

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Senator Lana Oleen at 1:30 p.m. on April 28, 1995 in Room 254-E of the Capitol.

All members were present.

Committee staff present: Mary Galligan, Legislative Research Department
Mary Ann Torrence, Revisor of Statutes
Kim Perkins, Committee Secretary

Conferees appearing before the committee: Gregory Ziemak, Executive Director, Kansas Lottery
Terry Hamblin, Attorney, Kansas Racing Commission
Carl Anderson, Attorney, Kansas Lottery
John Campbell, Office of the Attorney General

Others attending: See attached list

Sen. Oleen asked the committee to direct its attention to **SB 27**, an act concerning the Kansas lottery; authorizing electronic games of chance at certain locations; relating to abolition of the Kansas lottery, and called on Gregory Ziemak to continue his testimony from the April 28, 1995 committee meeting which was held at 10:00 a.m. Gregory Ziemak referred to the Sunset of 1998 which is outlined in the bill and stated that the lottery currently has contracts which extend to 1997 and that because of the capital outlay involved in making bids for contracts, the lottery would not be able to get a one year contract needed to take them through until the 1998 Sunset. Sen. Ramirez asked if Gregory Ziemak had any recommended dates for abolition of on line games and Gregory Ziemak stated that most states have 10 year restrictions but that the lottery could conduct business with 6 or 7 years.

Sen. Gooch asked Gregory Ziemak if he could estimate how the use of electronic games which effect lottery sales and Gregory Ziemak stated that he estimated a change of about 5% or 10%. Gregory Ziemak stated that the lottery estimated how much money could be accrued from the use of electronic games based on figures from West Virginia which has a program most similar to that of Kansas. Based on the findings of West Virginia, The Division of the Budget estimated net machine revenue from electronic game of chance machines at the horse and dog tracks to be \$27.4 million. Sen. Oleen asked Gregory Ziemak if other states specifically outlined in statute how every percent of the money generated by electric games of chance is distributed and Gregory Ziemak stated that West Virginia does enumerated every percentage in law.

Sen. Ramirez asked Gregory Ziemak if the lottery commission had the authority to contract with parimutuel licensees in regard to electronic games and Sen. Oleen called upon Carl Anderson, Assistant Attorney General with the Lottery, to respond. Carl Anderson stated that the Executive Director of the lottery is authorized but not required to contract with a parimutuel licensee.

Sen. Oleen stated that the committee had a copy of figures which were developed by Bruce Rimbo, Executive Director of the Woodlands, which outline projected revenue which could be accrued with the addition of electronic games of chance (Attachment 1).

Sen. Oleen introduced Terry Hamblin, Assistant Attorney General with the Racing Commission, to speak to **SB 27**. Terry Hamblin supplied the committee with a copy of a letter from Dr. Denice Kobuszewski, Chair of the Racing Commission (Attachment 2). Sen. Oleen clarified that currently the Racing Commission does not have statutory authority to approve contracts between the technology providers and parimutuel licensees and asked how the racing commission feels they could ensure that the operation of electronic gaming machines does not interfere with the best interests of racing. Terry Hamblin answered that the racing commission requires that in order for simulcasting to occur at least 13 live races must also be conducted and therefore this is a check which the racing commission can use in order to regulate and therefore, a track cannot only hold one simulcast race in order to use electronic games of chance.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS, Room 254-E
Statehouse, at 1:30 p.m. on April 28, 1995.

Sen. Oleen introduced John Campbell, Office of the Attorney General, who supplied the committee a copy of a memorandum from the Office of the Attorney General in regard to SB 27 (Attachment 3).

Sen. Oleen stated to the committee that she would entertain a motion to separate the lottery and electronic games of chance in order to treat the two issues separately as was the original intent of the Senate. Sen. Parkinson made a motion to separate the two issues and the motion was seconded by Sen. Walker. Sen. Ramirez made a substitute motion to leave the bill in its present form except for allowing the lottery to conduct Keno and to have a Sunset of 2002.

Sen. Oleen announced that committee would not meet again this session and adjourned the meeting at 2:45 p.m.

Electronic Games of Chance Projections

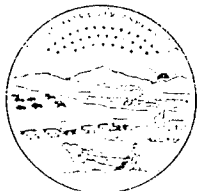
Statewide totals:

Amount Wagered into Machines	\$877,500,000
Amount Returned to Public	\$789,750,000
Net machine income	\$87,750,000
20% to State	\$17,550,000
of which 70% to regents	\$12,285,000
of which 25% to community colleges	\$4,387,500
of which 5% to Washburn	\$877,500
1% to largest city in county	\$877,500
20% to horse and greyhound purses	\$17,550,000

Sen. Fed & State
Attachment 1
4-28-95 1:30

fc to
Dr. Denise
Janssen
Francisco
Londerholm
3-27-95
cd

STATE OF KANSAS



KANSAS RACING COMMISSION

3400 Van Buren
Topeka, Kansas 66611-2228
(913) 296-5800
FAX (913) 296-0900

mailed to al
COMM. 3-27-95
cd

March 27, 1995

Representative Ray Cox
Vice-Chairman House Federal & State Affairs Committee Room
156-E, Capitol
Topeka, KS 66612

RE: Proposed Amendments to HB 2547

Dear Chairman:

Thank you for asking the Kansas Racing Commission for its input on HB 2547. Pursuant to your request the Kansas Racing Commission met this morning to discuss possible amendments to HB 2547. After a majority of the commission first reiterated its neutral stance on HB 2547 the commission, in light of its duty to promote and protect the Kansas parimutuel industry, is pleased to offer the following amendments that the commission believes to be necessary to make HB 2547 workable in the event that HB 2547 should pass, to wit:

1. Presently all persons entering Kansas racing facilities for occupational purposes must be licensed by the Kansas racing commission. Many of these licenses require KBI background investigations. The Racing Commission believes that an amendment to clarify that the Racing Commission will continue to have jurisdiction over who receives occupational licensure to come and go in parimutuel facilities is essential. As this bill is now structured, the lottery and any contractors and agents and employees thereof providing services to operate electronic games of chance would have to be licensed as class I concessionaires and receive the appropriate occupational licenses issued by the commission in order to come and go in the restricted areas of parimutuel facilities.

Sen. Fed & State
Attachment 2
4-28-95

2. The legislation should specify that the electronic games of chance must be located inside the existing parimutuel buildings at a licensed parimutuel location not in a separate building. In order to assure that this is the case the commission believes that subparagraph (m) on page 2 of the bill commencing at line 24 should be amended to read as follows, to wit:

(m) "Parimutuel licensee location" means a facility located on the real estate of a parimutuel licensee where live horse racing or live greyhound racing is conducted, and parimutuel wagers are accepted. A parimutuel licensee location may include any of the existing structures where parimutuel wagers are accepted located on the real estate where live horse racing or live greyhound racing is conducted or any structures that may be constructed on such real estate, where parimutuel wagers are accepted.

3. On page 10 of the bill at line 14 subsection (d) should be amended to read:

(d) The contracts authorized by this section may shall include the following

In addition to the forgoing the Racing Commission believes that the amendments offered by the Kansas Lottery designed to enhance the Lottery's ultimate ownership and control of the electronic games of chance should also be made a part of this legislation.

Very truly yours,

KANSAS RACING COMMISSION



DENISE E. KOBUSZEWSKI, D.V.M.
CHAIR

MEMORANDUM

To: The Honorable Lana Oleen
 Chair, Senate Committee on Federal and State
 Affairs

From: Julene Miller, Office of Attorney General Carla J.
 Stovall

Date: April 27, 1995

Re: 1995 Senate Bill No. 27, as amended by House
 Committee of the Whole

Attorney General Stovall has asked me to provide you with responses to the questions you posed to John Campbell this morning.

You inquire whether the state will receive only 20% of the net machine income, or whether it could be more than that. New section 8(c), on line 26 of page 24, provides that the state will receive "an amount equal to not less than 20% of the net machine income from the operation of electronic game of chance machines" This appears to enable the executive director to contract for more than 20%, but no less. However, for the sake of clarity, we suggest that the words "an amount equal to" be stricken from the bill. Note that the state is to receive 20% of the net machine income. This is defined in section 1(k) (line 40 of page 15) as all cash and the value of cash vouchers and tokens placed in electronic game of chance machines less amounts paid to players. New section 8(i)(1) (lines 1 and 2 on page 26) provides for a payout to players of from 90-97.3% of the amount wagered on electronic game of chance machines. Thus, the state will receive 20% or more of the 2.5-10% not paid out to players.

You next inquire how the remaining 80% of the net machine income is to be spent. New section 8(d) provides that 1% of the net machine income derived from the operation of machines located in a particular county is to be distributed to the most populous city in that county to be used for urban redevelopment in blighted areas of the city. New section 8(f) provides that the parimutuel licensee must enter an agreement with the horse and dog associations for distribution of an undetermined % of net machine income before the licensee may execute a contract with the state. Aside from these two provisions, we could locate nothing that requires a particular usage of the remaining 80% of the net machine income.

Sen Fed & State
 Attachment 3
 4-28-95

Page 2

You also inquire who pays the costs for set-up of the machines and security. While we could locate no express provisions dealing with this issue, it appears that the bill envisions these costs being paid by the parimutuel licensees. The state is to contract with a licensee to install and operate electronic game of chance machines, new section 8(a), line 12 of page 24; such machines may be installed, operated, managed, owned or leased by the licensee or a technology provided under contract with the licensee, new section 8(b), line 19 of page 24; the licensee is to pay an application fee, section 3(b), line 40 of page 18, and the costs of examining prototypes of electronic game of chance machines and certification of such machines, new section 8(h), line 29 of page 25; and permissible provisions of the contract between the state and the licensee include minimum requirements for the licensee to provide oversight, security and supervision of the operation, new section 8(e)(3). However, the state will undoubtedly incur additional costs in handling matters associated with the operation of electronic game of chance machines, and is specifically authorized to pay for such costs from the lottery operating fund, new section 8(k)(1) [a portion of the state's 20% or more of the net machine income is to be credited to this fund as determined necessary to pay such costs].

Finally, you question whether the bill in its current form provides for a lottery that is state-owned and operated as is required by the Kansas constitution. Attorney General Stephan was called upon to address that question on two occasions. In both instances he stressed the fact that there is no bright-line distinction to be drawn between something that is state-owned and operated as opposed to something that is state-taxed and regulated. It all depends on how much control the state retains over the operation in question. It is not absolutely necessary that the state own the facility or machines, but must own the business and have ultimate and complete control of the operation; state-owned and operated does mean something different and implies more direct state ownership and control than does state-taxed and regulated. The ultimate determination whether the business is state-owned and operated may depend in large part on how the statutes are implemented by the Lottery and the specific terms of the contracts. We thus are unable to provide a definitive answer to this question.

- § 1, p. 14, line 42: Amends 74-8702
Adds definitions for
Cash voucher
Electronic game of chance
Electronic game of chance machine
Net machine
Parimutuel licensee
Parimutuel licensee location
Technology Provider
Token
Amends definitions for
Lottery retailer
Person
Strikes definition for
Video lottery machine
- § 17, p. 28, line 39: Amends 74-8702
Adds definition for
On line game
Does not reflect § 1 amendments
- § 20, p. 32, line 11: Amends 74-8702
Adds definition for
Casino game
Strikes definition for
Video lottery machine
Otherwise, does not reflect § 1 or § 17
Amendments

Page 2

§ 2, p. 17, line 6: Amends 74-8704

Specifically allows executive director of lottery to
contract with parimutuel licensees for placement of
electronic game of chance machines at license locations

Page 3

§ 3, p. 18, line 25: Amends 74-8708

Allows executive director to charge parimutuel licensees
a different application fee than that assessed for
other lottery retailers

§ 4, p. 20, line 27: Amends 74-8710
Commission exemption from rule and regulation filing act
repealed

Amends rule and regulation authority to allow
regulations dealing with electronic games of chance
played on machines operated at parimutuel licensee
locations

Provides for exclusivity of electronic games of chance
at parimutuel licensee locations

§ 18, p. 30, line 3: Amends 74-8710
Does not strike commission's exemption from filing act

Retains prohibition on video lottery machines

Requires new rules and regulations on online game to be
submitted to house and senate committees on federal
and state affairs and delayed effective dated less 45
days into session

§ 19, p. 31, line 9: Amends 74-8710
Does not strike commission exemption from filing act

Retains prohibition on video lottery machines

Also prohibits lottery vending machines

§ 21, p. 33, line 20: Amends 74-8710
Does not strike exemption from filing act

Substitutes "casino games" for "video lottery"

§ 5, p. 21, line 36: Amends 74-8711

Includes money received from operation of electronic game of chance machines in the amount to be remitted by executive director to state treasurer; electronic game of chance machine money not to be credited to lottery operation fund (p. 22, lines 1, 2)

Allows lottery operating fund money to be used to pay costs of contracts entered for purchase or lease of equipment

Provides that electronic game of chance machine money amount is not considered when determining 30% total revenues from sale of tickets or shares to be transferred to state gaming revenues fund from lottery operation fund. [Note needs clarification.]

Page 6

§ 6, p. 22, line 42: Amends 74-8718
Unlawful for parimutuel licensee to allow persons known
to be under 18 years to play.

Page 7

§ 7, p. 23, line 14: Amends 74-8719
Adds electronic games of chance to conflict provisions

§ 8, p. 24, line 12: New

Authorizes executive director to enter into contracts with parimutuel licensees to install and/or operate electronic game of chance machines at licensee locations

Allows electronic game of chance machines to be "installed, operated, managed, owned or leased" by parimutuel licensees of technology providers under contract with a licensee. Requires each game (not each machine) to be approved by the lottery

Provides that lottery must receive "an amount equal to not less than 20% of the net machine income"

Contract term initially 5 years

One city in county to receive 1% of net machine income from machines operated in that county to use for urban redevelopment in blighted areas of the city

Provisions that may be included in the contracts:

Accounting procedures

Times of operation of machines [May operate only on days when live or simulcast races are conducted/displayed, but days cannot otherwise be limited.]

Location of machines within facility

Requirements for provision by licensee of oversight, security

Licensee must agree with horse and dog associations on amount of distribution of net machine income to such associations before executing contract with the lottery

Each machine must be certified by executive director -- licensee or person seeking examination and certification shall pay costs of such

Electronic game of chance machines shall pay out an average of 90% and 97.5% of all money wagered

Electronic game of chance machines must be linked to provide audit, information, but need not be "on-line" or in constant communication with central computer

Maximum wager amount per person per day is \$500.00

Lotteries portion of revenues to be credited to:

Lottery operation fund in amount necessary to cover costs

Remainder

70%--education building fund

Page 9

25%--community colleges
5%--Washburn
Sunset on electronic games of chance machines
7-1-1998

Page 10

- § 9, p. 26, line 30: New
Criminal penalty for tampering
- § 10, p. 26, line 35: New
Act takes precedence over any other law in conflict
- § 11, p. 26, line 38: New
Exempts transport of gambling devices to or from
licensee locations from § 2 of 15 U.S.C. §§ 1171-117
- § 12, p. 27 line 5: New
Provides for vote in counties on allowing electronic
games of chance at tracks in county

Page 11

§ 13, p. 28, line 9: Amends 74-8723
Sunsets lottery on 7-1-2002

§ 15, p. 28, line 20: Amends 74-8723
Sunsets lottery on 7-1-2002 -- except, if executive
director contracts for electronic games of chance
machines, sunsets lottery on 7-1-98

Page 12

§ 22, p. 34, line 20: New
Reporting requirements for certain persons engaged in
promoting or opposing proposition in counties voting
on whether to allow electronic games of chance machines

2/15



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

February 15, 1991

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

Re: Constitution of the State of Kansas--Miscellaneous--
State-owned and Operated Lottery

Dear Senator Reilly:

You request clarification of my March 23, 1990 letter regarding riverboat gambling.

Initially you question whether state-owned casino-style gambling would be allowable under the Kansas lottery act. As noted in Attorney General Opinion No. 87-38, the Kansas constitution does not define or restrict the term "lottery" in any particular way. The courts have supplied the definition as any game involving the three elements of prize, chance and consideration. Thus, we concluded in the opinion that "any game, no matter the extent of player participation or the title assigned to the game, be it 'lotto' or 'casino gambling,' as long as it is state-owned and operated and involves the essential elements discussed above, would be classified as a lottery." The lottery act, however, appears designed to regulate only the sale of lottery tickets and drawings. The legislature may therefore wish to enact additional statutes to provide for casino-style gambling if it so desires.

You next ask whether the state would have to own the facility and the gambling equipment for the operation to be considered "state-owned." Currently lottery tickets are sold by retailers out of the retailer's place of business pursuant to contract with the state. Article 15, section 3c of the constitution requires that the "lottery" be state-owned and operated. It does not necessarily require that the state own

3-15

Senator Edward Reilly
Page 2

the actual structure in which the lottery is conducted, or the equipment which is used in the operation. I therefore believe that, as long as the state owns the business and has ultimate and complete control of the operation, it is not necessary that the state actually own the building or the equipment used in the operation. It may be necessary to amend K.S.A. 21-4306 and 21-4307 to allow possession and ownership of gambling devices by entities other than the state if this is so desired.

You also question whether bets would have to be allocated in the same way as revenue from lottery tickets. Again, the constitution does not limit the legislature in this regard. K.S.A. 1990 Supp. 74-8711(b) currently provides that any money received by or on behalf of the Kansas lottery must be deposited in the state treasury, credited to the lottery operating fund and expended as provided in the lottery act. Thus it would appear that any deviation from this allocation would have to be statutorily authorized.

Finally, you question whether the state may locate slot machines or other games at racetracks. We have been unable to locate any statutes which would prevent this (aside from K.S.A. 21-4306 and 21-4307). Janet Chubb and Carl Anderson may be of some assistance to you in this regard with their expertise in the two acts.

I hope this information will be of assistance to you. If I may be of further assistance, please contact me or a member of my staff.

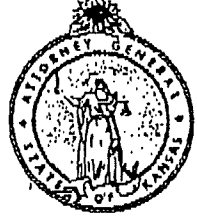
Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas

RTS:JLM:jm

bcc: Janet Chubb, Asst. Attorney General, Racing Commission
Carl Anderson, Asst. Attorney General, Lottery Commission



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

January 2, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
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ATTORNEY GENERAL OPINION NO. 92- 1

The Honorable Edward F. Reilly, Jr.
State Senator, Third District
430 Delaware
Leavenworth, Kansas 66048-2733

Re: Constitution of the State of Kansas--
Miscellaneous--Lotteries; Indian Gaming Regulatory
Act

Synopsis: If the legislature and the electorate choose to remove the constitutional authority for a state-owned and operated lottery, the types of class III games Indian tribes could conduct in this state pursuant to a compact would be limited to on-track parimutuel wagering on horse and dog races, as this would be the only permissible class III gaming anywhere in the state. A tribe may not conduct simulcasting/wagering operations pursuant to a compact or otherwise since such conduct is currently prohibited by state law. Statutorily prohibiting certain specific class III games, if across the board (i.e. no one, including the state, may conduct or participate in it), would foreclose the ability to include those specific games in a compact. 25 U.S.C. § 2719(d) specifically makes provisions of the Internal Revenue Code concerning the reporting and withholding of taxes on winnings applicable to Indian gaming operations.

As long as the state owns the business and has ultimate and complete control of the operation, article 15, section 3c of the constitution does not require that the state actually own the building or equipment used in a lottery operation. Cited

herein: Kan. Const., Art. 15, §§ 3b, 3c; 25
U.S.C. § 2719(d).

* * *

Dear Senator Reilly:

You request our opinion regarding gambling in the state of Kansas. We address your questions about Indian gaming first.

"Does the constitutional provision allowing parimutuel wagering, like that allowing for a state lottery, result in the possibility that type III gambling (which includes a wide variety of gaming activities) can be conducted on reservations in Kansas? Would the Legislature be forced to propose amending the Constitution to remove or alter existing permissive language regarding both kinds of gambling in order to prohibit casino gambling in the state?"

The Kansas Supreme Court has held that parimutuel wagering on horse and dog races, if it includes the three elements of consideration, chance and prize, constitutes a lottery. State, ex rel., v. Bissing, 178 Kan. 111, 119 (1955). This is due to the broad definition attributed to the term "lottery" by our courts, see State, ex rel., v. Merchantile Assn., 45 Kan. 351, 353 (1891); State, ex rel, v. Fox Kansas Theater Co., 144 Kan. 687, 692 (1936), and the fact that the term has not been otherwise defined by the constitution. While parimutuel wagering has been held to be a form of lottery, we do not believe the courts would find in the reverse. Article 15, section 3b of the constitution is specific in terms of what it allows: "the operation or conduct . . . of horse and dog racing and parimutuel wagering thereon . . . [excluding off track betting]." Further, we do not interpret the Indian gaming regulatory act (IGRA) to open the door to all class III games solely because one particular class III game is permitted. See Mashantucket Pequot Tribe v. State of Conn., 737 F.Supp. 169, 176 (D.Conn. 1990) ("The type of gaming permitted is identified by the type of play permitted, not by bet, frequency, and prize limits."); U.S. v. Sisseton-Wahpeton Sioux Tribe, 897 F.2d 358, 365 (8th

Cir. 1990) ("we believe that the legislative history reveals that Congress intended to permit a particular gaming activity, even if conducted in a manner inconsistent with state law, if the state law merely regulated, as opposed to completely barred, that particular gaming activity."); Lac Du Flambeau Band of Lake Superior Chippewa Indians v. State of Wisconsin, ___ F.Supp. ___, Op. No. 90-C-408-C, 18 (W.D. Wisc. 1991). Thus, if the legislature and the electorate choose to remove the constitutional authority for a state-owned and operated lottery, we believe the types of class III games Indian tribes could conduct in this state pursuant to a compact would be limited to on-track parimutuel wagering on horse and dog races, as this would be the only permissible class III gaming anywhere in the state.

"Since simulcasting of horse or dog races has not been authorized by statute, can parimutuel wagering on dog or horse races simulcast to American Indian gambling establishments be included among the array of gambling permitted by compacts with American Indian tribes? If so, would that constitute off-track betting which is banned by the Kansas constitution?"

The fact that simulcasting is not specifically authorized by statute or currently conducted in Kansas (see Attorney General Opinion No. 88-116) is of no consequence; what is important is whether the conduct is permitted, as opposed to prohibited. See Attorney General Opinion No. 91-119. Article 15, sections 3b and 3c together permit the state to conduct or provide for simulcasting. However, we have previously opined that Kansas statutes prohibit simulcasting. Attorney General Opinion No. 88-116. Thus, a tribe may not conduct simulcasting/wagering operations pursuant to a compact. Even if simulcasting was permissible, since off-track betting is constitutionally prohibited, Indian tribes could not simulcast horse and dog races for the purpose of betting thereon unless the wagers were placed at a racing facility (track).

"In the absence of a law permitting simulcasting in Kansas, could American Indian gambling establishments receive simulcast race signals from tracks

outside the state, whether or not betting is allowed on those simulcast races?"

See answer given above.

"Could specific kinds of gambling, e.g., casino gambling, sports book, betting on simulcast races, etc., be prohibited for all persons by statute as a means of limiting types of gambling allowed by a compact between the state and a tribe, notwithstanding existing constitutional provisions? That is, would such a prohibition need to be constitutional, or is a statutory prohibition sufficient?"

The IGRA does not specify how the state may prohibit or permit certain class III games. In other words, the federal law does not require the prohibition or permission of games be by constitutional provisions. Thus, in our opinion, statutorily prohibiting certain specific class III games, if across the board (i.e. no one, including the state, may conduct or participate in it), would foreclose the ability to include those specific games in a compact. Lac Du Flambeau Band of Lake Superior Chippewa Indians, supra at 20. ("[T]he state is required to negotiate with [tribes] over the inclusion in a tribal-state compact of any activity that includes the elements of prize, chance and consideration and that is not prohibited expressly by the Wisconsin constitution or state law). (Emphasis added).

"Finally, in regard to enforcement of existing, nongambling related laws on American Indian reservations: Would such gambling establishments have a responsibility to the state or to the federal Internal Revenue Service to report individuals' winnings in order to ensure those winnings are taxed? If not, how could the state ensure that winners pay applicable income tax on their winnings?"

25 U.S.C. § 2719(d) specifically makes provisions of the Internal Revenue Code concerning the reporting and withholding of taxes on winnings applicable to Indian gaming operations.

"What types of arrangements with regard to video lottery machines satisfy the constitutional requirement that the Kansas lottery be state-owned and operated?"

"Presumably the requirement would be met if the Kansas Lottery owned or leased the machines and either placed and maintained the machines, or contracted with a private entity to place and maintain them. However, can the Kansas Lottery:

-- contract with private entities to place and maintain privately-owned video lottery machines;

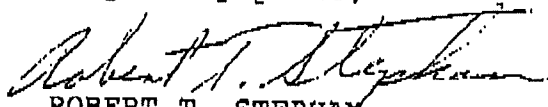
-- issue licenses or certificates authorizing private entities to place and maintain privately-owned video lottery machines; and

-- receive a set percentage of the income from privately owned, placed, and maintained video lottery machines, with the remainder of the income going to the private entity or entities owning, placing, and maintaining those machines?"

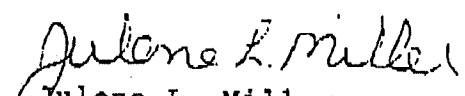
Article 15, § 3c of the Kansas constitution authorizes the legislature to "provide for a state-owned and operated lottery. . . ." This office has previously stated that this provision "does not necessarily require that the state own the actual structure in which the lottery is conducted, or the equipment which is used in the operation. [A]s long as the state owns the business and has ultimate and complete control of the operation, it is not necessary that the state actually own the building or the equipment used in the operation." Letter to Senator Edward Reilly, dated February 15, 1991. It is our understanding that under the scenario you present, the state will, through legislation, rule and regulation and contract terms, determine and actively control the types of games to be allowed, the odds of winning, the stakes to be won, the amount of consideration required to play and the percentage of take for the state and others. The state will also determine where the machines will be placed as well as certifying such locations. These factors evidence state control.

Clearly, the more control the state retains, the easier it will be to determine that the operation is state-owned and operated. On the other hand, the fewer hands-on roles the state takes, the closer it comes to being state-regulated rather than state-owned and operated. In the example you present, if our understanding is correct, the state retains sufficient control and ownership to be constitutionally sound.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm