

Approved 2/2/88  
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

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

11:00 a.m. ~~p.m.~~ on January 20, 19<sup>88</sup> in room 254-E of the Capitol.

All members were present ~~except~~

Committee staff present:

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

Conferees appearing before the committee:

Attorney General Robert Stephan  
Larry Montgomery, Executive Director, The Kansas Lottery

The Chairman stated that staff and representatives from KTECH were before the Committee yesterday concerning and to discuss the urgency for the Legislature to address the agreement that has been signed by The Kansas Lottery and other states.

Today's agenda calls for the Director of the Lottery to appear to briefly go over the history of the lottery and where it is going.

Yesterday the Chairman appointed a Subcommittee to review the request concerning the lottery and to look at the agreement. It was agreed by Senator Morris, Chairman; Senator Bond and Senator Martin, after reading the contract to make their report to this full Committee. (Attachment #1)

Senator Morris presented the report of the Subcommittee to the Committee. He said they have copies of both a resolution and a senate bill drawn up with the Revisor's Office. Mary Torrence distributed copies of a bill, (7 RS 1946), which she explained to the Committee. (Attachment #2)

The Attorney General, Robert Stephan, was contacted by the Chairman of the Subcommittee, and agreed to come visit with the Committee. A letter which Senator Morris requested from him yesterday was before the Committee. (Attachment #3)

The Attorney General appeared and said it was his opinion that there needed to be concurrence by the Legislature. To make sure "you are absolutely safe." He said he and his staff have checked the contract for clarity with state statute, and find it complies, and that the Commission and Director proceeded properly with the execution of the contract. The Chairman thanked him for appearing.

Senator Morris reminded the Committee that time is of the extreme essence in this lottery matter.

The Chairman asked the Attorney General if nothing is done in the sense of "immediately," may things proceed on schedule with the obvious intent of the Legislature to implement this matter in a timely manner in the Session and to ratify it. In other words, what kind of timetable. The Attorney General said it is difficult to tell exactly what a court might do, but it is reasonable to conclude that even if the Legislature has not acted that in and of itself might not preclude the game taking place.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 254-E, Statehouse, at 11:00 a.m./~~xxxx~~ on January 20, 1988

The Attorney General said he thought there is a basis that it could proceed while the Legislature works on the issue.

He said the Legislature might want to consider legislation that would allow any future amendments to the agreement to be binding to that so as not to arrive at any problems in the future such as this today.

Staff stated the Committee might want to take Section 3 out of the bill and include in the lottery law later, after the Committee has had more opportunity to look it over.

Again the Chairman thanked the Attorney General for appearing.

Mr. Larry Montgomery, Executive Director, The Kansas Lottery, appeared and an outline of his position is part of these Minutes. (Attachment #4) He said he would like to reiterate one more time that the Kansas Legislature did establish what is considered by all new states coming along as model legislation. It enables the lottery to be run like a business. It has been of real benefit to them. His letter dated January 19, 1988 to the Chairman is attached. (#5)

They designed their instant games to have more winners than any other state.

Mr. Montgomery talked about the economic development impact on the communities. He also answered questions from the Committee.

There was a question about the multi-state lottery rule, 6.4, concerning the records. This was a question concerning records retention. Mr. Montgomery said they have tried to take that point into consideration.

Another member asked why did Kansas not get the contract on board the opening day of the Session. Mr. Montgomery said that the Legislature specifically authorized the Commission by statute to enter into an agreement. As a consequence, they felt it had already been authorized.

A question was asked about liability insurance. The Director said they lease the terminals from KTECH. They have hired forty Kansans to service those computer terminals. It is a manager contract. The liability is so if the vendor should make a mistake it can potentially cause loss of revenue to the state.

Mr. Montgomery was asked why when the lottery was authorized it was authorized for two years, so how can a seven-year contract be let. He answered that all the contracts specifically refer to the sunset laws. That is in all the contracts.

The Director was asked what was the expanding cost to the state lottery because of entry into the multi-state. There was discussion. He said it would be 12.7% of the gross to the contract itself.

Another question was if there is anything in the agreement that will change the benefit or distribution as regards the Kansas lottery. Mr. Montgomery said there was none.

The Chairman asked if there is anything with costs to the multi-state that would make the state "cough up" from the Kansas lottery to fund the multi-state. Mr. Montgomery said not in terms of expense.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS,  
room 254-E, Statehouse, at 11:00 a.m./~~p.m.~~ on January 20, 1988.

The Director said every state takes upon itself the responsibility that if an error is caused they take the first million dollars for an error they cause. They are setting up a reserve fund to handle that in Kansas. Multi-state is also setting up a reserve fund of ten million dollars.

A question was asked about "All of the party lotteries" on page 6, of the agreement. Concerning unless all of the parties withdraw. He said you either all have to get out or legislative action could take you out, and the Chief Executive by presumed executive order could withdraw that state. Mr. Montgomery said that on page 7, Kansas can get out at any time by giving a six-month notice of intention to withdraw.

He explains what that would cost. If the state were to withdraw from MUSL before a certain time in the program, it would lose the physical things but would get the prize money back.

A member asked about what problems arise. Mr. Montgomery said they continually have little problems that come up. When that happens they trace back through to find the problem. They do not see that as a major problem.

He was asked what kind of money goes into MUSL? Mr. Montgomery said Kansas shares the fees, based upon population. Kansas' share was \$165,000. It comes out from each state as administrative expense. In Kansas the administrative fees will exceed 20%, but sales are going much faster than had been projected.

The Chairman thanked Mr. Montgomery for his appearance.

Senator Morris pointed out that in light of the number of questions, and with regard to the information of the Attorney General concerning the necessity of the quick passage of the legislation that he was going to make a motion. Senator Morris moved the bill be introduced as a Committee bill as recommended by the Subcommittee, and encouraged to hold hearings as soon as possible, with the deletion of Section 3. The motion was seconded by Senator Martin. The motion carried.

The Chairman stated he intends to set tomorrow as a hearing for proponents and opponents of this bill. The agenda for tomorrow will be changed to take care of that. The business scheduled on Thursday will be changed to Friday.

The Minutes of January 12, 13, and 14, were before the Committee. Senator Arasmith moved they be approved. The motion was seconded by Senator Strick. The motion carried.

The Chairman pointed out a copy of a letter from the Kansas Racing Commission, (Attachment # 6) which was before the Committee. He said he had written a letter to Governor Hayden concerning consultants for the Kansas Racing Commission. (Attachment #7)

The meeting was adjourned at noon.

SENATE FEDERAL AND STATE AFFAIRS  
SUBCOMMITTEE REPORT

Original  
1/20/88  
Attachment #1

January 19, 1988

The Subcommittee, composed of Senators Morris, Bond and Martin met on January 19 to review the options for Legislative approval of the multi-state lottery agreement with all members present.

Senator Bond reported on his conversation with the Attorney General who stated that the Legislature may either approve the agreement via concurrent resolution, if there are no amendments to the agreement, or by enacting legislation as is the case for other interstate compacts. Senator Bond said that the Attorney General would have a written opinion regarding the form and content of the agreement ready for consideration by the full Federal and State Affairs Committee by 11:00 am January 20.

Mary Torrence, Assistant Revisor of Statutes, informed the subcommittee that compacts have always been enacted into law in the past and that resolutions have not been used for this purpose. She stated that the Constitution does not specify the form that must be used in such matters.

Based on that information, the subcommittee recommends that the full committee follow the advice of the Attorney General regarding the legislative action necessary to implement the multi-state lottery agreement.


Senator Morris directed that both a bill and a resolution be drafted.



Senator Bill Morris,  
Chairman



Senator Richard Bond



Senator Phil Martin

Senate FSA  
1/20/88  
Attachment #1

SENATE BILL NO. \_\_\_\_\_

By Committee on Federal and State Affairs

AN ACT relating to the creation of a multistate lottery; enacting and joining the state of Kansas with other jurisdictions in an interstate agreement to create a multistate lottery.

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

Section 1. An interstate agreement creating a multistate lottery is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

INTERSTATE AGREEMENT CREATING  
A MULTISTATE LOTTERY

Party lotteries hereby agree to create a multistate lottery, hereinafter referred to as MUSL, an association of state lotteries and the District of Columbia, to operate a game, as follows:

1. That the party lotteries herein establish and create the multistate lottery board of directors, hereinafter referred to as board, on which each participating lottery shall be represented, to initiate, promulgate, administer and carry out a lottery game that will enhance each party lottery's revenue.

2. That a dual system of voting is established. One vote will be taken in which each party lottery has one vote. A second vote will be taken in which each party lottery has a number of votes equivalent to its proportionate percentage of the total population (as per the most recent U.S. census) of the states participating in MUSL multiplied by 100, except that the maximum vote a party lottery shall have under the second vote shall not exceed 1/3 of the total votes cast. Following the commencement of sales, each party lottery's second vote will have the number of votes equivalent to its proportionate percentage of total MUSL

sales multiplied by 100, except that the maximum vote a party lottery shall have under the second vote shall not exceed 1/3 of the total votes cast. This percentage will be based upon each lottery's average monthly sales experience for the twelve or proportionate calendar months preceding the vote.

Unless a different percentage is provided in this agreement, the percentage of votes necessary to allow action by the MUSL is 51% of the votes cast pursuant to both methods of voting.

The terms of this agreement cannot be changed without a 2/3 vote of all party lotteries cast pursuant to both methods of voting.

3. That the quorum necessary to hold an official meeting of the MUSL board shall be representation in person or by proxy from at least 51% of all party lotteries. However, unless a majority of the proportionate population votes, as defined in paragraph 2 of this agreement are also represented, any decisions adopted at any MUSL board meeting must subsequently be ratified within 14 days by a majority vote utilizing the proportionate percentage share allocation of votes.

4. That the director or designee, of each party lottery shall represent it on the board and may cast the votes allocated to it either in person or proxy.

5. That the board shall elect for a term as prescribed in its bylaws, a president, vice-president, secretary and two coordinators from its membership hereinafter to be called the executive committee.

6. That a percent of the gross sales as determined by the MUSL board and stipulated in MUSL rules from the MUSL game sales of each party lottery will be aggregated in a common prize pool.

7. That operating costs of the MUSL shall be paid by each party lottery proportionate to its percentage of MUSL game sales as compared with total MUSL game sales. The executive committee will advise the board of the budget and estimated expenditures of MUSL for each fiscal year. The budget proposal will specifically estimate the portion of the total budget to be paid to MUSL by

each of the member lotteries based upon the percentage described.

8. That the revenues not allocated to prizes or operating cost as outlined above and generated within each party lottery shall remain in that lottery.

9. That the board's functions shall be performed and carried out by such advisory committees or panels, or both as the board may establish and by such officers and independent contractors as may be appointed by the board. All such officers, independent contractors, agents, consultants and employees shall serve at the pleasure of the board and the board shall prescribe their powers, duties and qualifications and fix their compensation and other terms of their service.

10. That each party lottery shall be responsible for travel and per diem expenses incurred by its board members unless otherwise approved by the board.

11. That the party lotteries shall operate and administer a game in accordance with rules governing the establishment and operation thereof, as promulgated by the board. Notwithstanding the above, the game rules shall be adopted by the party lotteries or similar rules and regulations will be adopted by each lottery which are approved by the MUSL board.

The rules may be changed or modified by the MUSL only after the MUSL has given each member two weeks notice that a rule change or modification will be voted upon at a MUSL meeting. A rule can be changed or modified by the MUSL by an affirmative vote of 2/3 of the MUSL members cast pursuant to both methods of voting. Following receipt of notice that an amendment or modification has been adopted the party lotteries shall adopt the amendment or modification or a similar amendment or modification which is approved by the MUSL board.

12. That the executive committee shall make annual reports to the party states, which shall include a full and complete statement of MUSL revenues, prize disbursements and other expenses and any other information the party lotteries may require. These reports shall be the basis to determine each party

lottery's share of expenses as prescribed in the bylaws, this agreement and the rules.

13. That each party lottery shall provide all necessary operational reports and other data required by MUSL.

14. That all MUSL accounts and transactions shall be subject to annual post audits conducted by independent auditors retained by the board for this purpose and each of the party lotteries shall receive a certified copy of the same. All such records and transactions shall be available to all party lotteries for copying, inspection and auditing purposes as may be required under the laws of their state.

15. That the fiscal year of the MUSL shall be from July 1 of one calendar year to June 30th of the succeeding calendar year.

16. That prizes received pursuant to this agreement shall be subject to the statutory authority and rules and regulations of the party lotteries wherein the ticket was purchased. Any litigation relating to tickets and prizes shall be resolved according to the laws of the state where the ticket was purchased.

17. That MUSL shall continue in existence until this agreement is revoked by all of the party lotteries. The withdrawal of one or more party lotteries shall not terminate this agreement among the remaining lotteries. Upon termination of MUSL, any assets acquired by MUSL with the exception of the prize reserve fund, will be liquidated in a manner determined by the board. The proceeds from the liquidation will be divided among all of the lotteries which were members of MUSL in good standing at any time during the 12 months preceding termination. The amount of the proceeds received by each lottery will be calculated by use of the following formula:

$$\frac{\text{individual lottery MUSL sales during the twelve month period}}{\text{total MUSL sales during the 12-month period}} \times \text{proceeds available for distribution}$$



A party lottery wishing to withdraw from this agreement shall give the board a six months notice of its intention to withdraw. However, a lottery may terminate such agreement at any time without prior notice if authority to participate is withdrawn by executive or legislative action or if participation in the MUSL is in conflict with the constitution or statutes of any state. In addition, the MUSL can vote out a party lottery for cause with the consent of 2/3 of the party lotteries voting by both methods of voting as outlined in paragraph 2, except the party lottery being voted upon shall be excluded from the vote in that proceeding and in the calculations as outlined in paragraph 2. A lottery which withdraws or is voted out by MUSL more than 12 months prior to termination of MUSL will not be entitled to a share of the property or assets of MUSL, except for such lottery's proportionate share of the prize reserve fund.

In the event that a party lottery terminates, voluntarily or involuntarily, or MUSL is terminated by agreement of the parties, the prize reserve fund share of the party lottery or lotteries shall not be returned to the party lottery or lotteries until the later of one year from and after the date of termination or final resolution of any pending unresolved liabilities arising from transactions processed during the tenure of the departing lottery or lotteries. The voluntary or involuntary termination of a party lottery or lotteries does not cancel any obligation to MUSL which the party lottery or lotteries incurred before the withdrawal date.

18. That all intellectual property rights developed and approved by MUSL with respect to the game including, but not limited to, trade marks, trade names, logos, copyrights, slogans and devices shall be acquired and held by a party lottery designated by MUSL for the use and benefit of MUSL. The use thereof shall be limited to party lotteries participating in this game.

19. That each party lottery agrees that upon termination from MUSL that it will not use any of the intellectual property

identified with the game.

20. That the board shall not pledge the credit of the party lotteries, directly or indirectly, except that each party lottery shall be liable for its proportionate shares of prize moneys and operational costs as specified in paragraphs 6 and 7 of this agreement.

21. Compliance with MUSL standards is a prerequisite for MUSL membership. The board shall review the internal control procedures submitted by each lottery and vote upon whether or not each lottery's internal controls comply with MUSL standards as set forth in MUSL rules and regulations. If MUSL incurs a prize liability under this provision due to the error of a lottery whose internal control procedures have been approved and the error was not due to a contractor's actions or omission, the party lottery will pay to the prize winner the disputed prize or \$1,000,000 whichever is less at the direction of the board. Upon the payment herein before outlined, MUSL will indemnify and hold harmless each member lottery for any additional liabilities relating to the MUSL prize payments. In addition, it is recognized that \$1,000,000 may not be enough to cover the value of the prize liability incurred, and a prize reserve fund will be established to enable MUSL to fund the difference between this amount and the actual prize liability. In addition, the companies which operate online gaming systems on behalf of the party lotteries will be required to have some level of insurance to cover such liabilities in the event one of them makes a mistake.

If MUSL incurs any liability as the result of the acts of a party contractually obligated to the member lottery, that lottery shall pursue all contractual and legal remedies available to it under the contract. Any money recovered by the lottery will be turned over to MUSL up to the amount expended by MUSL as a result of the error. A lottery's pursuit of its contractual and legal remedies against the party at fault is that lottery's only obligation to MUSL in the event of a MUSL loss.

The MUSL shall establish and then maintain a prize reserve

fund solely for the purpose of indemnifying the member lotteries. The board will determine the manner in which the prize reserve fund is to be invested and interest earned on the fund will become part of the fund if the fund balance is below the ceiling amount designated by the board. Interest earned on the fund when the fund balance is not below the ceiling amount will be treated as prize money.

22. That no lottery shall be allowed to join the MUSL without the consent of 2/3 of the party lotteries voting pursuant to both methods of voting. The board will designate the terms which must be met by a lottery seeking admission, including but not limited to, setting the amount which the lottery must contribute to the MUSL prize reserve fund. This paragraph is not applicable to the lotteries listed in this first paragraph of this agreement provided that they sign this agreement by October 1, 1987.

23. That this agreement may be executed in as many counterparts, as there are party lotteries. When so executed each shall be deemed to be an original and such counterparts together shall constitute one and the same agreement.

24. That all notices required to be sent to a party lottery pursuant to this agreement shall be in writing and sent by certified mail, return receipt requested at the addresses appearing hereunder or any other address which may be given from time to time to the board.

Sec. 2. The executive director of the Kansas lottery or the executive director's designee shall represent this state on the multistate lottery board of directors.

Sec. 3. Any change in the terms of the agreement enacted by this act shall be subject to approval by the legislature.

Sec. 4. This act shall take effect and be in force from and after its publication in the Kansas register.



1/20/88  
Attachment #3

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

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

January 20, 1988

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

Dear Senator Reilly:

I have been requested by the subcommittee considering Kansas lottery matters to issue an opinion regarding the propriety of the Multistate Lottery Agreement to which the Kansas lottery commission intends to be a party.

The Kansas Lottery Act authorizes the Kansas lottery commission to "enter into written agreements with one or more other states for the operation, marketing and promotion of a joint lottery or joint lottery games, conforming to the provisions of this act. . . ." K.S.A. 1987 Supp. 74-8709(g). Pursuant to this provision, the lottery commission has negotiated and entered into a Multistate Lottery Agreement. The commission has acted appropriately in this regard, and the agreement entered into has been approved by this office as to its conformance to the lottery act.

In accordance with my opinion no. 87-16, enclosed, the Legislature must now ratify the Agreement. I believe that under these circumstances this ratification may take the form of a resolution. However, if the terms of the Agreement are modified in any way, I believe the Legislature's action must be by bill.

Senate FSA  
1/20/88  
Attachment #3

1/20/88  
Attachment #4



Kansas Lottery

Mike Hayden

Larry Montgomery

SENATE FEDERAL AND STATE AFFAIRS

January 20, 1988

OUTLINE OF PRESENTATION BY  
LARRY MONTGOMERY

- Overview
- Lottery as a Business
- Foundation Principles
  - Security
  - Research
- Start-Up Consideration
  - Legislation
  - First Game
  - Second Game
  - Lotto-America
  - Draw Show
- Relationship with KTECH,  
Department of Commerce,  
Kansas Venture Vapital, Inc.  
and Kansas Inc.

Senate FSA  
1/20/88  
Attachment #4

1/20/88  
Attachment #5



**Kansas Lottery**

**Mike Hayden**  
Governor

**Larry Montgomery**  
Executive Director

January 19, 1987

*Ed*

Dear Senator Edward Reilly:

In 1923 our Pulitzer Prize winning editor, William Allen White, said, "Whatever happens in the United States, happens first in Kansas." The 1987 Kansas Legislature certainly captured that spirit when the Kansas Lottery enabling legislation was passed.

You created a new first: The most comprehensive Lottery Act in the nation. In fact, the Kansas Lottery Act is currently referred to as model legislation for all new lotteries being considered in the United States.

Your lottery staff has endeavored to continue building on that same theme. We are the first lottery in the nation to have implemented electronic funds transfer with all our retailers prior to starting the Lottery, we have tried to be responsive to the desires of potential Kansas players without being offensive to Kansans who prefer not to play the game, we have generated involvement for more grassroots community participation than any other state in the history of lotteries, and we are starting into the on-line games sooner than any other state in the nation. In Kansas we are jointly providing evidence that the Lottery and the Legislature can successfully work together to continue rekindling the spirit of which William Allen White wrote.

As you know, your foresight enabled the Kansas Lottery Commission to enter into a multi-state agreement. The Commission has done so in accordance with your authorization. It has now come to our attention, however, that the statutory action approved by the Kansas Lottery Commission needs to be ratified by the Kansas Legislature.

Consequently, I am requesting your urgent support to accomplish ratification during the week of January 19-22.

*Senate FSA*

*1/20/88  
Attachment #5*

As you may know, the multi-state game "LOTTO-AMERICA" is to begin nationwide on February 3, 1988. The following is submitted for your consideration during the ratification process:

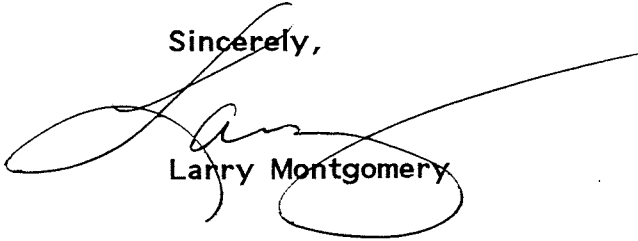
- o LOTTO-AMERICA has been designed with our 2 1/2 million population taken into consideration. If we were not to participate at this late date, it would create havoc for our five sister states and the District of Columbia and potentially attract negative national attention to Kansas.
- o Over \$5 million in electronic terminals (which we are leasing from GTECH) have already been distributed to approximately 630 Kansas retailers across the state.
- o Southwestern Bell Telephone has installed dedicated telephone lines to each of those 630 retailers including all of the cross lateral contract negotiations with other telephone companies required to make this rather massive effort possible.
- o While trying to be empathetic to those who do not favor the lottery, we have tried to be responsive to the desire of the Legislature and the 64% of Kansas voters who approved creating the lottery.
- o It is important we have enough time to teach Kansas players how to play this electronic game prior to February 3rd. Therefore we have scheduled a practice game during the week of January 23rd.
- o In respect for the ratification authority of the Legislature, I have directed that all advertising for LOTTO-AMERICA be withdrawn until you have ratified the multi-state agreement approved by the Kansas Lottery Commission.
- o Approximately half of our Kansas players indicated they wanted "lots of winners." We have provided that through the instant ticket game.
- o The other half, however, want "big winners." Most of our sister states in the mid-West have failed to accomplish this because of smaller state populations in the mid-West. The multi-state game LOTTO-AMERICA, however, can provide a larger population base and enable Kansas to be successful where other states have failed.
- o We are on a critical time line: February 3rd to start the game, January 28-30 to run a practice game, and January 23rd to begin advertising.

- o The ability to provide \$8,500,000 in profit to the state this fiscal year is predicated upon: 1) greater sales through LOTTO-AMERICA, and 2) beginning on February 3rd rather than waiting until May as originally projected to start the on-line games.

Unlike some of our sister states, I know we can send a message to our citizens that the Kansas Legislature and the Kansas Lottery can work together effectively to avoid problems and to implement a successful lottery. Therefore, I again respectfully request your ratification of the multi-state lottery contract during the week of January 19-22.

With every best wish, I remain

Sincerely,

A handwritten signature in black ink, appearing to read "Larry Montgomery", with a large, sweeping flourish extending to the right.

Larry Montgomery

cc: Governor Mike Hayden  
President Bob Talkington  
Speaker Jim Braden  
Senator Mike Johnston  
Representative Marvin Barkis  
Senator Ed Reilly  
Representative R. H. Miller



1/20/88  
Attachment #6

KANSAS RACING COMMISSION  
128 N. Kansas Avenue  
Topeka, Ks. 66603  
(913) 296-5800

January 11, 1988

The Honorable Edward F. Reilly, Jr.  
Senator, Third District  
430 Delaware  
Leavenworth, Ks. 66048

Dear Senator Reilly:

Your letter of November 20, 1987, addressed to me and the members of the Kansas Racing Commission is acknowledged and fully appreciated. It has been a great assistance to the commission in formulating preliminary procedures to process applications for the licensing of racing facilities.

On November 4, 1987, when I appeared before the Federal and State Affairs Committee, several matters concerning the parimutuel wagering act (H.B. No.2044), were addressed and - in particular those areas where amendment of the legislation may be desirable were discussed. Since that time other matters have come before the Kansas Racing Commission that suggest a need for additional amendment. I shall therefore enumerate all matters that have now come before the commission where amendment of the parimutuel wagering Act may be desirable to effectuate the legislative intent relative to the Kansas racing program to be administered by the Kansas Racing Commission:

1.

Sec. 3(h) of the Act pertaining to subsistence allowances and mileage should be changed by amending KSA 75-3216 to exempt the Kansas Racing Commission from the provisions otherwise applicable. This would be in accordance with provisions made for the members of the legislature, The Judicial Council and other administrative agencies of the State.

2.

Sec. 6(g) of the Act pertaining to the laboratory testing of blood and urine samples of racing dogs and horses by requiring the testing to be done "in this state", is too limiting. The only lab available for this kind of testing in Kansas would be at Kansas State University. Lab testing frequently has to be checked by providing samples to other labs to confirm accuracy of the testing. The present problem in New Mexico, where blood samples

Senate FSA  
1/20/88  
Attachment #6

previously tested in the State passed muster, but a later testing of the same samples in another lab proved that horses had been drugged although previously cleared, is an example. Dr. John Nordsey, Dean of the College of Veterinary Medicine at K.S.U. in Manhattan, Ks. and Dr. Harry Anthony on the Kansas Racing Commission suggest necessary change of this section of the racing Act.

3. Immunity of members of the racing commission for official acts of the commission should be thoroughly studied to provide the same protection to them by the State as is provided other officers of the State. The State Tort Claims Act should be thoroughly reviewed on this matter.
4. In Sec. 13(j) the commission is granted broad powers to enforce compliance with the intent of the Act, but in Sec. 13(k) these powers are materially restricted. It is suggested that Sec. 13(k) be given further consideration by the legislature.
5. Under Sec. 13 in the last few paragraphs, time factors give prospective applicants for racing facilities and the members of the racing commission considerable concern. Matters under these provisions could possibly drag on for years with no remedy and frustrate the Kansas Racing program. See also Sec. 15(h)(i) &(j).
6. Sec. 14(f) makes no provision for a hearing prior to the making of a finding or determination by the Racing Commission.
7. The open meetings act provides certain exceptions which authorize the confidential treatment of three matters which are enumerated in the Attorney General's Opinion No. 88-3, a copy of which is attached hereto. Limitation to these three exceptions, however, is inadequate to administer the Racing Act. Mr. Johnson, Director of the K.B.I. complains that the reports of investigations made by the K.B.I. will not be filed with the Racing Commission or submitted to the Commission in any form if they become public records in the Commission files. With amendment of the wagering act to authorize confidential treatment of the K.B.I. reports the Commission will have the necessary information to make licensing determinations. Mr. Johnson is taking the initiative to seek legislative amendment on this subject.

8. Further on the confidentiality issue the Commission should have authority to negotiate in confidentiality with applicants for licensure. Iowa law makes provision for this and it has been a useful tool for the Iowa Racing Commission.

Sincerely,

A handwritten signature in cursive script that reads "Alfred G. Schroeder". The signature is written in dark ink and is positioned above the typed name.

Alfred G. Schroeder  
Chairman  
Kansas Racing Commission



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

January 8, 1988

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

ATTORNEY GENERAL OPINION NO. 88-3

The Honorable Alfred G. Schroeder  
Kansas Racing Commission  
128 N. Kansas Avenue  
Topeka, Kansas 66603

Re: Laws, Journals and Public Information -- Records  
Open to Public -- Kansas Racing Commission;  
Applications for Licensure

Synopsis: The application form submitted to the Kansas Racing Commission (Commission) by entities and persons seeking licensure to conduct and manage parimutuel horse and greyhound races and own racetrack facilities is a public record subject to disclosure under the Kansas Open Records Act. The Commission has discretion under K.S.A. 1987 Supp. 45-221(a)(4) to keep confidential the names of prospective employees listed on the application. In addition, security information supplied with the application is exempt from mandatory disclosure under K.S.A. 1987 Supp. 45-221(a)(12). Further, the Commission is prohibited from disclosing applicants' tax returns required to be submitted with the applications. Cited herein: K.S.A. 2-1202; 16-715; 39-709b; 45-215; 45-216; 45-217; K.S.A. 1987 Supp. 45-221; K.S.A. 47-502; K.S.A. 1987 Supp. 65-436; K.S.A. 65-1831; 66-1220a; 74-8801; 74-8802; 74-8813; K.S.A. 1987 Supp. 75-4318; 79-3234; K.A.R. 112-3-7; 112-3-8; 112-3-11; 112-3-12, as proposed.

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Senate FSA  
1/20/88  
(Part of  
Attachment #6  
See # No. 7)

Dear Mr. Chief Justice Schroeder:

On behalf of the Kansas Racing Commission, Janet A. Chubb, Assistant Attorney General for the Commission, has requested our opinion on two questions concerning the Kansas Open Records Act, K.S.A. 45-215 et seq: (1) Whether the application for licensure to conduct and manage parimutuel horse and greyhound racing and own racetrack facilities may be closed to the public before the license is granted; (2) if the application cannot be closed, whether the names of key, prospective employees listed on the application may be kept confidential before licensure is granted.

The 1987 session of the Kansas legislature enacted the Kansas Parimutuel Racing Act, which provides for the regulation and taxation of parimutuel wagering on horse and greyhound racing. K.S.A. 1987 Supp. 74-8801 et seq. The Kansas Racing Commission (Commission) was established to carry out the provisions of the parimutuel racing statutes and regulations adopted by the Commission. It is the Commission's duty to license nonprofit organizations, granting them the authority to conduct races and parimutuel wagering. Such licensed, nonprofit organizations, "organization licensees," may also be licensed to construct or own racetrack facilities. K.S.A. 1987 Supp. 74-8802(o). If the racetrack facility will not be owned by the organization licensee, the proposed racetrack owner must obtain licensure as a "facility owner licensee." K.S.A. 1987 Supp. 74-8802(g). In addition, if the organization licensee contracts for the management of the racetrack facility, the proposed manager must obtain licensure as a "facility manager licensee." K.S.A. 1987 Supp. 74-8802(f). Thus, a potential of three entities and/or persons may need to be licensed by the Commission to operate, manage, and own a parimutuel racetrack facility.

Applicants for an organization license must meet the requirements specified by the legislature in K.S.A. 1987 Supp. 74-8813, and the requirements of administrative rules and regulations promulgated by the Commission pursuant to statute. These requirements are being incorporated into an application form which all applicants must complete and submit to the Commission. If the nonprofit organization will not manage or own the racetrack, the prospective facility manager and facility owner must apply for licensure by completing pertinent sections of the application form. Your first question is whether applications for licensure submitted to

disclosure of the application form. In addition, it does not appear that any of the exceptions to mandatory disclosure are applicable.

We shall examine several exceptions listed under K.S.A. 1987 Supp. 45-221(a). Exception (10) provides that criminal investigation records are not required to be disclosed. "Criminal investigation records" are records of "an investigatory agency or criminal justice agency. . . compiled in the process of preventing, detecting or investigating violations of criminal law. . . ." K.S.A. 45-217(b). The information supplied on the application forms is used to investigate an applicant's background. However, the Commission is not an investigatory agency and the information is compiled for purposes of obtaining licensure.

Under K.S.A. 1987 Supp. 45-221(a)(11), a public agency is not required to disclose the following records:

"Records of agencies involved in administrative adjudication or civil litigation, compiled in the process of detecting or investigating violations of civil law or administrative rules and regulations, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent."

This exception does not exempt the application form from disclosure as the Commission is not involved in an administrative adjudication, the information was not compiled to detect violations of law, and disclosure would not reveal a confidential source or undercover agent.

A public agency also has discretion whether to disclose "records pertaining to prospective location of a business or industry. . . ." K.S.A. 1987 Supp. 45-221(a)(31). At first glance, this exception may seem applicable to the present situation. However, the exception only applies when "no previous public disclosure has been made of the business' or industry's interest in locating in, relocating in or expanding within the state." The Commission's grant or denial of a license must be done in an open meeting. See K.S.A. 1987 Supp. 75-4318(a). Exception (31) further provides:

"This exception shall not include those records pertaining to application of agencies for permits or licenses necessary to do business or to expand business operations within this state."  
(Emphasis added).

Since licensure is required to conduct parimutuel racing and wagering, this provision is not applicable to exempt the application from disclosure. In the absence of a statutory provision prohibiting disclosure or permitting the Commission to keep the document confidential, the application form as a public record is open for public inspection upon request by any person.

You ask whether the names of key, prospective employees listed on the applications may be kept confidential before licensure is granted. Proposed K.A.R. 112-3-11(c) requires an applicant for an organization license to "list those persons within the applicant organization who will be supervising the conduct and operation of the horse races or greyhound races, or both, and the operation of the pari-mutuel system of wagering. . . ." Applicants for an organizational license or facility manager license in which the applicant proposes to manage a racetrack facility are required by proposed K.A.R. 112-3-12(b) to list their management personnel on the application form.

The KORA provides that, if a public record contains material not subject to disclosure, the public agency shall separate or delete the material and make available to the requestor the information in the public record which is subject to disclosure. K.S.A. 1987 Supp. 45-221(d). In our opinion, the Commission may keep confidential the names of prospective employees listed on the application as an exception to mandatory disclosure is applicable:

"[A] public agency shall not be required to disclose:

. . .

(4) Personnel records, performance ratings or individually identifiable records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of

public agencies once they are employed  
as such." K.S.A. 1987 Supp. 45-221(a).  
(Emphasis added).

The above exception provides that the names of applicants for employment are not required to be disclosed. This exception is generally invoked in instances concerning public agency employees and applicants for such employment. See Tew v. Topeka Police and Fire Civ. Service Comm'n., 237 Kan. 96, 103-04 (1985). However, it also extends to applicants and employees of private entities when an individually identifiable record becomes a public record, such as the application form in the present case. The individuals named in the application are not yet employed by the organization but are potential employees. Therefore, it is our opinion that the Commission has discretion to keep confidential the names of such individuals. The exception further provides that, once they are employed by a public agency, the names of public agency employees must be disclosed to the public. No such requirement is placed on persons employed by a private entity.

We note that proposed K.A.R. 112-3-7(e) and proposed K.A.R. 112-3-8(c) require applicants for an organization license, facility owner license, and facility manager license to include with the application a copy of the applicant's tax returns from the previous three years or all tax returns if the applicant has been organized for less than three years. State law prohibits tax returns and tax return information from being disclosed by any state officer or employee:

"(b) Except [as otherwise provided] it shall be unlawful for the director, any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act. . . ." K.S.A. 79-3234. (Emphasis added).

Thus, the Commission is prohibited from disclosing tax returns submitted with the application forms.



We understand the Commission is concerned that applicants are required to submit on the application detailed information regarding their security plans and financing mechanisms. K.S.A. 1987 Supp. 45-221(a)(12) gives a public agency discretion to close the following records:

"Records of emergency or security information or procedures of a public agency, or plans, drawings, specifications or related information for any building or facility which is used for purposes requiring security measures in or around the building or facility or which is used for the generation or transmission of power, water, fuels or communications, if disclosure would jeopardize security of the public agency, building or facility."  
(Emphasis added).

Proposed K.A.R. 112-3-14 requires applicants who wish to manage a racetrack facility to submit public safety and security information. In pertinent part, the regulation provides:

"(b) The application shall describe a complete security plan for the race period and the non-race period, including:

- (1) The number and deployment of security personnel;
- (2) the perimeter;
- (3) the stable and the kennel compound;
- (4) the cash room;
- (5) the vault;
- (6) the method of money transfer between wagering windows, cash room and any other location to which money will be transferred;
- (7) the number of sworn law enforcement personnel assigned to any local law enforcement

offices and the types of incidents to which the law enforcement personnel may be expected to respond;

- (8) the coordination between the racetrack facility security and the local law enforcement personnel, including the location of the local law enforcement office and the approximate response time;
- (9) any video monitoring equipment, including the type and location;
- (10) any alarms, including the type and location;
- (11) the testing or detention barn or paddock for horses;
- (12) the greyhound paddock;
- (13) the parking lot
- (14) the backside and the frontside;
- (15) any emergency procedures, including ambulance, first aid or evacuation, and the location of any local emergency medical services and approximate response time;
- (16) the exclusion and expulsion rules;
- (17) the security force equipment;
- (18) the policy and procedure for admittance of persons to any locations at the racetrack facility; and
- (19) the control of traffic at the racetrack facility."

Clearly, regulations drafted by the Commission pursuant to the Parimutuel Racing Act require security measures for racetrack facilities. Therefore, it is our opinion that the Commission may, in accordance with K.S.A. 1987 Supp. 45-221 (a)(12), refuse to disclose security information submitted with the application.

In regard to applicants' financing mechanisms, the parimutuel wagering statutes do not contain a provision protecting the confidentiality of this information and we do not find any statute exempting it from mandatory disclosure. K.S.A. 1987 Supp. 45-221(a)(34) only exempts financial information of a contractor "who has submitted a bid or is negotiating for a contract on a public improvement project." Frederickson, Letting the Sunshine in: An Analysis of the 1984 Kansas Open Records Act, 33 U. Kan. L. Rev. 205, 261 (1985). Financial information contained in the applications, therefore, must be disclosed to the public.

As we have shown, in order for information contained in or supplied with the application form to be withheld from disclosure, a specific statute must exist. In other areas of the law, the legislature has enacted statutes exempting from disclosure certain information required to be filed with public agencies. See, e.g., K.S.A. 2-1202 (fertilizer blender's reports required to be submitted for licensure); K.S.A. 16-715(e) (pawnbrokers and precious metal dealers' reports); K.S.A. 39-7096 (information concerning applicants for and recipients of SRS assistance); K.S.A. 47-502 (ingredients in livestock remedies required to be submitted on application for registration); K.S.A. 65-436 (records of licensing agency concerning medical care facilities which identify individuals or facilities); K.S.A. 65-1831 (applications submitted for registration by the Board of Barber Examiners); K.S.A. 66-1220(a) (trade secrets of entities regulated by the Kansas Corporation Commission). In addition, the KORA grants public agencies discretion to keep confidential certain documents required to be filed with the agency. See, e.g., K.S.A. 1987 Supp. 45-221(a)(17) (student financial assistance applications); 45-221(a)(19) (well samples, logs, or surveys required to be filed with the state corporation commission); 45-221(a)(28) (sealed bids).


In summary, the application form submitted to the Kansas Racing Commission (Commission) by entities and persons seeking licensure to conduct and manage parimutuel horse and greyhound races and own racetrack facilities is a public record subject to disclosure under the Kansas Open Records

Act. The Commission has discretion under K.S.A. 1987 Supp. 45-221(a)(4) to keep confidential the names of prospective employees listed on the application. In addition, security information supplied with the application is exempt from mandatory disclosure under K.S.A. 1987 Supp. 45-221(a)(12). Further, the Commission is prohibited from disclosing applicants' tax returns required to be submitted with the applications.


Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Janet A. Chubb  
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Assistant Attorney General

RTS:JLM:JAC:RLN:bar

STATE OF KANSAS



TOPEKA

SENATE CHAMBER

January 18, 1988

EDWARD F. REILLY, JR.  
SENATOR, THIRD DISTRICT  
LEAVENWORTH AND JEFFERSON COUNTIES  
430 DELAWARE  
LEAVENWORTH, KANSAS 66048-2733  
913 682-1236

1/20/88  
Attachment #7

COMMITTEE ASSIGNMENTS  
CHAIRMAN FEDERAL AND STATE AFFAIRS  
AND INSURANCE SUBCOMMITTEE  
VICE CHAIRMAN ELECTIONS  
MEMBER CONFIRMATIONS  
FINANCIAL INSTITUTIONS AND  
INSURANCE  
PUBLIC HEALTH AND WELFARE

The Honorable Mike Hayden  
Governor of Kansas  
2nd Floor  
State House  
Topeka, Ks 66612

Dear Governor:

On Wednesday, January 13, 1988, the Federal and State Affairs Committee of the Senate had the opportunity to hear from the executive director of the Kansas Racing Commission, Jim Grenz, and the Attorney General assigned to the Commission, Janet Chubb. Both made excellent presentations to the committee about the progress and development of rules and regulations for the operation of the Commission. One question I raised to Director Grenz was the need for consultants, immediately to assist the commission in developing appropriate licensing requirements and provide necessary guidance to the commission in an effort to issue licenses in a timely manner. It is apparent to me from discussion with the Chairman of the Commission, Justice Schroeder, and other members, that they would welcome such advice. I would respectfully urge that the Finance Council and the respective chairmen of the Ways and Means Committees provide the necessary funds for the employment of the these consultants to assist the commission in its efforts. I am confident that this will expedite the initiation of parimutuel racing in Kansas so that we may reap the maximum benefits to our state economically.

Thank you for your consideration in this regard and I would welcome the opportunity to visit with you at any time personally about this or with your staff.

Sincerely,

EDWARD F. REILLY, JR.  
State Senator, Third District

Senate FSA  
1/20/88  
Attachment #7