

Approved _____

Date

4/8/87

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./~~p.m.~~ on February 25, 1987 in room 254-E of the Capitol.

All members were present except:

Committee staff present:

Mary Galligan, Legislative Services
Emalene Correll, Legislative Services
June Windscheffel, Secretary to the Committee

Conferees appearing before the committee:

Secretary Harley Duncan, Department of Revenue

The Chairman stated that the Committee will continue its discussion of HB 2043, concerning the state lottery.

Senator Vidricksen said that he had a bill proposal, concerning unclaimed property and its disposition, transferring the administration from the state treasurer to the secretary of administration. (Attachment #1) Senator Bond moved that the bill be introduced. Seconded by Senator Morris. The motion carried.

The Chairman appointed a Subcommittee to study SB 283, real estate brokers' and salespersons' act, to consist of Senator Arasmith, Chairman; Senator Bond and Senator Martin.

It was pointed out that an opinion was before the Committee from the Attorney General, dated February 25, 1987. (Attachment #2)

The Subcommittee Report of yesterday was referred to by its' Chairman, Senator Morris. He said he wanted to clarify a point on No. 4, concerning raising the maximum value of gifts to be accepted and include food and beverage in that amount. The \$100 would be in addition to and not include food and beverage.

Concerning pooled investment bonds, there was an amendment in regard to the payment purchased in new Sec. 13. Senator Morris moved to adopt the proposed amendment. Seconded by Senator Martin. The motion carried.

Secretary Harley Duncan, Department of Revenue, told the Committee they have looked around the town for potential lottery sites. They would propose an amendment concerning the initial lease office space not be subject to the approval of the Commission. Senator Bond made the conceptual motion, seconded by Senator Martin that staff draw up an amendment as to the Committee for the first lease, to be comprised of the Secretary of Administration, the representative from the Division of Architectural Services and the designated executive director of the lottery appointed by the Governor. From that point on any others would go back to the original procurement proceeding. The motion carried.

Senator Martin moved that HB 2043 be recommended favorably for passage as amended. Seconded by Senator Morris. The motion carried.

The Committee will proceed with hearings tomorrow as shown on the agenda.

The meeting was adjourned.

SENATE BILL NO. 348

By ~~Senator Vidricksen~~

Committee on Federal & State Affairs

AN ACT concerning the disposition of unclaimed property act; transferring the administration of the act from the state treasurer to the secretary of administration; amending K.S.A. 58-3901, 58-3912, 58-3913, 58-3914, 58-3915, 58-3916, 58-3917, 58-3918, 58-3920, 58-3921, 58-3923, 58-3924, 58-3925, 58-3926 and 58-3927 and K.S.A. 1986 Supp. 58-3919 and 58-3922 and repealing the existing sections.

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

Section 1. K.S.A. 58-3901 is hereby amended to read as follows: 58-3901. As used in this act, unless the context otherwise requires:

(a) "Banking organization" means any bank, trust company, or safe deposit company engaged in business in this state.

(b) "Business association" means any corporation, joint stock company, business trust, partnership, or any association for business purposes of one or more individuals.

(c) "Financial organization" means any savings and loan association, building and loan association, credit union, or investment company, engaged in business in this state.

(d) "Holder" means any person in possession of property subject to this act belonging to another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to this act.

(e) "Life insurance corporation" means any association or corporation transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

(f) "Owner" means a depositor in case of a deposit, a

beneficiary in case of a trust, a creditor, claimant, or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to this act, or ~~his-er-her~~ such person's legal representative.

(g) "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(h) "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas.

(i) "Secretary" means the secretary of administration.

Sec. 2. K.S.A. 58-3912 is hereby amended to read as follows: 58-3912. (a) Every person holding funds or other property, tangible or intangible, presumed abandoned under this act shall report to the ~~state-treasurer~~ secretary with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) Except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property presumed abandoned under this act;

(2) in case of unclaimed funds of life insurance corporations, the full name of the insured or annuitant and ~~his er-her~~ such person's last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under ~~three-dollars~~ {3} \$3 each may be reported in aggregate;

(4) the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) such other information as may be required by the state treasurer secretary necessary for the administration of this act.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his--or--her their name while holding the property, such person shall file with his-or-her such person's report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The state--treasurer secretary may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(f) Verification, if made by a partnership, shall be executed by a partner, if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

(g) The initial report filed under this act shall include all items of property that which would have been presumed abandoned if this act had been in effect during the ten-year period preceding its effective date, and which property remains unclaimed, and, is in the possession of, or is identified upon the books of, the reporting person on the effective date of this act.

Sec. 3. K.S.A. 58-3913 is hereby amended to read as follows: 58-3913. (a) Within ~~one-hundred-twenty~~ ~~(120)~~ 120 days from the filing of the report required by K.S.A. 58-3912, and

amendments thereto, the ~~state--treasurer~~ secretary shall cause notice to be published at least once each week for two ~~(2)~~ successive weeks in a newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has ~~his-or-her~~ such person's principal place of business within this state.

(b) The published notice shall be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property," and shall contain:

(1) The names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified;

(2) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the ~~state--treasurer-~~ secretary;

(3) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within ~~sixty-five-(65)~~ 65 days from the date of the second published notice, the abandoned property will be placed not later than ~~eighty-five-(85)~~ 85 days after such publication date in the custody of the ~~state--treasurer~~ secretary to whom all further claims must thereafter be directed.

(c) The ~~state--treasurer~~ secretary is not required to publish in such notice any item of less than ~~twenty-five-dollars~~ ~~(\$25)~~ \$25 unless ~~he-or-she~~ the secretary deems such publication to be in the public interest.

(d) Within ~~one--hundred--twenty--(120)~~ 120 days from the receipt of the report required by K.S.A. 58-3912, and amendments thereto, the ~~state--treasurer~~ secretary shall mail a notice to

each person having an address listed therein who appears to be entitled to property of the value of ~~twenty-five-dollars-(\$25)~~ \$25 or more presumed abandoned under this act.

(e) The mailed notice shall contain:

(1) A statement that, according to a report filed with the ~~state--treasurer~~ secretary, property is being held to which the addressee appears entitled;i

(2) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder;i

(3) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the ~~state-treasurer~~ secretary to whom all further claims must be directed.

(f) This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under K.S.A. 58-3902, and amendments thereto.

Sec. 4. K.S.A. 58-3914 is hereby amended to read as follows: 58-3914. (a) Every person who has filed a report under K.S.A. 58-3912, and amendments thereto, within 20 days after the time specified in K.S.A. 58-3913, and amendments thereto, for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under K.S.A. 58-3902, and amendments thereto, within 20 days after the filing of the report, shall pay or deliver to the ~~state treasurer~~ secretary all abandoned property specified in the report, except that, if the owner establishes such person's right to receive the abandoned property to the satisfaction of the holder within the time specified in K.S.A. 58-3913, and amendments thereto, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the ~~state-treasurer~~ secretary, but in lieu thereof shall file a verified written explanation of the proof of claim

or of the error in the presumption of abandonment. In the case of any stock or other certificate of ownership, delivery shall be accomplished by a registration of such property in the name of the ~~state-treasurer~~ secretary for the benefit of the owner.

(b) The holder of any interest under subsection (b) of K.S.A. 58-3905, and amendments thereto, shall deliver a duplicate certificate by registration of such property in the name of the ~~state-treasurer~~ secretary for the benefit of the owner, or other evidence of ownership if the holder does not issue certificates of ownership.

Sec. 5. K.S.A. 58-3915 is hereby amended to read as follows: 58-3915. Upon the payment or delivery of abandoned property to the ~~state-treasurer~~ secretary, the state shall assume custody and shall be responsible for the safekeeping thereof. Any person who pays or delivers abandoned property to the ~~state treasurer~~ secretary under this act is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property. Any holder who has paid moneys to the ~~state-treasurer~~ secretary pursuant to this act may make payment to any person appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee was entitled thereto, the ~~state-treasurer~~ secretary shall forthwith reimburse the holder for the payment.

Sec. 6. K.S.A. 58-3916 is hereby amended to read as follows: 58-3916. (a) When noninterest-bearing property is paid or delivered to the ~~state--treasurer~~ secretary under this act, the owner is not entitled to receive income or other increments accruing thereafter.

(b) When interest-bearing property is paid or delivered to the ~~state--treasurer~~ secretary under this act, the owner is entitled to receive interest accruing thereafter under the following conditions:

(1) Interest will be paid at the stated rate the property was earning at the time it was turned over to the ~~treasurer~~

secretary; and

(2) interest will be computed and paid by the treasurer secretary at the time a valid claim is established by the owner. The interest will be compounded quarterly.

Sec. 7. K.S.A. 58-3917 is hereby amended to read as follows: 58-3917. The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by this act or to pay or deliver abandoned property to the ~~state--treasurer~~ secretary.

Sec. 8. K.S.A. 58-3918 is hereby amended to read as follows: 58-3918. (a) Except as provided in subsection (c), all abandoned property other than money delivered to the ~~state treasurer~~ secretary under this act shall within one year after the delivery be sold by the ~~state--treasurer~~ secretary or the ~~treasurer's~~ secretary's designee to the highest bidder at public sale in whatever city in the state affords in the ~~treasurer's~~ secretary's judgment the most favorable market for the property involved. The ~~state-treasurer~~ secretary may decline the highest bid and reoffer the property for sale if the ~~treasurer~~ secretary considers the price bid insufficient. The ~~state---~~ treasurer secretary need not offer any property for sale if, in the ~~treasurer's~~ secretary's opinion, the probable cost of sale exceeds the value of the property.

(b) Any sale held under subsection (a) shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale, in a newspaper of general circulation in the county where the property is to be sold.

(c) Except as provided in subsection (d), within one year after delivery to the ~~state--treasurer~~ secretary, securities listed on an established stock exchange shall be sold at the prevailing prices on such exchange. Other securities may be sold over the counter at prevailing prices or by such other method as

the state--treasurer secretary may determine may be advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment. The state-treasurer secretary need not sell any securities if, in the treasurer's secretary's opinion, the probable cost of sale exceeds the value of the property.

(d) Unless the state-treasurer secretary deems it to be in the best interest of the state to do otherwise, all securities presumed abandoned under subsection (b) of K.S.A. 58-3905, and amendments thereto, and delivered to the administrator must be held for at least three years before the securities may be sold.

(e) The purchaser at any sale conducted by the state treasurer secretary pursuant to this act shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state-treasurer secretary shall execute all documents necessary to complete the transfer of title.

(f) If one year or more after publication under K.S.A. 59-3913, and amendments thereto, the state-treasurer secretary determines that any property delivered to the state--treasurer secretary has no apparent value, the treasurer secretary shall give written notice to the ~~secretary-of--administration--and~~ the secretary of the state historical society that the property will be destroyed after six months unless, within that time, a state agency or the state historical society requests that the treasurer secretary transfer the property to the agency or society. If a state agency or the state historical society so requests, the treasurer secretary shall transfer the property to the agency or society without requiring consideration. If neither a state agency nor the state historical society requests a transfer of the property within six months after notice by the treasurer secretary, the treasurer secretary may at any time thereafter destroy the property. No action or proceeding may be brought or maintained against the state or any officer thereof or against the holder of property because of the destruction or

transfer of any property in accordance with this subsection.

Sec. 9. K.S.A. 1986 Supp. 58-3919 is hereby amended to read as follows: 58-3919. (a) The unclaimed properties suspense fund and the unclaimed property contract fund are hereby created in the state treasury. The ~~state-treasurer~~ secretary shall deposit at least monthly all moneys received under the disposition of unclaimed property act in the state treasury and the state treasurer shall credit amounts thereof to the unclaimed properties suspense fund, the unclaimed property contract fund and the state general fund as provided in this section. Of the moneys so deposited, the state treasurer shall credit moneys to the unclaimed properties suspense fund in an amount which is sufficient for the payment of claims allowed by the ~~state treasurer~~ secretary under subsection (b), subject to a maximum unencumbered balance in the fund of \$50,000, and to the unclaimed property contract fund in an amount which is sufficient for payments from the fund for contracts for the location and collection of unclaimed properties, subject to a maximum unencumbered balance in the fund of \$20,000. All other moneys received under the disposition of unclaimed property act shall be credited to the state general fund.

(b) The ~~state-treasurer~~ secretary shall pay promptly from the unclaimed properties suspense fund all claims for unclaimed properties subject to the disposition of unclaimed property act which are duly allowed by the ~~state-treasurer~~ secretary.

(c) Before making the deposit of moneys in the state treasury, the ~~state-treasurer~~ secretary shall record the name and last known address of each person appearing from the holders' report to be entitled to the abandoned property and of the name and last known address of each insured person or annuitant. With respect to each policy or contract listed in the report of a life insurance corporation, the ~~state-treasurer~~ secretary shall record its number, the name of the corporation and the amount due. The record shall be available for public inspection at all reasonable business hours.

(d) Subject to the provisions of appropriations acts, the state--treasurer secretary may make expenditures under the disposition of unclaimed property act to cover:

(1) Any cost in connection with the sale of abandoned property;

(2) any cost of mailing and publication in connection with any abandoned property; and

(3) any cost incurred in collection of abandoned property and discovery of holders of abandoned property.

(e) All expenditures from the unclaimed properties suspense fund and the unclaimed property contract fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the state-treasurer secretary or by a person designated by the state-treasurer secretary.

~~(f) On July 1, 1984, the director of accounts and reports shall transfer all moneys in the unclaimed property expense recovery fund to the unclaimed property contract fund. On July 1, 1984, subsequent to such transfer, the director of accounts and reports shall transfer all moneys in the unclaimed property contract fund in excess of \$20,000 from the unclaimed property contract fund to the state general fund. On July 1, 1984, all liabilities of the unclaimed property expense recovery fund are hereby imposed on the state general fund and the unclaimed property expense recovery fund is hereby abolished.~~

Sec. 10. K.S.A. 58-3920 is hereby amended to read as follows: 58-3920. Any person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state-treasurer secretary.

Sec. 11. K.S.A. 58-3921 is hereby amended to read as follows: 58-3921. (a) The state--treasurer secretary shall consider any claim filed under this act and may hold a hearing and receive evidence concerning it. If a hearing is held, the state--treasurer secretary or his-or-her the secretary's designee

shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him-or-her the secretary and the reasons for such decision. The decision shall be a public record.

(b) If the claim is allowed, the ~~state-treasurer~~ secretary shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

Sec. 12. K.S.A. 1986 Supp. 58-3922 is hereby amended to read as follows: 58-3922. (a) Failure of the ~~state--treasurer~~ secretary to act within 90 days after the filing of a claim pursuant to this act constitutes denial of such claim.

(b) Any action of the ~~state-treasurer~~ secretary pursuant to the disposition of unclaimed property act is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 13. K.S.A. 58-3923 is hereby amended to read as follows: 58-3923. The ~~state--treasurer~~ secretary, after receiving reports of property deemed abandoned pursuant to this act, may decline to receive any tangible property reported which he-or-she the secretary deems to have a value less than the cost of giving notice and holding sale, or he-or-she the secretary may, if he-or-she the secretary deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within ~~one--hundred--twenty--(120)~~ 120 days after filing the report required under K.S.A. 58-3912, and amendments thereto, the ~~state-treasurer~~ secretary shall be deemed to have elected to receive the custody of the property.

Sec. 14. K.S.A. 58-3924 is hereby amended to read as follows: 58-3924. The ~~state-treasurer~~ secretary may within ~~one hundred-twenty--(120)~~ 120 days after receiving the report required under K.S.A. 58-3912, and amendments thereto and upon reasonable notice examine all records pertaining to abandoned property of any person if the ~~state-treasurer~~ secretary has reason to believe that such person has failed to report property that should have

been reported pursuant to this act. Audits and inspections made pursuant to this act shall be conducted only by employees of this state, duly authorized by the ~~state-treasurer~~. The provisions of this section shall not be deemed to authorize audits or inspections of supervised commercial banks, trust companies, savings and loan associations, credit unions, supervised licensed lenders, and insurance companies with home offices located in this state. All state agencies shall provide the ~~state-treasurer~~ secretary with such information as is necessary for carrying out the provisions of this act.

Sec. 15. K.S.A. 58-3925 is hereby amended to read as follows: 58-3925. If any person refuses to deliver property to the ~~state--treasurer~~ secretary as required under this act, the ~~state-treasurer~~ secretary shall bring an action in a court of appropriate jurisdiction to enforce such delivery.

Sec. 16. K.S.A. 58-3926 is hereby amended to read as follows: 58-3926. (a) Any person who, during a reporting period, willfully fails to render any report or perform other duties required under this act, shall be punished by a fine of ~~ten--dollars--(\$10)~~ \$10 for each day such report is withheld, but not more than ~~one--thousand--dollars--(\$1,000)~~ \$1,000 in the aggregate.

(b) Any person who, during a reporting period, willfully refuses to pay or deliver abandoned property to the ~~state treasurer~~ secretary as required under this act shall be punished by a fine equal to ~~one-half--(1/2)~~ 1/2 of the value of the abandoned property, the delivery of which has been refused, or by a fine of ~~two-hundred-dollars-(\$200)~~ \$200, whichever is greater.

(c) Any person who, during a reporting period, knowingly and with intent to defraud makes a false statement in any report required under this act, shall be punished by a fine of not less than ~~one--hundred--dollars--(\$100)~~ \$100, but not more than ~~one thousand-dollars-(\$1,000)~~ \$1,000.

Sec. 17. K.S.A. 58-3927 is hereby amended to read as follows: 58-3927. The ~~state--treasurer~~ secretary is hereby

authorized to adopt such rules and regulations as may be necessary to carry out the provisions of this act.

New Sec. 18. (a) When any conflict arises as to the disposition of any power, duty or function or the unexpended balance of any appropriation as a result of any transfer made by this act, or under authority of this act, such conflict shall be resolved by the governor and the decision of the governor shall be final.

(b) The secretary of administration shall succeed to all property and records which were used for, or pertain to, the performance of the powers, duties and functions transferred to the secretary under the provisions of this act. Any conflict as to the proper disposition of such property or records arising under this section and resulting from the transfer of the state treasurer's powers, duties and functions to the secretary of administration shall be determined by the governor whose decision shall be final.

New Sec. 19. All rules and regulations and all orders and directives of the state treasurer in existence on the effective date of this act shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the secretary of administration until revised, amended, repealed or nullified pursuant to law.

Sec. 20. K.S.A. 58-3901, 58-3912, 58-3913, 58-3914, 58-3915, 58-3916, 58-3917, 58-3918, 58-3920, 58-3921, 58-3923, 58-3924, 58-3925, 58-3926 and 58-3927 and K.S.A. 1986 Supp. 58-3919 and 58-3922 are hereby repealed.

Sec. 21. This act shall take effect and be in force from and after its publication in the statute book.



2/25/87
Attachment #2

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

February 25, 1987

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

ATTORNEY GENERAL OPINION NO. 87- 38

The Honorable Vincent K. Snowbarger
Representative, 26th District
Capitol Building, 446-N
Topeka, Kansas 66612

Re: Constitution of the State of Kansas --
Miscellaneous -- State Owned and Operated
Lotteries

Synopsis: The constitutional provision permitting a state owned and operated lottery would allow the state to advance and market any game or combination of games as long as there is consideration, chance and a prize involved in each game. Cited Herein: Kan. Const., Art. 5, §3C; L. 1986, ch. 414.

*

*

*

Dear Representative Snowbarger:

As Representative for the Twenty-Sixth district, you ask our opinion as to the definition of the word "lottery." Specifically, you question whether the game "lotto" is allowed by the Kansas constitutional provision, Art. 15, §3C.

The constitutional provision as voted on and passed by the Kansas electorate did not define or restrict the term "lottery," nor did it define or restrict itself to any specific games. The definitional responsibility of defining "lottery" is therefore passed to the courts of

Attachment #2
FSA 2/25/87

this state. State v. Nelson, 210 Kan. 439, 445 (1972). In Nelson, the Court stated that "[t]he definition should achieve a consistency so that it shall not be taken to mean one thing at one time and another thing at another time." Id. at 445.

In Higgins v. Cardinal Manufacturing Co., 188 Kan. 11 (1961), the Court stated that a constitution is not to be narrowly or technically construed but its language "should be held to mean what the words imply to the common understanding of men." This position was adopted in the later case of State, ex rel., v. Highwood Services, Inc., 205 Kan. 821 (1970), when the court used resources available around the time the Kansas Constitution was adopted in 1859 to define "lottery." The Court wrote in Highwood at 825 and 826 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. (See, also, State v. Sessions, 84 Kan. 856, 115 Pac. 641)." Thus, in defining the term "lottery" the Court has adopted common usage definitions.

In Highwood, the Court's research included the following:

"In Abbott's Law Dictionary, published in 1879, we have found this definition of a lottery:

"'A scheme for the distribution of prizes by chance, among buyers of the chances.

"'Such schemes were formerly very common, were authorized by law, and were even set on foot, in many instances, by the authorities, for raising revenue for public or benevolent purposes. [In view of the ill effects of the element of gambling involved, they are now very generally made unlawful.'

"Foremost among the citations appended to the text, the author has placed the following:

"'A lottery is a distribution of prizes by chance or lot, where a valuable consideration is given for the chance of drawing a prize. United States v. Olney, 1 Abb. U.S. 275.,' (1868).

"Webster's Third New International Dictionary, unabridged, (1964) conveys much the same idea as it defines lottery:

"'a scheme for the distribution of prizes by lot or chance; esp.: a scheme by which prizes are distributed to the winners among those persons who have paid for a chance to win them, usu. as determined by the numbers on tickets as drawn at random (as from a lottery wheel).'"

"To similar effect, see Oxford Illustrated Dictionary (1962) and The Random House Dictionary of the English Language, the Unabridged Edition (1967)."

The court has refined the various definitions into three required elements in order to be recognized as a lottery in Kansas. "The court has held that the essential elements of a lottery are three: (1) consideration, (2) prize, and (3) chance. (State, ex rel. v. Bissing, 178 Kan. 111, 283 P.2d 418)." Highwood, 205 Kan. at 823. Using this three element definition the court has adhered to the constitutional provision banning lotteries and struck down such efforts prior to Kan. Const. Art. 15, sec 3c. "The State, ex rel. v. Mercantile Association, 45 Kan. 351, 25 Pac. 984, [distribution of prizes by chance]; In re Smith, Petitioner, 54 Kan. 702, 39 Pac. 70, [sale of lottery tickets]; The State, ex rel. v. Fair Association, 89 Kan. 238, 131 Pac. 626, [bets on horse races]; State, ex rel., v. Fox Kansas Theatre Co., 144 Kan. 687, 62 P.2d 929, [theater bank night]; City of Wichita v. Stevens, 167 Kan. 408, 207 P.2d 386, [punch boards]; State v. Brown, 173 Kan. 166, 244 P.2d 1190, [punch boards]; State, ex rel. v. Bissing, 178 Kan. 111, [parimutuel betting on dog races]." Nelson, 210 Kan. at 444.

In considering the lottery provision, numerous individuals and state agencies advanced definitions for the term lottery. Included in the minutes were reports that "new forms of lottery games are constantly being invented," Minutes of the House Federal and State Affairs Committee, January 16, 1986, testimony of Ross Mills, Legislative Research Department, Attachment A., and "there are currently several types of lottery products being played . . . weekly game or draw lottery . . . instant lottery ticket . . . online system . . . numbers game . . . pick four." Minutes of the House Federal and State Affairs

Committee, January 16, 1986, testimony of Secretary of Revenue Harley Duncan, Attachment B.

It was further presented that some states have restricted their lottery to specific games. Minutes of the House Federal and State Affairs Committee, January 21, 1986, testimony of Patrick J. Hurley, Attachment C. The Kansas Legislature did not preclude any specific game or games with the language used in 1986 Senate Concurrent Resolution 1609, L. 1986, ch. 414.

In Attorney General Opinion No. 87-16, this office indicated that:

"[t]he 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.

"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."

In our judgment, the game "lotto" would fall within the scope of the Kansas constitutional "lottery" amendment since it is an unrestricted provision. The lottery could include both an active game and a passive game. An active game has been recognized as a lottery game in which the player takes action to determine the outcome by choosing a number or set of numbers to bet on, attempting to match the numbers later drawn. A passive game is a lottery game in which the player takes no active part in determining the outcome; the ticket sold is either a winner or a loser, and no choices of numbers are made. Minutes of the House Federal and State Affairs Committee, January 16, 1986, testimony of Secretary of Revenue Harley Duncan. Attachment B. Again, to be recognized as a lottery the three (3) essential elements must be present in either an active or passive game.

The Kansas Supreme Court in Highwood, supra, came to the conclusion that:

"In short, we entertain the opinion that not only in 1859, when the constitution was adopted, and in 1895, when K.S.A. 21-1506 was enacted, but in recent years as well, the common understanding of a lottery entertained by men in general has been that a consideration of value must flow from those who participate. We gravely doubt that had the ordinary man in the streets in 1859 been able to envision the advent of television he would have characterized as a lottery the give-away program known as Dialing for Dollars." 205 Kan. at 826.

In keeping with the court pronouncement that the definition must remain constant and should withstand the test of time, any game, no matter the extent of player participation or the title assigned to the game, be it "lotto" or "casino gambling," as long as it is state owned and operated and involves the essential elements discussed above, it would be classified as a lottery.

It is therefore our opinion that a state-owned and operated lottery could include any game or combination of games as long as there is consideration, chance and prize involved in each game. Such a game would not be repugnant to the intent of the constitutional provision.

Very truly yours,



Robert T. Stephen
Attorney General



Brenda L. Braden
Deputy Attorney General

RTS:BLB:may