

MINUTES OF THE HOUSE COMMITTEE ON FEDERAL & STATE AFFAIRS

The meeting was called to order by REPRESENTATIVE ROBERT H. MILLER at  
Chairperson

1:30 a.m./p.m. on January 25, 1988 in room 526S of the Capitol.

-All members were present except:  
Representative Peterson - E  
Representative Grotewiel

Committee staff present:

Mary Torrance, Revisor's Office  
Mary Galligan, Research Department  
Lynda Hutfles, Secretary

Conferees appearing before the committee:

Larry Montgomery, Director, Kansas Lottery  
J. Edward Slover, Retired Washburn Law Professor  
Reverend Richard Taylor, Kansans' for Life at its Best  
Jon Brax, Kansans' for Life at its Best  
Frances Wood, Capitol City Christian Temperance Union

The meeting was called to order by Chairman Miller.

Representative Sughrue made a motion, seconded by Representative Roe to approve the minutes of the January 20. The motion carried.

Representative Charlton explained a proposed bill concerning Indian burial grounds and made a motion, seconded by Representative Eckert, to introduce the proposal as a committee bill. The motion carried. See attachment A.

SB494 - Multi-State Lottery

Larry Montgomery, Director of the Kansas Lottery, gave the committee some background information concerning the multi-state lottery. He also distributed a copy of the administrative rules & regulations adopted by the Commission on September 16, 1988. See attachment B & C.

There was discussion of what percentage of the prize money is going to go into the multi-state lottery.

Representative Roper asked if a contract had been drawn with G-Tech and what would happen to that contract if SB494 were not passed. Mr. Montgomery told the representative that they are negotiating the contract with G-Tech at this time. The security clearance was completed last week and further negotiation will be taken up next Thursday. If SB495 does not pass, Mr. Montgomery said that Kansas would immediately start a Kansas game.

Representative Hensley questioned Rule 18 which states that the prize pool for all prize categories shall consist of 45% of each week's sales. In the event that New York would join the multi-state lottery, with a prize pool of 40%, what would happen with Kansas' 45% requirement. Mr. Montgomery said that New York was given until December 31, to come into the multi-state, and they didn't. If they reverse in the future New York will have to change their state law in order to accommodate the 45%. Representative Hensley distributed a copy of a letter from Arden Ensley, Revisor or Statutes, concerning the constitutionality of Kansas entering into a multi-state lottery. See Attachment D.

CONTINUATION SHEET

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When asked if they are subject to Legislative review of their rules & regulations, Mr. Montgomery said that they had met with Legislative Rules Committee and have gone over the rules. The way the statute is worded, there is some question if the Commission rules & regs are subject to review.

When asked what the monetary affect would be if Kansas decided not to get into the multi-state lottery, Mr. Montgomery said the prize fund must stay in for the full 365 days and there would be some administrative costs. If the multi-state lottery should be dissolved within 12 months after Kansas withdraws they would get a proportion of the administrative costs back; if not Kansas will loose all rights to the property. The prize fund liability is limited to tickets already sold.

There was discussion about how much money has been spent to date on the multi-state lottery. Mr. Montgomery stated that \$165,000 is our share of administrative costs and about \$2,00 has been spent for staff travel.

Also discussed was the bidding procedure for the multi-state lottery described in Rule 15 and whether this is in line with state procurement procedures.

Representative Gjerstad asked questions about purchases that are subject to major procurement procedures. Mr. Montgomery stated that they contacted the Travis Consulting Firm in July of this year to help design requests for proposals. Within 48 hours the RFP was let. There was an October 1 deadline for entering the multi-state lottery. Travis was able to work so fast because a lot of the work was done ahead of time at the state level. They did not have to start from scratch.

Chairman Miller asked whether the multi-state lottery was going to effect the instant lottery in Kansas. Montgomery said that they expected sales would go down, but that in Kansas, the advantage has been that the sales are higher and are dropping off at a much higher level than expected. The reason the multi state was consider at such an early date was because of the initial analysis that sales would drop. The commission wanted to break that slide and provide more revenue so they started looking at possibilities of introducing on-line games in February or March.

Representative Hensley expressed his concerns about how this issue has been approached. He said he felt it was unfortunate that we were in this predicament and were put under the gun. He said he felt it was inappropriate that the Director of the Lottery Commission has placed himself, the Legislature and the Governor's reputation on the line by going ahead with the multi-state lottery before approval was given. Mr. Montgomery replied that Kansas has done a number of things that no other state has done. The state has an opportunity to work together to do what other states are doing and be more successful at it.

This is the first coast to coast multi-state lottery. There is a provision in the contract to extend to other states after 12 months. Within 2½ months, Kansas has accomplished a lot. They have gone from an instant game to an on-line game; have a major 30 minute live draw show on TV. The commission has worked hard to put this all together and it has been an enormous task. Mr. Montgomery apologized that they had not reviewed the AG opinion of a year ago. They thought the Legislature had approved the contract.

There was discussion on the advertising. Each state performs their own advertising. The odds are displayed on the "How to Play" brochure. When asked what the anticipated odds are in the multi-state lottery, Mr. Montgomery referred to Rule 9 of the rules & regs - first prize - 1 in 18 million.

J.Edward Slover, Retired Washburn Law Professor, gave testimony in opposition to the bill questioning the constitutional limitations on the activities of the commission. See attachment E.

CONTINUATION SHEET

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Reverend Richard Taylor, Kansans's for Life at its Best, gave testimony in opposition to the bill. He explained to the committee that he is the one who brought the fact that the Legislature had to approve the contract to the attention of the Commission. See attachment F.

Jon Brax, Kansan's for Life at its Best, gave testimony in opposition to SB495 which would prevent Kansans' participating in a multi-state lottery. He asked the committee to consider the negative societal consequences and to consider if Kansans' participation is, in fact, constitutional. See attachment G.

Frances Wood, a concerned citizen from Berryton and President of the Capitol City Christian Temperance Union, gave testimony in opposition to SB495. She expressed her disfavor of the commercials on TV which have introduced gambling to her 9 year old granddaughter.

Hearings were concluded on SB494.

Representative Aylward made a motion, seconded by Representative Barr, to report SB495 favorable for passage. The motion carried.

The meeting was adjourned.

HOUSE BILL NO. \_\_\_\_\_

By Representative Charlton

AN ACT relating to certain burial sites; creating an unmarked burial sites preservation board; prescribing powers and duties thereof; providing funding therefor; making certain acts unlawful and prescribing penalties therefor; amending K.S.A. 20-2801 and repealing the existing section.

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

New Section 1. This act shall be known and may be cited as the Kansas unmarked human burial and skeletal remains protection act.

New Sec. 2. (a) The legislature finds that:

(1) Existing state laws do not provide adequate protection for unmarked human burials and skeletal remains; and

(2) there is no procedure regarding the treatment and disposition of human skeletal remains from unmarked graves necessary to protect the interests of descendants or other interested persons.

(b) The purposes of this act are to:

(1) Provide adequate protection for unmarked human burial sites and human remains located on all private or public lands within the state of Kansas;

(2) prohibit disturbance of unmarked human burial sites; and

(3) provide procedures for the proper care and protection of unmarked human burial sites and skeletal remains found in the state of Kansas.

New Sec. 3. As used in this act:

(a) "Unmarked human burial" means any interment by whatever means of human skeletal remains for which there exists no grave marker or any other historical documentation providing

information as to the identity of the deceased.

(b) "Human skeletal remains" means any part of the body of a human being that has been dead for 50 years or longer in any stage of decomposition.

(c) "Board" means the unmarked burial sites preservation board.

(d) "Person" means an individual, corporation or unincorporated association.

New Sec. 4. (a) There is hereby created an unmarked burial sites preservation board to be attached to the state historical society, which shall consist of the following members: (1) The state archaeologist; (2) a physical anthropologist selected by the governor from one of the state's academic institutions; (3) an historian selected by the governor from the staff of the state historical society or one of the state's academic institutions; (4) four tribal representatives, one from each of the four resident Kansas Indian tribes, to be selected by the governing bodies of such tribes; and (5) two members appointed by the governor who are neither American Indians nor professional anthropologists. The state archaeologist shall serve as chairperson of the board.

(b) The board shall have the following powers and duties:

(1) To create and maintain a registry of unmarked human burial sites. The board shall notify landowners on whose property such burial sites are located and identify, to the extent possible, persons or groups most likely descended from the deceased person or persons interred on that property;

(2) to consult with all interested parties on occasions of threatened or potential disturbance of unmarked human burials to determine a proper course of action;

(3) to initiate necessary action by the attorney general for the enforcement of this act;

(4) to have jurisdiction and authority to issue permits regarding the disposition, study and display of human skeletal remains from unmarked burials as provided in this act; and

(5) to promulgate rules and regulations necessary to carry out the board's duties and responsibilities under the provisions of this act.

(c) Appropriations shall be made to the state historical society under this act for the following purposes: (1) To create and maintain a registry of unmarked human burial sites; (2) to reimburse board members and consultants for actual expenses and subsistence allowances incurred in carrying out duties of the board; (3) for the investigation, recovery and scientific study of accidentally discovered human burials as may be permitted under this act; and (4) for reinterment of human burials or skeletal remains under the provisions of this act. In addition to moneys appropriated to the state historical society, the proceeds from any fines, penalties or forfeitures arising from violations of this act shall be remitted to the state treasurer, who, upon receipt of any such remittance shall deposit the same in the state treasury to the credit of the unmarked burial sites preservation fund to be used for the purposes enumerated above. All expenditures from the unmarked burial sites preservation fund shall be made upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of the state historical society or a person designated by the secretary.

New Sec. 5. (a) No person, except in accordance with the provisions of this act, shall:

(1) Willfully remove, mutilate, deface, expose or destroy an unmarked human burial site;

(2) possess any human skeletal remains, or articles interred therein, from an unmarked human burial;

(3) publicly display or exhibit any human skeletal remains;

or

(4) sell, trade or give any human skeletal remains or interred goods obtained from an unmarked human burial.

(b) Any person who knows or has reason to know that an unmarked human burial or human skeletal remain is being treated

contrary to the provisions of this act shall immediately notify the local law enforcement agency of the jurisdiction where such treatment occurred. On notification of violations of this act from local law enforcement agencies, the state archaeologist will assume jurisdiction over the human skeletal remains and any interred burial goods for disposition under the provisions of this act.

New Sec. 6. (a) Public displays or exhibits of human skeletal remains, or goods interred with the dead, may be made only with a permit from the board for medical or educational purposes by a qualified medical or educational institution. When skeletal remains can, unquestionably, be identified with a historically known American Indian tribe, decisions as to display shall be made by the tribe.

(b) Reinterment of human skeletal remains or goods interred with unmarked human burials that are displayed or exhibited in violation of this act shall be done by the state archaeologist under the direction of the board.

New Sec. 7. (a) On notification of the accidental discovery of human skeletal remains from unmarked human burials, the skeletal remains and any goods interred with the burial shall be reinterred by the state archaeologist under the direction of the board, to be done in consultation with interested parties and pursuant to the rules and regulations of the board. The remains may be retained under the control of the state historical society for a one-year period for scientific study under the jurisdiction of the state archaeologist. On application, the board may extend the study period for an additional six months. Following the scientific study, the human remains and burial goods, if any, shall be reinterred by the state archaeologist under the direction of the board.

(b) No person may knowingly cause or permit the disturbance of an unmarked human burial in the state of Kansas without a permit from the board for scientific or educational purposes and upon such terms, conditions and procedures as the board may

prescribe. All permits issued by the board shall provide for reinterment at a specific date at the expense of the applicant.

New Sec. 8. Upon request of the board, the attorney general shall aid in any investigation, inspection, hearing or trial had under the provisions of this act and shall institute and prosecute all necessary actions or proceedings, including eminent domain, for the enforcement of such provisions and for the punishment of violations of the same. The attorney general shall report to or confer with the board regarding the request within 30 days after receipt of the request.

New Sec. 9. Any person who violates any provisions of this act may be liable for injunctive relief, damages and attorney fees or other appropriate relief to any person or persons with a kinship, cultural, tribal, scientific or educational interest in preserving the effected unmarked human burial or skeletal remains and burial goods.

New Sec. 10. (a) Any person who fails to report the disturbance of a burial site as required under subsection (b) of section 5, upon conviction thereof, shall be fined not less than \$100 nor more than \$500.

(b) Any person who intentionally disturbs a burial site in violation of subsection (a)(1) of section 5 which is not listed on the registry of unmarked human burial sites, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000.

(c) Any person owning land upon which an unmarked human burial is located who intentionally causes or permits any activity which disturbs an unmarked human burial site after receiving notice from the board under subsection (b)(1) of section 4, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000.

(d) Any person who intentionally causes or permits any activity which disturbs a burial that is listed on the registry of unmarked human burial sites without a permit issued by the board under subsection (b) of section 7, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000.



(e) Any person who disturbs a burial site for commercial gain not related to use of the land where the burial site is located or who disturbs a catalogued burial site for commercial gain related to use of the land where a burial site is located in violation of this section, upon conviction thereof, may be fined not to exceed two times the gross value gained or two times the gross loss caused by the disturbance, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred, or be imprisoned for not more than one year in the county jail, or both. In calculating the amount of the fine based on the personal injury, any measurement of pain and suffering shall be excluded.

(f) Any person who violates subsection (a)(2) of section 5, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000.

(g) Any person who violates subsection (a)(3) of section 5, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000, or be imprisoned for not more than one year in the county jail, or both.

(h) Any person who violates subsection (a)(4) of section 5, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000, and the amount received from the sale or trade of human skeletal remains or goods interred from an unmarked burial.

Sec. 11. K.S.A. 20-2801 is hereby amended to read as follows: 20-2801. (a) At least monthly the clerk of the district court shall remit all moneys payable to the state treasurer from fines, penalties and forfeitures to the state treasurer, and the state treasurer, except as otherwise provided in subsection (c) of section 4, shall deposit the same in the state treasury to the credit of the state general fund.

(b) The director of accounts and reports or the state treasurer, whenever it is deemed necessary by either of said such officers in order to determine the amount available under this section, may request of clerks of the district court or any one

or more of them the information indicated herein. Within ~~ten~~ 10 days of the receipt of any such request, each clerk receiving the same shall certify the amount of moneys collected to which this section applies to the director of accounts and reports and the state treasurer.

(c) This section shall not apply to municipal courts.

Sec. 12. K.S.A. 20-2801 is hereby repealed.

Sec. 13. This act shall take effect and be in force from and after its publication in the statute book.

HOUSE  
Federal and State Affairs Committee  
January 25, 1988  
Larry Montgomery  
Kansas Lottery



**Kansas Lottery**

Mike Hayden  
Governor

Larry Montgomery  
Executive Director

- 12 months work by the Attorney General's office in six jurisdictions (including 2 months by our Attorney General's office) to prepare an agreement acceptable to the laws of all states.
- Equal protection for small and large state party lotteries. (Section 2)
- All revenues not allocated to prizes remain within each jurisdiction. (Section 8)
- Rule changes require 2/3 vote. (Section 11)
- Annual post audits conducted by independent auditors. (Section 14)
- Prize payments are subject to statutory authority of the state where purchased. (Section 16)
- Any party lottery may withdraw with 6 months notice. (Section 17)
- Any party lottery may withdraw immediately by Executive or Legislative decree. (Section 17)
- The Multi-state Lottery cannot pledge the credit of any state, except for prize monies and operational costs. (Section 20)
- All states must meet Internal Control Procedures adopted by MUSL. (Section 21)
- If a state is responsible for a mistake, their maximum liability is \$1,000,000 or exact amount of mistake, if less. (Section 21)
- If a state vendor makes a mistake, the appropriate state will pursue action against the vendor. (Section 21)

ATTACHMENT B.

MULTI-STATE LOTTERY RULES

MUSL RULES AS ADOPTED  
SEPTEMBER 16, 1987

# MULTI-STATE LOTTERY RULES

## PART I - ADMINISTRATION

### RULE 1--DISPUTES.

1.1 First Review. The Board shall have the first opportunity to informally resolve any disputes arising between party lotteries regarding the MUSL, the agreement, by-laws, rules, or guidelines. The party lottery seeking resolution of a dispute shall seek a remedy from the Board by filing a notice of dispute with the Board. Filing shall be done by certified mail, return receipt requested, addressed to the Executive Director. If the Board fails to resolve the dispute to the satisfaction of any party to the dispute within 60 days after receiving notice of the dispute, the aggrieved party lottery may seek any other remedy authorized by law.

1.2 Conflicting Terms. In resolving conflicting terms in the Agreement, bylaws, rules, or other MUSL writings, controlling weight shall be given to statute and writings in the following order:

- (a) State Law,
- (b) MUSL Agreement,
- (c) MUSL Rules
- (d) MUSL Bylaws, and
- (e) MUSL Operating Procedures.

### RULE 2--MINIMUM INTERNAL CONTROL SYSTEM (ICS) STANDARDS.

2.1 Daily Transactions Records. Daily transactions records of all MUSL transactions shall be collected by each party lottery after the close of each day's transactions. These records shall be processed by party lottery personnel using party lottery programs and balanced to the reports generated by the on-line system. Discrepancies shall be reconciled before a drawing can be held.

2.2 Drawing Day Transactions Records. Drawing day transactions records may be processed throughout the day so that discrepancies can be identified as soon as possible. The party lottery shall take possession of the drawing day's transactions records through the close of the drawing day's transactions and shall notify the MUSL drawing official of such possession and certify that the transaction records are in balance before a drawing can be held.

2.3 Winning Numbers Processing. Winning numbers shall be processed on the party lottery's system and balanced with the winning numbers report issued by the on-line system. The number of winners for each prize level shall be transmitted to the MUSL office. Each party lottery is expected to transmit the number of winners for each prize level to the MUSL control office within twelve hours of the drawing. The MUSL control office is expected to certify the number of winners and authorize the payment of

prizes within twelve hours of receiving the certified transactions records from all party lotteries. Prizes shall not be paid by any party lottery until the MUSL control office authorizes the payment of prizes.

2.4 Computer Requirements. The party lottery's internal control computer system shall be duplexed so that if one system fails, processing can continue on the system. A fault tolerant computer system is an acceptable alternative to a duplex computer system. All systems shall receive approval of the Board before use.

2.5 Changes to ICS. A party lottery shall obtain approval of the Board prior to implementing any change in its internal control system.

### RULE 3--BUDGET.

3.1 Duties of Executive Director. By February 1st of each year, the Executive Director shall prepare and submit to the Executive Committee, a budget of the estimated expenditures of the MUSL for the fiscal year beginning July 1st, and estimate the portion of the total budget to be paid to the MUSL by each of the party lotteries in accordance with estimated sales as described in the Multi-State Agreement.

3.2 Contents of Budget. The annual budget shall include a narrative description of each major function or task of the MUSL with the estimates for each clearly identified and further defined by the following cost categories:

- (a) number, classification, and base salary of full-time employees, overtime, and temporary hours, dollars, and fringe benefits,
- (b) travel and subsistence,
- (c) supplies and printing (except facilities and DP),
- (d) communications (telephone and data-fax equipment)
- (e) facilities (including rentals, utilities, supplies, and services),
- (f) contracted services and maintenance (except facilities and DP),
- (g) data processing (including equipment, supplies, maintenance, and contracted services),
- (h) reimbursement to party lotteries,
- (i) equipment (except facilities, communications, and DP),
- (j) external audit services,
- (k) other expenses

All estimates shall be identified as being either recurring or non-recurring.

3.3 Executive Committee Review. The Executive Committee shall review the proposed budget and advise the Board and party lotteries by June 1st of each year of the approved budget and the portions thereof to be paid by each of the party lotteries. Each party lottery shall transfer its share of the operating expenses to MUSL by August 1st of each year.

3.4 Interim Reports and Transfers. If at any time during the fiscal year, the Executive Director has reason to believe that the actual costs will be significantly over or

under the approved budget, the Executive Director shall prepare and submit a supplemental budget to the Executive Committee with an explanation of the reasons for the variance and a revised estimate of the costs required. Each party lottery shall transfer its share of additional operating expenses approved by the Board to the MUSL within 60 days of notice of Board approval of the supplemental budget. The MUSL shall not incur any costs or obligations in excess of the current budget without the prior approval of the Board.

3.5 **Excess Operating Funds.** At the conclusion of the fiscal year accounting, excess operating funds shall be returned to the party lotteries in the same ratio as paid to the MUSL pursuant to Rule 3 (Budget).

**RULE 4--DRAWING PROCEDURES.** The Executive Director shall establish, with Executive Committee approval, the drawing procedures to be followed at each drawing. The drawing procedures shall provide that a minimum of two hours elapse between the close of the MUSL game ticket sales and the time of the drawing for those tickets sold. All drawings shall be open to the public and shall be witnessed by an independent certified public accountant. Any equipment used in a drawing shall be inspected and tested by the MUSL in the presence of an independent certified public accountant, both before and after the drawing. All drawings, inspections, and tests shall be recorded on video tape.

**RULE 5--EMPLOYEE HIRING PRACTICES AND WORK RULES.** The Executive Director shall develop employee work rules or guidelines with approval of the Executive Committee. The employee work rules or guidelines shall cover:

- (a) equal employment opportunities,
- (b) sexual harassment,
- (c) attendance and tardiness,
- (d) work standards,
- (e) separations,
- (f) disciplinary actions,
- (g) compensation, and
- (h) any other area deemed appropriate by the Board.

**RULE 6--RECORDS MANAGEMENT.**

6.1 **Records Defined.** "Records" shall mean any document, paper, photograph, or recording made or received in connection with the official business of the MUSL. Records do not include materials made or acquired for reference or exhibition purposes, or miscellaneous papers or correspondence without official significance.

6.2 **Duties of Executive Director.** The Executive Director shall maintain, in a secure and orderly manner, MUSL records and the records of party lotteries held by the MUSL in an official capacity.

6.3 **Confidentiality.** To the maximum extent practical, MUSL records shall be made available for public inspection in a reasonable and responsible manner through the party lotteries.

6.4 Records Retention. The Executive Director shall establish the minimum retention period for each record or class of record with Board approval. The Executive Director shall establish the criteria for the disposal of MUSL records.

**RULE 7--INSURANCE COVERAGE.** The MUSL shall purchase liability insurance for the MUSL staff and party lotteries staffs while on MUSL business.

**RULE 8--PETITION FOR ADMISSION.**

8.1 Minimum ICS Standards. A Lottery seeking admission to the MUSL shall have a fully tested internal control system which meets or exceeds the minimum standards set forth in Rule 2 (Minimum ICS Standards) before ticket sales commence. The Board shall review the internal control systems of each lottery seeking admission to the MUSL for compliance with Rule 2 (Minimum ICS Standards) and shall issue a written report summarizing its findings.

8.2 Other Admission Requirements. The Board shall determine other admission requirements as allowed by paragraph twenty-two of the agreement.

**RULE 9--EXPULSION OF A PARTY LOTTERY.** If the MUSL Board votes to expel a party lottery as provided in paragraph seventeen of the Agreement, the party lottery being considered for expulsion shall be excluded from the vote in that proceeding and in the voting calculations outlined in paragraph two of the Agreement.

**RULE 10--ADVERTISING.**

10.1 Unfair Advertising. No party lottery may advertise, either directly or indirectly, that MUSL tickets sold in its state offer better odds, better chances of winning, or better payoffs than MUSL tickets sold in other states. This rule does not prohibit a party lottery from offering retailer promotions or other creative promotions designed to increase the sale of MUSL tickets.

10.2 Grand Prize Estimate. No party lottery may advertise an estimated Grand Prize amount which is different than the estimated Grand Prize amount provided to the party lotteries by the MUSL.

**RULE 11--TICKET PRICE**

11.1 Uniform Price. Each ticket shall be sold at retail for the price set by the MUSL Board.

11.2 Taxes. The ticket price set by the MUSL Board shall include all the applicable taxes which a party lottery may be required to collect.

11.3 Discounts and Promotions. No party lottery shall discount or add to the price charged to the consumer or make any promotional offer which has the indirect effect of altering the price charged for a MUSL ticket.

**RULE 12--SALE OF TICKETS**

12.1 Authorized Agents. MUSL tickets shall be sold



only through agents authorized by a party lottery. Tickets shall be sold in accordance with the rules and regulations which apply to the sale of similar products sold by the party lottery.

12.2 Ticket Stock. MUSL tickets shall be sold through a party lottery's on-line system and shall be printed on ticket stock which meets the security requirements for ticket stock used in the party lottery's on-line games as well as other requirements approved by the Board.

12.3 MUSL Markings. All play slips used in the MUSL game shall be conspicuously marked to indicate that the slip pertains to the MUSL game and shall contain other markings as may be required by the MUSL Board.

**RULE 13--PRIZE PAYMENTS.** No party lottery may pay prizes that are less than or more than the prize amounts established by the MUSL. The prize won cannot be indirectly increased by party lottery promotions or agent promotions which have the effect of increasing the designated MUSL prize.

**RULE 14--GRAND PRIZE FUND.**

14.1 Grand Prize Funds Transferred to MUSL. Each party lottery shall transfer to the MUSL an amount as determined by rule 28.1 less actual low-tier prize liability. If this results in a negative amount, the MUSL control office shall transfer funds to the party lottery.

14.2 Unclaimed Grand Prizes. All funds owed by party lotteries to the MUSL to pay a grand prize that goes unclaimed shall be returned to party lotteries in proportion to sales by party lotteries for the grand prize in question after the claiming period set by the party lottery selling the winning ticket expires.

**RULE 15--PURCHASING.** The Executive Director is empowered to make purchases and enter into contracts on behalf of the MUSL which are necessary for the operation of the MUSL. Purchases which are expected to cost in the aggregate in excess of \$5,000.00 shall be obtained as a result of competitive bidding whenever bidding is feasible and is in the best interests of the MUSL or through the party lotteries. The Executive Director may exempt an item from competitive bidding or acquisition through a party lottery if the item is noncompetitive, if the item is purchased in quantities too small to be effectively purchased through competitive bidding, if there is an immediate or emergency need for the item, or if acquisition of the item through the normal procedures would not be in the best interests of the MUSL. Purchases or expenditures expected to cost in the aggregate more than \$25,000.00 must be approved by the MUSL Board before the expenditure is made. All property acquired by the Executive Director on behalf of the MUSL will be held in the name of the MUSL unless the Board designates a different entity to hold title to the property acquired.

**RULE 16--SUBSCRIPTIONS.** No party lottery shall offer for sale subscriptions to the MUSL game.

**RULE 17--SINGLE GAME.** No party lottery is obligated to participate in more than one MUSL game.

**RULE 18--DATA TRANSMISSION.** The Executive Director shall establish, with Executive Committee approval, a secure data transmission system to receive and transmit data necessary for the operation of the MUSL. The system shall provide for:

- (a) password protection,
- (b) notification of winning numbers,
- (c) input of sales and play data,
- (d) error checking, and
- (e) other features to facilitate the operation of the game

**RULE 19--ELECTRONIC FUNDS TRANSFER.** Funds shall be collected from each party lottery weekly by EFT. The amount to be transferred shall be calculated in accordance with Rule 27 (Prize Pool) and Rule 13 (Grand Prize Funds).

**RULE 20--ANNUITY PAYMENTS.** The MUSL shall act as agent for the party lotteries and purchase annuities in the names of the party lotteries who receive valid claims for each prize with an annuitized value of at least one million dollars. The annuity purchase process shall be handled by the MUSL (solicitation of bids, selection of annuity, premium payment, etc.).

**RULE 21--ADVANCE SALES.** Proceeds from advance sales may be held by the party lottery until the draw date for which the ticket applies.

**RULE 22--ANNUAL AUDIT.** All reimbursements and distributions of excess funds shall be done based on the annual financial audit conducted by the MUSL financial auditor.

**RULE 23--INTEREST INCOME.** Interest income earned on operating funds shall be used to offset operating expenses. Interest income on investments of unclaimed prizes shall accumulate to the prize reserve fund. Excess reimbursement from each party lottery is to be distributed to the party lotteries annually based on their proportion of gross sales.

**RULE 24--TAX WITHHOLDING.** Each party lottery shall withhold taxes in accordance with federal and state laws which apply to the party lottery. State income tax shall not be withheld or assessed by any jurisdiction unless the winner of the prize is a resident of the taxing jurisdiction or the winning ticket was purchased in the taxing jurisdiction.

**RULE 25--PRIZE RESERVE FUND.** The Prize Reserve Fund shall be invested by the Executive Director in the manner approved by the Executive Committee.

## PART II - LOTTO GAME RULES

**RULE 26--DEFINITIONS.** The following definitions apply unless the context requires a different meaning or is otherwise inconsistent with the intention of the rules adopted by the MUSL and its party lotteries.

26.1 "Agent" or "retailer" means a person or entity authorized by a party lottery to sell lottery tickets.

26.3 "Drawing" means the formal process of selecting winning numbers which determine the number of winners for each prize level of the game.

26.4 "Computer pick" means the random selection by the computer system of seven different two-digit numbers from one (01) through forty (40) which appear on a ticket and are played by a player in the game.

26.5 "Game board" or "boards" means that area of the play slip which contains forty (40) squares, numbers one (1) through forty (40).

26.6 "Game ticket" or "ticket" means a ticket produced by a terminal which meets the specifications defined in the rules of each party lottery and Rule 30.

26.7 "Lotto" means a lottery game wherein a player selects a group of numbers out of a larger predetermined set of numbers. A player wins a prize if four (4), five (5), six (6), or seven (7) of the numbers selected by the player match the randomly drawn numbers in a weekly drawing conducted by MUSL.

26.8 "Party lottery" means a state lottery which has joined the MUSL.

26.9 "Play" or "bet" means the seven (7) different numbers from one (1) through forty (40) which appear on a ticket as a single lettered selection and are to be played by a player in the game.

26.10 "Play slip" or "bet slip" means a card used in marking a player's game plays and contains one or more boards.

26.11 "Terminal" means a device, which is authorized by a party lottery, to function in an on-line, interactive mode with the lottery's computer system, for the purpose of issuing lottery tickets and entering, receiving, and processing lottery transactions, including purchases, validating tickets, and transmitting reports.

26.12 "Winning numbers" means the seven (7) numbers between one (1) and forty (40), randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket.

### **RULE 27--GAME DESCRIPTION.**

27.1 LOTTO AMERICA is a weekly seven (7) out of forty (40) lotto game which pays prizes on a parimutuel basis. To play LOTTO AMERICA, a player shall select a set of seven (7) different numbers, between one (1) and forty (40), for input into a terminal. Tickets can be purchased either from a terminal operated by an agent (i.e., a clerk-activated terminal) or from a terminal operated by the player (i.e., a player-activated

terminal). If purchased from an agent, the player may select each set by communicating the seven (7) numbers to the agent, or by marking seven (7) numbered squares in any one game board on a play slip and submitting the play slip to the agent or by requesting "computer pick" from the agent. The agent will then issue a ticket, via the terminal, containing the selected set or sets of numbers, each of which constitutes a game play. Tickets can be purchased from a player-activated terminal by use of a touch screen or by inserting a play slip into the machine.

**27.2 Claims.** A ticket (subject to the validation requirements set forth in Rule 34) shall be the only proof of a game play or plays and the submission of a winning ticket to the issuing party lottery or its authorized agent shall be the sole method of claiming a prize or prizes. A play slip has no pecuniary or prize value and shall not constitute evidence of ticket purchase or of numbers selected.

**27.3 Cancellations Prohibited.** A ticket may not be voided or cancelled by returning the ticket to the selling agent, including tickets that are printed in error.

**27.4 Player Responsibility.** It shall be the sole responsibility of the player to verify the accuracy of the game play or plays and other data printed on the ticket. The placing of plays is done at the player's own risk through the on-line agent who is acting on behalf of the player in entering the play or plays.

**RULE 28--PRIZE POOL**

**28.1 Prize Pool.** The prize pool for all prize categories shall consist of forty-five percent of each week's sales, including tax, until the Jackpot prize is funded to the annuitized amount guaranteed by the MUSL Board. When the Jackpot prize fund reaches the guaranteed annuitized amount, then forty-three percent of sales, including tax, shall become part of the prize pool. In the event the New York Lottery joins the MUSL, the prize pool shall consist of forty percent of the sales from all tickets.

**28.2 Prize Reserve Fund.** When the Jackpot prize fund reaches the annuitized amount guaranteed by the MUSL Board, two percent of sales, including tax, shall be placed in a prize reserve fund until the prize reserve fund exceeds the amount designated by the MUSL Board. Once the prize reserve fund exceeds the designated amount, the excess shall become part of the prize pool.

**28.3 Parimutual Prizes.** All prizes awarded, except the prize awarded for matching 4 numbers, shall be determined on a parimutuel basis as follows:

TICKETS CONTAINING FOLLOWING NUMBER OF MATCHES IN ONE GAME PLAY	PRIZE CATEGORY	PERCENT OF PRIZE POOL ALLOCATED TO PRIZE CATEGORY
All seven (7) Winning Numbers	Category 1	67.055
Any six (6) Winning Numbers	Category 2	7.204

Any five (5) Winning Numbers	Category 3	13.831
Any four (4) Winning Numbers	Category 4	11.910 est.

(a) The amount of prize money allocated to the Fourth Prize category paying a fixed prize of \$5.00 per each game board winning a fourth prize, shall be determined by the number of game boards winning a fourth prize. If the number of game boards winning a fourth prize exceeds the expected number of winners, prize money shall be drawn from the Grand Prize category to fund the Fourth Prize category. If the number of game boards winning a fourth prize is less than the expected number of winners, the excess prize money shall be added to the Grand Prize category.

(b) The prize money allocated to the Grand Prize category shall be divided equally by the number of game boards winning a grand prize.

(c) The prize money allocated to the Second Prize category shall be divided equally by the number of game boards winning a second prize.

(d) The prize money allocated to the Third Prize category shall be divided equally by the number of game boards winning a third prize.

**28.4 Prizes Rounded.** The calculation of a prize shall be rounded down so that prizes can be paid in multiples of whole dollars. All breakage shall be carried forward to the prize pool for the next drawing. The Grand Prize or a share of the Grand Prize may be rounded to facilitate the purchase of an appropriate funding mechanism.

**RULE 29--PROBABILITY OF WINNING.** The following table sets forth the probability of winning and the probable distribution of winners in and among each prize category, based upon the total number of possible combinations of seven (7) drawn from a field of forty (40) numbers.

Prize Category	Match	Probability of Winning	Probability Distribution of Winners	Probability of Prize Amount
Category 1	7	1:18,643,560	1	\$10,751,251*
Category 2	6	1:80,708	231	\$2,500
Category 3	5	1:1,681	11,088	\$100
Category 4	4	1:98	190,961	\$5

\* Prize estimated using 20-year deferred-payment factor of 1.785.

**RULE 30 PRIZE PAYMENT**

**30.1 Annuitized Prizes.** Grand prizes shall all be paid with per winner annuities. If an annuity has a cash value of less than \$250,000, the MUSL, in its sole discretion, may elect to pay the cash value of the annuity. All annuitized prizes shall be paid in twenty equal payments with the initial payment being made in cash, to be followed by nineteen payments funded by the annuity. The initial payment of an annuitized prize shall not be made by a party lottery until the fifteenth calendar day following the drawing.

**30.2 Cash Prize Payments.** All prizes, other than grand prizes, having an annuitized value of less than one million dollars, shall be paid in cash by the party lottery which sold the winning ticket(s). A party lottery may begin paying cash prizes on the Monday following the drawing as authorized by the MUSL.

**30.3 Rollover.** If the Grand Prize is not won in a weekly drawing, the prize money allocated for the Grand Prize shall roll over and be added to the Grand Prize pool for the following week's drawing.

**30.4 Grand Prize Cap.** A cap of \$80 million shall be placed on the Grand Prize. Funds allocated to the Grand Prize in excess of the amount needed to fund an \$80 million prize shall be held to fund the next Grand Prize which is less than \$80 million.

**30.5 Limited to Highest Prize Won.** The holder of a winning ticket may win in only one Prize Category per board in connection with the winning numbers drawn, and shall be entitled only to the highest prize won by those numbers.

**30.7 Prize Claim Period.** Prize claims shall be submitted within the period set by the party lottery selling the ticket. If no such claim period is established, all grand prize claims shall be made within 180 days after the drawing date.

**RULE 31--TICKET VALIDATION.** To be a valid ticket and eligible to receive a prize, a MUSL ticket shall satisfy all the requirements established by a party lottery for validation of winning tickets sold through its on-line system and any other validation requirements established by the MUSL Board. The MUSL and the party lotteries shall not be responsible for tickets which are altered in any manner.

**RULE 32--TICKET RESPONSIBILITY.**

**32.1 Signature.** Until such time as a signature is placed upon the rear portion of a ticket in the area designated for signature, a ticket shall be owned by the bearer of the ticket. When a signature is placed on the back of the tickets in the place designated, the person whose signature appears in such area shall be the owner of the ticket and shall be entitled (subject to the validation requirements in Rule 30 (Ticket Validation)) to any prize attributable thereto.

**32.2 Multiple Signatures.** The manner of payment of MUSL prizes for valid winning tickets bearing multiple signatures

shall be determined by the rules of the party lottery making the prize payment.

32.3 Stolen Tickets. The MUSL and the party lotteries shall not be responsible for lost or stolen tickets.

**RULE 33--INELIGIBLE PLAYERS.** Those persons designated by a party lottery's law as ineligible to play its games shall also be ineligible to play the MUSL game in that party lottery's jurisdiction.

**RULE 34--APPLICABLE LAW.** In purchasing a ticket, the purchaser agrees to comply with and abide by all applicable laws, rules, regulations, procedures, and decisions of the party lottery where the ticket was purchased.

STATE OF KANSAS

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January 25, 1988

LEGAL CONSULTATION - LEGISLATIVE  
COMMITTEES AND LEGISLATORS  
LEGISLATIVE BILL DRAFTING  
SECRETARY - LEGISLATIVE  
COORDINATING COUNCIL  
SECRETARY - KANSAS COMMISSION  
ON INTERSTATE COOPERATION  
KANSAS STATUTES ANNOTATED  
EDITING AND PUBLICATION  
RULES AND REGULATIONS  
FILING AND PUBLICATION  
LEGISLATIVE INFORMATION SYSTEM

Representative Anthony Hensley  
Room 278-W  
Statehouse  
Topeka, KS 66612

Dear Representative Hensley:

You have asked if, in my opinion, the provisions of section 3c of article 15 of the Kansas constitution relating to a state-owned and operated lottery would permit the legislature to authorize the state to join in a multistate lottery.

The attorney general in Opinion No. 87-16 to Senator Reilly has addressed this question and concluded that the constitutional provision adopted by the electorate in 1986 allowing for a state-owned and operated lottery would allow the state to enter into an agreement to provide for a multistate lottery (see attached).

In the absence of a court decision on the matter, the executive agency should be guided by the opinion of the state's attorney, but in matters involving legislation it is the responsibility of the revisor to advise with members of the legislature on questions of law. I trust that my comments will be of assistance to you.

In the general's opinion, he recites the applicable law and arrived at the conclusion noted above. I would agree with the law cited by the general in his opinion but would have personally differed somewhat in my conclusion. At this point, I know of no analogous case law or situation that would be of assistance in arriving at a conclusion and for this reason it is difficult to anticipate just what the court might decide.

In the general's opinion, he notes that the Kansas constitution has delegated all legislative power to the

ATTACHMENT D

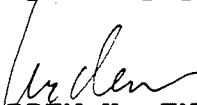


legislature except where it is limited or prohibited from action by the constitution. He also notes that provisions of the constitution are not to be narrowly or technically construed but should be held to mean "what the words imply to the common understanding of men."

Historically, article 15, section 3, of the Kansas constitution has prohibited the lottery. With the adoption of section 3c of article 15 in 1986, the legislature "may provide for a state-owned and operated lottery." It is the general's conclusion that when the amendment did not contain a specific prohibition (even though the concept of the multistate lottery was mentioned in the house committee) the legislature under its general powers could join with other states in the establishment of a multistate lottery. He further concludes that ownership and operation by the governments of the several states joining in the multistate lottery would still be "state owned."

The constitution states that "the legislature may provide for a state-owned and operated lottery." The amendment did not eliminate the prohibition on the power of the legislature to act on the matter of lotteries generally but rather substituted words of limitation in a specific exception to this prohibition. In imposing this limitation the amendment specified that lotteries included in this exception must be both state-owned and state operated. In my opinion the "common understanding" of the term "state-owned and operated" would include both the right of control over the operation of the lottery and the right to terminate and dispose of the same. It is true that a person owning an undivided interest in a private-business venture in common with other persons is for certain purposes an owner of the business and such person has certain rights to participate in control over the operation of the business but I would distinguish this interest and right from those which are commonly understood as attributes of ownership and operation by such individual. The proposed multistate agreement would only allow the state of Kansas the right, as one of a group, to participate in the control of the operation of the lottery and (with certain limitations) the right to walk away from the operation if it were not satisfied.

Very truly yours,



ARDEN K. ENSLEY  
Revisor of Statutes

## TESTIMONY OF J. ELWOOD SLOVER

From 1968 until my retirement in 1983, I was a full time member of the law faculty of Washburn University School of Law. For most of those years I taught, as one of the several courses for which I was responsible, the course in Legislation. I therefore feel that I have a rather broad knowledge of the process of law making and the interplay of state constitutional limitations on legislation.

You are now considering legislation which would permit the Lottery Commission to enter into an agreement permitting participation in a multi-state lottery. It is not my purpose to advise you on the merits of a multi-state lottery as opposed to one solely controlled by Kansas. My purpose is to discuss only the matter of constitutional limitations on the activities of the commission.

We start with the position held by much respectable authority that constitutions should normally be interpreted broadly so as to find statutory enactments constitutional. Another constitutional interpretive tool often mentioned in case law is that constitutions should be interpreted so as to fulfill the intent of the framers and the electorate who voted its adoption. In applying these and other interpretive tools there is another which cannot be overlooked by you in discussing the presently proposed legislation. I refer to the rule that when a constitutional provision has not been deleted and the new provision merely provides an exception, the original provision is still fully viable except for the closely limited exception. In other words the original provision is still the law but with an exception which should be strictly construed. Thus when the bingo and pari-mutual exceptions were approved, the basic provision of the constitution remained.... "Lotteries and the sale of lottery tickets are forever prohibited."

The fact that the constitution uses the language "forever prohibited" did not prevent amendment of the constitution. Within the

constitution itself is the stated means by which amendments may be made. That is not to say that the words "forever prohibited" should be given no effect whatsoever. The framers thought very strongly about what they conceived to be a great evil and they used the strongest language possible to denounce lotteries. That language is still in the constitution because the resolution by which you placed lotteries before the voters did not seek to delete it.

I am aware of the Missouri Supreme Court Case handed down within the past few weeks holding that the Missouri Lottery Commission need not have the authority of the state legislature to proceed with entrance into a multistate lottery agreement. That decision came in face of the fact that the Missouri legislature had considered and failed to pass a statute which would have authorized such participation. The constitutional amendment in Missouri simply authorized a "Missouri State Lottery ". The court held that since the division of proceeds would not be changed----10% for commission expenses, 45% for state revenues and 45% for prizes---- and since the commission was privileged to withdraw at any time, such an arrangement did not exceed the authority to operate a "Missouri State Lottery ." There were two strong dissents to the majority opinion.

The Missouri opinion has little applicability here. There the court dealt with a very general constitutional mandate. Here you are dealing with a closely guarded exception to a constitutional provision forever forbidding lotteries and the sale of lottery tickets. The exception in Kansas permits only a "state owned and operated lottery". It is a most strained interpretation which would say a multistate lottery participated in by Kansas was state owned and state operated.

The conclusion is that a statute allowing participation in a multistate lottery would be outside the exception in the constitution and would therefore be unconstitutional.

One year ago when the Attorney General's opinion on multistate lotto required the legislature to "approve such a contract," I knew that would give concerned lawmakers an opportunity to reject such a gambling activity which does more damage to poor people than is inflicted upon them with lottery tickets or a state lotto.

Then on January 12, this year, I saw the headlines in the Topeka Capital-Journal, KANSANS TO HAVE SHOT AT BIG JACKPOTS FEB. 3. I called a reporter friend and asked if I had missed something early in the session, did the legislature approve the contract? He did not know of such a measure and said lottery officials believed they had carte blanche authority to enter the multistate lottery.

I then wrote a letter on January 14, hand delivered it to the Attorney General's office and gave copies to the news media.

When the Senate voted on this bill, many Senators were confused. The news media was used by Senator Reilly in a most effective coverup. He gave this editorial to members of his committee and placed it on the desk of every Senator before the measure was debated.

This is a dishonest editorial. I did not ask for nor receive an Attorney General's opinion which required the legislature to approve multistate lotto gambling.

That opinion was given one year ago, and it was given to Senator Reilly. An honest Senator would have told the truth to the editor of his local paper so a correct editorial could be written.

Local TV stations carried Senator Reilly saying the Attorney General should have issued the opinion earlier in this session so the legislature could have acted sooner.

Lottery people should thank me for bringing this to their attention quickly. I could have waited until the legislature adjourned.

## Editorial/Opinion

### Still fighting lottery

Leavenworth Times  
January 20, 1988

The Rev. Richard Taylor of "Kansans for Life at Its Best!" continues to fight the Kansas Lottery, even though 70 percent of the Kansas voters favored the constitutional amendment two years ago. His latest salvo involves the multi-state lotto game, scheduled to begin Feb. 3.

Taylor asked for and received an attorney general's opinion which states that the Legislature must pass enabling legislation to enter into the compact which permits Kansas to participate in the multi-state lotto game. So even though the Kansas Lottery Commission approved the lotto contract, the Legislature must scramble to quickly pass a bill endorsing that contract. Taylor is lobbying against it, asking Kansans to write letters in opposition to their legislators. In a letter sent to Kansas editors Taylor urges people to "Ask them (lawmakers) to vote NO on multi-state lotto gambling. Remind

lawmakers that thousands in their district voted NO, even if a majority may have voted YES."

Taylor is unwilling to let the majority rule. He continues to fight the will of the majority on the lottery issue. He maintains that Kansans did not know what they were voting for and that the promised lottery revenue is not coming in.

If Kansans who supported the lottery become disillusioned with it, if they feel that it is not being run properly or that they are not getting what they voted for, they will quit playing the game. No one forces anyone to buy lottery tickets and no one will be forced to play the multi-state lottery game, if we eventually have one.

It is time for Taylor's vocal minority to step aside and quit trying to block the will of the majority. His continued protests are taking up valuable time which the Legislature should be spending on other issues.

Senators voted YES because they were told the Missouri Supreme Court upheld action by their lottery leaders to join Lotto America. But the Missouri Constitution reads, "The General Assembly shall have authority to authorize a Missouri State Lottery."

"Missouri State Lottery" carries no restrictions. That could be a listing for a TV program just like a TV listing for the "Kansas Lottery."

The Kansas Constitution carries a specific limitation on the power of the legislature for that which has been absolutely prohibited. The Kansas "Legislature may provide for a state-owned and operated lottery." That is quite a constitutional difference from Missouri.

Senators voted YES because they were told everything possible must be done to prevent the Kansas Lottery from having the financial problems now experienced by the Missouri Lottery.

Their problem is a division on gross receipts. The Missouri Constitution requires 45% go for jackpots, 45% to the state, and 10% for lottery expenses. Greedy gambling promoters knew 10% would never be enough, but in order to win legislative approval of the amendment, they told Missouri lawmakers 10% would be enough. Now they blame everyone but themselves for their problem.

The Kansas legislature has determined that 45% of gross sales shall go for jackpots, 30% to the state, and 25% to lottery gambling promoters. This can be changed at any legislative session.

Many states have operated their lotteries for years on less than 25% of gross sales. You are being told over and over how successful the Kansas Lottery is - and without Lotto America.

We are told Lotto America is an issue of freedom of choice. People have freedom of choice to deal with a swindler, but we have criminal laws to discourage the practice. People have freedom of choice to buy inferior merchandise, but we have consumer protection laws to reduce consumer losses.

The Wall Street Journal explains how lottery gambling is technically a swindle, theft by deception. The "product" pushed by lottery promoters hurts those who can not afford to lose what they are sure to lose. Your NO vote on Lotto America is a consumer protection issue, a vote to not increase the damage that will be inflicted on Kansas poor people by lottery tickets and a Kansas Lotto.

According to a poll released by the Kansas Lottery, 40% of lottery gamblers spend \$10 to \$12 weekly for tickets, and 5% spend more than \$12 a week. For a person making less than \$15,000 a year, \$10 to \$12 a week and up is a lot more than for a person making \$50,000 a year. For a poor person, it is milk and bread and rent. For the rich it is a few miles of gasoline for his Lincoln Continental.

Kansas lottery promoters do not want to tell us the income level of those in the 40% and 5% groups, because that would prove our point. A higher percentage of low income persons are moderate to heavy lottery players, and they spend a higher percentage of their income. Lottery is many, many times more regressive than a sales tax.

If persons can afford to go to Las Vegas, they can probably afford to lose what they are sure to lose. But the poor lose at the corner computer terminal what they can not afford to lose.

Of course the lottery office tells us there are no losers, just non-winners. How childish can you get? There are no poor, just non-rich. There are no dead, just non-living.

Kansas does not have a large enough population to collect all the dollars needed to pay the unbelievable large lotto jackpots that attract the poor. Multistate lotto provides this large population base, causing the odds to be astronomical. But poor people see only the prize. They think nothing of the odds as they lose \$10 and \$30 a week. They do not understand that millions and millions of people must lose a lot if prizes are large.

(The words in caps are from Opinion No. 87-16 by the Attorney General given to Senator Reilly on January 29, 1987 - Kansas Day)

1. A CONSTITUTION IS NOT TO BE NARROWLY OR TECHNICALLY CONSTRUED.

That generally holds true. But not in this case. The amendment says "the legislature may provide for a state-owned and operated lottery."

That is a very specific limitation on the power of the legislature as this was made a specific exception to the absolute prohibition of all lotteries that was in our constitution when we entered the union and still remains as Section 3 of Article 15.

The first specific exception on the total prohibition of lotteries was bingo gambling made some years ago. At that time, Senator Jack Robinson was a leading promoter of parimutuel gambling. He tried to set up "bingo" dog track gambling in Wichita, but was quickly told this constitutional restriction was to be narrowly and technically construed. The operation of "bingo" dog gambling ended before it began.

Attorney General Stephan last week in response to questions from Senators admitted it is difficult to know exactly what courts may do because they consider "liquor and gambling" differently from other issues.

2. THE LEGISLATURE DID NOT SPECIFICALLY PRECLUDE MULTI-STATE LOTTERIES WITH THE LANGUAGE USED IN 1986 SENATE CONCURRENT RESOLUTION 1690.

The legislature also did not specifically include multistate lotteries, although it was discussed in committee. Odds were discussed by the legislature and were included. A sunset provision was discussed and included. If lawmakers wanted to make certain Kansas could join a multistate lottery, they could have included it. But for whatever reason, they adopted language that excludes multistate lotteries, saying the lottery must be "state-owned and operated."

A generally accepted attribute of ownership includes the right to dispose of property and assets. Kansas can not exercise such control over a multistate lottery. Even the operation of the lottery will not be subject to the direct control of the State of Kansas. The multistate agency will be answerable to a group composed of representatives of all participating states and the District of Columbia. Only limited control will be exercised by the State of Kansas. This is in conflict with the law you passed last year that requires management and control to rest solely with the Kansas Lottery. Of course the legislature alone can change that statute, but the legislature alone can not change our constitution that requires "state-owned and operated."

3. 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.

People voted YES because they believed a state lottery would reduce their property taxes, would help pay teacher salaries, and would build highways. Of course lottery revenue will never do those things.

If you reject Lotto America, Kansas will still have lottery tickets and Kansas Lotto, a REVENUE RAISING MEASURE. But a thousand Lotto Americas would never come close to raising enough revenue to reduce property taxes, increase teacher salaries, or build new highways.

4. 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.

Voters approved a constitutional amendment that says "the legislature may provide for a state-owned and operated lottery." These WORDS IMPLY TO THE COMMON UNDERSTANDING OF MEN exactly that. It seems doubtful that the "common understanding" of this limitation (state-owned and operated) would include the ownership and operation of a lottery by an agency created by agreement of this and other states located outside the State of Kansas.

It is true that under an interstate agreement, the State of Kansas could elect to join in the multistate arrangement, could cooperate with other states in controlling the day to day operation of the multistate lottery, and could sever its relationship if desired, but this should be distinguished from ownership and operation solely by the State of Kansas.

People voted for a Kansas owned and operated lottery. They did not vote for a Missouri owned and operated lottery. They did not vote for an Oregon owned and operated lottery. They did not vote for an "Iowa-West Virginia-Rhode Island-Missouri-Oregon-Kansas-District of Columbia owned and operated lottery."

How could any court claim SEVERAL STATES WOULD OWN AND OPERATE THIS LOTTERY when the District of Columbia is not a state?

5. SOME WOULD ARGUE THAT SPARSELY POPULATED STATES COULD RAISE MORE IN A MULTI-STATE LOTTERY THAN ONE RUN BY A SINGLE STATE.

That is exactly why Lotto America is being promoted by G-Tech and high salaried Kansas lottery employees. They know that for each additional \$1 revenue, nearly another \$1 goes into their pockets, with much of it coming from people who can not afford to lose.

Did the people vote in inflict the maximum amount of suffering on lower income people? Enough damage will be inflicted with lottery tickets and Kansas Lotto. Why should you vote to help greedy lotter promoters?

You want to raise revenue for Kansas economic development. Then raise slightly the percent tax on high income people. Raise sales tax by one tenth of a cent, one additional penny on a \$10 purchase.

A few million dollars of lottery revenue is nothing next to our 4 billion dollar budget. Raise this "drop in the bucket" revenue by fair taxation and not by victimizing poor people more!

6. A MULTI-STATE LOTTERY WOULD NOT BE REPUGNANT TO THE INTENT OF THE CONSTITUTIONAL PROVISIONS.

Can every action of the Lottery Commission be justified on the INTENT of the constitutional change which was to raise revenue? A multi-state lottery might not be REPUGNANT TO THE INTENT, but Lotto America stinks to high heaven relative to what the constitution states!

Legislation for a multistate lottery came after the people had approved the amendment. Members of the legislature questioned their authority to do it and requested this opinion.

If lawmakers, who had debated the amendment for months before they approved it, were in doubt about what "state-owned and operated" means, how can anyone claim the people approved a multistate lottery?



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  
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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):

①

"[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; 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.)

- ② 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.
- ③ 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:

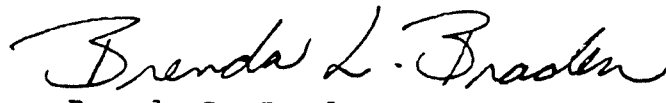
"The legislature may confer legislative powers upon interstate bodies, comprised of officers of this state or its political subdivisions acting in conjunction with officers of other jurisdictions, relating to the functions thereof. Any such delegation, and any agreement made thereunder shall be subject 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

The people did not vote to send out of state 60% of 45% total dollars Kansans would spend on Lotto America.

The people did not vote to victimize the poor in the greatest possible way.

The people did not vote for a "multistate and District of Columbia owned and operated lottery."

People in your District voted for a "state-owned and operated lottery." That is exactly what we have today.

Lottery is many times more regressive than a sales tax. Democrats have opposed regressive taxation. They have been concerned for the poor. We call upon loyal Democrats, and Republicans who are concerned for poor people, to vote NO.

If your concern for poor people is not a strong enough reason to win your NO vote, then vote NO because this measure raises a serious constitutional question.

If you vote YES and this measure passes, and if it is unconstitutional because the court declares Lotto America is not owned and operated by Kansas, how will you explain your vote to the people back home? You have taken an oath to uphold the constitution. As we celebrate Kansas Day, do just that.

If the joint state lotto agreement is rejected by the legislature, lottery ticket sales and lotto will continue in Kansas. But concerned citizens will be thankful that increased suffering will not be inflicted on the poor by Lotto America, with its multi-million dollar jackpots and astronomical odds.

Lawmakers who vote NO and uphold our constitution will be appreciated next November by voters concerned for quality of life in Kansas.

Respectfully yours  
Richard Taylor

Jon Brax  
Kansans For LIfe At Its Best!

January 25, 1988

My purpose in testifying today is to ask that you defeat this bill and prevent Kansas participation in a multi-state lottery. My request is based on two points. First, I ask that you consider the negative societal consequences if Kansas participates and, secondly, I ask that you consider if Kansas' participation is, in fact, constitutional.

THE NEGATIVE CONSEQUENCES: THE EXPLOITATION OF THE POOR.

A poll taken to determine the typical California Lottery player found that 24% of the heaviest players earned an income of \$15,000 or less annually. That same income group comprised only 14% of non-players. (San Francisco Chronicle, December 13, 1985.) This example indicates that the lottery attracts the type of player who can least afford to play. What makes the matter worse is that people may be attracted to the lottery dishonestly. Herbert Kahn, President of a marketing company in Weston, Massachusetts states (Wall Street Journal, June 14, 1984) "In order to attract financially unsophisticated people to the lottery, the state misrepresents the winnings in almost exactly the same way finance companies used to do before the Truth-in Lending Law." This criticism attacks the annuity system utilized to pay large prizes. I'd like to remind the committee that these criticisms address single state lotteries. I believe the problems would be multiplied seven fold in a seven party lottery.

I'm also terribly concerned about the fact the Kansas Lottery promoters have said that Kansas' participation in Lotto America is targeted at another category of potential player. The Denver Post (October 19, 1983) reported that G. Robert Blakey stated in the Journal of Social Issues "The bureaucracies which administer and advertise the lotteries have a vested interest in their success. . . . Raising money has become the paramount concern with respect to lotteries. Patrons of illegal games apparently cannot be enticed in great numbers to play. So the government must find customers who will."

An additional question to ask when considering expanded lottery gambling in Kansas is, "Will a larger lottery open the doors to even more gambling in Kansas?"

To quote the same Denver Post article:

"How can voters be told convincingly that casino gambling is wrong, when its only real difference from the state run game is that casinos give players much better odds."

THE CONSTITUTIONAL QUESTION: WOULD LOTTO AMERICA BE "STATE OWNED AND OPERATED"?

The constitutional questions has already been well-discussed in this hearing but for the purpose of emphasis I'd like to highlight some important points.

FIRST. When considering that the constitution strictly prohibits lottery gambling except as allowed by Article 15, Section 3c does that give the Attorney General license for the broad interpretation of the amendment his opinion depicts.

SECONDLY, from my understanding, a criterion for ownership is the ability to buy and sell assets. The bill itself states that the Board of Lotto America would have the power to purchase and sell. That Board is comprised of representatives of each of the participating lotteries.

Finally, the opinion states that the concept of a multi-state lottery was discussed in the hearings before the resolution was taken to the people. The issues of odds publication and sunset provisions were also discussed and those issues were written into the amendment.

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Does this fact support the Attorney General's statement, "The legislature did not specifically preclude multi-state lotteries with the language used in 1986 Senate Concurrent Resolution 1609. . .?"

I ask that you consider both the societal consequences and the constitutional questions concerning the multi-state lottery. I urge you to defeat this measure.