

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairperson Nancey Harrington at 10:45 a.m. on May 3, 2003 in Room 313 S of the Capitol.

All members were present.

Committee staff present: Russell Mills, Legislative Research Department
 Dennis Hodgins, Legislative Research Department
 Theresa Kiernan, Office of the Revisor
 Nikki Kraus, Committee Secretary

Chairperson Harrington opened the:

Informational Meeting on Gaming

Ms Kiernan briefly outlined four bills for the committee:

- SB 108**--Authorizing video lottery machines and games at lottery retailers' facilities
- SB 249**--Authorizing operation of slot machines and other casino games at racetracks and other locations
- SB 208**--Authorizing the operation of slot machines at parimutuel racing facilities and other locations
- SB 226**--Allows electronic gaming machines at racetracks

Senator Oleen asked about fiscal notes and if there were any guarantees as to what those projections are. Ms. Kiernan replied that the \$30 million would have to be paid, and another \$15,000 per machine up front.

Senator Oleen asked about percentage state would be getting. She stated that the statistics provided were based on a percentage of an 87% machine pay out; the machines would need to be looser than this in order to be competitive with the existing casinos across state lines, whose payout is around 92%.

Senator Vratil asked about disposition of net gaming revenue in terms of percentages. He walked the committee through them himself.

Ms. Kiernan stated that the state's percentage of net profits are graduated: 20% of first \$50 million, 22.5% of next \$50 million and so on.

Senator Barnett asked, in regard to a question from Senator Oleen, if there was any kind of bonding to the state and if that was required in the bill or not.

Ms. Kiernan said that the executive director could require a cashier's check, but that they were not required to pay up front.

Senator Barnett asked the committee and audience if there were any studies on net impact on local economies. There was no reply. He stated that he thought these were important questions and that they should nail down the bonding issue.

Senator Barnett asked if there were any studies to see the impact on the state in the next 5 years; there was no reply.

Senator Barnett asked if there was a prediction of the net income for the state over the next 5 years; there was no reply.

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Senator O'Connor asked if they had gotten the Attorney General's opinion on the meaning of "state owned and operated." Ms. Kiernan replied that one had not been requested, but gave Senator O'Connor a copy of the opinion from Representative Clyde D. Graber. (Attachment 1)

Ms. Kiernan explained the meaning of "state owned and operated."

Senator Gilstrap asked how much cities and counties could make off of gaming. Ms. Kiernan said that she would not really be able to answer money questions.

Senator Gilstrap asked about the situation of the unified government, and Theresa said that it was treated as both a city and a county depending on the circumstance, but that it would get 3%.

Senator Steineger asked, in regard to guarantees of revenue, if Kansas sales tax and income taxes had reliable numbers.

Mr. Mills said that he could talk to people to get him those numbers.

Senator Steineger asked, in response to Senator Barnett's questions, if there is any data about the loss of funds to restaurants and other businesses because of the current situation, referring to casinos across state lines. There was no response.

Ms. Kiernan explained **SB 283— An act concerning lotteries; authorizing electronic gaming machines and other lottery games at certain locations.**

Mr. Mills pointed out that in **SB 283**, "net machine revenue" is defined differently than usual. Usually it means the amount of money put in minus prizes, but in **SB 283**, "net machine revenue" means money in minus prizes, minus lottery expenses.

Senator Gooch asked about any other mention of bonding. Mr. Mills could not remember any KDFA bonding in any other bills.

Ms. Kiernan followed-up with discussion of what lottery expenses really are, how the bills were treating money, and that the method for determining the distribution of funds is also a little different in **SB 283** than in others.

Senator O'Connor asked about definition of "lottery gaming expenses." Ms. Kiernan said these would be determined by the Executive Director of the Lottery.

Senator Wagle asked if they would include utilities and payroll of the manager.

Ms. Kiernan said that it would probably include all normal expenses related to owning and operating lottery gaming facilities themselves, not to exceed 30%.

Senator Wagle asked if a 30% share of profits would be realistic for investments and if there were differences for racetracks.

Mr. Mills said that would go to the racetrack owner.

Senator Wagle noted that this bill treats racetrack owners differently.

Mr. Mills said yes, it could.

Senator Wagle asked how that is a level playing field when some have to get expenses approved by the state and others do not.

Chairperson Harrington pointed out exclusivity for these after February 2004.

Senator Corbin spoke of NCSL meeting in Boston; his vice-chair from New Jersey advised him to be sure never to take the net, only the gross so that the state would not have to worry about the expenses.

Senator Steineger asked about Section 18 of **SB 283**, pointing out that they would use GAAP (General

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Accepted Accounting Principles) to report.

Senator Brungardt pointed out that Enron, the company recently charged with financial misdealings, also used GAAP.

Senator Steineger replied that they had the benefit of a shroud of corporate secrecy.

Senator Steineger pointed out on page 15, section 18 that the county commissioner must approve as well as the people, the lottery director, and the Governor.

Both Mr. Mills and Ms. Kiernan agreed.

Senator Steineger pointed out that to get the license from the state of Kansas owners had to give \$15,000 up front per machine.

Ms. Kiernan said that they had some leeway on the upfront payment; they would be given a certain date by which they had to pay or else their contract would be void.

Senator Steineger said that in section 18, parimutuel tracks can also operate, as well as the VFW and American Legion. He said that if the Indian tribes wished to create another casino, they could also. He said that this bill created a level playing field.

Chairperson Harrington asked how the tribes could get the approvals necessary.

Senator Steineger said that the tribes would have two options, IGRA, or the formation of a separate private corporation.

Senator Barone asked about need to get multiple approvals. Staff clarified that there would only be a need for one vote, then, with approval, multiple parties could come in before the window of time closes.

Ms. Kiernan said that there would be no need for additional elections; the Governor and others would be the gatekeepers.

Senator Oleen asked if there would be any limit on the number of casinos the state of KS would have in **SB 283**.

Ms. Kiernan said no, the time between the dates, approximately December to June, would be open.

Senator Oleen asked if that date could be extended next year, and if they could speculate as to how many.

Ms. Kiernan confirmed that yes, the date could be extended next year, and she could not speculate.

Senator Oleen said that since this bill addresses not only slots, but other gaming endeavors, it was worth noting that not all gaming is at the tracks. From this, she stated that this meant that the discussion had turned from being one about slots to one about casinos. She then went on to ask if there was a limit on the number of slot machines allowed in the bill.

Ms. Kiernan said the bill required a minimum of 300 machines, but that there was no upper limit.

Senator Oleen said Harrah's had under 1,000 now; this bill would permit 2,000-3,000.

Senator Oleen referred again to the percentage payout on which many of the state profits were calculated as being on the low end for operation. She wanted to know if slots that paid out much less than the competition would be adequate and able to compete.

Ms. Kiernan said that she had not heard from the supporters of the bill. She also stated that the numbers were

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against machines only, not table games.

Senator Barnett asked about the meaning of "state owned and operated" in reference to who would be in charge of personnel and issues such as who would hire and fire employees.

Ms. Kiernan said that it would be the facility manager.

Senator Barnett asked if there would be any salary cap for key employees.

Ms. Kiernan stated that the bill did not include a cap. She stated that if an employee made more than \$50,000 a year then he or she would be defined as a "key employee."

Senator Barnett asked how much of the \$30 million was discretionary money.

Mr. Mills stated that he did not know and would have to refer the committee to the professionals in the audience. There was no reply from the audience.

Following further discussion, Chairperson Harrington thanked staff and members of the committee for coming to the meeting.

The meeting was adjourned 12:10 p.m.

3. The state of Kansas may contract with private entities to construct a casino, as can be done with any state-owned and operated facility. The state may also contract with private entities to operate specific games of chance within the casino if ownership and sufficient control and responsibility over the business as a whole remains with the state.

4. The state may not lease the casino premises to a private entity to operate games of chance therein. Mere ownership of the premises is not enough; the state must own and operate the business.

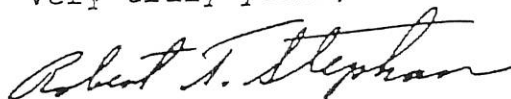
5. Not all personnel employed at a casino must be state employees. The state may contract with private entities to provide services. Private entities providing contracted services may use their own employees. We caution, however, that as a matter of public policy sensitive positions should be held by state employees subject to termination by the state and ethics provisions and/or background checks.

6. The state of Kansas may license private entities to place and maintain privately-owned casino gaming equipment as long as the state retains ownership and control of, and responsibility for, the gaming operation. For example, the state would determine the types of games and gaming equipment to be made available for public use, the betting limits, the stakes, the odds, and essentially how the equipment will be used and patrolled.

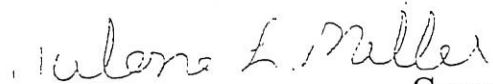
7. An arrangement whereby the state agrees to permit a private entity to operate a casino in exchange for a set percentage of the take comes very close to regulation with a tax. However, if the arrangement is contractual and involves the state's retention of ownership and control, the issue of compensation would appear to be best left to sound business discretion exercised in the best interests of the state.

8. The state of Kansas may not hand over the operation of a casino to a "quasi-public" corporation, and must play a more intimate and active role than that of a regulator.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

Senate Fed & State

Date: 05 / 03 / 2003

Attachment # 1

State-owned Property
Questions Raised

- "1. Must the state of Kansas own the real estate upon which a casino operates?
- "2. Must the state of Kansas own the casino building or the gaming equipment?
- "3. May the state of Kansas contract with private entities to construct a casino and operate games of chance within the casino?
- "4. May the state of Kansas lease the casino premises to a private entity to operate games of chance therein?
- "5. Must the personnel employed at a casino be state employees?
- "6. May the state of Kansas issue licenses authorizing private entities to place and maintain privately-owned casino gaming equipment?
- "7. May the state of Kansas receive a set percentage of the income derived from casino gaming operations conducted by a private entity which has entered into a contract with the state to operate a casino, with the remainder of the income going to the private entity?
- "8. May the state of Kansas create by legislation a quasi-public corporation, rather than a commission or agency, which would regulate casino gaming in the state?"

Answers:

In reviewing whether various arrangements for operation of video lottery machines would satisfy the constitutional requirement that the lottery be state-owned and operated, this office concluded that "[a]s 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." Attorney General Opinion No. 92-1. We continue to hold this opinion and see no reason to distinguish between video lottery and other types of casino games in terms of the ownership issue. Therefore, we answer your first two questions negatively; the constitution does not require that the state own the real estate upon which a casino operates or the casino building or gaming equipment. It is the ownership of the lottery business itself which is important.

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