

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:40 a.m. on Wednesday, January 26, 2005, in Room 231-N of the Capitol.

All members were present.

Committee staff present:

Athena Andaya, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Mary Ann Torrence, Revisor of Statutes Office  
Dee Woodson, Committee Secretary

Conferees appearing before the committee:

Matt All, Chief Counsel, Governor's Office  
John McElroy, Executive Director, Kansas State Gaming Agency

Others attending:

See attached list.

Chairman Brungardt called upon Matt All, Chief Counsel for the Governor's Office, to present a briefing and update on the Governor's Tribal Gaming and Reactivation of the Compact. Mr. All testified that the Governor continues to believe that gaming has the potential to encourage investment, create jobs, and attract tourists to Kansas. He included with this written testimony copies of the executive summaries of the reports covering the Governor's appointed 2003 committee to study gaming and make recommendations for the best approach for Kansas and the Kansas Lottery commissioned study by Christiansen Capital Advisers of the potential gaming market in Kansas. He stated that both studies made it clear that the best way to expand gaming in Kansas was to open a limited number of destination resort casinos, and to supplement them with slot machines at the state's parimutuel race tracks. (Attachment 1)

Mr. All said that the destination casinos should be high-quality tourist attractions, with lodging, dining, entertainment, and other resort amenities that would attract tourists from beyond the immediate region. He explained that by focusing on a few destination casinos, rather than many smaller, lower-quality gaming venues, the state would increase its ability to attract investment and infuse new dollars into our state, rather than simply shuffling around dollars that are already here. It would also mitigate the negative effects of gaming by isolating them to a few locations, where they can be managed and minimized. Mr. All told the Committee that based on this information, last year the Governor proposed a plan to allow a limited number of state-owned destination casinos, along with slot machines at the parimutuel race tracks and fraternal and veteran's organizations. That plan was changed substantially in committee, and was then defeated on the Senate floor.

Mr. All reviewed the Governor's negotiations on a state-tribal gaming compact with the Sac & Fox Nation and Kickapoo Tribe which would allow these tribes to open a destination casino near the Kansas Speedway in Kansas City. Following approval by the Joint Committee on State-Tribal Relations, the compact was advanced to the Legislative Coordinating Council (LCC) for final approval which is required by Kansas law. The LCC did not vote on the compact, so it must be resubmitted to the joint Committee if it is to go into effect.

The Governor's plans for the compact during this legislative session, according to Mr. All, is to advance the compact at some point during the session, and wait until other gaming bills have been heard in committee. The Governor will then decide whether she will advance the compact under the same terms as last fall, and all interested parties will be notified. She also has decided to stay out of the middle of this year's gaming debate, and focus her staff time and resources on issues she considers more important to Kansans, including education, health care, and creating jobs. Mr. All also stated that the Governor would like to sign a gaming bill, but it must meet at least the following two criteria: (1) it must promote destination resort casinos; and (2) it must be constitutional.

## CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:40 a.m. on Wednesday, January 26, 2005, in Room 231-N of the Capitol.

Committee questions and discussion pertained to clarifying the definition of a destination casino relating to mileage boundaries of casino locations, how the compact would work with the Department of Interior, whether the lands would be put into a trust for gaming by the Department of Interior, whether a precedent would be set for other tribes with lands going into a trust, what the response of other tribes not included in the compact would possibly be, approximately \$50M plus dollars coming into the state funds, and if the Kansas Congressional Delegation were in favor of the compact as the views are very complex and evolving.

Chairman Brungardt expressed his appreciation to Mr. All for his briefing, and this subject would be revisited when the Governor chooses to resubmit it.

The Chair called for bill introductions. Senator Goodwin requested a bill be introduced concerning the Kansas Commission on Veterans Affairs in allowing them to have control over all improvements, repairs, reconstruction and maintenance of memorials for veterans. The proposed legislation would prescribe certain guidelines and procedures, and establish the Kansas Veterans Memorials Fund.

Senator Hensley made a motion to introduce the drafted bill, seconded by Senator Gilstrap, and the motion carried.

Senator Vratil requested a bill be introduced concerning gaming compacts; relating to the procedure for the approval thereof; amending K.S.A. 46-2302 and repealing the existing section.

Senator Barnett moved to introduce the requested bill, seconded by Senator Reitz, and the motion carried.

Chairman Brungardt introduced John McElroy, Executive Director, Kansas State Gaming Agency, to give an overview and update of his agency. He explained that in Kansas, the Iowa Tribe of Kansas and Nebraska, the Prairie Band Potawatomi Nation of Kansas, the Kickapoo Tribe in Kansas, and the Sac and Fox Nation of Missouri in Kansas and Nebraska each have a reservation and a casino. Each casino operates through the terms of a Tribal State Compact. State Statute, K.S.A. 74-9805, limits the jurisdiction of the Agency to Oversight and investigations concerning tribal gaming operations in Kansas carried out in connection with Tribal Compacts. He said that the Agency is charged specifically with monitoring gaming activities at the casinos and doing background investigations of vendors who do significant business with casinos, gaming personnel and tribal gaming inspectors.

Mr. McElroy said that licensing is done by the individual Tribal Gaming Commissions who are also designated in the Compacts as the primary regulators. The Agency has no jurisdiction over any other type of gaming, legal or illegal. The Agency was officially designated a part of the Kansas Racing and Gaming Commission in the Tribal Gaming Oversight Act in 1996. He explained that the Commission approves the Agency's budget, the number and qualifications of its employees and any expenditures for arbitration. He said that the Agency is entirely funded by contributions from the four recognized Kansas tribes, and that the budget for FY 2005 was \$1,650,758. Mr. McElroy said that State General Funds are only used in the case of an arbitration award if the State is ordered to pay any costs of arbitration. (Attachment 2)

The meeting was adjourned at 11:15 a.m. The next meeting is scheduled for January 27, 2005, at 10:30 a.m.

SENATE FEDERAL & STATE AFFAIRS COMMITTEE GUEST LIST

DATE Weds, Jan. 26, 2005

John McElroy	KS Gov
White, James	Kickapoo Tribe / Sac & Fox Nation
Glenn Thompson	Stand Up For KS
Alissa Rowles	Governor's Office
Jedha Perkins	Sac & Fox Nation of Moinks
Ed Green	Sac & Fox Nation
Stephanie Buchanan	DOB
Jan Watkins	Kickapoo Tribe / Sac & Fox Nation
John Piregar	Butler National Corp.
Jim Hartavel	WOODLANDS
Bill Sneed	PSWS
Steph W. Durrell	A.G.
Julene L. Miller	AG
John Kofas	KS Lottery
Ed Van Patten	KS Lottery
Alex Klobasantz	Resort @ Milford Lake
John Peterson	Havvchi Entertainment
Jamie Rutherford	Little Joe + Rel
Michelle Burnham	KC Star
Jim May	Foulston-Sullivan LLC
STEPHEN MARTINO	Foulston SIFRW Rep
Katie Gonzales	Federico Consulting
E. L. "Toa" Jan	VFW District 1 Commander

# KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

## Testimony on Gaming in the 2005 Session

**MATTHEW D. ALL**  
Chief Counsel to the Governor

Before the SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

Wednesday, January 26, 2005

Mr. Chairman and Members of the Committee:

Thank you for allowing me to testify about the Governor's views on gaming in the 2005 legislative session. As you know, the Governor has invested a significant amount of staff time and other resources on this issue. She continues to believe that gaming has the potential to encourage investment, create jobs, and attract tourists to Kansas. But we can harness this potential only if we expand gaming responsibly and based on good information.

To that end, we have tried to take a thoughtful, practical approach to our work on gaming over the past two years. In 2003, the Governor assembled a committee to study gaming, and to recommend the best approach for Kansas. In 2004, the Kansas Lottery commissioned a study by Christiansen Capital Advisers, an industry leader, of the potential gaming market in Kansas. I have included the executive summaries of these reports with my testimony.

Both the committee report and the CCA study made clear that the best way to expand gaming in Kansas is to open a limited number of destination resort casinos, and to supplement them with slot machines at the state's parimutuel race tracks. These destination casinos should be high-quality tourist attractions, with lodging, dining, entertainment, and other resort amenities that would attract tourists from beyond the immediate region. By focusing on a few destination casinos, rather than many smaller, lower-quality gaming venues, the state would increase its ability to attract investment and infuse new dollars into our state, rather than simply shuffling

around dollars that are already here. It would also mitigate the negative effects of gaming by isolating them to a few locations, where they can be managed and minimized.

Based on this information, last year the Governor proposed a plan to allow a limited number of state-owned destination casinos, along with slot machines at the parimutuel race tracks and fraternal and veteran's organizations. The Governor's plan would have created a new commission to oversee a competitive process to place and develop the destination casinos. But that plan was changed substantially in committee, and was then defeated on the Senate floor.

Then, last fall the Governor completed negotiations on a state-tribal gaming compact with the Sac & Fox Nation and Kickapoo Tribe to allow these tribes to open a destination casino near the Kansas Speedway in Kansas City. If approved, this compact would significantly reshape Indian gaming in Kansas. The tribes would shut down their two on-reservation casinos to open this single destination casino. Unlike the current Indian casinos in Kansas, the state would be the primary regulator of the new casino, and would collect a substantial portion of its revenues—likely more than \$50 million per year.

In November, the Joint Committee on State-Tribal Relations advanced the compact, consistent with Kansas law, to the Legislative Coordinating Council for final approval. The LCC did not vote on the compact, however, and so it must be resubmitted to the Joint Committee if it is to go into effect.

We have been asked about the Governor's plans for the compact this legislative session. She plans to advance the compact at some point during the session, but for reasons of both strategy and fairness, she will wait until other gaming bills have been heard in committee. As soon as she has determined when she will advance the compact, and whether it will be advanced under the same terms as last fall, she will inform all interested parties.

We have also been asked about the Governor's views on other gaming bills this legislative session. In general, she has decided to stay out of the middle of this year's gaming debate. She is focusing her staff time and resources on issues she considers more important to Kansans, including education, health care, and creating jobs. She hopes the Legislature acts this session to expand gaming in a careful, responsible way. As in previous sessions, she would like to sign a gaming bill. But any gaming bill that reaches her desk must meet at least the following two criteria.

First, it must promote destination resort casinos. She does not support gaming for gaming's sake, but rather the positive things gaming can produce if handled responsibly. Destination casinos do that; scattered slot parlors do not.

Second, it must be constitutional. The Kansas Constitution does not allow privately owned or operated casinos. The worst thing we can do is finally pass a bill, only to have it held up and struck down in court.

More than anything, the Governor hopes the Legislature will finally take some action to resolve the gaming issue once and for all. It is time to focus the Legislature's time on those more important issues that affect Kansans lives every day.

Although the Governor will not have her own gaming bill this year, I hope to be of service to you if you need any information in your review of and deliberation over this year's gaming bills. Please do not hesitate to contact me if I can help you in any way.

# The Feasibility of Electronic and Casino Gaming in Kansas: Executive Summary

The Kansas Lottery is reviewing the feasibility and desirability of expanded gaming in the Sunflower State. To assist in this review the Lottery has retained Christiansen Capital Advisors, LLC and Behavioral Research Center, Inc. to conduct market research and related services pertaining to electronic and/or casino gaming in the State of Kansas. Presently, the only kinds of gambling permitted in the State of Kansas are pari-mutuel dog and horse racing under the regulation of the Kansas Racing and Gaming Commission ("pari-mutuel racing"), charitable bingo, tribal casinos per compacts negotiated between the State of Kansas and certain Native American tribes, and games offered by the Kansas Lottery.

During recent legislative sessions, various bills have been introduced to expand gaming in Kansas, including slot machines, video lottery terminals ("VLT's"), casinos (including not only electronic machines, but also table games), and/or other similar types of gaming. Various scenarios for expanded gaming have been proposed, including limiting gaming to presently operating pari-mutuel tracks, a combination of pari-mutuels and "at-large" facilities, one or two "mega resorts," gaming at all Kansas Lottery retail locations, and so forth. Absent a change in the State Constitution, the Kansas Lottery will own and operate any expanded gaming ventures.

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## OBJECTIVES OF THIS STUDY

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Although market research and other similar studies have been conducted by entities interested in operating expanded gaming facilities, no research has been performed on behalf of the Kansas Lottery or the State of Kansas. Christiansen Capital Advisors, LLC ("CCA") has been engaged by the Kansas Lottery ("the Lottery") to conduct market research and provide related services pertaining to electronic and/or casino gaming in the State of Kansas. Specifically, CCA has been asked to do the following:

- To determine whether the expansion of gaming in the State of Kansas is economically feasible;
- If the expansion of gaming in Kansas is feasible, determine what type(s) of gaming is (are) preferable;
- To determine at what venue(s) expanded gaming should be conducted;
- To make any other suggestions and provide such market research and feasibility information as may be deemed necessary for the State of Kansas to adequately evaluate the issue of expanded gaming.

CCA and Behavior Research Center, Inc. ("BRC") determined that the most effective way of addressing these issues is to establish a baseline description of gambling in Kansas before considering potential expansion.

Subcontractor BRC conducted consumer marketing research designed to provide the Kansas Lottery with a valid assessment of public attitudes toward the expansion of gaming, the location of potential new gaming operations, and so forth. A description of the tasks performed by CCA and BRC and the methodology employed is presented in Section 2 of this report.

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#### SUMMARY OF SURVEY FINDINGS

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CCA and BRC determined that 55% of adult Kansas residents favor the expansion of destination resort gaming. Kansas residents expressed lukewarm support for State-owned and operated slot machines at fraternal organizations, such as American Legion and Elks Club halls. Kansas residents are ambivalent regarding slot machines at horse and dog tracks. Half oppose allowing Indian tribes to build casinos on non-reservation land or installing video lottery terminals at Kansas Lottery retail outlets.

CCA evaluated the city/cities and/or area(s) of the State to determine where expanded gaming should be located and what level of gaming activity each market will bear. Among the scenarios considered were stand-alone casinos, expanded gaming at existing pari-mutuel facilities, and expanded gaming at Class A fraternal organizations.

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#### THE GOVERNOR'S GAMING COMMITTEE RECOMMENDATIONS

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In its final report the Governor's Gaming Committee<sup>1</sup> warned that Kansas should guard against the "proliferation of small, shabby slot parlors." The Committee recommended that the State establish strict criteria to ensure that additional gaming venues, should they be established, are high quality tourist destinations. To that end, the Committee strongly recommended that the State seek independent advice about the market potential for expanded gaming. Estimates of demand for gaming, and especially estimates of how large Kansas gaming markets can become, are fundamental to the formulation of sound gaming policy. Christiansen Capital Advisors, LLC has been hired by the State Lottery to provide this independent analysis.

Utilizing the results of the survey research described in Section 2 as a guide, CCA has been asked to make recommendations to the Kansas Lottery concerning in what city/cities and/or area(s) of the State expanded gaming could and/or should be located, what kind of expanded gaming should be authorized (i.e., what scenario(s)), and the level of gaming activity each Kansas market will support. In the following section CCA presents our findings concerning these matters.

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#### SCENARIO 1: THREE RESORTS, SLOTS AT TRACKS, AND MACHINES AT FRATERNAL ORGANIZATIONS

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Exhibit ES.1 summarizes our findings (from Section 4) concerning the revenue potential of three destination resorts, in Kansas City, Wichita, and Dodge City, together with slot machines at the racetracks and at fraternal organizations. We estimate that destination resorts in these

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<sup>1</sup> Governor's Gaming Committee, Final Report, December 18, 2003. pp 44-45.



three cities, slot machines at racetracks ("racinos"), and devices at Class A fraternal organizations would generate gross gaming revenue ("win") of \$752.6 million.

**Exhibit ES.1 Scenario 1 Revenue Projections (\$s in millions)**

	Revenue Potential Average Facilities	Revenue Potential Destination Casinos
<b>Casinos</b>		
Kansas City	\$ 177.3	\$ 235.3
Dodge City	42.1	62.2
Wichita	156.0	191.1
<b>Racinos</b>		
Woodlands	115.7	77.0
Wichita Greyhound Park	69.9	55.9
Anthony Downs	12.1	11.5
Eureka Downs	14.5	13.0
Camptown	75.3	75.3
<b>Fraternal Organizations</b>	31.2	31.2
<b>Total</b>	<b>\$ 694.0</b>	<b>\$ 752.6</b>

Source: Christiansen Capital Advisors, LLC

**SCENARIO 2: THREE RESORTS (2 AT RACETRACKS), SLOTS AT 3 TRACKS, AND MACHINES AT FRATERNAL ORGANIZATIONS**

Exhibit ES.2 summarizes our findings (from Section 4) concerning the revenue potential of three destination resort casinos (at the Woodlands location, Wichita Greyhound Park, and Dodge City) and three racinos (Anthony Downs, Eureka Downs, and one in Pittsburg). We estimate that three destination resorts at these locations, three racinos, and devices at Class A fraternal organizations under Scenario 2 would generate gross gaming revenue ("win") of \$681 million.

**Exhibit ES.2 Scenario 2 Revenue Projections (\$s in millions)**

	Revenue Potential
<b>Casinos</b>	
Dodge City	\$ 62.2
<b>Racinos</b>	
Woodlands	268.9
Wichita Greyhound Park	209.4
Anthony Downs	16.5
Eureka Downs	15.3
Camptown	74.8
<b>Fraternal Organizations</b>	<b>33.8</b>
<b>Total</b>	<b>\$ 681.0</b>

Source: Christiansen Capital Advisors, LLC

**SCENARIO 3A: THREE RESORTS, SLOTS AT TRACKS, AND MACHINES AT FRATERNAL ORGANIZATIONS**

Exhibit ES.3 summarizes our findings (from Section 4) concerning the revenue potential of three destination casinos (in Kansas City, Wichita, and near Galena), five racinos (at the Woodlands location, Wichita Greyhound Park, Anthony Downs, Eureka Downs, and one in Pittsburg), and slot machines at Class A fraternal organizations. We estimate that destination resorts, racinos, and devices at fraternal organizations under Scenario 3a would generate gross gaming revenue ("win") of \$898 million.

**Exhibit ES.3 Scenario 3a Revenue Projections (\$s in millions)**

	Revenue Potential	
	Destination Casinos	
<b>Casinos</b>		
Kansas City	\$	235.3
Galena		240.8
Wichita		193.1
<b>Racinos</b>		
Woodlands		77.0
Wichita Greyhound Park		68.3
Anthony Downs		15.9
Eureka Downs		9.0
Camptown		27.6
<b>Fraternal Organizations</b>		31.2
<b>Total</b>	<b>\$</b>	<b>898.0</b>

Source: Christiansen Capital Advisors, LLC

**SCENARIO 3B: THREE RESORTS AND MACHINES AT FRATERNAL ORGANIZATIONS**

Exhibit ES.4 summarizes our findings (from Section 4) concerning the revenue potential of three destination casinos (in Kansas City, Wichita, and near Galena) and slot machines at Class A fraternal organizations. We estimate that destination resorts at these three locations and devices at fraternal organizations under Scenario 3b would generate gross gaming revenue ("win") of \$887 million.

**Exhibit ES.4 Scenario 3b Revenue Projections (\$s in millions)**

	Revenue Potential	
	Destination Resorts	
<b>Casinos</b>		
Kansas City	\$	288.4
Galena		254.7
Wichita		303.3
<b>Fraternal Organizations</b>		40.6
<b>Total</b>	<b>\$</b>	<b>887.0</b>

Source: Christiansen Capital Advisors, LLC

### Dodge City vs. the Galena Area

CCA believes that, at least from an economic perspective, a resort in or around the Galena, Kansas area makes more sense than one in Dodge City. With only 63,055 adults within 50 miles, and 732,419 within 150 miles, the Dodge City market will simply not support a large destination casino. The market (gross gaming revenue) potential of a Dodge City casino (destination resort or otherwise) is only \$62.2 million (Exhibit ES.1), compared to a market potential of \$254 million for a casino in Southeast Kansas.

While it is true that a casino in the Galena area would be vulnerable to new competition in Missouri should a new license be approved closer to Springfield, cutting off that market, and/or in Oklahoma should casinos be approved in that State, cutting off Tulsa, such risks are inherent in this type of development. Similarly, a casino and/or racino in Kansas City runs the risk that Missouri will remove its present loss limit, thereby increasing the competitiveness of Missouri casinos. All things considered, CCA feels that a destination resort in Southeastern Kansas will significantly outperform one in Dodge City.

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### LARGE DESTINATION CASINO(S)

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The survey results (from Section 2) indicate that the preferred form of expanded gaming in Kansas is destination resort casinos. This policy option would maximize the economic contributions of expanded gaming, i.e., jobs and the capital investment that creates jobs. The Kansas gaming market, particularly around Kansas City, is relatively congested. A large new casino anywhere in the State will compete for patronage with table and machine games not only in Kansas but with casinos elsewhere in the region. In these market conditions simply adding more machines and tables is not the optimum strategy. If a large new casino is to be built, CCA recommends that the emphasis should be placed on non-gaming attractions. Giving area residents good reasons to visit the new facility and spend time on the property that extend beyond the opportunity to engage in gaming will be critically important in determining return on investment ("ROI") and, as important, the new facility's survival prospects in the almost certainly more competitive market conditions that will develop in the years to come.

### Kansas City

For the reasons discussed above and in Section 4 the performance of a casino in Kansas City will be directly related to the attractiveness of the new facility. It is important to remember that the Kansas City market is a competed one, with little unsatisfied demand for gaming.

The creation of a quality destination resort would thus be of the utmost importance. Destination resorts are more attractive than other forms of gaming, drawing customers from greater distances and taking share in competed markets.

CCA further recommends that any policy adopted by Kansas with regard to casino gaming not include loss limits. In any scenario, Kansas casinos would have a significant competitive advantage over Missouri riverboats if they are not subject to a loss limit. The competitive disadvantage for Missouri riverboats created by the \$500 loss limit in that State was described by the Missouri Gaming Commission in its 2003 annual report:

*"For the past eight years, the Commission has fulfilled this statutory requirement by reporting that the data unequivocally shows the loss limit renders Missouri casinos less competitive than casinos in neighboring jurisdictions. Furthermore, the loss limit results in less gaming tax revenue for education, fewer tourists and less admission fee revenue for veterans, the National Guard, college student loans and early childhood development programs.*

*The reason the loss limit renders Missouri casinos less competitive is that customers do not like it. Those who use Missouri casinos find the loss limit a patronizing intrusion by government into a private business transaction. Perhaps more important to the issue of competitiveness are those who dislike the loss limit so much that they refuse to patronize Missouri casinos, choosing instead to visit casinos in neighboring jurisdictions or to gamble illegally at truck stops and private clubs. In addition, since Missouri is the only jurisdiction in the world with a loss limit, tourists and business travelers find it particularly confusing. Out-of-state customers visiting Missouri casinos for the first time often have a look of bewilderment when learning of the loss limit. They typically go directly to the entrance of the casino where they are rerouted to a ticketing window. Once there, the customer is told to produce government approved photo identification and complete paperwork attesting to their identity. Finally, the casino issues the customer a player's card that will make a permanent record of their casino visits and track their play. Understandably, many customers simply leave rather than completing the process."*

No loss limits and a quality destination casino would allow Kansas to recapture a significant portion of the Kansas personal income now flowing into Missouri casinos. Moreover, Kansas City already has two powerful non-gaming attractions: Cabela's in Kansas City, and the nearby Kansas City Speedway. A joint casino resort facility development with either of these attractions would make sense if Kansas elects to build a large new casino. Cabela's is reportedly attracting record numbers of visitors to its recently opened store: Cabela's and the other retail anchors at the Village West development expect to attract between 7 million and 9 million visitors each year, from distances as great as 200 miles, throughout the Midwest region.

Population and personal income in the market area, loss limits, and non-gaming attractions such as Cabela's or Kansas City Speedway are not the only factors that would determine the ability of casino resorts to compete in Kansas markets. Among the most important of these other factors are overall supply/demand relationships (for machine and table gaming) in the market (Section 1); the quality of the machine games offered; the kind and quality of competition Kansas casinos have to deal with; the kind and quality of the casino facilities themselves (a function of the rate of gaming privilege tax); the casino(s) location(s) in relation to transportation systems, which in Kansas means particularly the Interstate Highways, hours of operation (per day or per year), whether liquor is served in the casino(s), and, very importantly, the consumer price (takeout percentage) of the machines and table games.

Finally, CCA believes the Kansas City market can not support more than one destination casino.

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#### ADDING VLTs TO THE KANSAS LOTTERY

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This policy option would maximize the fiscal contribution of expanded gaming, i.e., tax revenues, while minimizing expanded gaming's economic contributions (jobs and capital

investment). It could also maximize expanded gaming's social costs (in the form of compulsive gambling) and create enhanced business and revenues for the Kansas Lottery franchisees authorized to operate VLTs. By adding to the supply of gaming machines in Kansas this policy option would erode the market economics for a large new casino, making such a project more difficult to finance and further congesting the market in which it would operate if it is financed and built.

The survey results (from Section 2) indicate that this form of gambling has the least support among Kansas residents.

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#### RACINOS

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A more difficult question to answer is whether Kansas should add racinos to its menu of expanded gaming options. Support among the populace for racinos is tepid, with only 47% of those surveyed in favor of allowing slots at racetracks. And, as we note in the full report, there is a limit to the gambling demand in Kansas City and in other Kansas markets, even less competed ones such as Wichita. Adding racino facilities to these markets does little to increase market demand; primarily, this option redistributes a slightly larger pie among more facilities.

This will become an important consideration should lawmakers in Kansas decide to pursue the recommendations contained in the final report of the Governor's Gaming Committee and what our survey results indicate is the preferred option (destination resort gaming) of Kansas residents. Machines at the Woodlands and Wichita Greyhound Park, and, to a lesser extent, in Pittsburg, would limit the amount of capital that can responsibly be invested in destination casinos that share these markets. A rule of thumb is that invested capital should be roughly equal to expected gross gaming revenues. So, for example, if slots are allowed at the Woodlands the appropriate capital investment in a resort casino located two miles away adjacent to the Speedway drops from approximately \$275-\$300 million to approximately \$225 million. Smaller capital investment translates into a less attractive facility with a smaller geographic reach.

The other side of this coin, from a policy viewpoint, is that if slot machines are not allowed at pari-mutuel facilities they will likely suffer severe negative competitive impacts. Some tracks may close, layoffs will be inevitable and it will most certainly hurt breeders and associated agribusiness in Kansas.

From a fiscal perspective these policy options are a wash. CCA projects that three destination resorts and five racinos could produce as much as \$898 million in gaming revenue. Three destination resorts alone would recapture much of the racino revenue and generate approximately \$887 million in gaming revenue.

This issue is likely to be decided by political rather than economic considerations, and based upon the foregoing analysis CCA can not make a recommendation in this regard.

# SUMMARY OF FINDINGS AND RECOMMENDATIONS

Based on the information this Committee has reviewed, it makes the following findings and recommendations:

- Expanded gaming in Kansas would have both benefits and costs. The benefits would include a boost in economic activity and jobs, expanded entertainment options, increased tourism, and revenue to the state government. The costs would include the possibility of increased addiction, crime, and a clash with existing entertainment venues. **On balance, it is the sense of the Committee that the benefits of expanded gaming outweigh its costs.** The state should expand gaming in a limited, responsible fashion, and in a way that addresses its costs.
- **The state should expand gaming in the form of a large destination casino.** It should be in an attractive setting and include restaurants, a hotel, and entertainment venues for shows and concerts. It should be designed to attract tourists from well outside its immediate region. The state should avoid “convenience gaming,” in which the gaming facilities would merely redistribute dollars within the region. The destination casino approach would maximize the benefits and minimize the costs of gaming.
- Because the Kansas Constitution generally prohibits gaming, **the only two legal models currently available (absent a constitutional amendment) for a casino are a state-owned and operated casino (under Article 15, Section 3c of the Kansas Constitution) and an Indian casino (under IGRA).** Both of these models contain significant legal obstacles. Any proposal to expand gaming must overcome these obstacles.
  - To pass muster under Article 15, Sections 3 and 3c of the Kansas Constitution, **the gaming operation of a state-owned and operated casino must be controlled and directly managed by a state entity.** Although the state may contract with private entities to perform certain functions, turning over the gaming management decisions to a private entity would place this model in legal peril.
  - The most prominent proposals for expanded Indian gaming in Kansas would require the Secretary of Interior to take off-reservation land into trust for purposes of gaming and approve a

compact with significant revenue sharing to the state. Whether the Secretary would approve these proposals is unclear and the subject of significant disagreement.

- The choice between a state-owned and operated casino and an Indian casino is complex and involves several serious public policy issues. Each model contains significant advantages and disadvantages.
  - It is argued that such a state-owned casino would generate more profits than an Indian Casino. **This approach, however, would place the State of Kansas in the uncomfortable position of being the first state in the Union to own and operate a full casino.** Taking the plunge into full-blown gaming presents the state with significant ethical and economic risks. The state should thus enter this territory with extreme caution.
  - Because of IGRA's restrictions on revenue sharing, the state might receive less revenue from an Indian casino than from other models. The state's experience with Indian gaming to this point – with no revenue sharing and weak regulatory controls – has been less than satisfying. **The state should expand Indian gaming only if it receives a significant percentage of the casino revenue and takes the primary role in regulating the Indian casino.** The state should also seek to renegotiate its current Indian compacts to secure better terms.
- Privately owned and operated casinos are unconstitutional. They can exist in Kansas only if the Kansas Constitution is amended to allow them. **If lawmakers want a competitive, private gaming industry in Kansas, they should back a constitutional amendment.** It is the sense of the Committee that, given today's political environment, such an amendment is unlikely to pass.
- **Kansas's parimutuel dog and horse tracks present the state with an opportunity to reap significant revenues quickly.** Because the voters have already approved gaming at these tracks, the state should consider placing and operating video lottery terminals there. The revenues from these terminals should go primarily to the state and to boost purses for dog and horse races. Track owners should receive reasonable compensation for the use of their track space, but the presence of slot machines at their facilities should not create a windfall for the track owners or grant them a monopoly on gaming activity in Kansas. Prior



bills to allow slots-at-tracks bills have failed, due in large part to the perception that they would unduly enrich track owners.

- **The state should allow multiple casinos in a single market only under limited, controlled circumstances.** Because a private, competitive market cannot exist under current law, multiple casinos would either pit the state against Indian tribes or pit the state against itself. The state should thus allow multiple casinos in the same market only if it has carefully determined that ample space exists within the market for two large destination casinos to survive simultaneously. The state should also carefully consider other effects of multiple casinos, including any effect they might have on revenue sharing with an Indian casino. To this point, the preponderance of information submitted to the Committee suggests that only Wyandotte County has the potential to support more than one significant casino. The best, most objective information, however, suggests that Wyandotte County can only support one large destination casino.
- **The best location in Kansas for a destination casino is Wyandotte County – specifically near the Village West development and the Kansas Speedway.** If the state expands gaming, it should begin there. Although other communities may seek to attract gaming sites, the state should allow this only under limited circumstances, and should duly account for these communities' more limited markets and greater political resistance. The most sensible strategy for expanded gaming in Kansas would focus on a large destination casino in Wyandotte County. A destination casino should not be established outside of Wyandotte County without convincing and significant evidence of such a venture's viability.
- **Local and County-wide approval.** Any expansion of gaming should be contingent on the approval of the site's home community. It is the sense of the Committee that this objective would best be served through a county-wide vote. As noted several times throughout this report, certain communities in Kansas have expressed a great deal of interest in expanding gaming operations locally while others have raised significant and unified objections. The will of the home community should be accounted for when determining the best location or locations for expanded gaming. A local or regional vote is the best way to officially determine and gauge the degree of a community's support for expanding its local gaming operations.

With these considerations in mind, the Committee recommends the following approaches:

- **A large destination casino – either state-owned and operated or Indian – in Wyandotte County, supplemented by slots at the tracks.** To be successful, this casino must provide a superior product to its Missouri competitors. It should contain sufficient amenities to attract tourists from beyond the immediate region. The Village West location, with its other attractions, would maximize this destination effect. Whether the state chooses the state-owned and operated model or the Indian model depends on its preference between the advantages and disadvantages of each. In addition to this destination casino, the committee feels that the state should maximize its potential for immediate revenue by placing a limited number of video lottery terminals at the parimutuel tracks.
  
- **Limited additional gaming venues, both in Wyandotte County and elsewhere in Kansas.** The state should consider allowing additional gaming venues, but only under limited, controlled circumstances. To accomplish this, the state should establish strict criteria to ensure that these venues are high quality tourist destinations. These criteria should include minimum requirements for (a) the size and quality of gaming facilities, (b) number, nature, and quality of tourist amenities, (c) amount of revenue to the state and local governments, and (d) level of capital investment. The state could establish a gaming board to evaluate proposals for additional sites in Wyandotte County or in other communities such as Dodge City and Junction City. To avoid undue political and financial influence, this board should be appointed by various state officials, have time-limited terms, and should operate under strict ethical rules.
  
- **Video lottery at fraternal organizations.** The state should place a limited number of video lottery terminals at fraternal organizations to allow these organizations to raise funds. The state should own, place, operate, and closely oversee these terminals and their use.

# KANSAS

KANSAS STATE GAMING AGENCY  
JOHN McELROY, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

## Testimony Before the Senate Committee on Federal and State Affairs of

John E. McElroy, JD, CFE  
Executive Director  
Kansas State Gaming Agency  
January 26, 2005

It is my pleasure to appear today before the Senate Committee on Federal and State Affairs to provide information about the Kansas State Gaming Agency. In Kansas, the Iowa Tribe of Kansas and Nebraska, the Prairie Band Potawatomi Nation of Kansas, the Kickapoo Tribe in Kansas, and the Sac and Fox Nation of Missouri in Kansas and Nebraska each have a reservation and a casino. Each casino operates through the terms of a Tribal State Compact.

KSA 74-9805 limits the jurisdiction of the Agency to oversight and investigations concerning tribal gaming operations in Kansas carried out in connection with Tribal State Compacts. Specifically, the Agency is charged with monitoring gaming activities at the casinos and doing background investigations of vendors who do significant business with casinos, gaming personnel and tribal gaming inspectors. Licensing is done by the individual Tribal Gaming Commissions who are also designated in the Compacts as the primary regulators. The Agency has no jurisdiction over any other type of gaming, legal or illegal.

The Agency was officially designated a part of the Kansas Racing and Gaming Commission in the Tribal Gaming Oversight Act, KSA 74-9801 et seq, in 1996. The Commission approves the Agency's budget, the number and qualifications of its employees and any expenditures for arbitration. All other management functions are left to the executive director and his designees. I have been the executive director of the Agency since April, 2003.

The Agency has three management/ supervisory personnel, three support personnel, five special investigators and eight enforcement agents. The Agency

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Senate Federal & State Affairs

Committee

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Attachment 2

currently has five vacancies with plans to fill them soon. Special investigators are assigned to do Category II background investigations exclusively. Corporate and Category I background investigations are done by enforcement agents. Enforcement agents are sworn law enforcement officers. Enforcement agents are also responsible for monitoring gaming activity at the casinos. The Agency operates 11 vehicles.

The Agency is entirely funded by contributions from the four recognized Kansas tribes. The Agency budget for FY 2005 is \$1,650,758. A close examination of the budget for FY 2005 resulted in a proposed budget for FY 2006 of \$1,643,726, a reduction of \$7032 or 0.43% from FY 2005. Each Tribe receives a notice of assessment from the Agency by July 31 of each year. Any funds left over from the previous fiscal year are credited to the next year's tribal assessments before the notice is sent. Tribes must pay their assessments on or before September 21, January 1, and April 1. All of the Tribes are current in paying their assessments. The Tribes pay no other funds to the State.

From the discussion above, you see that the Agency begins each fiscal year at a zero balance. In order to fund the Agency until assessments are paid, the Agency borrows \$450,000 from the State General Fund at the beginning of each fiscal year. The loan is repaid from tribal assessment contributions before the end of each fiscal year.

State general funds are only used in the case of an arbitration award if the State is ordered to pay any of the costs of arbitration. During 2004, the Agency filed one arbitration which is still pending.

The Agency is housed on the fifth floor of 700 SW Harrison, Topeka, KS. In December 2004, the Agency moved to this state owned office space. Cost of rent increased with the move and badly needed space available to the Agency increased about 2000 square feet. It will now be possible for the Agency to hire some necessary and already approved employees.

During the summer of 2003, the Agency installed a server based computer network with high speed internet access. During the summer of 2004, the Agency purchased a document imaging system from a Topeka based company. These purchases have increased the efficiency of the Agency and now permit data files to be backed up every evening, reduce the need for file storage space, and prevent loss of data due to power failure.

Enforcement agents of the Agency have investigated several criminal cases in 2003. One case involved an employee who allegedly possessed unauthorized computer files from a previous gaming employer. He was convicted after trial in FY 2004. In one case a patron attempted to use counterfeit bills in a slot machine. He pled guilty after an investigation by KSGA. The final case involved two out of state patrons who are alleged to have attempted to cheat a slot machine. Trial is pending in that case. In each of these cases, at least one person was apprehended and charged.

An investigation that began in FY 2003 has resulted in a former agent of the Arizona Department of Gaming and the president of a slot machine distributor being indicted in Arizona for bribery in early FY 2005. The information was initially developed by KSGA and relayed to ADOG who requested an investigation by the Arizona Attorney General.

I am unable to discuss with you any particular information in regard to any particular casino. KSA 45-221 (42) prohibits disclosure of records when disclosure is prohibited by a Tribal State Compact. All Tribal State Compacts clearly call attention to the confidential and proprietary nature of information provided to the Agency by the Tribes to permit the Agency to carry out its mission.

I am pleased to stand for questions. I can be reached by telephone at 368-6202 or by email at [john.mcelroy@ksgaming.org](mailto:john.mcelroy@ksgaming.org).