

2/11/87  
Attachment #1

Approved 4-29-87  
Date

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. ~~xxx~~ on February 11, 1987 in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

Mary Galligan, Legislative Research  
Emalene Correll, Legislative Research  
Mary Torrence, Assistant Revisor of Statutes  
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Mr. John R. Wine, Jr., Assistant Secretary of State  
Mr. Harley Duncan, Secretary, Department of Revenue

The Minutes of February 5, 6, and 9, 1987, were before the Committee. Senator Arasmith moved they be adopted. Seconded by Senator Strick. The motion carried.

Copies of an Attorney General's Opinion, No. 87-16, concerning Multi-state lotteries, was in the Committee's packet for members. (Attachment #1)

Mr. John Wine, Jr., Assistant Secretary of State, appeared to ask the introduction of a committee bill concerning amendments to the Kansas notary laws. A copy of his letter is attached. (Attachment #2) Senator Martin moved that the bill be introduced. Seconded by Senator Daniels. The motion carried.

Copy of a letter from Thomas J. Sloan to Gregory Watson, of Austin, Texas, including a joint resolution to ratify a proposed amendment to the U.S. Constitution concerning congressional compensation, was before the Committee. Staff explained the resolution. (Attachment #3) Following Committee discussion, Senator Bond suggested that a letter be written to the Kansas Congressional Delegation as to their feelings. It was the consensus of the Committee that the Chairman write a letter. The Chairman will do that.

A Memorandum, dated February 10, 1987, from the Alcoholic Beverage Control, concerning SB 141, minimum markups, was before the Committee. (Attachment #4)

The Chairman introduced a video tape that was played for the Committee concerning the lottery. The tape gave a history of the lottery and explained how various states spend their lottery money and gave the procedures.

Mr. Harley Duncan, Secretary of the Department of Revenue, gave an overview of the administrative costs of the lottery. He stated that he thinks Kansas can have a successful lottery. He stressed the importance of promotion to the public.

The Chairman asked the Committee its pleasure concerning Substitute Bill for SB 141. Senator Anderson referred to the Minutes of February 6, where Senator Bond had moved to totally abolish minimum markup. At some time the Legislature will have to deal with it. Senator Anderson moved it be stricken from SB 141. Seconded by Senator Strick. The motion carried.

Senator Hoferer stated that Washburn University would not fall under the legislation concerning the Board of Regents exempting specific property by resolutions; she moved that Washburn be included in that legislation. Seconded by Senator Martin. The motion carried.

Senator Martin moved that the Substitute for SB 141 be recommended favorable for passage by the Committee. Seconded by Senator Strick. The motion carried.

The meeting was adjourned.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.



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Attachment #1

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

January 29, 1987

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 87- 16

The Honorable Edward F. Reilly, Jr.  
Senator, Third District  
Capitol Building, 255-E  
Topeka, Kansas 66612

Re: Constitution of the State of Kansas --  
Miscellaneous -- Multi-State Lotteries

Synopsis: The constitutional provisions allowing for a state owned and operated lottery would allow the state to enter into an agreement to provide a multi-state lottery. Cited herein: Kan. Const., Art. 2, § 30; Art. 15, § 3c; L. 1986, ch. 414.

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Dear Senator Reilly:

As Chairperson of the Senate Federal and State Affairs Committee you ask our opinion about multi-state lotteries. Specifically, your question centers on the enforceability of agreements with other states to form a multi-state lottery.

Before we answer your specific question, a more fundamental question must first be answered. Does the constitution allow for multi-state lotteries? Article 15, Section 3c of the Kansas Constitution provides in pertinent part, "the legislature may provide for a state-owned and operated lottery." In construing constitutional provisions the Supreme Court of Kansas has stated in State, ex rel. v. Highwood Services, Inc., 205 Kan. 821, 825 (1970):

"[A] constitution is not to be narrowly or technically construed but its language should be held to mean what

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the words imply to the common understanding of men; that in ascertaining the meaning of constitutional provisions courts should consider what appears to have been the intent and understanding of the people at their adoption." (Citations omitted.)

The legislature did not specifically preclude multi-state lotteries with the language used in 1986 Senate Concurrent Resolution 1609, L. 1986, ch. 414. The concept of multi-state lotteries was in fact mentioned in the minutes of the Federal and State Affairs Committee. Minutes of the House Federal and State Affairs Committee, January 21, 1986, testimony of Kansas Alliance for the Lottery, Patrick J. Hurley, Attachment C.

The intent and understanding of both the legislature and the people seems to have been to have a government controlled lottery as a revenue raising measure. Minutes of the House Federal and State Affairs Committee, January 21, 1986, testimony of Secretary of Revenue Harley Duncan, Attachment A. We must now determine whether a multi-state lottery meets this intent. A multi-state lottery would still be state-owned. The governments of the several states would own and operate this lottery in much the same fashion as a single state operates a lottery. A multi-state lottery would also meet the revenue raising aspect. A multi-state lottery would raise money similar to a lottery in a single state. Some would argue that sparsely populated states could raise more in a multi-state lottery than one run by a single state.

It appears that the intent of the voters in approving the lottery was to allow closely regulated gambling and to raise money for the state. A multi-state lottery would not be repugnant to the intent of the constitutional provisions.

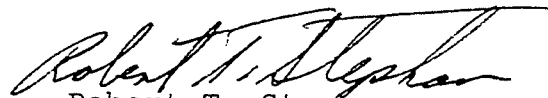
Having determined that multi-state lotteries are permissible, we can now turn to your primary question dealing with enforceability of an interstate agreement. Article 2, Section 30 of the Kansas Constitution provides:

"The legislature may confer legislative powers upon interstate bodies, comprised of officers of this state or its political subdivisions acting in conjunction with officers of other jurisdictions, relating to the functions thereof. Any such delegation, and any agreement made thereunder shall be subject to limitation, change or termination by the legislature, unless contained in a compact approved by the congress." (Emphasis supplied.)

Thus, the legislature may provide for powers to negotiate such agreements as multi-state lotteries, subject to the constitutional limitations stated above. The general rule dealing with compacts between states was stated in 81A C.J.S. States §32(b) (1977). "Generally, contracts between states are made by the acts of their respective legislatures." This, coupled with the language cited above, leads us to conclude that the legislature can delegate to an agency the powers to negotiate a contract between this state and another, but the legislature itself must approve such a contract. This approval could be in the form of enacting the agreement as law, such as is done with other compacts to which this state is a party.

In conclusion, a multi-state lottery would not be contrary to constitutional provisions. The legislature may delegate power to enter into interstate agreements subject to the approval of the legislature.

Very truly yours,



Robert T. Stephan  
Attorney General



Brenda L. Braden  
Deputy Attorney General

RTS:BLB:may

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Attachment #2



Bill Graves  
Secretary of State

2nd Floor, State Capitol  
Topeka, KS 66612-1594  
(913) 296-2236

## STATE OF KANSAS

January 26, 1987

The Honorable Edward Reilly, Jr.  
Chairman, Committee on Federal and State Affairs  
Room 255-E, Capitol  
Topeka, Kansas 66612

Dear Senator Reilly:

Enclosed are amendments to the **Kansas notary laws** that this office requests be introduced as a committee bill. The amendment to K.S.A. 53-101 is in response to two recent United State Supreme Court decisions which rejected citizenship and residency requirements.

The amendment to K.S.A. 53-105 is intended to give the Secretary of State some flexibility to accept notary seals that do not contain the exact statutory wording. The amendment to K.S.A. 53-509 is simply a clean-up amendment dealing with notary forms.

New section one clarifies that claimants under a notary bond make their claims directly to the surety and not through the State. Section two provides a means for the Secretary of State to learn about notaries who may be failing to properly perform their duties.

Please do not hesitate to contact this office if you have any questions or if we can be of any assistance.

Cordially,

A handwritten signature in blue ink, appearing to read "John R. Wine, Jr.", written over a horizontal line.

John R. Wine, Jr.  
Assistant Secretary of State

enclosure

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New Section One:

Any person injured by the failure of a notary public to faithfully perform any notarial act for which a bond is given under the laws of this state may sue on the bond in his or her own name in any court of competent jurisdiction to recover the damages he or she may have sustained by such failure.

New Section Two:

If a surety on a notary bond receives a claim on the bond, the surety shall notify the secretary of state of the outcome of that claim.

not more than

**53-101.** Appointment; term, age; not state officers. The secretary of state shall appoint notaries public, who may perform notarial acts in any part of this state for a term of four (4) years, unless sooner removed. Any person who is a citizen of the United States, at least eighteen (18) years of age and who has been a resident of this state for at least one hundred and eighty (180) days immediately prior to the date of the application for appointment as a notary public shall be eligible to be appointed as a notary public as provided in this act. Notaries public shall not be considered as state officers.

is

, or who is a resident of a state bordering on the state of Kansas and who regularly carries on a business or profession in the state of Kansas or who is regularly employed in the state of Kansas



# KANSAS SENATE

ROBERT V. TALKINGTON

SENATE PRESIDENT

P.O. BOX 725  
IOLA, KANSAS 66749-0725

2/11/87  
Attachment 3

CHAIRMAN:  
LEGISLATIVE COORDINATING COUNCIL

CHAIRMAN:  
ORGANIZATION, CALENDAR AND RULES

MEMBER:  
INTERSTATE COOPERATION  
JUDICIARY  
WAYS AND MEANS

## OFFICE OF THE PRESIDENT

STATE CAPITOL  
TOPEKA, KANSAS 66612-1565  
913-296-2419

January 2, 1987

Gregory D. Watson  
P.O. Box 13458  
Capitol Station  
Austin, TX 78711-3458

COPY

Dear Mr. Watson:

I apologize for the delay in responding to your inquiries concerning ratification of the proposed Constitutional Amendment regarding compensation of members of the U.S. Congress. We have been extremely involved in an election and the transition of power from the former Governor to the new administration and have fallen behind in our correspondence. That is not an excuse for keeping you waiting and I do apologize.

Senator Talkington and I have discussed your letter and he has no problem with Senator Reilly introducing the ratifying resolution during this Session. I will convey that position to Senator Reilly and he may proceed.

Thank you for bringing this matter to our attention.

Sincerely,



Thomas J. Sloan  
Administrative Assistant

COPY

TJS:na

Representative Williamson's Office

Attachment #3

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FILED NOV 10 1986

By Williamson

H.J.R. No. 8

A JOINT RESOLUTION

11 ratifying a proposed amendment to the Constitution of the United  
22 States relative to the compensation of members of the United  
33 States Congress and when any increases therein shall take effect.

44 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

55 SECTION 1. That the Legislature of the State of Texas,  
66 pursuant to Article V of the United States Constitution, hereby  
77 ratifies an amendment to the Constitution of the United States  
83 proposed by resolution of the First Congress of the United States  
99 in New York, New York on September 25, 1789, which reads as  
100 follows, to wit:

111 "RESOLVED by the Senate and House of Representatives of the  
122 United States of America in Congress assembled, two thirds of both  
133 Houses concurring, that the following [Article] be proposed to the  
144 Legislatures of the several States,...which [Article], when  
155 ratified by three fourths of the said Legislatures, to be valid to  
166 all intents and purposes, as part of the said Constitution, viz.:

177 "[An ARTICLE] in addition to, and Amendment of the  
188 Constitution of the United States of America, proposed by  
199 Congress, and ratified by the Legislatures of the several States,  
200 pursuant to the fifth Article of the original Constitution.

211 "Article the second...No law, varying the compensation for  
222 the services of the Senators and Representatives, shall take  
233 effect, until an election of Representatives shall have  
244 intervened."

1           SECTION 2. That the Legislature of the State of Texas  
2 acknowledges that the above-quoted article of amendment to the  
3 United States Constitution has already been ratified by the  
4 legislatures of the following states on the dates indicated, to  
5 wit: Maryland on December 19, 1789; North Carolina on December  
6 22, 1789; South Carolina on January 19, 1790; Delaware on January  
7 28, 1790; Vermont on November 3, 1791; Virginia on December 15,  
8 1791; Ohio on May 6, 1873 [70 Ohio Laws 409-10]; Wyoming on March  
9 3, 1978 [124 Cong. Rec. 7910]; Maine on April 27, 1983 [130 Cong.  
10 Rec. H9097, S11017]; Colorado on April 18, 1984 [131 Cong. Rec.  
11 S17687; 132 Cong. Rec. H6446]; South Dakota on February 21, 1985  
12 [131 Cong. Rec. H971, S3306]; New Hampshire on March 7, 1985 [131  
13 Cong. Rec. H1378, S3597]; Arizona on April 3, 1985 [131 Cong. Rec.  
14 H2060, S4750]; Tennessee on May 23, 1985 [131 Cong. Rec. H6672,  
15 S10797, S13504]; Oklahoma on July 10, 1985 [131 Cong. Rec. H7263,  
16 S13504]; New Mexico on February 13, 1986 [132 Cong. Rec. H827,  
17 S2207-8, S2300]; Indiana on February 19, 1986 [132 Cong. Rec.  
18 H1634, S4663]; and Utah on February 25, 1986 [132 Cong. Rec.  
19 S6750, S7578]; as well as by the Senate of the State of Georgia on  
20 February 2, 1984 and on January 21, 1985.

21           SECTION 3. That the Legislature of the State of Texas  
22 acknowledges that the above-quoted article of amendment to the  
23 United States Constitution may still be ratified by states'  
24 legislatures as a result of the ruling by the United States  
25 Supreme Court in the landmark case of Coleman v. Miller, [307 U.S.  
26 433 (1939)] in which it was opined that Congress is the final  
27 arbiter on the question of whether too much time has elapsed

11 between Congress' submission of an amendment and the most recent  
12 state legislature's ratification of same if Congress did not  
13 specify a deadline on the amendment's consideration.

14 SECTION 4. That the Secretary of State shall notify the  
15 Archivist of the United States (pursuant to 1 U.S.C. 106b and 112;  
16 as amended by PL 98-497 [98 Stat. 2291]) of the action of the 70th  
17 Legislature, Regular Session, by sending to him a copy of this  
18 resolution.

19 SECTION 5. That the Secretary of State shall also send  
20 copies of this resolution to both United States Senators from  
21 Texas, all twenty-seven (27) United States Representatives from  
22 Texas, the Vice-President of the United States and to the Speaker  
23 of the United States House of Representatives with the request  
24 that it be printed in full in the Congressional Record.

2/11/87  
Attachment #4

MEMORANDUM

TO: Senate Federal & State Affairs Committee  
FROM: Alcoholic Beverage Control Division  
DATE: February 10, 1987  
SUBJECT: Senate Bill 141, minimum markups

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If the minimum price markup system is eliminated, the Alcoholic Beverage Control would ask that the Legislature to adopt a provision prohibiting liquor retailers from selling below acquisition cost. Suggested language would be:

Sale below acquisition cost by retailer prohibited. No retailer shall sell, directly or indirectly any alcoholic liquor at less than acquisition cost of said alcoholic liquor without first having obtained from the director a permit to do so, and the director is authorized to issue such a permit in the following cases:

(a) where the retailer is actually closing out his or her stock for the purpose of completely discontinuing sale of such item of alcoholic liquor for a period of not less than twelve (12) months;

(b) where the item of alcoholic liquor is damaged or deteriorated in quality and notice is given to the public thereof; or

(c) where the sale of the item of alcoholic liquor is by an officer acting under the order of any court.

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# Resolve Liquor Mess Legislatively

*Eagle Beacon* 2-11-87

THERE'S no question General Robert Stephan was right Monday in declaring invalid the Kansas law requiring retailers to mark liquor prices up by at least 28.5 percent and wine prices by at least 40.5 percent. The U.S. Supreme Court last month struck down a New York law that was mechanically the same as Kansas', saying it was an unconstitutional restraint of competition. But Mr. Stephan's opinion apparently won't be enough to settle the matter for those who have vested interests either in seeing the law remain as is, or in seeing it changed. As Gov. Mike Hayden suggests, legislative action is the best way to bring Kansas into line with the rest of the country. It's also the best way to discourage lengthy and costly court action.

For reasons not entirely clear, Mr. Hayden also says liquor markups should continue to be enforced in the meanwhile, regardless of Mr. Stephan's opinion. That's no favor to Kansas consumers, who pay some of the

highest liquor and wine prices in the country, and who are entitled to prompt relief. Mr. Hayden's stance tosses the matter squarely into the Legislature's lap.

The Senate Federal and State Affairs Committee has gotten a good start toward dealing with it. A clause abolishing liquor markups is part of an omnibus liquor bill whose main purpose is to put liquor-by-the-drink into effect. Even though the minimum markup issue has no legal relationship to the liquor constitutional amendment approved by the voters last November, the two issues are logically related. It makes sense to use the same bill to address both.

As the bill moves through the legislative pipeline, senators and representatives should remember that the voters and the high court already have decided what fundamental state liquor policy should be. Their task — whose urgency has been increased by Mr. Stephan's opinion — is to make the necessary legal changes in timely fashion.