo."

0307 Sec. 6. K.S.A. 1976 Supp. 79-4704 is hereby amended to read
 0308 as follows: 79-4704. For the purpose of providing revenue which
 0309 may be used by the *state*, counties and cities in the enforcement
 0310 of the provisions of this act, from and after the effective date of
 0311 this act, and for the privilege of operating or conducting games of
 0312 "bingo" under the authority of this act, there is hereby levied and
 0313 there shall be collected and paid by each licensee a tax at the rate
 0314 of ~~two~~ *three* percent (~~2%~~) (*3%*) upon the gross receipts received by
 0315 the licensee from charges for participation in such games and any
 0316 admission fees or charges in connection therewith. The tax im-
 0317 posed by this section shall be in addition to the license fee
 0318 imposed under K.S.A. ~~1975~~ 1976 Supp. 79-4703, *as amended*.

0319 Sec. 7. K.S.A. 1976 Supp. 79-4705 is hereby amended to read
 0320 as follows: 79-4705. On or before May ~~15~~, 1975, and On dates
 0321 thereafter, prescribed by the director of taxation, every organiza-
 0322 tion operating or conducting a game of "bingo" shall make a
 0323 return to the director of taxation upon forms prescribed by the
 0324 director stating the name and address of the organization, the
 0325 amount of the gross receipts received from charges for admission
 0326 or participation in such game during the preceding reporting
 0327 period, and such other information as the director may deem
 0328 necessary. The organization making the return shall, at the time
 0329 of making such return, pay to the director of taxation the amount
 0330 of the enforcement tax then due under K.S.A. ~~1975~~ 1976 Supp.
 0331 75-4704, *as amended*. The director may extend the time for
 0332 making returns and payment of such taxes for a period not
 0333 exceeding sixty (60) days under rules and regulations adopted
 0334 under the provisions of this act *by the secretary of revenue*.

0335 Sec. 8. K.S.A. 1976 Supp. 79-4706 is hereby amended to read
 0336 as follows: 79-4706. Games of "bingo" *managed*, operated or
 0337 conducted by organizations licensed under the provisions of this
 0338 act shall be *managed*, operated or conducted subject to *rules and*

0339 *regulations adopted by the secretary of revenue and the following*
 0340 *restrictions:*

0341 (a) The entire gross receipts received by any such organiza-
 0342 tion from the operation or conduct of games of "bingo," except
 0343 that portion utilized for the payment of the cost of prizes and
 0344 license fees and taxes imposed under the provisions of this act,
 0345 shall be used exclusively for the lawful purposes of the organiza-
 0346 tion permitted to conduct that game;

0347 (b) No person except a bona fide member or spouse of a bona
 0348 fide member of the sponsoring organization or parent organiza-
 0349 tion or an auxiliary unit or society of such sponsoring organiza-
 0350 tion may participate in the management, conduct or operation of
 0351 the game;

0352 (c) No owner, co-owner, lessor, sublessor or any employee of
 0353 any such person shall play any game of bingo on premises leased
 0354 by any such person or shall be responsible for or assist in the
 0355 management, operation or conduct of any game of bingo on such
 0356 premises;

0357 (d) No person may participate in the management, conduct or
 0358 operation of bingo games if he or she has been convicted of, has
 0359 plead guilty to or plead nolo contendere to any illegal gambling
 0360 activity, has paid tax under the internal revenue code for wagering
 0361 or gambling activity, or has been convicted of any felony;

0362 (e) (e) No person may receive any remuneration or profit for
 0363 participating in the management, conduct or operation of the
 0364 game;

0365 (d) (f) The aggregate value of all prizes including the retail
 0366 value of all merchandise awarded by any such organization in
 0367 any single day to winners of games of "bingo" shall not exceed
 0368 one thousand seven hundred fifty dollars (~~\$1,750~~) *one thousand*
 0369 *two hundred dollars (\$1,200)*;

0370 (e) (g) The total number of games *managed*, operated or
 0371 conducted by any such organization licensee in any one day shall
 0372 not exceed twenty-five (25) and not more than five (5) of such
 0373 games shall be jackpot or special games *and not more than one*
 0374 *licensee may conduct bingo games at a given licensed location in*
 0375 *any one calendar day*;

0376 (f) (h) The prize awarded in any one regular game shall not
 0377 exceed fifty dollars (\$50) cash or its equivalent and such prize in
 0378 any one jackpot or special game shall not exceed five hundred
 0379 dollars (\$500) cash or its equivalent *and, the retail value of any*
 0380 *merchandise received by a winner of a bingo game shall be*
 0381 *considered as the cash value for the purposes of determining the*
 0382 *value of the prize. The name and address of winners of prizes*
 0383 *awarded in all bingo games managed, operated or conducted by a*
 0384 *licensee shall be maintained by the licensee for a period of three*
 0385 *(3) years;*

0386 (g) (i) The charge made for a single card to play in games other
 0387 than jackpot or special games shall not exceed one dollar (\$1) and
 0388 such card shall be valid for all regular games conducted or
 0389 operated by the licensee on such day; the charge made for a single
 0390 card to play in any single jackpot or special game shall not exceed
 0391 one dollar (\$1);

0392 (h) (j) Games of "bingo" shall not be *managed*, operated or
 0393 conducted by any such licensee upon more than two calendar
 0394 days in any one week;

0395 (i) (k) All licenses issued under the provisions of this act shall
 0396 be issued in the name of the organization licensed;

0397 (j) (l) Each licensee shall keep a record of all "bingo" games
 0398 *managed*, operated or conducted by it for a period of three years
 0399 following the date the game is *managed*, operated or conducted;

0400 (k) (m) No person under the age of eighteen (18) years shall
 0401 participate in the *management*, operation or conduct of any game
 0402 of "bingo" *managed*, operated or conducted by any organization
 0403 licensed under the provisions of this act;

0404 (n) A lessor or sublessor of premises used for the management,
 0405 operation or conduct of bingo or a licensee may not advertise
 0406 bingo games except to the extent and in the manner prescribed by
 0407 the rules and regulations adopted by the secretary of revenue.

0408 (o) No lessor or sub-lessor of premises used for the manage-
 0409 ment, operation or conduct of any games of bingo or any licensee
 0410 shall offer an opportunity to participate in a game of chance,
 0411 drawing, contest, door prize, game, test of skill, lottery or any
 0412 similar activity as an inducement to participate in games of bingo

0413 *nor as a bingo prize or preliminary to the awarding of a bingo*
 0414 *prize;*

0415 (p) No licensee shall manage, operate or conduct bingo on any
 0416 leased premises or with leased equipment unless all of the terms
 0417 and conditions of rental or use, including the rental of chairs,
 0418 bingo equipment, tables, babysitters, security guards, janit er
 0419 vice or any other services, are set forth in a lease submitted,
 0420 approved and on file with the secretary of revenue.

0421 Sec. 9. K.S.A. 1976 Supp. 79-4707 is hereby amended to read
 0422 as follows: 79-4707. (a) The secretary of revenue, after a hearing
 0423 on the record and with reasonable notice to the licensee and an
 0424 opportunity to appear and defend, shall *may* revoke or suspend
 0425 any license issued under the provisions of this act for any one of
 0426 the following reasons:

0427 (a) (1) If a licensee has fraudulently obtained the license by
 0428 giving false information in the application therefor;

0429 (b) (2) If the licensee has violated any of the *laws of the state*
 0430 *of Kansas* or provisions of this act or any rules and regulations of
 0431 the secretary of revenue for the ~~administration or enforcement of~~
 0432 ~~this act~~ *licensing, taxing, management, conduct or operation of*
 0433 *bingo;*

0434 (c) (3) If the licensee has become ineligible to obtain a license
 0435 under this act.

0436 (b) Within twenty (20) days after the order of the secretary of
 0437 revenue revoking or suspending any license, the licensee may
 0438 appeal to the district court of the county in the manner provided
 0439 by K.S.A. ~~1975~~ 1976 Supp. 60-2101 *et seq.*, and any amendi ts
 0440 thereto, except that any appeal taken from an order revoking or
 0441 suspending any such license shall not suspend the order of
 0442 revocation or suspension during the pendency of any such appeal.
 0443 In case of the revocation of the license of any licensee, no new
 0444 license shall be issued to such organization, or any person acting
 0445 for or on its behalf, for a period of six (6) months thereafter.

0446 Sec. 10. K.S.A. 1976 Supp. 79-4708 is hereby amended to
 0447 read as follows: 79-4708. The administration of this act shall be
 0448 vested in the secretary of revenue who shall have power to adopt
 0449 and enforce rules and regulations *to regulate, license, and tax the*

0450 management, operation and conduct of games of bingo and
0451 participants therein and to properly administer and enforce the
0452 provisions of this act. The secretary may appoint or employ any
0453 necessary employees for the proper enforcement of this act.

0454 Sec. 11. K.S.A. 1976 Supp. 79-4710 is hereby amended to
0455 read as follows: 79-4710. (a) All amounts received by or for the
0456 secretary of revenue from license fees pursuant to K.S.A. 1975
0457 1976 Supp. 79-4703, as amended, shall be remitted to the state
0458 treasurer and the state treasurer shall deposit all of such funds
0459 moneys in the state treasury and, except as otherwise required in
0460 accordance with section 12 for maintenance of the bingo refund
0461 fund, shall credit the same to the state general fund.

0462 (b) All amounts received by or for the secretary of revenue
0463 from the enforcement tax pursuant to K.S.A. 1975 1976 Supp.
0464 79-4704, as amended, shall be remitted to the state treasurer and
0465 the state treasurer shall deposit all of such moneys in the state
0466 treasury. There is hereby created the county and city bingo tax
0467 fund. Subject to the maintenance requirements of the bingo refund
0468 fund under section 12, one-third (1/3) of each such deposit shall be
0469 credited to the state general fund and the remaining two-thirds (2/3)
0470 of such deposit shall be credited to the county and city bingo tax
0471 fund. Whenever any part of such deposit is credited to the bingo
0472 refund fund in accordance with section 12, one-third (1/3) of the
0473 balance of such deposit shall be credited to the state general fund
0474 and the remaining two-thirds (2/3) of such balance shall be credited
0475 to the county and city bingo tax fund.

0476 (c) All moneys deposited in the county and city bingo tax fund
0477 shall be returned to the counties and cities in which the licensed
0478 premises are located at a time or times fixed by the secretary but
0479 not less than once in each year. If the licensed premises is located
0480 within the corporate limits of a city, all taxes collected therefrom
0481 shall be remitted to the city treasurer of such city and credited to
0482 the city general fund. If the licensed premises is located within
0483 the unincorporated area of any county, all taxes collected there-
0484 from shall be remitted to the county treasurer of such county and
0485 credited to the county general fund.

0486 New Sec. 12. There is hereby created the bingo refund fund

0487 in the state treasury. The bingo refund fund shall be a refund
0488 clearing fund and refunds of the fees imposed under K.S.A. 1976
0489 Supp. 79-4703, as amended, and of the tax levied under K.S.A.
0490 1976 Supp. 79-4704, as amended, shall be made from this fund
0491 The bingo refund fund shall be maintained by the secretary of
0492 revenue from the fees received under K.S.A. 1976 Supp. 79-4703
0493 as amended, and the tax collected under K.S.A. 1976 Supp.
0494 79-4704, as amended, in an amount sufficient for such refunds of
0495 not to exceed ten thousand dollars (\$10,000).

0496 Sec. 13. K.S.A. 21-4302 and K.S.A. 1976 Supp. 79-4701, 79-
0497 4702, 79-4703, 79-4704, 79-4705, 79-4706, 79-4707, 79-4708, 79-
0498 4709 and 79-4710 are hereby repealed.

0499 Sec. 14. This act shall take effect and be in force from and
0500 after its publication in the statute book.

February 17, 1983
Attachment #3

M E M O R A N D U M

To: Members of the Senate and
State Affairs Committee

Date: February 17, 1983

From: Alan F. Alderson
General Counsel

Re: Bingo Enforcement Recommendations

The Department of Revenue has been asked to advise this Committee concerning what would be required to properly enforce the State's bingo laws. The following is our recommendation assuming the Legislature decides to upgrade enforcement at all.

The major problems occurring with the enforcement of the bingo law are due to the proliferation of the "bingo parlors" or "casinos." The full-time bingo parlor is, in fact, working a slow elimination of the type of bingo game originally envisioned by the Kansas legislature in 1975--that being the "church basement bingo game." These problems could be eliminated by placing a limitation on the number of games which could be played at any one premises. For example, you could prohibit more than 5 games per week at any premises. You have already taken one step, toward addressing some of the problems by the passage of House Bill No. 2815 in 1982. For the first time we now have some leverage over the owners of the premises in which bingo is played.

The Department of Revenue would also recommend that the Legislature take a closer look at the types of organizations which are able to qualify for bingo licenses to determine whether the original intent of the law is being fulfilled in this area as well.

Since the Department of Revenue has been asked to advise this committee with respect to what would be required to provide adequate enforcement of the bingo laws, it is the Department's position that, absent changes with respect to who is entitled to be licensed to conduct games of bingo or where it can be conducted, the Department would require the following changes in order to adequately enforce the bingo laws.

1. Statutory changes. In order to provide any kind of audit trail, the bingo law should be amended to provide for the use of state-issued, serially-numbered or stamped bingo cards. The law should also require the obliteration of the number or stamp at the time of its use in order to prevent multiple use of such cards. The licensee should be required to pay for the cards at the time they are obtained from the Department. At present, we have no audit trail and thus, no way to know whether the proper amount of tax is being collected.

We would also need a statutory requirement imposing a positive duty on local law enforcement agencies to assist in the investigation of alleged or suspected violations of the law. Cities and counties receive two-thirds of the revenue generated by the tax, but we see little evidence of local enforcement practices. Representative Francisco has introduced a bill (House Bill No. 2066) which would accomplish this purpose.

2. Personnel The Department would require appropriations to authorize the hiring of:

- a. Eight investigator/auditors to be responsible for the more than 1000 games of bingo played each week. The Department's 1975 fiscal note requested eight enforcement personnel but no appropriation has ever been made. The Department is aware of no other state allowing any form of gambling which does not have some form of gambling commission. Texas, which has 1000 full-time and 1,600 temporary bingo licensees, has a bingo commission with more than 100 employees. Qualified personnel would need to be established at pay range 20;
- b. One field unit supervisor (pay range 24);
- c. One clerk-typist II (range 7) to issue and account for the bingo cards; and
- d. One attorney I (range 27) to represent the Department in the prosecution of all civil violation actions and appeals from assessments.

3. Additional costs.


- a. Mileage for investigator/auditor travel, at 18,000 miles per year per investigator;
- b. Per diem for investigator/auditors for an average of 3 nights per week per person, or 1056 nights total per diem;
- c. Certified mail postage to cover the mailing of bingo cards.

Fiscal Impact of Above Personnel Recommendations.

	<u>ANNUAL EXPENSES</u>		
	<u>(5) Full Year Salary, FY 84</u>	<u>(7) Wages and Blue Cross, FY 84</u>	<u>(8) Total Request</u>
a. (8) Investigator/ Auditors	\$18,897.00 ea	\$3,415.00 ea	<u>\$178,496.00</u>
(1) One Field Unit Supervisor	\$21,607	\$3,756	<u>\$ 25,363.00</u>
(1) Attorney I	\$24,525	\$4,124	<u>\$ 28,649.00</u>
(1) Clerk Typist II	\$ 9,983	\$2,292	<u>\$ 12,275.00</u>
		Total	<u>\$244,783.00</u>

FY 84
Annual Expenses

b. Mileage		
(8) Investigator/auditor		
@ \$0.22 per mile	\$31,680	
(Private Vehicle)	(3,960 per auditor)	
 Per Diem		
(8) Investigator/auditor		
@ \$36.00 per day	\$38,016	
	(4,752 per auditor)	
 Certified Mail	Bingo Cards	
postage @ \$1.55	(Depends on # of Cards Mailed)	
	Total Request (b)	\$ 69,696
	Total Annual Expense (a + b)	\$314,479



Alan F. Alderson
 General Counsel
 Legal Services
 Department of Revenue

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