

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Dwayne Umbarger at 4:00 P.M. on March 14, 2005 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Mary Ann Torrence, Revisor of Statutes  
Julian Efird, Kansas Legislative Research Department  
Matt Spurgin, Kansas Legislative Research Department  
Dennis Hodgins, Kansas Legislative Research Department  
Judy Bromich, Administrative Analyst  
Mary Shaw, Committee Secretary

Conferees appearing before the committee:

Doug Lawrence, representing the Kansas Greyhound Association  
Larry Waldrop, Managing Member, River Falls Gaming LLC  
Clark D. Stewart, Chief Executive Officer, Butler National Corporation  
Mick Wunder, Mayor, City of Junction City, Kansas  
Rodney Barnes, City Manager, Junction City, Kansas  
Larry F. Cope, Executive Director, Junction City Economic Development  
Jeff Thorpe, Board of Directors, Boot Hill Museum, Inc., and President, Boot Hill Gaming, Inc.  
Don Denney, Media Relations Specialist, Unified Government Public Relations, Wyandotte County  
David Assmann, President, Kansas Thoroughbred Association, on behalf of Pam Davis, Westmoreland, Kansas  
Glenn Thompson, Executive Director, Stand Up for Kansas  
Ron Hein, Legislative Counsel for the Prairie Band Potawatomi Nation  
Whitney Damron, on behalf of the Kickapoo Tribe in Kansas and the Sac and Fox Nation of Missouri in Kansas and Nebraska  
Ralph Snyder, Assistant Adjutant, Kansas American Legion  
E. L. (Tom) Farr, District 1 Commander, Kansas Veterans of Foreign Wars  
Robert Johannes, Ranch West Bowling Center, Kansas City, Kansas  
Matthew D. All, Chief Counsel to the Governor  
Kathy Bassett, Topeka, Kansas (written)  
Dr. Paul E. Barkey, Manhattan, Kansas (written)  
Steve Ward, President, Kansas Greyhound Association (written)  
Paul Treadwell, President of the Kansas Quarter Horse Racing Association (written)

Others attending:

See attached list.

Chairman Umbarger opened the public hearing on:

**SB 294--Kansas expanded lottery act; electronic gaming; lottery gaming facilities**

Staff briefed the committee on the bill (Attachment 1).

Proponents:

Doug Lawrence, representing the Kansas Greyhound Association, testified in support of **SB 294** (Attachment 2). Mr. Lawrence explained that the legislation represents compromise among a wide variety of interests associated with proposals to expand the Kansas Lottery to include casino developments in Kansas. He noted that **SB 294** has two main parts:

1. Lottery Gaming facilities - referred to as Destination Resorts

## CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 4:00 P.M. on March 14, 2005 in Room 123-S of the Capitol.

### 2. Video Lottery Terminals - relate to existing parimutuel racing facilities

Larry Waldrop, Managing Member, River Falls Gaming LLC, spoke in support of **SB 294** ([Attachment 3](#)). Mr. Waldrop mentioned that this is the first time in many years that proposed expansion of the Kansas Lottery has been presented and that all proponents have joined together in support of one bill. He explained that the purpose of his appearance before the committee was to emphasize the elements of a lottery gaming facility that will be a "Destination Casino Resort". Mr. Waldrop noted that this type of development would generate the most, much needed, revenue to the State of Kansas with a limited number of locations.

Clark D. Stewart, Chief Executive Officer, Butler National Corporation, testified in favor of **SB 294** ([Attachment 4](#)). Mr. Stewart explained that he was present to support a part of the solution to maximize revenue to the State of Kansas and to dampen potential tax increases. He noted that above all other considerations, focus should be on the need to fund the educational system in Kansas.

Mick Wunder, Mayor, City of Junction City, Kansas, spoke in support of **SB 294** ([Attachment 5](#)). Mayor Wunder mentioned that he felt that **SB 294** was a win/win solution for citizens in Kansas. He explained that it would help the Legislature solve financing issues through revenue growth, it would enhance the State through tourism development and would create jobs for Kansas and opportunities for Junction City and Geary County.

Rodney D. Barnes, City Manager, Junction City, Kansas, testified in support of **SB 294** ([Attachment 6](#)). Mr. Barnes explained that the issue of lottery gaming facilities in Kansas comes down to providing an opportunity to fund education, develop tourism, create jobs, and grow revenues for the local communities and the State of Kansas. He mentioned that **SB 294** would provide the mechanism to the Legislature to create a permanent funding stream for financing education (K through 16) without raising the property taxes.

Larry Cope, Executive Director, Junction City Geary County Economic Development, spoke in favor of **SB 294** ([Attachment 7](#)). Mr. Cope detailed information in his testimony that the future of Fort Riley is bright. He also indicated that the future of Geary County's tourism, economic development and education is bright. Mr. Cope mentioned that SB 294 would provide them the opportunity to supply jobs to their citizens, an opportunity to stop the "Drive thru Kansas" traffic on Interstate 70, and a tax base to their community and state for the services and education upon which we all depend.

Jeff Thorpe, Board of Directors, Boot Hill Museum, Inc., and President, Boot Hill Gaming, Inc., testified in support of **SB 294** ([Attachment 8](#)). Mr. Thorpe explained that a challenge for the committee is to evaluate the impacts and effects of expanded gaming and to evaluate proposals that would:

- maximize tax revenue to the State of Kansas,
- enhance entertainment opportunities in Kansas communities,
- enhance economic opportunities in Kansas communities, and
- provide a sustainable, realistic business model.

Mr. Thorpe expressed his belief, and that of Dodge City and Ford County leaders, that they have a sustainable business model that effectively answers each of the issues mentioned above. There are details in Mr. Thorpe's written testimony.

Don Denney, Media Relations Specialist, Unified Government Public Relations, Wyandotte County, spoke in favor of **SB 294** ([Attachment 9](#)). Mr. Denney mentioned that the Unified Government believes any gaming legislation should allow the State and local communities to be in control. He noted that there must be checks and balances that will provide strong oversight and accountability. Mr. Denney explained that the Unified Government continues to strongly support legislation that would benefit The Woodlands, which was at one time, the Number One tourist attraction in the State of Kansas.

David Assmann, President, Kansas Thoroughbred Association, on behalf of Pam Davis, Westmoreland, Pottawatomie County, testified in support of **SB 294** ([Attachment 10](#)). Mr. Assmann explained that the river boats in Missouri hurt many business people and they would like to keep the dollars in Kansas. He noted that

## CONTINUATION SHEET

MINUTES OF THE Senate Ways and Means Committee at 4:00 P.M. on March 14, 2005 in Room 123-S of the Capitol.

this would offer tremendous economic development in Kansas.

### Opponents:

Glenn Thompson, Executive Director, Stand Up For Kansas, testified in opposition to **SB 294** (Attachment 11). Mr. Thompson focused on the five major points that the overall impact of the bill would have on the State of Kansas:

1. Casinos would be an extremely inefficient source of state revenue.
2. Depending on unstable and unpredictable revenues from casinos for funding essential state needs, such as education, would be bad public policy.
3. The state would own, operate, regulate and police the casinos.
4. The casinos would be regional casinos, not "destination" casinos.
5. The casinos would create thousands of new pathological gamblers.

Ron Hein, on behalf of the Prairie Band Potawatomi Nation, spoke in opposition to **SB 294** (Attachment 12). Mr. Hein addressed a number of problems with **SB 294** as listed in his written testimony. He emphasized point Number 5 on page 4 of his testimony regarding his read that the accelerated payment to the state is actually borrowed money from bonds. He noted that if he is correct in his reading, he believes the legislature should check and see if this is a violation of the cash basis law.

Whitney Damron, on behalf of the Kickapoo Tribe in Kansas and the Sac and Fox Nation of Missouri in Kansas and Nebraska, testified in opposition to **SB 294** (Attachment 13). Mr. Damron explained a number of general comments, observations and questions related to SB 294 in his written testimony. In his summary, Mr. Damron noted that the Kickapoo Tribe and the Sac and Fox Nation do not believe that it is appropriate for the State of Kansas to become the first state in the country to own, operate and regulate their own casino. He explained that they believe the state's appropriate role is that of a regulator.

Ralph Snyder, Assistant Adjutant, Kansas American Legion, spoke in opposition to **SB 294** (Attachment 14). Mr. Snyder explained that he was not going to argue the morality of gaming, but since it is here, the veterans and fraternal would like a "piece of the pie". He suggested possible amendments to include the veterans and fraternal organizations which are detailed in his written testimony.

Tom Farr, District 1 Commander, on behalf of the Kansas Veterans of Foreign Wars (VFW) and the Kansas VFW Ladies Auxiliary, testified in opposition to **SB 294** (Attachment 15). Mr. Farr requested support to be included in the bill for VLT (Video Lottery Terminals) machines in VFW Posts. He noted that these machines would be used by VFW members and guests, an officer of the post would be on-duty when the machines were available to members and guests with a lounge manager on duty. He mentioned that most VFW posts are only open a maximum of 50-55 hours per week.

Robert Johannes, Ranch West Bowling Center, spoke in opposition to **SB 294** (Attachment 16). Mr. Johannes explained that the main issue for his opposition is the fact that the proposal limits gaming to a few casino/race track facilities and noted that it would be, in effect, a government-supported monopoly. He proposed an amendment to the bill that would allow existing entertainment businesses an opportunity to fairly compete with the large scale facilities that are proposed in **SB 294**.

### Neutral:

Matthew D. All, Chief Counsel to the Governor, testified as a neutral party on **SB 294** (Attachment 17). Mr. All mentioned that the Governor believes that a responsible, moderate expansion of gaming can be good for Kansas. He explained that it has the potential to encourage investment, create jobs, and attract tourists to Kansas, but this potential can be harnessed only if it can be expanded carefully and with the best interests of the State and people of Kansas in mind. Mr. All addressed significant problems in **SB 294** as follows:

- No limits on the number of casinos.
- No guaranteed percentage of the gross revenues.

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MINUTES OF THE Senate Ways and Means Committee at 4:00 P.M. on March 14, 2005 in Room 123-S of the Capitol.

- Protections for casino managers, not for the State.
- Bonding from K DFA.

Written testimony was submitted by:

Kathy Bassett, Topeka, Kansas (Attachment 18)

Dr. Paul Barkey, Retired Army Chaplain, Manhattan, Kansas (Attachment 19)

Steve Ward, President, Kansas Greyhound Association (Attachment 20)

Paul Treadwell, President, Kansas Quarter Horse Racing Association (Attachment 21)

There being no further conferees to come before the committee, the Chairman closed the public hearing on **SB 294**.

The meeting adjourned at 6:10 p.m. The next meeting is scheduled for March 15, 2005.

SENATE WAYS AND MEANS  
GUEST LIST

Date March 14, 2005 (PM)

NAME	REPRESENTING
Don Denney	Unifed Government Wly Co/KCK
E.J. "Tom" Faw	VFW of KANSAS
Rudolph Snyder	American Legion Ks
Robert C. Mann	Kansas Thoroughbred Assoc
Gary Smith	Kansas Thoroughbred Assoc
Alex Kobergantz	P-I-A.
Mick Winder	MAYOR OF JUNCTION CITY
Rod Bannur	City of Junction City
John D. Piregar	Quaker National Corporation
Jim Miley	Foulton Sieffin LLP
<del>Eric Fawcett</del>	<del>Kensinger's Associates</del>
Bethie Thompson	—
Glenn Thompson	Stand Up For Kansas
Sarah Novascone	Federico Consulting / Herald's
Judy Shaw	Kearney and Associates
Natalie Bregis	REAP
Tom Bruno	K-Gaming
Stuart Little	Woodlands
Bill Sneed	Ks for Eco Growth
JOHN C. BOTTENBERG	THE Woodlands
George Wenzel	Ruffin Company
Doug Edwards	Ks. House
BILL REARDON	KCKS. USD 500



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March 15, 2005

To: Senator Dwayne Umbarger

Office No.: 120-S

From: Julian Efird, Principal Analyst 

Re: Bill Brief for SB 294

**Note:** This bill brief should be considered an overview of SB 294, not a comprehensive or thorough review of the bill's details, with the focus on selected components of the proposal.

The bill would authorize the Kansas Lottery to implement type II and type III gaming in certain specified locations and facilities within the state. The Kansas Lottery would be the licensee and owner of all software programs used for gaming, with each electronic gaming machine and individual game to be approved by the Kansas Lottery. The bill would define two types of electronic gaming machines, depending upon what type of facility uses the technology: video lottery machines and video lottery terminals.

The bill would authorize two categories of facilities to conduct gaming, with limits set on the maximum number of gaming devices at each location and facility. For the first category, there could be more than one approved gaming facility in each location and the number of gaming devices would be set by contracts. The second category would have more specific limitations on both the number of sites and number of gaming devices per site. Potential locations for gaming would include:

- **Category 1: Destination Facilities.** Five locations would be defined as destination development zones, with the maximum number of video lottery machines to be authorized and located in each facility by contract with the Kansas Lottery in Wyandotte County, Crawford and Cherokee counties, Sedgwick County, Ford County and Geary County. No caps on the number of electronic gaming machines per site would be imposed by the bill, nor on the number of sites within each zone.
- **Category 2: Parimutuel Facilities.** Five locations would be defined as parimutuel race tracks, with a maximum of 5,500 video lottery terminals (VLTs) allocated to race track facilities in Wyandotte County (2,000 VLTs), Sedgwick County (1,500 VLTs), Crawford County (1,500 VLTs), and not more than an aggregate of 500 VLTs to be divided between facilities in Greenwood and Harper counties.

The bill would provide for the allocation of the majority of electronic gaming machine revenue to prizes, with the remaining amount to be deposited into either the Lottery Gaming Facility Fund by destination facilities in Category 1, or the Lottery Video Revenue Fund by parimutuel facilities in Category 2, with both new funds to be established in the State Treasury. Proceeds in each fund would be divided among a number of intermediate purposes by formulae, treating the revenue derived from destination facilities in Category 1 differently than that from parimutuel facilities in Category 2.

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3-14-05  
Attachment 1

After deductions for the various intermediate purposes, such as transfers and payments, including an amount of revenue to be paid to lottery gaming facility managers of Category 1 sites and video lottery parimutuel sales agents of Category 2 sites as defined in the bill, a residual portion of revenue would accrue to the state, with such balance to be deposited in a trust account and dedicated to funding for elementary, secondary and higher education.

An advance funding payment, called an accelerated lottery gaming facility net payment from Category 1 facilities, and an accelerated video lottery net payment from Category 2 facilities, would be required by the bill to secure \$15,000 per electronic gaming machine for the state with payments due by May 31, 2006. One fiscal estimate suggested by a proponent of the bill indicates 10,000 electronic gaming machines would generate \$150 million in FY 2006, using this method under provisions in the bill. Likewise, any number of fewer or additional electronic gaming machines would subtract from or add to this estimated amount by \$15,000 per device.

JE/jl



Doug Lawrence  
800 SW Jackson, Suite 1120  
Topeka, KS 66612  
785-235-2555

Representing  
Kansas Greyhound Association

Testimony SB 294

The legislation before you today represents compromise among a wide variety of interests associated with proposals to expand the Kansas Lottery to include casino developments in our state.

The range of supporters associated with this legislation is the broadest I have ever seen and ranges from the Breed groups including both greyhound, quarterhorse and thoroughbred interests, parimutuel racetrack operators, communities interested in bringing economic development through development of destination resorts, and developers who are willing to invest hundreds of millions of dollars in our state.

No one interest agrees with all portions of this bill. But we do agree that we have reached the moment when the state should seriously consider expanding the lottery to allow casino gaming in our state. The reality is that we already have full-blown casino gaming in our state with the development and operation of tribal gaming facilities. Beyond that, to our east in the Kansas City area we have four riverboat casinos. And to our south, there is rapid development of tribal casinos in Oklahoma. Osage County Oklahoma will have 10 tribal casinos open and operational soon, and others are proposed just south of Arkansas City.

We have gaming, in full and complete form. And we have the attendant problems associated with gaming. In the case of border state gaming, we get little or none of the benefits through tax revenues or job creation.

And these forms of gaming are likely to continue to expand on our borders.

The question isn't whether Kansans can and will gamble. They do. The question is whether the state should closely look this revenue stream, as a means to provide needed funding for education. You are the policy makers, and ultimately it is your decisions. SB 294 offers you an alternative to a tax increase.

SB 294 has two main parts:

1. Lottery Gaming facilities, which we refer to as Destination Resorts
2. Video Lottery Terminals, Which relates to existing parimutuel racing facilities

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3-14-05  
Attachment 2

While I played a role in drafting this latest version of the bill, there are others who will testify this afternoon on the lottery gaming facility portion of the bill. I am more than happy to answer questions relating to both provisions of the bill, but my comments today are going to be focused on the Video Lottery Terminal portions, which begin on page 20 with new section 23.

The VLT portion of this legislation plays two important roles:

1. Immediate placement of machines at existing facilities in our state means faster revenues to the state for education funding. Construction is not required before video lottery terminals can be placed.
2. Breathes new life in the Live Racing industry in our state. Modeled after successful VLT operation at parimutuel facilities in other states, we know that placement of these machines will dramatically increase the quality of Greyhound and Horse Racing in our state. That increase will spread benefits far across the state.

The benefit to the state is immediate revenues, through accelerator payments, and large participation in the revenues from the Video lottery terminal. We would estimate that the state would receive more than 35% of the gross revenues at these facilities, and believe based on the number of machines and locations that the state would see more than \$100 million each year.

Beyond direct revenues for education, the VLT portion of this bill will increase opportunities for Kansas Breeders, trainers and operators to compete for purses in our state. Today, many of the best Horse and Greyhound operators travel to other states to race. Large purses, and special purses for Kansas bred horses and greyhounds will bring people to our existing tracks. It will also encourage even more investment in the agricultural businesses associated with the Horse and Greyhound Industries.

Today, the Kansas Greyhound Industry generates more than 150 million dollars in direct economic impact. Our operators are the best in the nation, and compete successfully at the largest tracks in the country. Last year, a Kansas bred greyhound sold for a record \$70,000 the National Greyhound Association's fall meet.

The benefits of expansion of the live racing industries in Kansas are spread far across the state in rural communities where Horse and Greyhound breeders live and work.

We ask for your support of SB 294

**Expanded Lottery Act  
SB 294  
Revenues**

**\$150 Million dollars in revenues in FY 2006**

First Year revenues generated by Accelerated payments to the state by Destination Resort developers and parimutuel racetrack licensees. Calculated on the basis of a mandatory \$15,000 per machine payment, as specified in legislation. Actual revenue may be more, because the racetrack facilities would be generating direct revenues from VLT operation during FY 2006.

Five Destination Resorts and five parimutuel facilities would be authorized to place electronic gaming machines or video lottery terminals at their facilities.

**Revenues Allocated to Supplementing Education Funding**

Legislation places state's share of revenues for supplementing funding for primary, secondary public education and higher education. K-16

**Future revenues to exceed \$200 million dollars**

Revenues allocated to supplement education funding under this legislation are projected to exceed 200 million dollars beginning in FY 2007, assuming development of five destination resorts.

**VLT's at racetrack locations help grow the Agricultural side of Live Racing**

The live horse racing industry and greyhound industry make a significant contribution to the economy of rural Kansas. Adding VLT's at the tracks will add big value to the rural sectors of Kansas, which benefit from the greyhound, quarterhorse and thoroughbred breeding industries. This legislation can add \$200 million dollars to the rural economies of our state.

# **Expanded Lottery Act**

## **SB 294**

### **Locations**

#### **Destination Development Zones**

Five locations identified as Destination Development Zones. Development of Destination Resorts limited to counties identified in the legislation. Resort must be part of an overall strategy of creating tourism destinations in or near the zone.

Northeast Kansas Zone: Wyandotte County

Southeast Kansas Zone: Cherokee and Crawford County

South Central Kansas Zone: Sedgwick County

Southwest Kansas Zone: Ford County

North Central Kansas Zone: Geary County

#### **Local Control**

Kansas Lottery cannot consider proposals for development of a destination resort until the voters in a county have authorized the county's participation. In addition to the local vote, the developer of a destination resort must have formal endorsement of the city or county where they propose a project.

February 17, 2005

The Honorable Pete Brungardt, Chairperson  
Senate Committee on Federal and State Affairs  
Statehouse, Room 143-N  
Topeka, Kansas 66612

Dear Senator Brungardt:

SUBJECT: Fiscal Note for SB 168 by Senate Committee on Federal and State Affairs

In accordance with KSA 75-3715a, the following fiscal note concerning SB 168 is respectfully submitted to your committee.

SB 168 would create the Kansas Expanded Lottery Act. The act would authorize the operation of destination casinos in Kansas and the use of video lottery terminals at parimutuel licensee locations and veteran organizations. Destination casinos could be located in the following Kansas counties: Wyandotte, Crawford, Cherokee, and Sedgwick.

#### Destination Casinos

The bill defines a destination casino as a gaming operation with electronic gaming machines owned and operated by the state. The Executive Director of the Kansas Lottery would issue a certificate of authority to applicants seeking to develop a destination casino in Kansas and be a destination casino manager. The certificate would authorize the applicant to submit a qualified application to the destination casino commission. However, before issuance of the certificate of authority, local voters where the destination casino would be located would have to approve operation of the casino in that county. The commission would review the qualified application, which sets forth various requirements, including the location of the casino, the disposition of casino revenues, and that ownership and control of the gaming operation of the casino rests with the Kansas Lottery. If the commission approved the application, the commission would authorize the Executive Director to enter into a management agreement with

the destination casino manager for a term of at least 15 years. The management agreement would implement the application and allow the destination casino manager to manage the casino; however, the Executive Director would have complete ownership and control of gaming operations at the destination casino.

Revenue would be distributed as follows: 2.0 percent to the Gaming Act Oversight Fund, up to 4.0 percent jointly for the city and county where the casino is located, at least 22.0 percent to the state, and 0.5 percent to the Problem Gambling Grant Fund. The balance of the revenues would go to the Destination Casino Operating Expenses Fund and to the destination casino manager according to percentages that would be in the contract. The application would also provide for an advance payment of the state's future share of the casino net revenues. The payment could be up to \$15,000 for each gaming machine operated at the casino.

#### Video Lottery Terminals

The Kansas Lottery would be authorized to implement a Video Lottery Program. In accordance with the rules and regulations of the destination casino commission, up to 4,000 video lottery terminals could be placed at parimutuel licensee locations and no more than a total of 500 at licensed premises of veteran organizations. Voters in the county where the terminals would be operated would have to approve operation of the terminals in that county. The Kansas Lottery would implement and administer the program. The Executive Director would enter into a contract with the parimutuel licensee and veteran organization for the operation of video lottery terminals. The licensee and organization would be considered video lottery sales agents. The contract would provide for the placement and operation of the terminals as well as an advance payment of the state's future share of the terminal net revenue, if the sales agent is a parimutuel licensee.

Video lottery sales agents at each location would manage the video lottery terminals. Net income from the terminals would be deposited into the Gaming Act Revenues Fund and then distributed as follows: as a commission and for operating expenses that would be paid to the video lottery sales agents, 7.0 percent of income from parimutuel licensee locations to the Live Horse Racing Purse Supplement Fund, 7.0 percent of income from parimutuel licensee locations to the Live Greyhound Racing Purse Supplement Fund, 1.5 percent to the county and 1.5 percent to the city where the parimutuel licensee is located, 14.0 percent of income from veterans organizations to the Veterans Benefit Fund, 0.5 percent to the Problem Gambling Grant Fund, and an appropriated amount to the Gaming Act Oversight Fund.

#### Other Provisions

SB 168 would create several funds, including the Gaming Act Revenues Fund, the Gaming Act Oversight Fund, the Live Horse Racing Purse Supplement Fund, the Live Greyhound Racing Purse Supplement Fund, the Veterans Benefit Fund, the Destination Casino

Operating Expenses Fund, and the Greyhound Promotion and Development Fund. The Gaming Act Revenues Fund would maintain separate accounts out of which each destination casino manager and video lottery sales agent would be paid. The Gaming Act Oversight Fund would pay the expenses of the Kansas Lottery associated with the administration and enforcement of the Kansas Expanded Lottery Act, as well as the operations of destination casinos and video lottery terminals.

The Live Horse Racing Purse Supplement Fund and the Live Greyhound Racing Purse Supplement Fund would be used for the distribution of purse supplements in accordance with the application approved by the destination casino commission. The Destination Casino Operating Expenses Fund would pay expenses of the operation of each destination casino. The Greyhound Promotion and Development Fund would be used for the development, promotion, and representation of the greyhound industry in Kansas. This fund would receive revenue through a voluntary greyhound purse checkoff program, which would deduct 2.0 percent from purses paid to kennels and greyhound owners that participate in the program.

Under current law, the Kansas Lottery would be abolished on July 1, 2008. SB 168 would change the date to July 1, 2012.

According to the Kansas Lottery, SB 168 could generate approximately \$340.0 million in destination casino net revenue each year. Under the bill, a total of 4,500 lottery machines could be operated under the Video Lottery Program. Assuming each machine generated \$48,000 in revenue, annual net revenues could reach \$216.5 million. The bill could generate approximately \$556.5 million in net revenues for the two major provisions combined. The agency could not estimate costs associated with administering its new responsibilities; however, the bill indicates that these costs would be financed by the gaming revenues generated under SB 168.

The Racing and Gaming Commission assumes passage of SB 168 could lead to increased wagering at current racetracks as well as the reopening of the Camptown Greyhound Park, since gaming machines at racetracks could increase the amount of activity in that industry. The parimutuel wagering taxes collected by the Commission from Camptown would cover operating costs related to the reopening of the facility. The Commission estimates that SB 168 could increase its costs by \$2,056,779 in FY 2006. These costs include salaries of \$1,608,729 for 20.00 FTE positions and \$448,050 for other operating expenditures. Any parimutuel wagering taxes collected would be in addition to revenue generated from the operation of electronic gaming machines. The bill also would require the Woodland Racetrack to run a 65-day horse meet. Currently, the facility runs a 30-day horse meet. The extension of the horse meet would increase the agency's operating expenditures and increase the parimutuel wagering taxes collected from the facility. It is assumed that the additional revenue would cover the agency's increased costs.

SB 168 would also have a fiscal effect on the Department of Social and Rehabilitation Services (SRS). According to the bill, the Problem Gambling Grant Fund would receive .5 percent, up to \$4.0 million, of net revenues generated by both casino revenues and video lottery

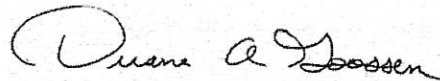
revenues. The additional revenue would allow SRS to enhance the problem gambling program with continued treatment of pathological gamblers.

SB 168 would have a fiscal effect on the Commission on Veterans Affairs. The bill does not indicate a specific percentage of revenue that the agency would receive; however, monies would be appropriated to the agency from gaming revenues for the benefit of veterans of the United States Armed Forces.

Under SB 168, the cities and counties would receive an aggregate of 4.0 percent of the net revenue generated at destination casinos and an aggregate of 3.0 percent of revenues generated from video lottery terminals. The Kansas Association of Counties indicates that there may be costs to the counties associated with operating ballots for voters to vote on whether to allow the operation of electronic gaming machines in their county. Any fiscal effect as a result of this bill would not be accounted for in *The FY 2006 Governor's Budget Report*.

In addition, SB 168 indicates that the balance of revenues remaining in the Gaming Act Revenues Fund after various transfers are made out of the fund would supplement funding for elementary and secondary public education.

Sincerely,



Duane A. Goossen  
Director of the Budget

cc: Ed VanPetten, Lottery  
John McElroy, Racing & Gaming  
Cheryl Dolejsi, Racing & Gaming





STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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

ROBERT T. STEPHAN  
ATTORNEY GENERAL

January 2, 1992

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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.

Senator Edward F. Reilly, Jr.  
Page 6

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*  
ROBERT T. STEPHAN  
Attorney General of Kansas

*Julene L. Miller*  
Julene L. Miller  
Deputy Attorney General

RTS:JLM:jm



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

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February 23, 1994

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ATTORNEY GENERAL OPINION NO. 94- 26

The Honorable Clyde D. Graeber  
State Representative, Forty-First District  
State Capitol, Room 115-S  
Topeka, Kansas 66612

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

Synopsis: The phrase "state-owned and operated," as used in article 15, section 3c of the Kansas constitution, is not synonymous with the phrase "state-regulated, licensed and taxed," the latter describing the state's involvement in bingo and parimutuel wagering on horse and dog races. A state-owned and operated lottery is one that is owned as well as directly controlled or managed by the state. Cited herein: Kan. Const., art. 15, §§ 3a, 3b, 3c.

\* \* \*

Dear Representative Graeber:

You request our opinion regarding the lottery amendment, article 15, section 3c of the Kansas constitution. You state that as a result of the Kansas Supreme Court's recent decision in State, ex rel. Stephan v. Finney, Docket No. 69,616 (Jan. 27 1994), the legislative committee you chair will begin considering a number of casino gaming proposals. Essentially you seek guidance in defining the phrase "state-owned and operated," as it is used in the constitutional provision. Specifically your questions are:

- "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?"

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.



The remainder of your questions deal with degree of state control over the operation of a casino. As stated in Attorney General Opinion No. 92-1:

"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."

You ask that we help draw the line between regulation and operation by answering your series of questions.

The Kansas constitution does not define the phrase "state-owned and operated." Neither has it been defined by the judiciary. We must therefore apply rules of constitutional construction to arrive at what we believe will be the court's interpretation of that phrase. The paramount rule of constitutional construction is that effect must be given to the intent of the framers and adopters of the provision in question. State, ex rel. v. Finney, supra at 45. There are several tools available to determine the intent of the framers of the constitution, including comparison of the language in question to language used in related provisions, and legislative history of the concurrent resolution that became the adopted provision.

"The importance of understanding the intentions of the legislature in proposing the amendment cannot be understated. . . . Where the purpose of the framers of constitutional provisions is clearly expressed, it will be followed by the courts." Id. at 46.

We begin with a comparison of section 3c of article 15 to section 3b of that same article. Section 3b, authorizing parimutuel wagering on horse and dog racing, was considered and passed by the legislature at the same time as the lottery amendment. While the lottery amendment, section 3c, authorizes the legislature to "provide for a state-owned and operated lottery," the parimutuel provision states:

"[T]he legislature may permit, regulate, license and tax . . . the operation or

conduct, by bona fide non-profit organizations, of horse and dog racing and parimutuel wagering thereon. . . ." Kan. Const., art. 15, § 3b.

Clearly two different concepts were envisioned: The state would own and operate the lottery but would regulate, license and tax the private operation of parimutuel wagering. See also Kan. Const., art. 15, § 3a. Thus, it would appear that "state-owned and operated" means something different than "state-regulated, licensed and taxed."

1985 senate concurrent resolution no. 1609 (SCR 1609) is the proposal that became article 15, section 3c of the constitution. While there is no recorded discussion of the phrase "state-owned and operated" in the minutes of the committees that worked SCR 1609, the house committee was provided extensive information regarding the mechanics of a state lottery organization, including the functions a state agency would perform. Minutes, House Committee on Federal and State Affairs, January 16, 1986. Included in that information were statements such as:

"Unlike a state lottery, bingo and raffle games are privately conducted by charitable and fraternal organizations under state license. Any profits inure to the benefit of the sponsoring organization. It was never intended that the games produce significant revenue for the state." Minutes, supra, attachment A (emphasis in original);

"The states have adopted a variety of administrative arrangements for running their lotteries. In Delaware, Michigan, and New York, lotteries are managed by single heads; in the other lottery states, boards or commissions are used. The usual arguments apply. Use of a single accountable person is argued to promote responsiveness and accountability and to make it possible for the relevant department head and governor to be held unambiguously accountable. Use of a board or commission is said to insulate the activity from politics and promote public confidence in lottery operation.

"The question of whether to use a board or commission is partly isolated from the question of where to place the lottery agency administratively. Lottery agencies are in the tax-collecting agency in [some states], but independent agencies elsewhere." Id.;

"Most state lotteries are operated in generally the same way with day-to-day administration resting with a Lottery Director. Major units within the organization include Security, Administration, and Marketing. . . . Lottery staffs can range in size from Iowa at 125 to California's with over 500." Minutes, supra, attachment B.

In discussing the need for enabling legislation should SCR 1609 be adopted, the department of revenue presented the following:

"A lottery is a unique entity in state government, in that it is the only state agency with a mission identical to a private business-selling a product in a fashion which maximizes revenue.

. . . .  
"Specific issues and potential problem areas that will need to be examined are:

"1. Location of the lottery operation. Although most states have a lottery commission to advise and govern lottery activities, they differ as to the lottery being a part of a state Department of Revenue or a separate state agency. Regardless of where it is located, it must have its own identity and be clearly responsible for its decisions, both from an efficiency and public relations standpoint.

"2. The lottery must be provided with the authority to enter into contracts . . .

with vendors. . . ." Id. (Emphasis added).

Overall, the information presented to the committee illustrates an understanding that a "state-owned and operated lottery" would be one run by a state agency, board or commission with authority to contract for specific services including the ability to contract with private businesses to promote and retail state established lottery games a commission on basis.

As originally adopted by the senate, SCR 1609 contained these provisions:

"(b) The legislature shall provide for a state lottery commission and for its control and supervision of any state-owned and operated lottery established hereunder. The state lottery commission shall have three members, appointed by the governor subject to confirmation by the senate, for overlapping terms as the legislature may prescribe. Not more than two members shall be members of the same political party. The state lottery commission shall report to the governor and the legislature at such times and upon such matters as may be prescribed by the legislature.

"(c) All moneys received by the state from the operation of the state-owned and operated lottery which are not required for the financing of the operation of such lottery shall be allocated among the taxing subdivisions of the state in the manner prescribed by the legislature and shall be used only for the reduction of general ad valorem property tax levies upon tangible property." Journal of the Senate, 664-665, April 12, 1985.

After receiving testimony and information regarding the importance of flexibility in locating the lottery operation (Minutes, House Committee on Federal and State Affairs, January 16, 1986, attachment B), and in dedicating the proceeds of the lottery operation (Minutes, House Committee on Federal and State Affairs, January 21, 1986), the house

committee voted to amend the resolution by deleting the above-quoted provisions, and adopted the resolution as amended. Minutes, House Committee on Federal and State Affairs, January 23, 1986; Journal of the House, Report of Standing Committee 1356, January 24, 1986. SCR 1609 was eventually adopted by both houses and the electorate without subsections (b) and (c), thus alleviating a constitutional requirement that the state lottery be under the "control and supervision" of a specific state commission. There was never any recorded discussion, however, that the amendment was intended to allow a non-state entity to operate the lottery. Having retained the "state-owned and operated" language, in contrast to the "regulate, license and tax" language in the parimutuel provision, it is our opinion that the framers of the constitutional amendment intended that operation of the lottery be the responsibility of a state entity.

In determining the intent of the adopters of a constitutional provision, "its language should be held to mean what the words imply to the common understanding of men" at the time of adoption. State, ex rel. v. Highwood Services, Inc., 205 Kan. 821, 825 (1970). "When interpreting the constitution, each word must be given due force and appropriate meaning." Finney, supra, at 46. First, the use of the conjunctive "and" is significant; the lottery must be both state-owned and state-operated. Thus, just owning the lottery would not appear to satisfy the constitutional requirement. The word "operate," when used as a transitive verb, was generally defined in 1986 as follows:

"1. To run or control the functioning of: operate a machine. 2. To conduct the affairs of; manage: operate a business. 3. To perform surgery upon. 4. To bring about or effect." The American Heritage Dictionary 871 (2d College Ed. 1985) (emphasis in original).

This definition is consistent with our conclusion in 1987 that "[t]he intent and understanding of both the legislature and the people seems to have been to have a government controlled lottery as a revenue raising measure." Attorney General Opinion No. 87-16. From this it appears that the intent of the adopters, as well as the framers, was for the state to own the lottery as well as to control or manage it directly.

Applying the foregoing discussion to your specific questions, our responses are as follows:

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.

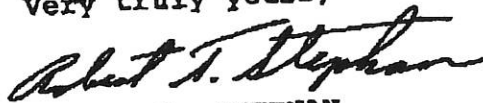
5. Not all personnel employed at a casino must be state employees. The state may contract with private entities to provide services. Private entities providing contracted services may use their own employees. We caution, however, that as a matter of public policy sensitive positions should be held by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

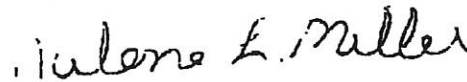
7. An arrangement whereby the state agrees to permit a private entity to operate a casino in exchange for a set percentage of the take comes very close to regulation with a tax. However, if the arrangement is contractual and involves the state's retention of ownership and control, the issue of compensation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

RTS:JLM:jm

# **The Feasibility of Electronic and/or Casino Gaming in Kansas**

## **Final Report**

Prepared by: Sebastian Sinclair, President, Christiansen Capital Advisors, LLC and  
Behavior Research Center  
Prepared for: The Kansas Lottery  
Tuesday, March 09, 2004

# 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>	
	33.8
<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.

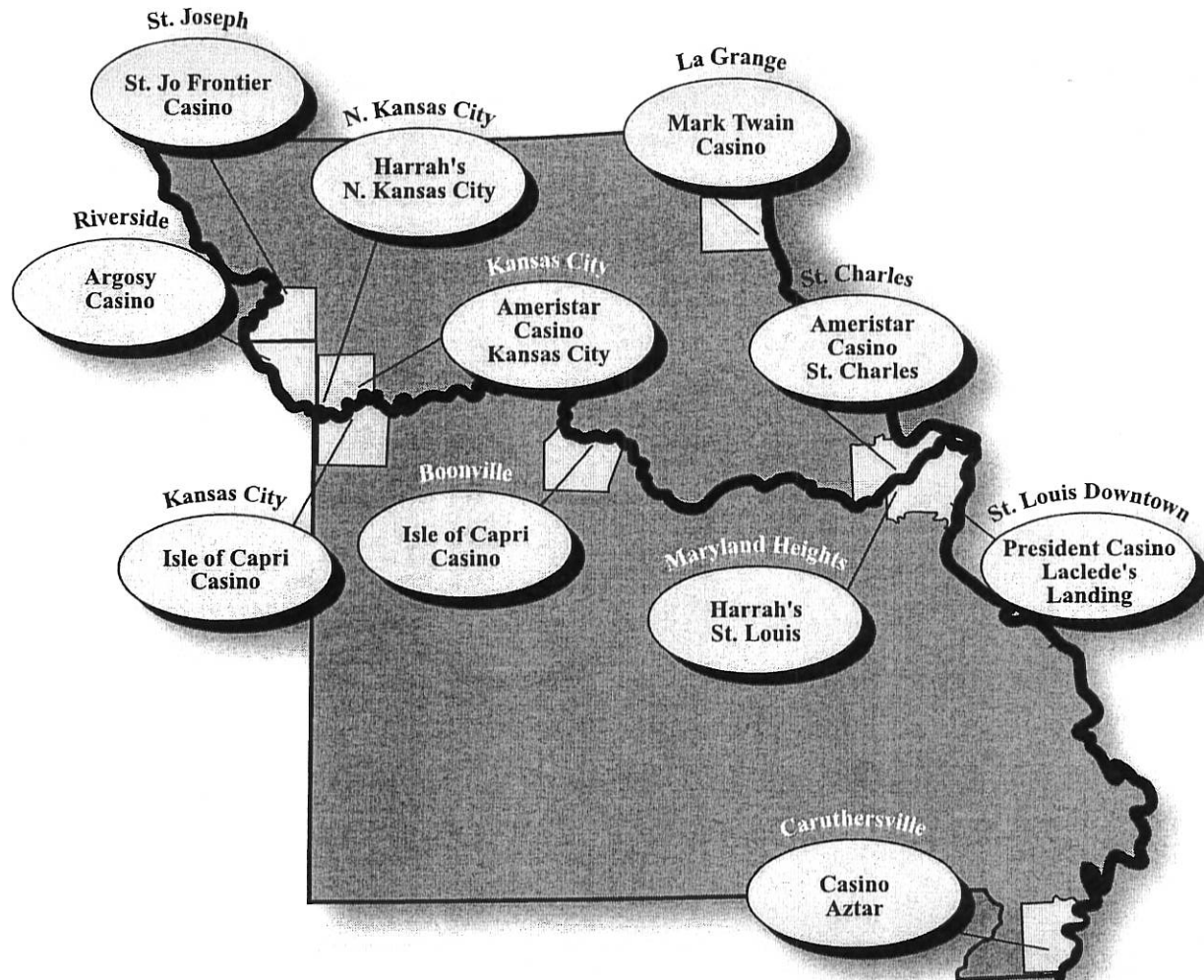
This will become an important consideration should lawmakers in Kansas decide to pursue the recommendations contained in the final report of the Governor's Gaming Committee and what our survey results indicate is the preferred option (destination resort gaming) of Kansas residents. Machines at the Woodlands 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 agri-business 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.

# Licensed Casino Locations





### Fiscal Year 2004 Project Summary

CASINO / LOCATION	OPENING DATE	ADMISSIONS	ADMISSION FEES (a)	ADJUSTED GROSS RECEIPTS	GAMING TAX (b)	ESTIMATED CAPITAL INVESTMENT *	EMPLOYEES	TABLE GAMES	SLOT MACHINES	GAMING SPACE (SQ FT)
President / St. Louis	27-May-94	3,659,048	\$ 7,318,096	\$ 71,843,574	\$ 14,368,715	\$ 73,100,000	682	38	1,100	58,000
Ameristar / St. Charles	27-May-94	10,551,002	21,102,004	284,747,394	56,949,479	415,300,000	1,923	87	3,283	130,000
Argosy / Riverside	22-Jun-94	4,284,623	8,569,246	124,111,486	24,822,297	176,100,000	1,032	46	1,750	62,000
St. Jo Frontier / St. Joseph	24-Jun-94	878,199	1,756,398	23,935,964	4,787,193	23,100,000	284	15	494	18,000
Harrah's / North Kansas City	22-Sep-94	6,710,112	13,420,224	199,332,830	39,866,566	202,700,000	1,456	47	1,734	60,100
Aztar / Caruthersville	27-Apr-95	751,524	1,503,048	22,185,729	4,437,146	60,800,000	312	14	701	20,800
Isle of Capri / Kansas City	18-Oct-96	4,198,197	8,396,394	100,432,130	20,086,426	70,400,000	715	31	1,543	45,300
Ameristar / Kansas City	16-Jan-97	9,134,586	18,269,172	225,878,279	45,175,656	391,300,000	1,921	107	2,923	140,000
Harrah's - Maryland Heights	11-Mar-97	8,848,949	17,697,898	254,674,008	50,934,802	328,900,000	1,959	62	2,652	120,000
Isle of Capri / Boonville	06-Dec-01	2,787,031	5,574,062	72,077,861	14,415,572	63,200,000	623	27	907	28,000
Mark Twain / LaGrange	25-Jul-01	1,030,413	2,060,826	25,798,381	5,159,676	15,900,000	281	17	502	18,000
<b>GRAND TOTALS</b>		<b>52,833,684</b>	<b>\$ 105,667,368</b>	<b>\$ 1,405,017,634</b>	<b>\$ 281,003,527</b>	<b>\$ 1,820,800,000</b>	<b>11,188</b>	<b>491</b>	<b>17,589</b>	<b>700,200</b>

\* Figures reflect the current operating property amounts carried on the casino balance sheet at cost.

(a) 50% of Admission Fees go to the State, with the remaining 50% to the Local Home Dock.

(b) 90% of Gaming Taxes go to the State, with the remaining 10% to the Local Home Dock.

The figures published in this report are subject to adjustment.

### GAMING TAX SUMMARY

Fiscal Year Ended June 30, 2004

MONTH	ARGOSY	AZTAR	HARRAH'S NKC	HARRAH'S MH	ISLE OF CAPRI KC	ISLE OF CAPRI BOONVILLE	AMERISTAR KC	MARK TWAIN	PRESIDENT	AMERISTAR SC	ST. JO	STATE TOTAL
Jul-03	1,593,017	385,067	3,610,958	3,926,337	1,632,796	1,234,145	3,604,874	430,735	1,235,207	4,593,803	394,813	22,641,752
Aug-03	1,652,241	396,812	3,966,934	4,270,411	1,592,400	1,302,271	3,985,127	433,283	1,320,530	4,964,380	431,375	24,315,763
Sep-03	1,444,296	357,549	3,511,045	4,138,438	1,539,007	1,161,599	3,343,964	397,336	1,119,696	4,055,941	385,107	21,453,978
Oct-03	1,496,522	369,099	3,429,599	4,361,031	1,589,227	1,207,889	3,708,671	393,396	1,162,233	4,360,044	371,045	22,448,757
Nov-03	1,435,579	351,755	3,294,263	4,243,489	1,583,488	1,208,739	3,752,071	420,681	1,093,956	4,523,018	361,268	22,268,306
Dec-03	2,177,042	336,725	3,220,005	4,148,432	1,616,554	1,078,654	3,463,258	398,528	1,096,936	4,560,845	396,121	22,493,099
Jan-04	2,559,992	381,200	3,191,401	4,158,622	1,627,581	1,150,317	3,730,644	404,393	1,191,529	4,978,831	396,625	23,771,135
Feb-04	2,559,992	425,938	3,135,014	4,330,693	1,917,071	1,253,284	3,828,979	453,530	1,292,310	5,025,489	404,645	24,625,955
Mar-04	2,505,383	396,729	3,186,888	4,234,013	1,802,299	1,225,651	4,076,053	489,503	1,249,485	5,111,617	445,764	24,723,386
Apr-04	2,445,961	357,526	3,206,690	4,302,422	1,739,176	1,177,688	3,833,608	449,601	1,241,694	4,936,098	407,545	24,098,009
May-04	2,580,677	351,231	3,239,815	4,471,497	1,741,735	1,225,530	4,029,287	460,618	1,180,507	5,144,217	412,783	24,837,898
Jun-04	2,372,585	327,515	2,873,955	4,349,416	1,705,093	1,189,804	3,819,120	428,072	1,184,632	4,695,197	380,102	23,325,489
TOTAL	24,822,297	4,437,146	39,866,566	50,934,802	20,086,426	14,415,572	45,175,656	5,159,676	14,368,715	56,949,479	4,787,193	281,003,527

Fiscal Year Ended June 30, 2003

MONTH	ARGOSY	AZTAR	HARRAH'S NKC	HARRAH'S MH	ISLE OF CAPRI KC	ISLE OF CAPRI BOONVILLE	AMERISTAR KC	MARK TWAIN	PRESIDENT	AMERISTAR SC	ST. JO	STATE TOTAL
Jul-02	1,667,160	374,788	3,598,422	4,698,031	1,580,167	1,091,940	3,737,083	417,988	1,224,491	2,887,779	411,003	21,688,851
Aug-02	1,700,384	406,140	3,671,526	4,344,538	1,573,679	1,100,297	3,827,310	426,036	1,260,596	4,441,418	435,623	23,187,545
Sep-02	1,573,059	374,414	3,204,951	4,005,826	1,569,019	978,704	3,616,208	396,357	1,176,971	3,883,908	417,656	21,197,074
Oct-02	1,537,565	367,742	3,353,707	3,822,654	1,619,854	1,099,595	3,459,779	389,758	1,178,340	3,832,911	411,866	21,073,770
Nov-02	1,499,996	362,605	3,480,615	3,991,698	1,734,350	1,129,559	3,577,235	393,370	1,193,862	4,010,740	427,622	21,801,654
Dec-02	1,583,766	327,836	3,499,794	3,674,131	1,718,633	1,037,232	3,371,064	418,919	1,155,260	3,964,068	448,375	21,199,076
Jan-03	1,590,258	360,870	3,460,325	3,814,275	1,566,570	1,067,490	3,388,530	420,474	1,234,636	4,240,695	435,171	21,579,296
Feb-03	1,592,519	370,785	3,483,359	3,552,445	1,638,566	1,029,657	3,298,914	434,226	1,283,386	3,958,207	426,164	21,068,228
Mar-03	1,711,540	410,192	3,786,551	4,116,225	1,792,454	1,252,575	3,567,506	468,222	1,350,698	4,525,450	454,486	23,435,897
Apr-03	1,540,010	361,311	3,454,576	3,869,258	1,703,020	1,128,814	3,347,662	416,159	1,223,995	4,147,425	406,630	21,598,860
May-03	1,630,893	395,170	3,542,847	3,960,981	1,777,308	1,211,423	3,515,631	443,204	1,358,299	4,663,976	449,249	22,948,980
Jun-03	1,500,924	333,976	3,036,215	3,443,407	1,580,762	1,114,663	3,249,307	386,879	1,048,295	4,126,704	404,641	20,225,772
TOTAL	19,128,074	4,445,828	41,572,888	47,293,467	19,854,380	13,241,949	41,956,230	5,011,591	14,688,829	48,683,280	5,128,486	261,005,003

**LARRY WALDROP  
MANAGING MEMBER, RIVER FALLS GAMING LLC**

**Before the Senate Ways and Means Committee  
March 14, 2005**

**Chairman Umbarger and members of the Committee, I thank you for the opportunity to address you concerning this very important issue today. This is the first time in the many years that proposed expansion of the Kansas Lottery has been presented, that all proponents have joined together in support of one bill. There has been a lot of give and take in this process, but we feel this bill is the best for all concerned and will add much needed revenue for education in the State of Kansas.**

**The purpose of my appearance before you today is to emphasize to you the elements of a lottery gaming facility that will be a "Destination Casino Resort". This type of development will not only increase tourism in Kansas, but will also capture more tourism dollars from the visitors to existing attractions such as the Kansas Speedway, Cabela's and The Nebraska Furniture Mart. Most importantly, "Destination Casino Resorts" will generate the most, much needed, revenue to the state with a limited number of locations.**

**In order to attract new tourist, a facility must offer much more than just a casino. The development must offer first class accommodations, quality dining, entertainment venues and services that lead to extended stays and not just in and out of the casino. In order to accomplish this goal a developer must have the opportunity to realize a reasonable return on investment and a management contract with a sufficient term to allow for proper amortization of the investment.**

**Our proposal will include a 400- room hotel, resort spa and fitness center, a "Branson style" showroom, special events center for larger entertainment venues and conventions and several quality themed restaurants.**

**Our development and investment team is committed to spend over \$200 million to bring to Kansas a first class resort in Wyandotte County. Also, in this room today are representatives of development groups that have committed to make similar investments in Southeast Kansas and Wichita. Representatives are also here today that plan on generating additional revenue to the state with lottery gaming facilities in Dodge City and Junction City.**

**These developments will create over 6,000 construction jobs, 7,000 permanent jobs and another 10,000 jobs in support related companies. Annually, the State will receive over \$250 million in direct revenue and local units of governments will have an additional \$40 to \$50 million.**

**The State of Kansas has people that are willing and able to invest hundred's of millions of dollars in the state. I encourage this committee to advance Senate Bill 294 and allow developers and investors to bring to Kansas quality developments that will increase tourism and add revenue to the State to supplement education.**

*Senate Ways and Means  
3-14-05  
Attachment 3*



**Testimony By Clark D. Stewart  
To Senate Ways and Means Committee  
Monday, March 14, 2005  
Regarding Senate Bill No. 294**

Mr. Chairman and members of the Committee, I am Clark Stewart from Olathe, Kansas. I serve as Chief Executive Officer of Butler National Corporation, a Kansas corporation, engaged in the manufacture and sale of Classic Aviation Products, Defense Contracting and Electronics, Avionics, Aircraft Modification, Environmental Monitoring and Management Services.

I am pleased to testify today in support of Senate Bill No. 294. I am here to support a part of the solution to maximize revenue to the State of Kansas and to dampen potential tax increases. I believe that above all other considerations; we should focus on the need to fund our educational system in Kansas.

Before, I specifically address the merits of the bill I would like to offer some personal comments. As a Kansas business manager and taxpayer, I am concerned about the need for additional revenue to the State. I am sure that all of you share some of this concern.

I was born in Kansas, graduated from High School with 17 fellow students, graduated from a Kansas University with BS and MS degrees. Except for service in the USAF, I have lived in Kansas 65 years. I am the CEO of a small public company with approximately 100 employees. Our productivity per employee is approximately the same as companies like General Electric. We are proud to be a Kansas business.

To expand our economy, we need to look at ways to retain existing jobs and businesses and to create new jobs and businesses. Kansas must be competitive in the attraction and retention of business. To accomplish this goal, property taxes, income taxes, sales taxes and all insurance costs must not continue to climb. In addition, we must educate our Kansas youth and keep them in Kansas.

To maintain our high standards of education, new funding mechanisms must be explored. A Kansas education must be one of the best. We must build our system to keep our best students in Kansas. Keeping our best students means more jobs and more business in Kansas.

For several years, the Kansas Legislature has studied and discussed the possibility of additional lottery gaming in the State. Many proposals have been submitted for consideration. I have followed this closely and developed a few observations.

First, we really need to put gaming in context. Assuming state owned and operated gaming is permitted, jobs will be created at the destination entertainment locations, economic development will be added to serve these destinations and gaming will become a significant revenue source for Kansas. Kansas gaming money will be retained in Kansas and new money will come to the Kansas destination locations.

Senate Bill No. 294 establishes the methodology to operate Kansas owned gaming. It is a market driven solution to provide for Kansas gaming in the best interest of Kansas. It should do this in a manner that is constitutional, maximizes revenue to the State, mandates accountability and provides a level playing field for interested parties.

Senate Bill No. 294 is drafted to work as presented. It creates the opportunity for state-owned and operated destination casinos. The lottery gaming machines and all other games would be owned or leased by the State. This is a crucial element to address the issue of constitutionality and to ensure proper accountability while maximizing controllable and understandable revenues to the state.

The proposed legislation requires the approval of the voters in the county where the facility would be located. The proposed destination casino must comply with any planning and zoning regulations of the city or county in which it is located. Local communities would determine if they want a destination casino in the jurisdiction.

Managers of the destination casinos will be selected from the private sector, they will have experience in the management of gaming related facilities and have clean backgrounds. To maintain the integrity of each destination casino and the reputation of the State of Kansas, the bill mandates a rigorous background investigation of prospective facility managers, principals, officers and directors.

Senate Bill No. 294 creates a level playing field that is fair to all prospective managers. The Kansas Lottery Commission would oversee a competitive process to locate and develop the destination casinos. The Kansas Lottery Commission has the expertise to oversee destination casinos that would create tourism, economic development and state revenue.

Indian Tribes, private entities and others with experience in the management of gaming related facilities could make a proposal to operate a destination casino. This is a very important provision in the bill. Not only is it the right thing to do, it stimulates competition among interested parties to create the most profitable destination casinos that should maximize revenue to the State.

Senate Bill No. 294 provides maximum oversight to ensure proper accountability. All gaming machines and other games would be directly linked on-line to a central lottery communications system to provide monitoring, auditing and other safe guards to the State.

Kansas owned gaming revenues go to education. A trust fund account would be established from which the State would receive not less than 65% of net casino revenues after repayment of advances for land, buildings and equipment owned by the State. Of that amount, 100% of the revenues received by the State would be used for necessary and appropriate funding of education.

This bill provides a method to solve the education shortfall with out a general tax increase. According to my conservative calculations the State should net in excess \$250,000,000 per year from the Lottery Gaming Facilities and the video lottery terminals at the Parimutuel Racing Facilities.

The destination casinos cannot be opened immediately. To address the urgent and immediate financial need for education funds, Senate Bill No. 294 provides that the State would receive an accelerated payment of \$15,000 per electronic gaming machine and video lottery terminals when the management contract is approved.

Mr. Chairman and members of the Committee, this bill does not favor Butler National in any of its provisions. If we make a proposal as the result of the passage of Senate Bill No. 294, we will be assured that our proposal will be evaluated on a level playing field with all other proposals.

I would like to leave you with one final thought. We all must do what is in the best interest of Kansas. I believe this includes all Kansans. Senate Bill No. 294 ensures proper accountability while maximizing revenues to the state. That should be good for all of us, particularly our Kansas students.

Thank you for your time and consideration.

Clark D. Stewart  
Butler National Corporation  
19920 W. 161<sup>st</sup> Street  
Olathe, KS 66062  
913-780-9595



P.O. Box 287  
Municipal Building  
Junction City, KS 66441

March 14, 2005

**OFFICE OF THE MAYOR**

Testimony to the  
Kansas Senate Ways & Means Committee

By Mick Wunder, Mayor, City of Junction City, Kansas

Members of the Senate Ways & Means Committee thank you for the opportunity to speak in support of Senate Bill 294. I'm Mayor Mick Wunder from Junction City.

Senate bill 294 provides a win/win solution for the citizens of Kansas. It helps the legislature solve financing issues through revenue growth. It enhances the State through tourism development. It creates jobs for Kansas and opportunities for Junction City and Geary County.

**Opportunity** - because of our **location**. You will find Junction City and Geary County nestled in the beautiful Flint Hills of northeast Kansas. We are 130 miles west of Kansas City and at the location that Interstate 70 intersects US Highway 77 allowing for easy access from all directions.

**Opportunity** - because we are a **community** on the move. You will find the US Army post of Fort Riley that serves as "America's War Fighting Center", as well as a center for training of numerous nationwide national guard troops. With its complement of troop and dependent services, Fort Riley has become a strong draw for both the active and retiring military personnel. These active and retired individuals contribute to the wonderful diversity of cultures in Junction City and Geary County. Thousands of people pass through the gates of Fort Riley each year. In 2005, we will receive an additional brigade of 3,400 soldier's, 4,300 dependents and 1,200 new civilian jobs. I can assure you that the military leadership of Fort Riley do not oppose the construction of a lottery gaming facility in our community. In a recent conversation with the Garrison Commander, he indicated that the military will not take a position one way or other. If you are told differently, that is erroneous.

**Opportunity** - because we have one of the best **tourist attractions in the State of Kansas**. According to figures from the Kansas Wildlife and Parks, over 1.3 million people visited Milford Lake in 2002, the largest reservoir in the state of Kansas.. A substantial number of these visitors come from out-of-state. We have thousands of acres of public hunting and fishing as well as two full service marinas to serve all boating and water sport needs. Within 25 miles (with a large number located right in Junction City)

Senate Ways and Means  
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Attachment 5

there are 5 public golf courses, 25 public parks, 4 country clubs, 9 theaters, 6 public tennis courts, and 20 + walking and nature trails.

**Opportunity** - because we are prepared to showcase not only the community but the **state**. We are the fishing capital of Kansas. The community successfully hosted the 2003 Cabela's National Walleye Fishing Tournament. In 2005 we are hosting the Kansas Wildscape Foundation Governor's Golfing & Fishing Classic, the Cabela's Ahearn Scholarship Fishing Tournament, Cabela's King Kat National Qualifier Tournament and the In-Fisherman Professional Walleye Trail Mercury National Championship. We were one of four Kansas communities that hosted the week long Kansas Humanities Council 2004 Chautauqua events. It celebrated our great history during "Bleeding Kansas".

**Opportunity** - because of **Interstate 70**. Over 36,000 cars pass through our City limits daily. John Q. Hammons recognized the opportunity in 2003 when he began construction on the John Q. Hammons Courtyard by Marriott Hotel & Convention Center that would be adjacent to our proposed lottery gaming facility site. The hotel has 119 rooms and an adjoining 30,000 sq foot convention center. This center offers convention/meeting space from 10 to 1,500 persons. It is the only convention center in Kansas located adjacent to I-70. In addition, in the next few weeks, the community expects to announce an \$18 million tourist destination attraction across the street from the convention center. The attraction will provide opportunities for families.

**Opportunity** because we have a willing **local developer**, Matlock Johnson, that has partnered with Butler National, a Kansas corporation to construct and operate a first rate destination lottery gaming facility adjacent to Interstate 70 and connect it to our recently opened John Q. Hammons Hotel/Convention Center. The site is ready to begin building on.

**Opportunity** - because Junction City has proved we have the capacity for economic development. We have proved we are being innovative in delivering services to our citizens. We have proven that we can manage our communities finances in a sound manner during times of adversity. Now it is up to the Kansas Legislature to give us the opportunity to develop a major tourist destination in our community. Give our citizens the right to determine our own destiny. Create a win/win solution for Kansas that will solve the lottery gaming issue permanently. A solution that will provide for a destination lottery gaming facilities that will attract out-of-state residents to Kansas. The travelers will have the opportunity to experience the great State of Kansas, and more importantly the wonderful rich heritage of the Junction City/ Geary County community. Whether it is catching a championship walleye, shooting a wild turkey, eating at one of our distinct ethnic restaurants, participating in the largest free 4<sup>th</sup> of July event in the State of Kansas, or supporting our troops around the world, Junction City/Geary County has it all.

Thank you for your time and consideration. I hope you will give the full Senate the opportunity to consider destination lottery gaming facilities for the State of Kansas and give our local citizens the right to vote on locating a facility in Geary County.



**Rodney D. Barnes**  
**City Manager**



*Junction City*

**CITY MANAGER'S OFFICE**

P.O. Box 287  
Municipal Building  
Junction City, KS 66441  
(785) 238-3103 ext. 300

March 31, 2005

Testimony to the Kansas Senate  
Ways and Means Committee

Thank you for the opportunity to speak in support of Senate bill 294. I'm Rod Barnes, City Manager for the City of Junction City.

The issue of lottery gaming facilities in Kansas comes down to providing an opportunity to fund education, develop tourism, create jobs, and grow revenues for the local communities and the State of Kansas .

Senate bill 294 provides the mechanism to the legislature to create a permanent funding stream for financing education (K through 16) without raising the property taxes. The potential dollars allocated for education in 2006 could be in excess of \$150 million. Finding other sources for revenue growth are key to insuring that we remain competitive in being touted as a location with reasonable property taxes.

Senate bill 294 provides a solution to the legislature to grow tourism. The State recently announced the "Kansas, As Big As You Think" campaign. While I'm not sure how that campaign can be tied to lottery gaming facilities, it certainly is about attracting out of state visitors to our State. Our community knows about attracting out-of-state visitors to our State. Over 70,000 National Guard soldiers passed through the gates of Fort Riley during the last year.

With over 36,000 cars going past our community per day, that means over 13 million people go down I70 every year. Attracting 25% or approximately 3.2 million people to stop at a lottery gaming facility and stay overnight should not be a big problem. This would help with the perception that we are a pass through state. The key is to develop a first class entertainment facility that people will stop and enjoy.

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Senate bill 294 gives the option for local control. It assists the politicians with allowing the local citizens to approve through a vote whether they want a lottery gaming facility in their community. That insures that the will of the people is heard. The local citizens know what's best for their community. Senate bill 294 provides that opportunity. Our local Chamber of Commerce polls indicate that our businesses support the construction of a lottery gaming facility in our community overwhelmingly.

The City of Junction City has not raised our mill levy for property taxes in the last seven years. However, the capital investment in our community is unparalleled. During that time, our City and County have constructed a second fire station, renovated the courthouse, constructed a \$1.3 million community center, expanded the hospital two times, built a \$1.5 county office building, renovated our downtown with a \$2 million grant and over \$11 million in private investment. We have constructed a second wastewater treatment plant, a second above ground water storage tank, developed numerous nature trails, constructed a new industrial park, demolished over 500 substandard housing units, \$750,000 for improvements to our Rathert Stadium baseball complex and constructed the Cloud County Community College satellite campus. Through this investment, we have the necessary infrastructure to support major tourist attractions in our community. Other communities are using lottery gaming facility revenues to provide funds for community improvements. Senate bill 294 could mean over \$2 million to the City and County per year. That means money to improve streets, improve public safety and improve the quality of life for our citizens.

According to the Springfield News-Leader newspaper published Monday, November 24, 2003, lottery gaming facility revenues in Tunica, Mississippi over the past 11 years paid for more than \$100 million in state highway and local road improvements, \$30 million for new public schools and teacher annual salaries, a \$29 million arena and exposition center, a \$26 Riverpark, a \$25 million airport expansion project, gave \$6 million toward a law enforcement center and fire protection equipment and facilities, a \$5.8 recreation and wellness center, \$3 million toward housing rehabilitation programs and support services for the elderly and disabled and \$2 million for a museum. According to articles in the same newspaper, a similar situation is occurring in Boonville, Missouri. There the City Administrator, Tracy Walkup was quoted as saying "It's been a source of direct funding for projects we'd only dreamed of."

I would like to fulfill the dreams of our community. As a local unit of government, we have few options to grow our revenues. One option that we do have, is to grow sales tax. Junction City's sales tax grew over 6% in 2003 and over 14% in 2004. This was at a time when nearly 7,000 troops were deployed from the community. One local business grew sales over 50% by relocating adjacent to Interstate 70. Another downtown home furnishings business attracts over 75% of its clients from out of town. A major destination lottery gaming facility in Junction City would help a key revenue source grow. Sales tax revenue in Junction City funds the police, fire, court, engineering, parks, recreation, inspection, administration, and streets. Growth in this revenue source is vital.

We know it takes innovative solutions to solve the financial challenges of today's world. Our community has found those innovative solutions through partnerships, through grants, through technological enhancements. We have partnered with the Kansas Department of Commerce, Kansas Department of Wildlife and Parks, United States Department of Agriculture, Rural Development, Corps of Engineers, U. S. Army, Unified School District #475, Geary County Convention and Tourism, Kansas Department of Travel & Tourism, Kansas Housing Finance Authority, National Trust for Historic Preservation, local financial institutions, community nonprofit organizations and private business. In addition, we have partnered with private business. This has included privatizing the City's public works functions, including street, sanitation, water distribution, sewer maintenance, motor pool, airport and building maintenance. Senate bill 294 provides the opportunity for a partnership between the State of Kansas, private business and local governments to answer the call of developing additional revenue for education.

We have expanded our Parks and Recreation Department through developing partnerships with our local school district for after school care. They also operate a roller skate rink through a partnership with a local nonprofit organization. Through that partnership, the community is going to renovate the skate center into a teen center using volunteer labor and a KANSTEP grant from the State of Kansas Department of Commerce. We are prepared to enter a partnership with the State of Kansas to develop a first class lottery gaming facility in Geary County.

Thank you for giving me the opportunity to talk about this important issue. I implore you to give our community the opportunity to choose our destiny and allow us to create economic development on a local level that benefits our citizens and the residents of the State of Kansas.

Submitted by

Rod Barnes, City Manager  
City of Junction City, Kansas

March 31, 2005

Testimony to the Kansas Senate  
Ways and Means Committee

Thank you for the opportunity to speak in support of Senate bill 294. Members of the Senate Ways and Means Committee, thank you for the opportunity to speak in support of lottery gaming facilities in Kansas.

Junction City and Geary County is at the dawn of a new horizon.

**The future of Fort Riley is bright.** Fort Riley serves as “America’s War Fighting Center”, as well as a center for the training of numerous nationwide National Guard troops. With the planned addition of 3,400 additional stationed troops and 4,300 dependants, **additional jobs in the region will be needed for the spouses of our soldiers.**

**The future of Geary County’s Tourism is bright.** Over 1.3 million people visit Milford Lake, the largest reservoir in the state of Kansas, each year. Many of the people visiting our region come here to enjoy our thousands of acres of public hunting lands and excellent fishing. Our community successfully hosted the 2003 Cabela’s National Walleye Fishing Tournament. We are the host of the 2005 Governor’s Fishing & Golfing Classic, and numerous other tournaments. We were one of four Kansas communities hosting the week long Kansas Humanities Council 2004 Chautauqua events. **We need additional activities for our out-of-state visitors to keep them in the area rather than driving through Kansas on the way to somewhere else.**

**The future of Geary County’s Economic Development is bright.** During the past 3 years we have attracted and/or retained over 1,825 jobs and negotiated investments worth \$74,000,000 dollars. Our community has worked hard to attract a diverse business base that includes such industries and companies as UPU Industries, Inc a plastic company from Dromore, Northern Ireland; Empire Home Services, LLC a Customer Service Center from Chicago, Illinois; Grocery Supply Company a grocery distribution company from Sulfur Springs, Texas. We have also assisted our local businesses such as Footlocker, Inc, Con-Agra, Inc, Millennium Rail, and Junction City Wire Harness, so that they may remain competitive in the Global Economy. **We need the lottery gaming facility to further diversify our economy so that our region is not at the mercy of the spending patterns of the federal government.**



**The future of Geary County Education is bright.** Over the past few years we have constructed a satellite campus for Cloud County Community College, reorganized the structure of the way in which 9-12 grade levels are taught, and have actively trained hundreds of citizens on how to start and operate their own businesses. **We need the lottery gaming facility to reduce the “Brain Drain” in our region. We loose many of our business, hotel and restaurant, computer and electrical engineering majors to other states do to the lack of opportunities in our region. We want to keep our Kansas State University, Manhattan Technical College, and Cloud County Community College graduates in our region and the State of Kansas.**

An example of the great benefits from a lottery gaming facility can be observed just north of the Topeka. It is Harrah’s Prairie Band Casino. Last year Harrah’s gaming facility invested an additional \$55 million into its community and created 100 additional jobs, bringing the total jobs created since the opening of the casino to 1,053 jobs. It also created 400 construction worker jobs for the period of 14 months. It supplies a payroll of \$23 million to its region with the average wage of \$14 per hour.

**Please provide us the opportunity to supply jobs to our citizens, an opportunity to stop the “Drive thru Kansas” traffic on Interstate 70, and a tax base to our community and state for the services and education upon which we all depend.**

It is now up to you to give us the opportunity to develop a major tourist destination in our community. A lottery gaming facility will attract out-of-state visitors. These visitors will get to experience the great State of Kansas, and much more.

Thank you for your time and consideration. I hope you will give our citizens the opportunity to consider lottery gaming facilities for the State of Kansas.

Larry F Cope



Executive Director  
JCGC Economic Development





**Testimony before the  
Senate Ways and Means Committee**

**March 14, 2005**

By:

Jeff Thorpe  
Board of Directors - Boot Hill Museum, Inc.  
&  
President, Boot Hill Gaming, Inc.

Chairman Umbarger, Vice Chairman Emler, Ranking Minority Member Barone and Committee Members:

Boot Hill Museum, through its subsidiary Boot Hill Gaming, speaks today in support of legislation to allow for expanded gaming in the State of Kansas.

Dodge City appreciates the kind reception by the Chair and Committee members in hearing our testimony in support of expanded gaming, specifically as it relates to Southwest Kansas. For us, this is simply family business – develop a partnership that will increase tourism, economic development to Kansas, and generate meaningful tax revenues at the State, regional, and local levels. Governor Sebelius, spoke to Dodge City residents and stated that her administration will *“look to partnerships with local communities for tourism and travel as a strategy for growing this economy”*. As one of Kansas’ primary tourism destination sites, Dodge City fully agrees.

We believe a challenge to your committee is to evaluate the impacts and effects of expanded gaming and to evaluate proposals that would:

- maximize tax revenue to the State of Kansas,**
- enhance entertainment opportunities in Kansas communities,**
- enhance economic opportunities in Kansas communities, and**
- provide a sustainable, realistic business model.**

Dodge City and Ford County leaders believe we have a sustainable business model that effectively answers each of these issues.

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o **Maximize Tax Revenue to the State of Kansas**

Based on conservative models, Dodge City has proposed tax distribution percentages in the past that would direct revenues to State general funds, State and Southwest Kansas tourism, and local City-County municipalities in excess of \$17 Million annually.

Analysis of conservatively projected revenues indicates that a destination casino located in Dodge City would provide that level of new tax, based on estimated gross annual gaming revenues of \$54 Million. Consultants engaged by the Kansas Lottery projected even higher gross revenues from a Casino in Dodge City, exceeding \$60 Million annually.

In addition, local tax revenues are estimated to be:

Ford County / Dodge City – Complex Property Taxes	\$ 1,250,550.
Local Transient Guest Tax – Casino Hotel	103,718.
Sales Taxes – Food & Beverage – Casino Complex	308,531.
Sales Taxes – Retail Sales & Entertainment – Complex	252,359.
Sales Taxes – Lodging – Casino Complex Hotel	<u>126,191.</u>
	\$ 2,051,349.
 Total Annual Tax and Economic Development Funding	 \$ 19,296,349.

o **Enhance Entertainment Opportunities in Kansas Communities**

In 1997 Dodge City said that it would become the entertainment capital of SW Kansas and voters made a commitment to that goal when over 70% approved a one-half cent sales tax to build entertainment facilities. Today, we have a nationally recognized motor-speedway complex, state-of-the-art baseball and soccer fields, and improved concert-arena facilities.

This *'entertainment facility'* sales tax had no sunset and included a voter commitment to fund a \$30 Million Convention/Special Events Center that is currently in the development stages. Ford County voters reaffirmed their commitment to this entertainment and tourism development tax in November 2004, again without a sunset.

It is a model of public-private partnership in the development of a destination casino/convention complex. The local voter approved a \$30 Million convention/special event center – a natural companion to a State owned and operated Casino and the private development of Hotel facilities – and will decide on site and design in an April 2005 vote. Gaming compliments the investment platform Dodge City and Ford County citizens have already made in their community and our objective to be the center of regional entertainment facilities.

Old west history clearly involved gaming parlors and games of chance. Dodge City has been a destination site in Kansas since 1872 and we're proud of our worldwide brand name. A gaming-convention complex is a comfortable companion to Dodge's invitation to revisit the legend and our promise of *'Old West – New Excitement'*.

## ○ **Enhance Economic Opportunities in Kansas Communities**

Dodge City needs to diversify from its concentration of employment in agricultural and meat processing industries. Tourism and entertainment represent a large segment of our economic base and provide significant opportunities for expansion.

With a capitalized investment between \$55–70 Million to complete the casino – hotel complex, and up to as much as \$30 Million in local sales tax for development of a convention/special events Center, the casino complex will provide for approximately 300 new jobs with estimated annual payrolls of nearly \$8 Million.

In addition, Non-lodging tourism spending is projected to increase by \$2,592,960 and gross lodging sales (Casino Hotel facilities) to increase by \$1,728,640. In 2002, combined lodging and tourism spending in Dodge City was estimated to be \$15,516,540. With the development of a destination casino/convention center/hotel complex, lodging and tourism spending is projected to increase 28% to \$19,838,140.

Dodge City has proposed 1.00% of gross gaming revenues be dedicated to fund the development of a grant pool, administered through the Kansas Department of Commerce Travel and Tourism Development Division, for member-entities of 'Wild West Country', an unfunded regional tourism group comprised of 22 counties in southwest Kansas. We believe that by funding such grant-pool, members of this southwest Kansas tourism coalition will effectively gain a participatory ownership in the Dodge City casino complex that directly enhances the tourism and economic development projects in their individual communities. In other words, each member-entity has the opportunity to directly benefit from expanded gaming through funding of their local individual tourism and economic development activities. Collectively, this enhances Kansas' ability to develop regional tourism themes that will significantly benefit all southwest Kansas communities.

## ○ **Provide a Sustainable, Realistic Business Model**

Dodge City has long maintained a seasoned tourism infrastructure through Boot Hill Museum, who greets over 90,000 visitors per year; a very active Convention and Visitors Bureau who coordinates our marketing and delivery of first class community services, and a Chamber of Commerce-Economic Development Corporation who continuously measure and guide our community development.

- Dodge City has funding in place to be a significant partner in a Destination Casino complex.
- Dodge City has several sites identified that are either already public owned, or available for siting of a destination complex.
- Dodge City is very experienced in the development and management of tourism services and companion industries.
- Dodge City has brought together a primary team of City, County, Economic Development Corporation, Family Facilities Advisory Board, Boot Hill Museum and Boot Hill Gaming representatives to facilitate the local control and success of an expanded gaming complex in our community.

Simply, Dodge City is prepared to expand its tourism services through the implementation of expanded gaming with probably the least difficulty of any city in



Kansas. Dodge City is prepared to provide a first-class destination gaming facility. It's a very natural extension of our existing brand name – known world wide.

- **Summary**

A commissioned poll in March 2003 revealed that 69% of Ford County residents approved the idea of an expanded gaming facility in Dodge City. A second poll of southwest Kansas residents provided a 61% approval rating. [Polls – conducted by High Plains Publishers, with a 3% +/- degree of error]

Dodge City wants to stress to the Committee the value of Kansas approving legislation providing for destination casinos. While we understand the complexity and confusion attached to many of the proposals for expanded gaming, none of that exists with the presentation you are hearing today.

We provide a clear, concise proposal for the approval of a destination gaming facility that is a partnership between our local community – the State of Kansas – and private development. We believe our proposal sets the standard for meeting the challenges of maximizing tax revenues, enhancing entertainment and economic opportunities, and being based on a solid business platform.

## **Gaming and Dodge City. It's very simple – it just fits!**

- **Exhibits**

Included with this testimony are several 'white-papers' that discuss specific areas of Dodge City's proposed Casino. These local reports were prepared as a discussion of the 2004 Governor's Bill for expanded gaming.

During the 2005 legislature, any final resolution on expanded gaming in Kansas will probably include much of what was proposed in SB-499 in 2004. With this in mind, these papers are included as they give specific answers to important questions that should be asked, including:

- **A Casino in Dodge City –**
  - Local Impacts and Revenues
  - Ownership and Financing
  - Oversight and Regulation
  - Selection and Local Vote
  - Feasibility of Casino Gaming in Dodge City



February 25, 2004

### **A Casino in Dodge City – Local Impacts and Tax Revenues**

Boot Hill Gaming, Inc., a subsidiary of Boot Hill Museum has been working with other Kansans to bring gaming to our state. We know that hundreds of thousands of people travel hundreds of thousands of miles each year to gamble. Why not bring some of them to Kansas – particularly Dodge City and southwest Kansas?

The local economic impact for Dodge City and the surrounding 22 counties in Southwest Kansas would be monumental. Based on conservative figures, we could expect more than 500,000 visitors each year in our area, visiting towns along the way to Dodge City.

The casino alone would create more than 300 new jobs, adding nearly \$8 million in new local payrolls.

Boot Hill Gaming's plan has provisions for payments to the State of Kansas, Ford County, the City of Dodge City and Boot Hill Museum. Besides helping the budget in Topeka, this plan would improve life in Southwest Kansas.

Senate Bill 499 provides specific percentages of gross gaming revenue to be paid to the state (minimum of 22%) and county (4% divided between City and Boot Hill Museum) and additional funding for regulation (2%) and problem-gambler treatment services (0.5%). When these percentages are applied to estimated gaming revenue, a casino in Dodge City would provide nearly \$16 million annually in new tax revenues.

That means approximately \$12 million annually in new tax revenue to the state – over \$800,000 annually to both Ford County and Dodge City - \$270,000 a year to fund quality problem-gambler treatment services- over \$1 million each year back into tourism development for the state, southwest region and Boot Hill Museum – and full costs of regulation and oversight by the state.

In addition, the casino and ancillary service facilities (hotel, dining, entertainment venue, and conference facilities) would add at least \$30 million of infrastructure to our County/City tax base and pay significant property taxes. Projections show that the destination casino enterprise would generate nearly \$700,000 annually in sales and transient guest taxes to Ford County and Dodge City.

Overall, the casino enterprise is projected to contribute nearly \$19 million annually in new tax revenues and regulatory fees – not including benefits of \$7 million in new payrolls.

When we look beyond the revenue capacity of the casino complex, the project will serve as a catalyst for a host of new and expanded retail and service businesses in Dodge City and add significantly to the value of regional marketing and tour promotion. It's conservatively estimated that non-lodging tourism spending and gross lodging property sales in Dodge City would grow by at least 28% as a direct result of the gaming – convention complex.

Private funding – managed locally for the benefit of Dodge City – a clear companion to our tax-supported entertainment facility, equals a tremendous step forward in diversifying our local economy, expanding our tourism and providing direct and measurable tax and financial impacts.



February 24, 2004

### **A Casino in Dodge City – Ownership and Financing**

Recently, there have been some misconceptions over who will own and operate a casino complex proposed to be built in Dodge City.

Boot Hill Gaming, Inc. (BHG) is a for-profit, wholly-owned subsidiary of Boot Hill Museum. It was formed to separate their lobbying efforts from Boot Hill's normal role as a museum and entertainment facility and charged with the idea of determining whether casino gaming would be beneficial for Dodge City. Boot Hill Museum's primary goal was to find a permanent revenue source that would ensure the museum's future. A percentage of gaming revenue was a very likely source, as pari-mutuel tracks are required to pay a percentage of their revenue to local non-profit organizations.

Senate Bill 499 states that a destination casino enterprise must include ancillary operations including service facilities such as a restaurant, hotel, entertainment venue, and meeting space that is a part of the destination casino complex. In other words, Dodge City cannot just build a stand-alone casino - it must include ancillary facilities and services.

The bill also states that a destination casino enterprise, including its physical infrastructure and real estate and all property and equipment shall be owned by the destination enterprise manager. BHG fits the definition of being the destination enterprise manager and may be the one that provides financing for construction and development of the whole complex, including the destination casino.

The bill requires that there be an investment in infrastructure of at least \$30 Million and must demonstrate through a market study that at least 15% of its gaming patrons would reside outside of Kansas. In addition, proposed legislation requires an accelerated payment of \$15,000 per slot machine (with 1,000 machines this will be about \$15 Million) that is due at the time of contract between the State and the destination enterprise manager. This is a 'pre-payment' of tax and recoverable over a five-year period.

The destination enterprise manager must also purchase or lease gaming equipment at a cost between \$10 and \$15 Million, including computer networks and communication systems with the state Lottery. However, to be in accordance with the Kansas constitution, the certificate of authority issued by the state will place "full, complete and ultimate ownership and control of the gaming operation of the destination casino with the Kansas Lottery".

Total costs should run between \$55 and 70 Million to build and equip the casino complex. Those costs would be funded privately by BHG - the casino operator that will eventually be hired - the hotel developer - or some combination of all three. There will be no tax-dollars used in building the destination casino enterprise.

There has been discussion that a Special Event Center, funded by Why Not Dodge sales tax revenues, could be located adjacent to the destination casino complex. This would represent use of tax-dollars, however that project would be independent from the destination casino enterprise.

The destination casino is not dependent upon having the Special Event Center, however BHG believes the Center may be more successful because of its correlation with the casino complex.



February 27, 2004

### **A Casino in Dodge City – Oversight & Regulation**

Boot Hill Gaming, Inc., a subsidiary of Boot Hill Museum, proposes to develop a destination casino complex in Dodge City that will include a casino – plus lodging, dining, conference meeting space, and entertainment facilities. The casino will be about 40,000 square feet and have approximately 1,000 slot machines.

According to the Governor's bill on expanded gaming (SB-499), the casino must purchase or lease all of the gaming equipment, computer networks and communication systems from the Kansas Lottery. The constitution of the State of Kansas, as amended in 1986, stipulates that the Kansas Lottery must 'own and operate' the gaming equipment and if a 'Certificate of Authority' was issued for a casino in Dodge City it must place "*full, complete and ultimate ownership and control of the gaming operation of the destination casino with the Kansas Lottery*".

So, in simple terms, how would that work? All of the slot machines are electronically linked through a computer network to the Lottery in Topeka. Literally, when a patron bets \$1.00 and pulls the handle – or pushes the button, that bet is immediately recorded on Lottery computer systems in Topeka. When winnings are paid out from that same slot machine, it is recorded on the Lottery computer. At the end of each day, the casino manager must transfer the net cash receipts (bets –less–winnings) to the Kansas Lottery. Once per week, the Lottery will pay the casino manager a percentage of those receipts that is negotiated in a contract. The Lottery also transfers a percentage of the gross receipts to the various taxing authorities named in the bill and ultimately in the contract, i.e., 22% to the State – 2% for regulation – .5% for problem gaming – 4% to Ford County for distribution, etc.

As you can see, the control of gaming revenues and cash are tightly monitored by the Kansas Lottery and net profit margins are actually negotiated by the casino manager in their contract with the Lottery. The casino manager must be able to meet all expenses and net profit margins within a specific percentage of gaming revenues that is stipulated in the contract. All cash receipts are controlled by the state.

All employees of the casino must pass background investigations and are subject to continuous monitoring by the state. Anyone involved in management of the casino, or the casino enterprise, including board members and directors, must also successfully pass a background investigation and are not allowed to place wagers in the casino they manage. The Kansas Lottery also provides supervision and oversight for the operation of the casino and may have gaming inspectors on duty at the casino facility at any time.

While the casino complex will be built with private funds, and the cost of that capitalized investment repaid by the owners, the actual net profit margins are controlled by their contract with the state and the public's interest in regulation and oversight is well served.



## A Casino in Dodge City – Feasibility of

You've read and heard the reports of a study of gaming in Kansas commissioned by the Kansas Lottery. The report was released during 2004. The surprise event was the focus on how successful a casino resort could be in Southeastern Kansas, namely Galena. Comparing Dodge City and the Galena area, the consultants stated in their report:

*"...a destination casino resort in or around the Galena, Kansas area makes more sense than one in Dodge City. With only 63,055 adults within 50 miles...the Dodge City market will simply not support a large destination casino. CCA estimates that the potential gross gaming revenue from a Dodge City casino would be \$62.2 million, compared to a market potential of \$254 million for a destination casino in Southeast Kansas"*

The report by CCA discusses the market potentials of Wyandotte County at \$235 million and Wichita, Sedgwick County area at \$191.1 million.

**We don't disagree! Dodge City has always presented itself as the 'fourth market' for expanded gaming in Kansas.**

The good news is that the consultants (CCA) estimated Dodge City gaming revenues at \$62 million, higher than Dodge City projects at \$54 million. CCA built their assumptions entirely on a trade-pull area – drive in patrons – not including Dodge City's existing tourism, bus tour development and world-wide brand name.

Dodge City is already one of Kansas' best destination sites which is part of the formula for success with expanded gaming opportunities.

**We don't have to create awareness – the World knows about Dodge City and its history of gaming since the 1870's.**

Dodge City has always proposed its site as the smaller of the four with an estimated cost of construction between \$50-70 million or less. In fact, the Governor's bill in 2004 (SB-499) was designed to favor a Dodge City type of facility by lowering minimum capital investment to \$30 million. The large complexes proposed in Northeast and Southeast Kansas are easily in the \$150 to \$200 million plus range.

**Dodge City is not the largest casino proposal in Kansas, but it is the most organized in the State, developed entirely by local non-profit and municipal interests, and dedicated only to the development of tourism in the 22 Counties of Southwest Kansas, new businesses and tax revenues. It is a project 'of-the-people – for-the-people' in Southwest Kansas.**



# Testimony

Unified Government Public Relations  
701 N. 7<sup>th</sup> Street, Room 620  
Kansas City, Kansas 66101

Don Denney, Media Relations Specialist 913.573.5544

## Senate Bill 294: Kansas Expanded Lottery Act Senate Ways and Means Committee, March 14, 2005

Every year since 1991, local government in Wyandotte County and Kansas City, Kansas has lobbied the Kansas Legislature for approval of expanded gaming in Kansas, and most specifically, **the opportunity for world-class destination casino gaming in Wyandotte County**. In 1996, the Citizens of Wyandotte County sent a very clear mandate when **82% of the electorate** overwhelmingly said they supported expanded casino gaming in their community. Today, the issue of expanded gaming is still a mandate of the Citizens of Wyandotte County. The Unified Government remains committed in its support of world-class destination casino gaming, which benefits the State of Kansas and includes **fair and equitable revenue benefits to the local community**. The Unified Government currently has a signed agreement with the Kickapoo/Sac and Fox Nations for a world-class casino to be located near Kansas Speedway. This agreement hinges on pending action by the legislature on a tribal compact negotiated between Gov. Kathleen Sebelius and the Kickapoo/Sac and Fox Nations. The Unified Government fully supports the compact.

For the past 10 years the State of Kansas has lost millions upon millions of Kansas dollars to the State of Missouri. A January 13, 2005 story in the *Kansas City Star* states: **"Sharp marketplace competition made 2004 the 10<sup>th</sup> consecutive year of growth for Kansas City's casino gaming industry."** Previous studies show that hundreds of thousands of Kansans frequent casinos that **do not benefit the State of Kansas**. This statement begs the question: How many hundreds of millions of dollars that could benefit the State of Kansas has been lost to other states because Kansas does not allow expanded casino gaming? Can the State benefit from casino gaming? Of course it could.

**A "no" vote to expand gaming in Kansas is not going to protect the Kansas economy or prevent Kansans from gambling at casinos in neighboring states. A "no" vote will deprive Kansas from generating revenue that its own Citizens would rather see benefit its own State. Kansans are already spending Kansas dollars in other states. A "no" vote prohibits the Kansas economy from benefiting.**

The Unified Government believes any gaming legislation should allow the State and local communities to be in control. There must be checks and balances that will provide strong oversight and accountability. The Unified Government continues to strongly support legislation that would benefit The Woodlands, which was at one time the #1 tourist attraction in the State of Kansas.

Casino gaming is wanted in Wyandotte County. It makes sense for our community, and it makes sense for the State of Kansas to benefit from casino gaming in Wyandotte County. It is time for the State of Kansas to benefit from a thriving industry that is benefiting greatly from Kansas dollars. It is time for the State of Kansas to benefit from a thriving industry that benefits hundreds of millions of dollars from tourists. The Unified Government and its Citizens, urges you to give strong consideration in supporting legislation that will bring world-class destination casino gaming to Wyandotte County.

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Good morning-

My name is Pam Davis, Westmoreland, in Pottawatomie County. I am currently employed at the College of Veterinary Medicine at Kansas State University in the Department of Anatomy & Physiology where I have been for 26 years. I have been a member of the Kansas Thoroughbred Assoc. since it began 18 years ago. I raise Thoroughbred race horses. I am also involved with 4-H as President of the State Horse Parent Action Committee and also currently a member of the Rural Agricultural Leadership Class, KARL Class VII.

My purpose is to present some information relating to the equine and agricultural economy in our state.

Since 1989 to 2003 there has been a change in number of horses Thoroughbred and Quarter Horses put into the Kansas Bred Program. Starting with 3230 and falling to 252, when you compare these numbers with states that have recently added alternative gaming the numbers of mares bred and stallions standing in those states have increased. These numbers greatly impact the equine industry in our state. With every mare bred there are usually 2 or 3 offspring too young to race, at home. All these animals have to be fed and cared for in order for them to develop into athletes. This fact impacts our agricultural business and Ag related occupations. Your feed and tack stores, farriers, veterinarians, custom hay producers, accountants, trainers, grooms, haulers, race tracks, training centers, and state agencies, all of these allow and supply jobs to our state.

As reported in the 1996 KS Equine Survey, 35.3 million dollars was spent of feed alone. Equipment purchased was 15.6 million. Just think of the dollars generated in property and sales tax. These dollars support local communities and the state.

The number of equine operations reported by type: 14,840 farms, typically family farms.

David Assmann, Pres, KS Thoroughbred Assn.

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Boarding and training facilities numbered 960. These operations encompass over 14 million acres with approximately 950 million acres devoted to the horse part of the farming operation.

As the racing industry gets stronger, that means the potential to generate dollars. We would bet that those dollars would go right back into the equine operation to expand and develop the farm's program, whether it be breeding or racing these horses.

Horses are labor intensive. Over \$14 million was reported in expenses for labor. I can speak to this subject first hand. I feed and clean stalls daily.

Another positive impact of the income from the racing industry is supporting equine and canine research at Kansas State. Since, 1990 to 2003 there has been over 2.6 million dollars spent as reported in the KS Racing Commission's annual report. This research has had a positive impact on our future veterinarians' education and has been major benefit to understanding our equine and canine athletes.

One of the problems we have as an industry is a lack of enhancement for our breeding and racing programs. Some people foal and breed their mares outside our state to take advantage of other racing and breeding programs. And many people race their horses outside the state as well. Now is the time to strengthen our racing program.

Ag in the Classroom is a great program for our students. Many states have a website that one can look up and learn about the state's agricultural products. Our state doesn't even mention horses on its page and we have great numbers, more than many states that have horses listed. We have the best situation for rearing horses, affordable land and a great agricultural infrastructure.

For the first time all the breed associations are united in the effort to expand and improve our racing and breeding environment. It is a MUST that we have quarantined live racing in any bill that is put forth. We also feel strongly that the number of 2500 slot machines is just not enough to grow our industry and improve the



agricultural economy based on this industry. Let's take this opportunity to make the breeding and racing industry strong. This can only happen with the support of you, our legislators.

# STAND UP FOR KANSAS



P.O. Box 780127 • Wichita, KS 67278 • (316) 634-2674

## Testimony To Senate Ways and Means Committee On Senate Bill 294

Glenn O. Thompson  
Executive Director, Stand Up For Kansas

March 14, 2005

### Introduction

Good afternoon Chairman Umbarger and members of the committee. Thank you for this opportunity to speak at this public hearing. I am speaking on behalf of Stand Up For Kansas, a state-wide coalition of grassroots citizens who oppose the expansion of gambling in Kansas. **We urge you to oppose Senate Bill 294.**

Let me begin by saying that this bill contains numerous deficiencies, some of which are listed in Exhibit 1. I encourage you to consider these significant problem areas.

Since Senate Bill 294 is a major policy decision, not only for the legislature but for the state, I will focus my time on the overall impact this bill would have on the state of Kansas and on local communities.

### **1. Casinos would be an extremely inefficient source of state revenue**

Senate bill 294 does not specify the percentage of revenue the state would receive from the casinos. However, if the state receives an average of 20% of casino revenue, Ks. citizens would have to lose over \$1.1 billion at the casinos annually to produce \$200 million annual revenue for education, as shown in the table below.

Revenue for education (\$ M)	\$ 200	\$ 200
Loss in lottery revenue	\$ 16	\$ 16
Loss in state sales tax (5% of casino revenue from Ks. citizens)	\$ 58	\$ 44
Total state revenue required (\$M)	\$ 274	\$ 260
State revenue (% of casino revenue)	20%	25%
Casino revenue (\$M)	\$ 1,372	\$ 1,041
Casino revenue from Ks. citizens (85%) (\$M)	\$ 1,166	\$ 885
Amount gambled for 90% payback (\$ billion)	13.72	10.41

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If the state receives an average of 25% of casino revenues, Ks. citizens would have to lose about \$885 million annually to produce \$200 million annual revenue for education.

These numbers are particularly significant, since:

- Studies indicate approximately 30% of gamblers in casinos are pathological or problem gamblers; (Exhibit 2)
- On average, 26% of gamblers at Harrah's casinos provide 82% of revenue. (Exhibit 2)

**So, a small number of Kansas citizens, many of whom would be pathological or problem gamblers, would lose approximately \$1 billion at the casinos and provide a large portion of the additional revenue for education.**

## **2. Depending on unstable and unpredictable revenues from casinos for funding essential state needs, such as education, would be bad public policy.**

Even Nevada Governor Kenny Guinn realized the folly of a state depending on gambling revenues for funding essential state services. In his 2003 state of the state address, Gov. Guinn said:

*"For years, our (state) economy has depended almost exclusively on tourism and gaming, rather than by exporting goods and services. Three out of every four of our tax dollars are collected from sales and gaming taxes; taxes vulnerable to swings in the economy... Unfortunately, this strategy has failed.*

*"My fellow Nevadans, the lesson from the last 20 years is clear; our revenue system is broken because it has relied on regressive and unstable taxes.*

*"Nevada ranks near the bottom in per pupil spending on education, and spends less per capita on Medicaid than any other state. If those two areas don't concern you, take a look at where Nevada ranks in high school dropout rates, teenage pregnancy, and children living in poverty."*

Closer to home, the history of Camptown Greyhound Park in southeast Kansas illustrates the difficulty of predicting gambling revenues. The track opened in May of 1995 and closed six months later. Revenue was less than one-half the forecast. Subsequently, Phil Ruffin, an experienced casino investor, purchased the track and restarted greyhound racing in Aug. 2000. He closed the track 74 days later. Revenue was less than one-half the forecast.

We agree with Governor Sebelius' statement in 2002, when she said using revenues from gambling to fund education and social services is "... *bad public policy. To look at this as a way to get out of our budget crisis, I think is ridiculous.*"<sup>1</sup>

In fact, this bill is not only ridiculous, it is an insult to the children and educators of Kansas. It sends the message that funding for educating our children and youth is a low priority, so using an unreliable revenue source is OK.

- 3. The state would own, operate, regulate and police the casinos,** encouraging corruption of government officials. How can the state regulate and police the casinos it owns? This is a recipe for disaster. That's why no other state is in the casino business.
- 4. The casinos would be regional casinos, not "destination casinos,"** pulling hundreds of millions of dollars from surrounding counties and businesses. The phrase "destination casino" is simply a marketing term used by promoters to imply that the casinos would be major tourist attractions. That simply won't happen. Most revenue will come from local citizens living within the surrounding 50-mile radius region.

In fact, the casinos will be similar to Kansas City riverboats, which obtain 78% of revenue from gamblers living within a 50-mile radius.<sup>2</sup>

This was confirmed by two studies reported last year, the Ks. lottery study and the Wichita Downtown Development study. Both estimated that casinos in Sedgwick County would obtain over 75 % of revenue from the surrounding 50-mile radius region.

## 5. The casinos would create thousands of new pathological gamblers

Accessibility is a key contributor to gambling addiction. The 1999 final report of the National Gambling Impact Study Commission states, "... *the presence of a gambling facility within 50 miles roughly doubles the prevalence of addicted gamblers.*"<sup>3</sup>

After casinos were introduced in Iowa in 1989 the number of problem and pathological gamblers increased from **1.7% to 5.4%** during the subsequent six years.<sup>4</sup>

The Wichita Downtown Development Corporation report, published last year, estimated a casino in Sedgwick County would create between **5,200 and 7,800** pathological gamblers.<sup>5</sup> In addition, tens of thousands of family members and other citizens -- spouses, children, parents, brothers and sisters, friends, and employers -- would become entangled in the addiction web.

Accessibility to casinos destroyed three of Kathy Bassett's family members. Kathy, a mother, wife and nurse living in Topeka, was a conferee at recent Senate and House committee hearings on casino bills. She was unable to take off from work today to attend this hearing, but she did submit a written testimony. I urge you to read her tragic testimony.

**Social costs for the new pathological gamblers in the state would be in the hundreds of millions of dollars.** Economists estimate that, on the average, a pathological gambler costs society **over \$13,000 per year** for crime, business expense, unemployment, money from family and friends, illness, social services, bankruptcy and other family costs.<sup>6</sup>

For example, last week we read that a former school superintendent in a small town 70 miles northeast of Kansas City confessed to stealing over \$844,000 from his school district to satisfy his gambling addiction problem.<sup>7</sup>

The Wichita Downtown Development Corporation report states the new pathological gamblers created by a casino in Wichita would cost the community -- you, me and other citizens in this region -- an annual social cost burden ranging "between \$71 and \$106 million."<sup>8</sup> And, this is for only one county!

The bottom line is the new casinos would cost Kansas citizens approximately \$2.00 in social costs for each \$1.00 received by the state.

## Conclusion

Senate bill 294 would have major adverse impacts, economically and socially, on the state and local communities surrounding the casinos. We urge you to oppose this bill.

## Sources

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- 1 "Sebelius: Using gambling to save budget is bad policy," Lawrence Journal-World, May 7, 2002
- 2 "Gaming Market Assessment Update: Woodlands Casino, Kansas City, Kansas, Prepared for: Kansas Racing LLC, St. Joseph, MO, by The Innovation Group, New Orleans, LA, December 2002, p. 12
- 3 Final Report, The National gambling Impact Study Commission, June 1999, p. 4-4
- 4 Rachel A. Volberg, "Gambling and Problem Gambling in Iowa: A Replication Survey," Iowa Department of Human Services, July 28, 1995.
- 5 Final report, "Economic & social impact analysis for a proposed casino & hotel," GVA Marquette Advisors, April 2004, Study commissioned by Wichita Downtown Development Corp., p. VII-9
- 6 Earl L. Grinols and David B. Mustard, "Business Profitability versus Social Profitability: Evaluating Industries with Externalities, The Case of Casinos, Managerial and Decision Economics, Vol. 22, Nbr. 1-3, Jan.- May 2001.
- 7 "Ex-superintendent admits losing school's \$844,478 on gambling," by Mark Morris, *The Kansas City Star*, Mar. 9, 2005.
- 8 Study commissioned by Wichita Downtown Development Corp., *op. cit.*, p. VII-9

Exhibit 1

**Senate Bill 294 Deficiencies**

**1. The bill is probably unconstitutional.**

Although the casinos must be "owned and operated" by the state to be compliant with the constitution, the bill requires the lottery director to contract out many responsibilities that are normally the responsibility of a business owner and operator.

For example, the Ks. lottery executive director would enter into a "management contract" with a "lottery gaming facility manager" to construct and manage a casino. (New Sec. 4) How can the state operate a casino if a contractor manages it?

In another place, the bill requires the wording on a county referendum to be, "Shall the Kansas lottery be authorized to contract for operation of a lottery gaming facility in \_\_\_\_\_ county?" (New Sec. 5)

The role of the "video lottery parimutuel sales agent" is even more confusing.

The bill states, "'Video lottery terminal management contract' means an agreement between the Kansas lottery and a video lottery parimutuel sales agent which governs the placement and operation of video lottery terminals, including allocation and payment of expenses, management fee and net lease, recovery of any accelerated video lottery net payment and the state's share of net video terminal income." (p. 22, lines 21-26) How can the state be the operator and contract out these tasks?

Furthermore, a video lottery parimutuel sales agent (not the state) will enter into an agreement with each parimutuel organization licensee. (p. 33, lines 11-14)

**2. Government corruption:** The bill contains no prohibitions on an elected official investing in or managing a casino. This is a sure recipe for government corruption at state and local levels.

**3. Referendums:**

a. The bill contains no minimum time between referendums if a referendum fails to pass. The minimum time should be at least 5 years. (New Sec. 5)

b. Only citizens in the home county of a casino would be permitted to vote in a referendum. Although citizens in surrounding counties would reap the adverse social and economic impacts of the casinos, they would have no voice on a proposed casino. (New Sec. 5)

c. Delete the section encouraging counties to conduct "advisory elections" (anytime after March 1, 2005) before the legislature approves the bill? (p. 12, lines 14-21)

**4. Underage employees:** The bill allows employees 18 and older to enter the casino area. (p. 17, lines 34-35) This should be changed to 21. Persons too young to gamble should not be exposed to a casino environment.

## 5. Video lottery terminals at parimutuel racetracks

- a. Although the horse and dog breeders would each receive 7% of net video lottery terminal income for purses, the home county and city would receive only 1.5% each. (New Sec. 33)
- b. Although present statutes limit Eureka Downs and Anthony Downs county racetracks to 40 days of live horse racing, this bill would permit the tracks to operate casinos year-round. (New Sec. 30)

## 6. Tourism and economic development

- a. The bill permits a casino investment of as little as \$25 million in destination zones other than southcentral and northeast if the investor can demonstrate through a market study that at least 25% of its gaming consumers would reside outside the state of Kansas. Since the casinos are being promoted as "destination casinos" to bring tourists and money into Kansas, the 25% should be changed to at least 50%. (p. 8, lines 23-31)
- b. The bill permits casinos with an investment of \$150 million or more in northeast and southcentral. Since the casinos are being promoted as "destination casinos," the bill should require that a proposal demonstrate through a market study that at least 50% of the revenue would come from out-of-state. (p. 8, lines 23-31)

## 7. Reporting

- a. Since the casinos are being promoted as destination casinos, creating tourism and economic development for the state, how will the state track and report on the amount of revenues from out-of-state gamblers? The reporting process developed and used by Missouri should be considered.
- b. The Missouri Gaming Commission provides detail monthly and annual financial reports to the public on the performance of each casino. A requirement for similar reports should be added to this bill.
- c. The bill states, "(K) The reporting and auditing of financial information of video lottery parimutuel sales agents, including, but not limited to, the reporting of profits or losses incurred by video lottery parimutuel sales agents and the reporting of such other information as the executive director may require to determine compliance with the Kansas expanded lottery act and the rules and regulations adopted hereunder. None of the information disclosed pursuant to this subsection shall be subject to disclosure under the Kansas open records act." (p. 26, lines 12-19) Since the casinos must be owned and operated by the state, why is this information not available to the public?



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## ***Casino Alert***

A Newsletter for Kansas Legislators

January 28, 2004

### ***26% of gamblers at Harrah's casinos provide 82% of revenue***

Christiansen Capital Advisors (CCA) is one of the leading consulting companies for the U. S. gambling industry. The December issue of CCA's "Insight" newsletter contains a significant statement on the relationship of Harrah's players (nationwide) to casino revenue:

"In 1994 Harrah's hired a chief marketing officer named Brad Morgan, ex-Procter & Gamble, ex-Visa, to mine its massive customer database. Mr. Morgan found, to no one's surprise in retrospect, that some Harrah's customers were very much more valuable than others. **Twenty-six percent of its players were contributing 82% of its gaming revenue and nearly all of its profits.** In 1997 Harrah's launched its Total Gold frequent-gambler card and began compiling detailed profiles of each of these **valuable customers.**"<sup>1</sup>

**The 26% is particularly significant, since studies indicate approximately one-third of gamblers in casinos are pathological or problem gamblers.**

For example ...

- A 1997 study commissioned by the state of Connecticut determined that **29% of the gamblers interviewed at Connecticut casinos were pathological or problem gamblers.**<sup>2</sup>
- A study commissioned by the state of Montana determined that in 1997 **37% of video gambling machine (VGM) revenues in the state came from problem and pathological gamblers.** At the time, Montana had licensed about 1740 gambling establishments, each authorized to operate up to 20 VGMs.<sup>3</sup>

**The state should not own and operate a business that  
obtains most revenue from addicted gamblers!**

1 "Casinos in 2010 - Part 1," *Insight*, Christiansen Capital Advisors, Version 1, Issue 12, Dec. 31, 2003, p. 13

2 WEFA Group, "A Study Concerning the Effects of Legalized Gambling on the Citizens of the State of Connecticut," Prepared for State of Connecticut, Department of Revenue Services, Division of Special Revenue, June 1997, p. 8-3.

3 Montana Gambling Study Commission Final Report, Chap. 6, 1998

**For additional information, contact Glenn Thompson at (316) 634-2674 or cell (785) 250-7070.**



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**Testimony re: SB 294**  
**Senate Ways and Means Committee**  
**Presented by Ronald R. Hein**  
**on behalf of**  
**Prairie Band Potawatomi Nation**  
**March 14, 2005**

My name is Ron Hein, and I am legislative counsel for Prairie Band Potawatomi Nation (PBPB). The Prairie Band Potawatomi Nation is one of the four Kansas Native American Indian Tribes.

The PBPB opposes SB 294.

### **PBPB Position and IGRA**

The Prairie Band Potawatomi Nation (PBPB) has consistently opposed legislation providing for the expansion of Class 3 gaming by the state of Kansas. The PBPB opposition stems primarily from the recognition that such gaming would negate the benefits that Tribal gaming provides to Native American Indian Tribes through the federal Indian Gaming Regulatory Act (IGRA.) IGRA was approved by Congress to promote economic development of Indian Tribes, and to provide for the regulation of gaming on Indian reservations. IGRA is administered at the federal level, but there are provisions for compacts to be entered into with the state, and the state is involved in the oversight of daily gaming operations. There are restrictions on the ability of the states to require payments to the state as a part of the consideration for gaming compacts.

### **Tribal Gaming Generates Tax Revenue and Economic Development**

Expanded gaming proponents contend that the state receives no revenue from Tribal gaming. It is correct that the Tribes do not pay a specified percentage of gaming revenues to the state. State and local government, school districts, and other taxing subdivisions benefit from Tribal gaming by virtue of numerous taxes paid as a result of Tribal gaming and the economic development that they currently generate for Northeast Kansas.

The myth that no taxes are generated from Tribal gaming exists because some people believe that Native Americans do not pay taxes. So there is no misunderstanding, all Tribal members pay federal income taxes. Regarding state income tax, only those Tribal members who both work and live on the reservation are exempt from state income taxes. Any Tribal member who lives off the reservation but works on the reservation and any Tribal member who lives on the reservation but works off the reservation pays state income taxes. A very small percentage of Tribal members both live and work on the reservation. Lastly, Tribal members pay sales taxes on purchases made off the reservation, which is virtually all purchases by tribal members.

Gaming is one of the few tools provided by federal law for Indian reservations to generate economic development and revenue necessary to run governmental programs. Other communities have expressed a need for gaming in order to help stimulate economic

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development. The areas being served by Tribal gaming and the reservations were severely economically disadvantaged before Tribal Gaming. I understand that prior to gaming, unemployment ran as high as 78% on the PBPN reservation.

Other communities have available economic and tax advantages that do not exist for the four Kansas resident Tribes. Gaming has been the principal economic development program which the federal government has supported the Tribes to utilize. Now, expanded gaming threatens that source of revenue for the Tribes and the areas surrounding the reservations.

With Tribal Gaming, dollars generated for the Tribes are used for community improvements and services such as fire protection, education, elderly programs, low-income housing, and other social programs and remain within the state as additional economic development for Kansas and local communities.

### **Gaming History and the Slippery Slope**

We have much to learn from the history of gaming from what has occurred with parimutuel gambling in Kansas, and with gaming in Missouri. Once the state starts down the slippery slope of casino gaming, the state will not be able to stop itself from falling further into expanded gaming as more groups and areas of the state demand to be included. If the intent of this legislation is to insure that everyone in the state is within close proximity to a gaming machine, then this bill fulfills that expansive intent.

A review of the history of parimutuel gaming in Kansas will demonstrate that even this massive gambling bill is probably not the end of efforts to expand gaming in Kansas. Gaming is likely to be a legislative issue every year for the next ten years as proponents seek greater and greater benefits, less and less restrictions, and more and more money. The legislature should not be deceived that even this massive of a gambling bill will put an end to expanded gambling.

### **Gaming Expansions Effect upon Economic Development and the State**

In estimating revenue benefits to the state of Kansas from gaming, this committee should take into consideration the impact on Lottery revenues, the impact on bingo revenues, the impact on charities running bingo operations, and the impact on tax revenue and economic benefits of other businesses in the state who will lose business to the expansion of gaming. Also, our own studies show that the economy of our Tribe, of the other Tribes, and of Northeast Kansas will be seriously impacted by expanded gaming.

Our studies also indicate that of the total market for gaming in Kansas, the majority of such market will consist of revenues now committed to existing Kansas businesses, not new "economic development" generated from out of state sources.

The legislature should not make any recommendation for expanded gaming without determining how much of the revenue generated by expanded gaming will come from dollars already being spent at other businesses within the state, and how much state and local tax revenues will be lost from those businesses.

### **Governor's Gaming Committee Findings**

The Governor's Gaming Committee spent a great deal of time researching gambling in the summer of 2004. Among other things, they made some findings as set out below:

"The state should expand gaming in the form of a large destination casino. ...The state should **avoid "convenience gaming,"** in which the gaming facilities would merely redistribute dollars within the region. ...The **best location in Kansas for a destination casino is Wyandotte County**...A destination casino should not be established outside of Wyandotte County without convincing and significant evidence of such a venture's viability."

The Governor's Gaming Committee went on to recommend: "A large destination casino—either state-owned and operated or Indian—in Wyandotte County, supplemented by slots at the tracks. ... 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." [Emphasis supplied.]

The Governor's Gaming Committee also noted the following:

"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). ... 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 agency.** ...**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.**" [Emphasis supplied.]

### **SB 294 Is Not the Way To Expand Gaming**

There are numerous problems with SB 294:

- 1) SB 294 does not meet the findings or the recommendations of the Governor's Gaming Committee.
- 2) SB 294 would provide for multiple casinos, which the bill calls "destination casinos". I find no requirement for assurances of bring substantial tourists into Kansas for the large casinos, and only 25% for the smaller casinos. This demonstrates very clearly that even the proponents feel that the vast majority of the gamblers are going to be pulled from the surrounding communities or, at the very least, from inside Kansas. This approach to gaming makes these "convenience casinos", which even the Governor's Gaming Committee recommended the state avoid.
- 3) The allocation of funds is not in the best interests of the State. Fifty percent (50%) of the gaming revenues after pay out of prizes, goes into an account (LGFOA-Lottery Gaming Facility Operating Account) to pay the expenses of the gaming facility operator in operating the gaming facility, which expenses are to include the interest on the bonds for the facility, and the other 50% is distributed as follows: up to 35% to the gaming facility operator (ostensibly as sheer profit to the operator because all of the expenses have been paid) and not less than 65% to the trust fund for the state to be used for school finance.

When SB 170 was first introduced (SB 170 is the bill from which many of the provisions of SB 294 have been taken), the split was 25% to the private gaming operator and 75% to the state. I guess the gaming speculators decided that they can seek more. [Greed is a big issue in the gaming debate.] Therefore they have upped their share in SB 294 to as much as 35%, and cut the state's share.

4) If I am interpreting the bill correctly, before the state's share is available for school finance, the state must pay back the bond principal on the facility. (Only the expenses are borne by both off the top before the state and the operator share the profits. It is also unclear whether there is a depreciation expense for the facility.

5) It appears that part of the bond money is used to pay the accelerated lottery gaming facility net payment. I may be reading the bill incorrectly, because many of these points were not made in the bill briefing which only touched on the positive aspects of this bill. However, my read is that the accelerated payment to the state is actually borrowed money from bonds. If I am correct in my reading, I believe the legislature should check and see if this is a violation of the cash basis law.

6) No study has been done by the legislature that 50% is the appropriate amount to be paid for expenses (not apparently counting depreciation on bond retirement expenses)?

7) No study has been done by the State as to whether 35% of the net gaming revenues (which is all profit since all expenses have already been paid) is a legitimate amount to pay a "manager"?

8) SB 294 provides for a certificate of authorization, which arguably gives the casino "manager" a property right in the management of the casino. **IF** this is a state owned and operated casino, the state ought to just enter into a contract that authorizes the state to terminate the contract if the manager or its agents commit malfeasance of any nature. Why such a long length of contract for the manager. How does that protect the state?

9) SB 294 has numerous detailed procedures and provisions which have NOT been included in versions of gambling legislation which the legislature has reviewed before this year. The legislature should make certain that they fully appreciate all of the financial and other details of SB 294, before taking action on the bill, if they truly are interested in maximizing revenues to the state from gambling. Some of the provisions of the bill appear that the "manager" is the real operator of the gaming, not the state.

10) SB 294 is dangerous because of the economic and ethical risks that are created, as noted by the Governor's Gaming Committee, with **one** state owned casino, let alone with the plethora of casinos and VLTs provided for in this bill. This bill will allow for five "destination" casinos and five pari-mutuel casinos. **This bill is gambling everywhere.** This bill virtually assures the state that gambling will be competing with other tax-paying businesses, and that the vast majority of the money "earned" from gambling will be sucked out of the Kansas economy. This will virtually guarantee an adverse economic impact on state revenues from existing businesses in the state. This bill is the epitome of what the Governor's Gaming Commission was trying to avoid as it looked to the interests of the state of Kansas.

11) It is interesting that the bill requires that the "manager", who is only contracted to "manage", must pay a \$15,000 per machine payment. Let's say I own a restaurant, and I

want to hire a manager. Do I tell the manager that he must buy the tables, and then pay me a \$15,000 payment per table in advance, to be later deducted from the income that MY business generates from those same tables. Does this make sense to anyone? Anyone who can't see through this little game being played by the prospective casino managers who are willing to invest in these accelerated payments, in my opinion, because they expect to share in the profits of gaming. And if they are sharing in the profits of gaming, that raises the question why isn't the owner, the state of Kansas, enjoying all of the profits?

11) Most importantly, previous testimony for this type of a bill indicated revenues to the state of \$200-250 million. If those numbers are accurate, with SB 294, the gaming operator would apparently receive \$100-125 million or more of the 'profits' after all expenses are paid. If the state truly wants to "own and operate" a casino they can do so without sharing the profits with the gaming operators. I understand that the bill calls them a manager, but do "managers" normally share 35% of the profits in a business without any risk, and then get to operate all of the ancillary businesses as part of the "enterprise" without sharing any profits with the "owner".

With regards to the VLTs, the result is nearly the same. Sales agents for the lottery normally make 5% commissions. Sales agents for the Lottery VLTs make 25% versus the 37.5% share the State, who "owns and operates" the VLTs, receives. So the VLT operators make 40% of the proceeds for "rental" of their space. Does this not strike anyone as being high? How many millions of dollars is this to the facility operators. Could the state not rent property to house these machines cheaper than that?

I understand why the gambling interests supporting this legislation would want to get the most money out of this legislation as they can. But I have trouble understanding why the legislature would even consider this venture using legislation written by the "manager"-operators. Although we oppose the expansion of State gambling, IF the State is going to expand gambling that is truly state owned and operated, the State should hire outside consultants, conduct a thorough study of the best terms for the State, and then write your own legislation which truly benefits the State rather than the gambling interests.

### **Mr. Lawrence Bill Brief**

I also want to address some statements made by Mr. Doug Lawrence at the unusual non-staff briefing which was held on this bill.

Mr. Lawrence's overview of the bill mentioned the potential revenue, but forgot to mention the revenue that will be lost for the state by reduced Lottery and Bingo revenues. He also forgot to mention the fiscal cost to the state by lost tax revenues from businesses currently paying taxes in Kansas when the "\$900 million gaming market" money is sucked out of the Kansas economy and away from other tax paying businesses. I believe the Legislature would want to know how much money from existing state revenues will be lost before making projections on net revenues to the state.

Mr. Lawrence's state that he would "guarantee" that the State of Kansas would receive \$82,500,000 million before the end of FY 2006. He forgot to mention, of course, that there is no guarantee of anything. Especially with a bill which, we believe, is in clear contravention of the Kansas constitution. If litigation occurs, as I suspect it will, the "guarantee" of which Mr. Lawrence spoke will be non-existent, the state will not have the

revenue they seek to fund the schools, and the state will be facing an even greater dilemma.

### **State Owned and Operated**

Lastly, the Governor's committee was very clear that the state must "own and operate" the gaming as required by the Kansas Constitution. There is no language in the Kansas Constitution about "certificates of authority", as set out in SB 294, which seems to be an unlawful delegation of legislative authority, in violation of the Kansas Constitution. This seems to be a "certificate of authority" to operate the casino, in violation of the Kansas Constitution. A casino which is not "owned and operated" by the state will not pass constitutional muster. The language in SB 294 is more like the "licensed and regulated" language used in the Kansas Constitution for pari-mutuel gambling, which the Governor's legal counsel has noted is a completely different standard than the "owned and operated" requirement of the Constitution for the lottery.

SB 294 and other such proposals which provide for non-state companies to be granted a "certificate of authorization" (which I note has been changed from last year's SB 499's "certificate of authority") to operate gaming will be subject to legal challenge, are likely to be challenged as being unconstitutional, and, in my opinion, are likely to be found unconstitutional.

### **If Gaming Must Be Expanded, How Should the State Expand Gaming**

As stated at the beginning of this testimony, the Prairie Band Potawatomi Nation opposes state expansion of gaming. But if gaming is to be expanded in Kansas, it should involve Tribal Gaming (including a Tribal destination casino in Wyandotte County if coupled with closure of such Tribes' existing casinos); it should be restricted (both in number of communities and number of slot machines); and it should be structured permanently to solve the issue for the future, most preferably through a constitutional amendment. Gaming should not be omnipresent, nor should it be substituted for or operated to the detriment of other businesses which have made Kansas great.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

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## TESTIMONY

TO: The Honorable Dwayne Umbarger  
And Members Of The  
Senate Committee on Ways and Means

FROM: Whitney Damron

On behalf of the:

- Kickapoo Tribe in Kansas
- Sac and Fox Nation of Missouri in Kansas and Nebraska

RE: SB 294 - An Act concerning lotteries; concerning electronic gaming,  
lottery facility games and other lottery games.

DATE: March 14, 2005

Good afternoon Chairman Umbarger and Members of the Senate Committee on Ways and Means. I am Whitney Damron and I appear before you today on behalf of the Kickapoo Tribe and the Sac and Fox Nation in opposition to SB 294 that would propose to dramatically expand gaming in Kansas in the name of school finance in a manner we believe to be irresponsible and inappropriate for our state, its citizens and our economy.

By way of information for the Committee, the Kickapoo Tribe and the Sac and Fox Nation have successfully owned and operated casinos on their respective reservations in Kansas dating back to 1997. The casinos were made possible by the Federal Indian Gaming Regulatory Act (IGRA), which was adopted by Congress in 1987. Compacts between the State of Kansas and its four resident tribes were negotiated in 1995.

IGRA has been universally cited as the only economic development tool provided for Native Americans that has been a success. Through tribal gaming, the four resident tribes in our state have created thousands of jobs for northeast Kansas, reinvested millions of dollars in tribal government infrastructure, contributed millions of dollars to public and private initiatives and become much more self-sufficient than they ever could have realized without the economic opportunities of gaming. Although the resident tribes are sovereign nations, they cannot abate taxes and provide other economic incentives to attract business and industry to develop on their reservations.

Senate Ways and Means  
3-14-05  
Attachment 13

In 2000, after more than eight years of gaming legislation failure, Governor Bill Graves sent a letter to the four resident tribes of Kansas encouraging them to join together to develop a large, 4-tribe destination resort and casino in Wyandotte County in hopes of resolving the annual debate over expanded gaming once and for all. Ultimately only the Kickapoo Tribe and the Sac and Fox Nation decided to pursue this initiative.

Since that time, tribal leaders have worked diligently, if not patiently, to negotiate agreements with the State of Kansas, the Unified Government of Wyandotte County and Kansas City, Kansas, the Board of Public Utilities and other parties as needed to further advance their project.

The Tribes have retained the services of leading professionals and contractors, including J.E. Dunn Construction, HNTB, Citigroup, Bank of America, Marnell Corrao Architects, Reece & Nichols Roberts and many others to assist them with this endeavor.

During the past two years, the Tribes have spent in excess of \$12 million in furtherance of their proposal, including the purchase of 80 acres of real estate located adjacent to the Kansas Speedway in Wyandotte County, which was consummated in July of 2004.

As members of this committee may be aware, the Kickapoo Tribe and the Sac and Fox Nation successfully concluded negotiations for a gaming compact with Governor Sebelius in the fall of 2004 after nearly two years of discussions and four months of intense negotiations with representatives of the Governor's office, which also included participation by the office of the Kansas Attorney General and the State Gaming Agency. Although that compact could have been considered last fall by the Legislative Coordinating Council, as we know, that was not done. However, both the Governor and the Tribes have indicated a willingness to submit that compact to the Joint Committee on State-Tribal Relations for its consideration during the 2005 legislative session.

SB 294 and other gaming bills do not necessarily preclude legislative consideration of a tribal compact, but such legislation obviously has ramifications for the Tribes' Kansas City project and their existing casinos, which is why we believe it is important to present these comments to you today.

## **General Comments, Observations and Questions relating to SB 294:**

### **Constitutional Questions.**

#### *Kansas Constitution*

*Article 15, §3c: State-owned and operated lottery. Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may provide for a state-owned and operated lottery, ...*



Each year the proponents of expanded gaming render their opinions on what Article 15, §3b means and how their proposal fits within the limitations of the *Kansas Constitution*. This year we even had a former Kansas Attorney General appear before the House and Senate Federal and State Affairs Committees on behalf of a gaming proponent to say what he meant when he opined on the subject of gaming in the 1980's. But the fact remains that there are not any cases on point in our state that clearly delineate what a "state-owned and operated lottery" is.

To better understand the limitations of the *Kansas Constitution*, my clients retained the services of Jim Borthwick of the Kansas City-based law firm Blackwell Sanders Peper Martin. Blackwell Sanders is a well-respected law firm headquartered in Kansas City with offices located around the world. Mr. Borthwick has over 40 years of trial and litigation experience with his firm and is highly-capable of rendering an opinion on this subject matter for my clients. To date the firm has rendered three opinions to the Tribes on gaming legislation and specifically the issue of state-owned and operated lotteries. Two of those opinions were delivered in 2004 and related to the history of state-owned and operated lotteries, both in Kansas and around the country, and upon gaming legislation that was being considered in 2004.

In February of this year, Blackwell Sanders rendered a third opinion based upon legislation under consideration by the Senate Committee on Federal and State Affairs (SB 168 and SB 170). While we have not requested a fourth opinion from Blackwell Sanders on the bill before you today, we believe a thorough understanding of the provisions of SB 294 would sustain the position that this legislation is yet another attempt to circumvent the constitutional limitations on expanded gaming.

Proponents of SB 294 go to great lengths in attempts to demonstrate how the gaming enterprise will be owned and operated by the state, including ownership of software, the lottery gaming facility and related controls. A thorough review of the role of the state in SB 294 and other gaming legislation is more appropriately described in terms of a regulatory role, not that of an owner and operator. While the state may own all or portions of the "game" and the "gaming floor" under SB 294, they clearly do not operate the casino or the games played at the casino. Specifically, I call your attention to pages 3-4 of the February 23, 2005 opinion by Mr. Borthwick for a discussion of this issue.

Suffice to say, there are interests in the state that will seek judicial review of any gaming legislation that may be passed in order to insure it is not in violation of the *Kansas Constitution*. Furthermore, it is unlikely any accelerated lottery gaming machine payments will be forthcoming to the State until such constitutional questions are answered with finality.

Distributed with our testimony today is a set of all three opinions with the section I have marked for your review.

## State Financing of Destination Resorts.

New Section 9 of SB 294 authorizes the Kansas Development Finance Authority to issue revenue bonds for the development and construction costs associated with a lottery gaming facility.

With five “destination development zones” designated in the bill, the State can expect to see requests for the issuance of hundreds of millions of dollars in such bonds, perhaps more. New Section 4 (d)(1) & (2) require a minimum investment of \$150 million for northeast and south-central lottery gaming facilities or in the alternative, \$25 million if at least 25% of its gaming consumers would reside outside the state of Kansas for all other development zones.

Under the bill, KDFA financing can include “development and construction costs”. Does this include legal and lobbying expenses? Does this allow for reimbursement of all expenses incurred by a developer prior to adoption of this legislation? Perhaps reimbursement for advertising expenses to support the local election on the gaming initiative? What other kinds of expenses can be paid for from this bond financing?

State financing of casinos insures there will not be a shortage of applicants for gaming licenses in all five of the destination development zones.

To further illustrate this point, we refer you to New Section 3 that outlines the process for issuance of a certificate of authorization by the executive director of the Kansas Lottery to a prospective lottery gaming facility manager.

That section begins as follows: *“The executive director shall issue a certificate of authorization to each prospective lottery gaming facility manager which meets the necessary requirements established by the executive director and as set forth herein.”*

{emphasis added}

That section further outlines several general factors the executive director shall consider, including financial responsibility, integrity, reputation and experience. Sections (c)(1-3) lists minimum criteria that appear to define the factors that can be considered, including financial resources of the applicant, whether the applicant is current in tax returns and three years experience in the management of a gaming-related facility.

New Section 3 (e) says, in part, “Subject to the requirements of this section, a certificate of authorization shall not be unreasonably withheld.”

{emphasis added}

You find similar language in New Section 4 relating to the approval of a management contract with a prospective lottery gaming facility manager holding a certificate of authority obtained under New Section 3.

New Section 4 states, in part: *“Approval of a management contract by the executive director and the commission shall not be unreasonably withheld.”*

{emphasis added}

### **Local Government Approval.**

New Section 4 (e)(12) requires a lottery gaming facility manager to obtain approval from the city, if the proposed facility is located within the corporate limits of a city and from the county if the proposed facility is located in the unincorporated area of a county.

This section would seem to imply that the only management contracts (and therefore casino proposals) that the state will have the opportunity to consider are those that have been first approved by a city or county.

As such, there is no assurance there will be any kind of a review process for competing applications and the state will be left to consider only those who have gained the requisite support of the local unit of government. Specifically, what restrictions, including public disclosure requirements and lobbying restrictions are applicable to gaming promoters that seek local government approval for their projects?

We would suggest this ability for gaming developers to seek local approval and thus exclude other proposals is an area of the bill that should be of great concern to the Kansas Legislature. I have included an article from yesterday’s *New York Times* that highlights this issue in regard to criminal charges filed in conjunction with a proposed casino in Erie, Pennsylvania.

Another point related to local approval centers upon the fact that a casino will necessarily have an impact upon an entire market area, not simply a single city or county. As the bill is written, a gaming facility manager could obtain approval for their project from a city that would have a significant impact upon other cities, counties or infrastructure located near the proposed site, but wouldn’t have to seek their approval, nor would they necessarily share in any revenues generated by the facility or its operations.

### **Ownership Concerns.**

SB 294 would require security, fitness and background checks pursuant to rules and regulations for “officers, directors, board members and key employees, specified by the executive director (of the Kansas Lottery), of video lottery pari-mutuel sales agents.

There does not appear to be a corollary requirement for the officers, directors, board members and key employees of the lottery gaming facility manager.

Perhaps one can assume the Kansas Lottery would use its broad authority to consider factors such as “financial responsibility, integrity, reputation, experience” and etc. that is found in New Section 3 to conduct similar reviews of those potential licensees. However, there is no specific requirement for disclosure of all ownership or business interests in the bill for either the lottery gaming facility manager, the ancillary gaming facility operations or the pari-mutuel track interests.

There also is no requirement for the disclosure of ownership interests for vendors and related parties that may seek to do business with the ancillary gaming facility operations.

SB 168, heard in the Senate Committee on Federal and State Affairs, proposed to exclude those with an ownership of less than 5 percent from disclosure and background investigation. Since SB 168 and SB 170 are portrayed as an amalgamation of those two bills, we would suggest this issue should be clarified with all ownership interests in the gaming facility manager, ancillary gaming facility operations and all vendors disclosed and subject to background checks.

### **Revenues.**

Proponents of SB 294 spoke to this committee last week and suggested their legislation was based in part upon the findings and recommendations of Christiansen Capital Advisors, which conducted a feasibility study of electronic and casino gaming in Kansas under a contract with the Kansas Lottery. That report, dated March of 2004, suggested the State of Kansas was a \$900 gaming market if destination casinos were developed throughout the state and video lottery machines were placed at pari-mutuel facilities.

While the numbers presented by CCA may be accurate, should their findings be the basis of expanded gaming legislation? Does the Kansas Legislature really believe it is appropriate to adopt a gaming plan that will remove \$900 million from consumers pockets and redistribute it through payments to gaming promoters, horse and greyhound subsidies and the State of Kansas (albeit it in the name of education)?

The CCA study does not tell us where this \$900 million will come from and who will be negatively impacted by this kind of a proposal. While we can look at demographic information and marketing studies, there is no mistaking the fact that casinos draw patrons predominantly from within their relevant market area. Casinos and video slot parlors at pari-mutuel racetracks will necessarily impact existing businesses in Kansas and fundamentally alter our state’s economy forever.

Gaming promoters suggest the state will receive approximately \$290 million a year from a fully-developed gaming industry as proposed in SB 294.

Under SB 294, gaming facility managers would reap 17.5 percent of revenues for their management services while pari-mutuel track owners would receive 25 percent of net revenues.

\$200 million annually to these interests would seem a bit generous for something that is required to be "state-owned and operated".

### **Summary Comments.**

The Kickapoo Tribe and the Sac and Fox Nation do not believe it is appropriate for the State of Kansas to become the first state in the country to own, operate and regulate their own casinos. We believe the state's appropriate role in regard to gaming is that of a regulator.

Gambling revenues are not the answer for a state's need for new revenue. If responsibly enacted, expanded gaming in an appropriate market area can work well with other existing amenities to attract even more tourists and provide additional revenues to the state, but gambling alone will not solve a state's budget problems. If implemented irresponsibly, as in SB 294, gaming will only reallocate spending priorities of our citizens and negatively impact existing businesses throughout our state.

Gaming proponents have not demonstrated an ability to show restraint during the 15+ years the Legislature has rejected their proposals. To the contrary, each year the proposals seem to get bigger and more expansive.

Some suggest the issue will be resolved once the Legislature finally passes a gaming bill. We would suggest that will only be the beginning. Gaming promoters have arbitrarily designated 5 casino locations in SB 294 with no limit on the number of casinos in those geographical areas. The bill also includes 5 pari-mutuel tracks that can receive video lottery terminals. But nothing in the bill can stop those left out of the bill from coming to Topeka in the future to seek enabling legislation for their city or county.

The legislature annually hears from those concerned that Kansans go to Missouri, Colorado or Oklahoma to gamble and the state does not receive any of the revenues. Are you prepared for the argument that residents of Butler County travel to Sedgwick County to gamble, but the residents of Butler County do not receive any of the revenues from Sedgwick County casinos? This argument will be repeated throughout Kansas should this legislation be approved, as those left out seek to obtain their very own holy grail of economic opportunity: A state-owned and operated casino, paid for through K DFA bonds, no less.

In contrast, the tribal gaming compact negotiated between the Governor and the Kickapoo Tribe and the Sac and Fox Nation would responsibly expand gaming into the only destination resort market in the State: Wyandotte County near the Kansas Speedway and Village West redevelopment area. The amenities of Village West and the Kansas Speedway annually attract in excess of 10 million patrons to that area. There are also 5 riverboat casinos located within a few miles of that site, making it uniquely appropriate for expanded gaming in Kansas.

As negotiated in 2004, the compact would provide significant revenues to the State and local government with a revenue sharing portion that by percentage would be among the highest levels of revenue sharing for a Native American casino and a state. We conservatively estimate a tribal casino would annually generate in excess of \$40 million in direct revenue for the state through a revenue sharing agreement, \$10 million from increased sales, property and payroll taxes generated by the facility and an additional \$10-12 million for Wyandotte County and Kansas City, Kansas.

Furthermore, meaningful restrictions on further expansion of gaming in our state contained in the compact will inevitably impose some finality on the annual legislative debate over gaming and halt the flow of hundreds of thousands of dollars gaming interests annually bring into Kansas politics. As drafted, the State would lose tribal gaming revenues if it expands gaming beyond the limitations contained in the compact.

As proposed last year, the compact would limit any future expansion of gaming in Kansas to no more than 600 state-owned and operated gaming machines at each of the three major pari-mutuel tracks in our state. Attached to my testimony is a spread sheet that estimates the revenues 1,800 state-owned and operated lottery gaming machines would produce for the State of Kansas, pari-mutuel track owners and the horse and greyhound industry if adopted with revenue percentages outlined in the document. As you can see, 1,800 state-owned and operated machines could produce over \$90 million annually for the State with a 60% revenue share for the State. Subsidies for the horse and greyhound industry would be significant under this scenario – in excess of \$10 million annually. Pari-mutuel track owners also do well, with over \$30 million generated for them.

These percentages are in line with state-owned and operated slot machine legislation found in other states and reflect a higher percentage for the state than that typically seen from industry-generated legislation.

The scenario outlined in the compact for pari-mutuel facilities is modeled after an existing program in New Mexico and a program adopted in Oklahoma in 2004. Limited placement of state-owned gaming machines at pari-mutuel tracks can generate significant revenues for the State and the pari-mutuel industry without unduly disrupting the entire state's economy.

In summary, implementation of a broad expansion of gaming as outlined in SB 294 will meet with strong constitutional challenges and necessarily delay any financial benefits of expanded gaming for some time. But if proponents are ultimately successful, then the State's economy will be fundamentally altered forever and Kansas residents and businesses will suffer a tremendous consequence as a result of this legislation.

Kansans appear willing to accept an expansion of gaming in Wyandotte County. The Kickapoo Tribe and the Sac and Fox Nation respectfully suggest the most responsible, legal and appropriate way to expand gaming in that area is through a tribal-owned, state regulated casino. Furthermore, it is in the best interests of the State of resolve the issue of expanded gaming with some finality and the best way to do that is through a tribal gaming compact. And finally, if it is the will of the Legislature to subsidize the pari-mutuel industry, then a limited number of machines at the three major pari-mutuel tracks will provide the State with a significant amount of revenue and also provide a significant financial benefit to the track owners and the horse and greyhound breed industry in our state.

On behalf of the Kickapoo Tribe and the Sac and Fox Nation, I thank you for your attention to my comments and would be pleased to stand for questions.

Whitney Damron

Attachments

March 13, 2005

ERIE JOURNAL

## Mayor's Woes Reflect a City's Concern Over Gambling

By JAMES DAO

**E**RIE, Pa., March 11 - The one-armed bandits have not arrived. The casino has not even been built. But with the prosecution of its dimple-chinned mayor, this industrial town on the bluffs of ice-clogged Lake Erie is at the center of a debate over Pennsylvania's newest legalized vice: slot machine gambling.

In a preliminary hearing this week, state prosecutors began outlining criminal charges against Mayor Richard E. Filippi, 38, asserting he conspired with friends and law partners to buy land around a shuttered paper plant in the expectation that it would become the site of a horse track and slot-machine parlor.

Mr. Filippi, the prosecutors say, planned to help the developers win approvals and tax breaks, then pressure them into buying his properties. The mayor and two other defendants have pleaded not guilty.

To gambling opponents, Mr. Filippi's case, which is not expected to be resolved before the Democratic primary on May 17, in which the mayor will face five challengers, has become a morality play about the corruptibility of elected officials and the seductive song of gambling.

"When they passed the slots bill, there was wagering in the Capitol about how soon the first municipal official would be indicted," said Michael Geer, president of the Pennsylvania Family Institute, a nonprofit policy group that opposes gambling. "I'll bet you now that no one thought it would be this fast."

"What people are witnessing in Erie," Mr. Geer said, "will be business as usual in other jurisdictions that legalize casino gambling."

But for many in Erie, the mayor's case is just a backdrop to a broader debate about the spoils of gambling. Will slot machines deliver the tax revenues, jobs and property tax reduction its proponents have promised? And if they do, who will reap those benefits?

Local officials are already feuding over how to allocate \$10 million in projected annual tax revenues from a proposed slot machine parlor and horse racing track in Summit Township, a suburb of Erie.

County officials want the money divided among the county, the city and other municipalities, while the township is proposing to return \$5 million a year for five years to subsidize developers' costs.

There are also growing concerns about Gov. Edward G. Rendell's signature provision in the gaming law: property tax rebates financed by as much as \$1 billion in slot machine revenues per year. To



qualify, school boards must relinquish their powers to increase local property taxes, leaving future increases to voter referendums.

The plan was Mr. Rendell's major selling point for the gaming bill last July, but many school boards now say they may forgo the rebates because they will hamstring their abilities to raise money for crises or capital programs.

"The school boards and superintendents don't know what to do," said Jacob A. Rouch, president of the Erie Regional Chamber and Growth Partnership.

Mr. Rouch said that many business leaders viewed a slot machine parlor in Summit as a welcome tourist attraction. But they also question whether it will do much to revitalize the region's economy, which lost 4,000 manufacturing jobs from 2000 to 2003.

"I think most business leaders don't view this as a savior," he said. "We may be just transferring money that was already here."

Proponents of gambling say it will help transform Erie from a blue-collar town of machine shops and plastic manufacturers into a major tourist destination. Already, they say, the city has one of the finest beaches in the Great Lakes, a seven-mile stretch of pebble-strewn sand along a peninsula known as Presque Isle.

"Manufacturing is fighting to stay important, corporations have left town," said Nick Scott Sr., president of a family-run business that operates hotels and restaurants in the region. "But the resorts and service sector is growing." From its earliest days, Erie was a fishing and shipbuilding town, whose workers built the fleet with which Commodore Perry faced the British Navy during the War of 1812. It became a way station for European immigrants and Great Lakes commerce in Minnesota iron ore and Appalachian coal. But Erie never grew very large, holding its place as Pennsylvania's third-biggest city until the 2000 census showed it slipping to fourth, behind Allentown, with 103,700 residents.

Today, the city is a patchwork of blue-collar neighborhoods, dotted by wood-frame homes, corner taverns and churches. Its favorite son, Tom Ridge, the former governor and former secretary of homeland security, grew up in subsidized housing here.

This week, in a courtroom nestled amid snow-swept vineyards of Concord grapes east of Erie, prosecutors began outlining their case against Mr. Filippi.

But the case was thrown into disarray when prosecutors requested that the judge, Frank Abate, withdraw, asserting that he improperly recommended that the parties reach a plea agreement.

With a hearing scheduled on the prosecutors' petition next week, Erie is consuming a daily diet of news about the case. Even some opponents of gambling express sympathy for the mayor. "I feel bad for the guy," said Lee Coleman, a retired engineer. "He's got a wife, children. It's just that the gambling promoters throw so much money around, it's corrupting."

To others, Mr. Filippi's travails have created wistful dismay about lost honor, both his and the city's.

"There's a lot of disappointment," said Mr. Rouch, a friend and former classmate of Mr. Filippi. "But we're not going to be defined by one event. This is not how Erie does business."

### Estimated Revenues/Machine/Site

SITE	\$\$ per Machine per Day	No. of Days of Operation	Total \$\$ per Machine	No. of Machines	Total \$\$
Wichita	\$ 245.00	365	\$ 89,425.00	600	\$ 53,655,000
Pittsburg	\$ 250.00	365	\$ 91,250.00	600	\$ 54,750,000
Kansas City	\$ 213.00	365	\$ 77,745.00	600	\$ 46,647,000
TOTAL ALL SITES					\$ 155,052,000

### POTENTIAL SPLIT OF NET SLOT REVENUES

Wichita		
# Machines		600
Revenue		\$ 53,655,000
State	60.0%	\$ 32,193,000
Local	1.0%	\$ 536,550
Terminal Providers	8.5%	\$ 4,560,675
Central System	2.5%	\$ 1,341,375
Purse	6.5%	\$ 3,487,575
Problem Gambler		
Programs	0.5%	\$ 268,275
Regulatory	1.0%	\$ 536,550
Facility Operator	20.0%	\$ 10,731,000

Pittsburg		
# Machines		600
Revenue		\$ 54,750,000
State	60.0%	\$ 32,850,000
Local	1.0%	\$ 547,500
Terminal Providers	8.5%	\$ 4,653,750
Central System	2.5%	\$ 1,368,750
Purse	6.5%	\$ 3,558,750
Problem Gambler		
Programs	0.5%	\$ 273,750
Regulatory	1.0%	\$ 547,500
Facility Operator	20.0%	\$ 10,950,000

Kansas City		
# Machines		600
Revenue		\$ 46,647,000
State	60.0%	\$ 27,988,200
Local	1.0%	\$ 466,470
Terminal Providers	8.5%	\$ 3,964,995
Central System	2.5%	\$ 1,166,175
Purse	6.5%	\$ 3,032,055
Problem Gambler		
Programs	0.5%	\$ 233,235
Regulatory	1.0%	\$ 466,470
Facility Operator	20.0%	\$ 9,329,400

Total		
# Machines		1800
Revenue		\$ 155,052,000
State	60.0%	\$ 93,031,200
Local	1.0%	\$ 1,550,520
Terminal Providers	8.5%	\$ 13,179,420
Central System	2.5%	\$ 3,876,300
Purse	6.5%	\$ 10,078,380
Problem Gambler		
Programs	0.5%	\$ 775,260
Regulatory	1.0%	\$ 1,550,520
Facility Operator	20.0%	\$ 31,010,400

## LIMITED SLOTS REVENUE PROJECTION

Projections of slot revenues based on 600 machines at each of Kansas' three pari-mutuel tracks were developed utilizing WPU/day data from 3 sources:

- GTECH/Post Audit Study 2002
- GVA Marquette Advisors April 2003 Market Study
- Christiansen Capital Advisors March 2004 Report for Kansas Lottery

### Wichita

GTECH's \$245 WPU/Day projection from the 2002 Post Audit Report is utilized. With a limited number of slots in this market and no destination casino downtown, GTECH's \$245 WPU/Day projection is realistic and perhaps low, given that its 2002 projection is based on 1675 machines at the track. The Christiansen Study's \$191 WPU projection in 2004 was based on the market potential for 800 slot machines at the track and another 1500 or more slot machines located at a nearby destination casino downtown.

### Pittsburg

A \$250 WPU/Day projection conservatively blends Christiansen's \$ 341 WPU/Day projection for 600 slots at the track and GTECH's 2002 \$200 WPU/Day projection for 1350 machines at the Track.

### Kansas City

A \$213 WPU/Day projection is used averaging GVA Marquette and Christiansen WPU projections for slots at the Woodlands. GVA Marquette projected WPU of \$160/day for 500 slots at the Woodlands with a destination casino nearby. This is significantly more conservative than Christiansen's projected \$266 WPU/day for 800 machines at the track with a destination casino nearby.

### Summary

Gaming revenues from 600 slots at three pari-mutuel tracks in Pittsburg, Wichita and Kansas City using the WPU/Day projections above and the assumed revenue allocations in the attached spreadsheet are projected to annually generate over \$90 Million for the State, over \$30 Million for track operators and over \$10 Million for purses/breeds.

# Constitutionality of Proposed Gaming Legislation in Kansas

February, 2005

## Information Prepared For The:

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(785) 486-2131

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## Legal Research Conducted By:

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For more information on the Kickapoo/Sac and Fox Gaming Proposal or information contained in this report, please contact:

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February 22, 2005

The Honorable Pete Brungardt, Chair  
And members of the  
Senate Committee on Federal and State Affairs  
State Capitol Building, Room 143-North  
Topeka, Kansas 66612

Re: Constitutionality of Proposed Gaming Legislation in Kansas

Dear Chairman Brungardt and Members of the Committee:

In late 2003, my clients, the Kickapoo Tribe and the Sac and Fox Nation, retained the services of Mr. Jim Borthwick of the Kansas City, Missouri-based law firm, Blackwell Sanders Peper Martin, LLP in order to ascertain the constitutionality of several gaming bills that were scheduled to come before the 2004 Kansas Legislature as well as review gaming legislation had been considered by the Kansas Legislature in earlier legislative sessions.

Blackwell Sanders Peper Martin is recognized as one of the top law firms in the Midwest with an emphasis on commercial litigation. The Firm is headquartered in Kansas City, Missouri and has offices throughout the United States and around the world.

Mr. Borthwick provided an opinion to the Tribes dated January 8, 2004 that reviewed gaming legislation introduced in the 2003 legislative session, researched constitutional law in Kansas relating to gaming and lottery and germane case law from other jurisdictions. Later that year, several new gaming bills were introduced, including SB 499, which was known as the Governor's gaming proposal for 2004. In light of new legislative proposals coming forth last year, we asked Mr. Borthwick to review those bills and provide the Tribes with an updated opinion on their constitutionality. His second opinion is dated March 18, 2004.

In 2005, so far we have two more gaming proposals encompassed in three bills (SB 168, SB 170 and a companion bill to SB 168 in the House, HB 2415) as well as a video lottery bill in the House, which has not been reviewed (HB 2486). The Tribes requested Mr. Borthwick review those bills and provide them with a third opinion on the constitutionality of those gaming proposals. That opinion is dated February 21, 2005.

The Honorable Pete Brungardt  
Page Two of Two  
February 21, 2005

Included in this packet of information are all three opinions. All three opinions call into question the constitutionality of virtually all gaming proposals considered by the Kansas Legislature in recent years.

We are pleased the Committee will take the time to hear from Mr. Borthwick on the constitutionality of gaming in Kansas.

We invite you to read through these well-researched legal opinions on the constitutional requirements for a state-owned and operated lottery and contrast those requirements with the bills you have before you.

Thank you for your attention to this information. Please do not hesitate to contact me if we can provide additional information or respond to questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Whitney Damron".

Whitney Damron

LAW FIRM

**BLACKWELL SANDERS PEPPER MARTIN**  
LLP

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February 23, 2005

Kickapoo Tribe in Kansas  
Attn: Ms. Emily Conklin, Vice Chair  
1121 Goldfinch Road  
Horton, Kansas 66439

Sac and Fox Nation of Missouri in KS and NE  
Attn: Ms. Fredia Perkins, Vice Chair  
305 North Main Street  
Reserve, Kansas 66434

**Re:** Constitutionality of Proposed Gaming Legislation in Kansas

Dear Ms. Conklin and Ms. Perkins:

In light of questions asked by Senator Vratil at the Senate committee hearing yesterday, we have decided to make two minor changes in the wording of our letter of February 21, 2005.

The first change is to add the words "on behalf of the State" to the next-to-last sentence of the paragraph which ends at the top of page five. The sentence will now read as follows:

But the Lottery Gaming Facility Manager purchases or leases all lottery facility games on behalf of the State.

The second change is that in the third full paragraph on page five, the fourth and fifth sentences are deleted, and the last sentence of the paragraph is changed to read as follows:

These provisions further demonstrate the operation of the casino by the private entity rather than the State because it is the Lottery Gaming Facility Manager who pays the revenue to the State (after generating the revenue from the gaming public), and it is the Manager who pays all of expenses of the operation of the Lottery Gaming Facility (Sec. 8(a)(b)).

In all other respects, the statements made and the opinions given in our letter dated February 21, 2005 remain unchanged.

We are enclosing a new opinion letter with today's date which incorporate these changes.

KC-1262164-1

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LLP

February 23, 2005

Very truly yours,

*Blackwell Sanders Peper Martin, LLP*

JB/cdc  
Enclosure

KC-1262164-1



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February 23, 2005

Kickapoo Tribe in Kansas  
Attn: Ms. Emily Conklin, Vice Chair  
1121 Goldfinch Road  
Horton, Kansas 66439

Sac and Fox Nation of Missouri in KS and NE  
Attn: Ms. Fredia Perkins, Vice Chair  
305 North Main Street  
Reserve, Kansas 66434

**Re: Constitutionality of Proposed Gaming Legislation in Kansas**

Dear Ms. Conklin and Ms. Perkins:

You have asked us to give our opinion whether Senate Bills 168 and 170, which have been introduced into the 2005 session of the Kansas Legislature, and which would authorize certain gaming activities in the state, would, if enacted, violate the Kansas Constitution.

We believe that the provisions providing for casino gambling in Bills 168 and 170 are clearly unconstitutional. The video lottery terminal provisions of Senate Bill 168 raise some constitutional issues, but they may well pass the constitutional test.

In January 2004 we provided you with our opinion concerning the requirements of the Kansas Constitution relating to gambling activities. We attach a copy of that opinion to this letter for your reference.

In our earlier letter, we noted that the Kansas Constitution authorizes the Legislature to "provide for a state-owned and operated lottery." The Kansas Supreme Court has defined "lottery" to include any form of gambling containing the elements of consideration, prize and chance. The Supreme Court has said that the words "state-owned and operated" must be construed to mean what the words imply to the common understanding of the average person, and particular attention should be paid to the intent and understanding of the people at the time the constitutional language was adopted. We discussed in our letter what we believe is involved if the State "owns" and "operates" particular gambling activities.

Senate Bill 168 provides for the expansion of gaming in Kansas (a) through the establishment of Destination Casinos (Sec. 3 and 4), and (b) through the implementation of a video lottery program whereby video lottery terminals are placed at parimutuel licensee locations and club locations (Sec. 11). After a developer's plan for a Destination Casino is approved by the Executive Director of the Kansas Lottery, (Sec. 3), the Lottery Commission can authorize the Executive Director to enter into a management contract (Sec. 4) with a Destination Casino Manager (Sec. 5(a)(12)). A Destination Casino manager is defined as a person authorized to

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“develop, construct and manage a Destination Casino” (Sec. 2(H)). A “person” is defined as a natural, person, association, corporation or partnership” (Sec. 36(H)). It is obvious that the bill contemplates a private individual or corporation, not the State, as the Destination Casino Manager (see also Sec. 4(5, 6)).

The bill provides that the Destination Casino Management Contract shall include a “comprehensive management plan” for “operation, oversight, and monitoring” of the Destination Casino. (Sec. 5(a)(12)). At the same time, the bill states that the plan shall place “full, complete and ultimate ownership and control of the gaming operation” with the Kansas Lottery Commission. (Sec. 5(a)(12)(c)(1) and 5(c)(1)). In Sections 7-9 of the bill, the Executive Director of the Kansas Lottery is given extensive regulation and oversight of the casinos’ operations.

Although the definition of a Destination Casino is given as “a gaming operation which is owned and operated by the State of Kansas, approved by the Commission and managed by the Destination Casino Manager,” (Sec. 2(d)) nothing in the text of the bill makes any provision for State ownership of gaming equipment or facilities and nothing provides for the State to operate the casino. Instead the Destination Casino Manager is given the responsibility to “manage” the casino. It is obvious that this is little more than a word meaning “operate” the casino.

The foregoing sections provide for extensive regulation of the casinos, but they do not appear to create an ownership interest in the State. Instead, ownership of the gaming operations (which are undefined in the bill) appears to be lodged with the Destination Casino Manager, a private entity.

In addition, the bill fails the test of State “operation” of the gambling activity. The definitions contained in the bill make it clear that “operation” of the casino will be in private hands, i.e., the Destination Casino Manager. All of the activities which we deemed important to the “operation” of a casino in our earlier letter are placed in the hands of the Manager, a private entity. Further, the officers, directors and “key employees” are all employed by and will apparently receive their paychecks from the Destination Casino Manager. In other words, hiring and firing will be in the hands of the private entity. These are critical factors in determining who “operates” the facility. We believe the Kansas Supreme Court will deem the “operation” of the casino to be by private entities, not the State, and thus Section 3c, Article 15 of the Kansas Constitution will be violated.

Perhaps the clearest indication in the bill that ownership and operation of the casino are in private hands, not the State, is the provision for the payment of casino revenues. Section 5 (b)(9) provides for not less than 22% of gaming revenues to go to the State, not less than 4% to the county and city where the casino is located, not less than 2% to an oversight fund, and not less than .5% to a problem gambling grant fund. The Casino Manager can therefore receive as much as 71.5% of the revenues, presumably to be used for purchases, payroll and profit.

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Another way of analyzing the Senate Bill 168 is to examine the role the State is given in the Destination Casino Management system. The role of the State is the following:

- a. Review and approve applications for developing a casino (Sec. 3).
- b. Enter into management contracts with Destination Casino managers (Sec. 4).
- c. Conduct security, fitness and background checks of key employees and other persons involved (Sec. 5(a)(12)(F) and (G)).
- d. Enforce personnel certification requirements (Sec. 5(a)(12)(I)).
- e. Certify which electronic gaming machines can be used in casinos (Sec. 7(d)).
- f. Purchase or lease equipment necessary to implement the communication system linking the gaming machines to the Kansas Lottery (Sec. 7(d)).
- g. Investigate violations of the Kansas Lottery Act (Sec. 8(a)).
- h. Investigate the violations of the Kansas Lottery Act (Sec. 8(a)).
- i. Audit the books of the Casino Manager (Sec. 8(b) and (g); Sec. 9)).
- j. Inspect and view all machines, equipment, systems, and facilities (Sec. 8(d)).
- k. Inspect and approve all advertising (e) requirement appropriate security (Sec. 8(f)).
- l. Enforce the applicable law and regulations (Sec. 8(h)).

These are not the duties of the owner or operator of a business enterprise. They are the duties of a regulator of a business enterprise. In spite of language to the contrary in the Bill, the State will neither own nor operate the Destination Casinos, and this portion of the Bill is therefore unconstitutional.

On the other hand, the Video Lottery Terminal sections of Senate Bill 168 do have the appearance of a state-owned and operated enterprise. In these sections it is the Kansas Lottery that implements a program to place video lottery terminals at pari-mutuel licensee locations and club locations (Sec. 11). It is the executive director of the Kansas Lottery who has the responsibility to perform the actions set out in Section 13, which are as follows.

- a. Establish a statewide network of video lottery terminals (Sec. 13(a)(1)).
- b. Review applications (Sec. 12(a)(2)).
- c. Collect fees (Sec. 12(a)(4)).
- d. Determine the payout percentage on machines (Sec. 13(a)(6)).
- e. Certify personnel involved (Sec. 13(a)(6)(C)).
- f. Determine the number of machines at each location subject to statutory maximum number (Sec. (a)(6)(E)).

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- g. Determine the type and location of machines in the facility. (Sec. 13(a)(6)(G)).
- h. Arrange for security (Sec. 13(a)(6)(H)).
- i. Perform auditing functions (Sec. 13(a)(6)(I) and (J)).
- j. Operate the video terminal network through a central computer system (Sec. 13(c)).
- k. Provide for electronic transfer of revenues (Sec. 13(d)).
- l. Enforce law and regulations (Sec. 14).

The provision for payment of revenue also gives some appearance of a state operation. Some of the costs of operation are borne by the State, and the State will apparently receive some of the profits. Section 19 provides for the following percentage allocations:

- 7.0% to a live horse racing purse (parimutuel licensee locations only)
- 7.0% to a live greyhound racing purse (parimutuel licensee locations only)
- 1.5% to the county
- 1.5% to the City
- 14.0% to the Veterans Benefit Fund (club locations only)
- 0.5% to a Problem Gambling Fund
- 47.5% Maximum payable to video lottery club sales agent.
- 35.0% Minimum payable to State (Sec. 10q)

The contract between the State and the sales agents will have an important bearing on the constitutional issue because it will state what the expenses are, who pays them, and who receives the profits.

A serious question about constitutionality arises in Section 21 where it is provided that the video terminals can be leased or owned by the State or by the sales agents operating the facilities. If the State owns the terminals, then ownership and operation of the video lottery system does appear to be in the hands of the State. If the sales agents owns the terminals, however, a question of doubt arises.

We believe that the Video Lottery Terminal portion of S.B. 168 could be carried out in a manner which would conform to constitutional requirements.

Senate Bill 170 is in many ways similar to the Destination Casino provisions of Senate Bill 168, but it uses different terminology. S.B. 170 does not have a separate section providing for video lottery terminals. S.B. 170 provides for casino gambling at Lottery Gaming Facilities (Sec. 1(s) and (z)). The Bill provides for the building in which gambling occurs to be owned by the State (Sec. 1(s)). Section 4(g)(1) of S.B. 170 states that the Kansas Lottery owns or licenses all

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software programs used in any lottery facility game. But the Lottery Gaming Facility Manager purchases or leases all lottery facility games on behalf of the State. That includes video terminals (Sub. Sec. 4(g)(2)). The ownership of the business enterprise which is carried on inside the building appears to be in the hands of the Lottery Gaming Facility Manager.

A Lottery Gaming Facility is operated by a Lottery Gaming Facility Manager (Sec. 1(u)). The Lottery Gaming Facility Manager is defined as "a corporation, limited liability company, or other business entity authorized to construct and manage, or manage alone, pursuant to a management contract with the Kansas lottery, and on behalf of the state, a lottery gaming enterprise and lottery gaming facility." (Sec. 1(u)).

Except for the foregoing, the Bill is silent regarding the ownership of assets and operation of a casino. Although some ownership interests are given to the State, the business enterprise is not. In addition to owning the enterprise, the Lottery Facility Manager has almost complete discretion in the management of the casino.

The statute provides in Section 8 that 50% of revenues shall be placed in an account for payment of expenses, and of the remaining 50%, the Lottery Gaming Facility Manager receives 25% and elementary, secondary and higher education receives 75%. Although Section 8(c)(ii) states that 75% of 50% (i.e. 37.5%) is to be used "exclusively" for education, the sentences which follow state that if it is necessary to pay principal on bonds issued to build the casino (Sec. 9), such amounts are to be paid from the education fund (Sec. 8(c)(ii)). The amount payable toward education could thus be substantially less than 37½ %. These provisions further demonstrate the operation of the casino by the private entity rather than the State because it is the Lottery Gaming Facility Manager who pays the revenue to the State (after generating the revenue from the gaming public), and it is the Manager who pays all of the expenses of operation of the Lottery Gaming Facility (Sec. 8(a)(b)).

We believe that because private entities, not the State, will own and operate the business enterprises constituting Lottery Gaming Facilities, Senate Bill 170 violates the Kansas Constitution.

Very truly yours,



JB/cdc

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March 18, 2004

Kickapoo Tribe in Kansas  
Attn: Ms. Emily Conklin, Vice Chair  
1121 Goldfinch Road  
Horton, Kansas 66439

Sac and Fox Nation of Missouri in KS and NE  
Attn: Ms. Fredia Perkins, Vice Chair  
305 North Main Street  
Reserve, Kansas 66434

**Re:** Constitutionality of Proposed Gaming Legislation in Kansas

Dear Ms. Conklin and Ms. Perkins:

You have asked us to give our opinion whether House Bill 2632 and Senate Bill 499, which have been introduced in the 2004 Session of the Kansas Legislature, and which would authorize certain gaming activities in the state, would, if enacted, violate the Kansas Constitution.

We believe that House Bill 2632 and the destination casino sections of Senate Bill 499 are clearly unconstitutional. The constitutional validity of the video lottery terminal sections of Senate Bill 499 is less clear, but at the very least, those sections raise serious constitutional issues.

In January 2004 we provided you with our opinion concerning the requirements of the Kansas Constitution relating to gambling activities. We attach a copy of that opinion to this letter for your reference.

In our earlier letter, we noted that the Kansas Constitution authorizes the Legislature to "provide for a state-owned and operated lottery." The Kansas Supreme Court has defined "lottery" to include any form of gambling containing the elements of consideration, prize and chance. The Supreme Court has said that the words "state-owned and operated" must be construed to mean what the words imply to the common understanding of the average person, and particular attention should be paid to the intent and understanding of the people at the time the constitutional language was adopted. We discussed in our letter what we believe is involved if the State "owns" and "operates" particular gambling activities.

Senate Bill 499 provides for the expansion of gaming in Kansas (a) through the establishment of Destination Casinos (Sec. 3), and (b) through the placing of video lottery terminals in parimutuel licensee locations and club locations (Sec. 11). The bill creates a state

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agency called the Destination Casino Commission which is attached to and becomes a part of the Kansas Lottery (Sec. 4). It is authorized to issue certificates of authority (Sec. 5(c)) after approval of an applicant's comprehensive plan for the casino (Sec. 6(a)(2)). The comprehensive plan must provide for the management of the casino by a Destination Casino Manager (Sec. 6(a)(2)). A Destination Casino Manager is defined as a person authorized to manage a Destination Casino (Sec. 3(g)). A "person" is defined as "any natural person, association, corporation or partnership (Sec. 1(h)). As is obvious, "person" is not defined to include the State of Kansas; only private entities are included in the definition.

The bill provides that the comprehensive plan "shall place full, complete and ultimate ownership and control of the gaming operation of the Destination Casino with the Kansas Lottery" (Sec. 6(a)(2)). It also provides that the management contract which the Executive Director of the Lottery must enter into with the Destination Casino Manager must "place full, complete and ultimate ownership, and control of the gaming operation of the Destination Casino with the Kansas Lottery." Further, the Kansas Lottery "shall retain the ability to overrule any and all significant gaming decisions at any time, without notice and shall retain full control over all decisions concerning Destination Casino games, including which games are offered at a Destination Casino, the odds, the payout and other conditions under which Destination Casino games are played." (Sec. 6(d)).

The foregoing sections provide for extensive regulation of the casinos, but they do not appear to create an ownership interest in the State. Instead, ownership of the gaming operations (which are undefined in the bill) appears to be lodged with the Destination Casino Manager, a private entity.

In addition, the bill fails the test of State "operation" of the gambling activity. The definitions contained in the bill make it clear that "operation" of the casino will be in private hands, i.e., the Destination Casino Manager. All of the activities which we deemed important to the "operation" of a casino in our earlier letter are placed in the hands of a private entity. Further, the officers, directors and "key employees" are all employed by and will apparently receive their paychecks from the Destination Casino Manager. In other words, hiring and firing will be in the hands of the private entity. These are critical factors in determining who "operates" the facility. We believe the Kansas Supreme Court will deem the "operation" of the casino to be by private entities, not the State, and thus Section 3c, Article 15 of the Kansas Constitution will be violated.

In addition to Destination Casinos, Senate Bill 499 provides for the placement of up to 2500 video lottery terminals at either parimutuel licensee locations or club locations around the state (Sec. 12, 13(a)(6)(E)). The Kansas Lottery is directed to implement a video lottery program and adopt rules and regulations for its operation (Sec. 12). The bill requires that the rules and

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regulations give the State extensive control (Sec. 13(a)(6)(A-K). The rules and regulations shall include the following:

- a. The denomination of all bills, coins, tokens or other media needed to play the terminals (Subsec. B)
- b. The certification of all officers, directors, board members and key employees of the licensees (Subsec. C)
- c. The number of terminals at each location (Subsec. E)
- d. Standards for advertising, marketing and promotion (Subsec. F)
- e. The kind, type, number and location of terminals at any licensee location (Subsec. G)
- f. Each terminal must be connected to the central video lottery terminal computer system which allows the State to audit, and even disable each terminal in the system (Subsec. c and d)

These activities are so detailed and specific that it is unusual to require them in rules and regulations, yet that is what the plain language of the bill requires. If the decisions for all of those activities are made by the State in rules and regulations, an argument can be made that the State is "operating" the terminals. However, one critically important function is placed in the hands of the private licensees. The licensees are given discretion to determine the payout from each terminal so long as it is between 87% and 95% on an average annual basis (Subsec. B). This is broad discretion in the video terminal business. This one factor may well be deemed so important that it causes the video lottery program also to fail the constitutional test. If the licensees are given any discretion to make other decisions, a decision of unconstitutionality is more likely.

The scope of House Bill 2632 is much more limited than Senate Bill 499. The House Bill provides only for placement of electronic gaming machines at parimutuel licensee locations (Sec 3). The licensees are selected by the executive director of the Kansas Lottery (Sec. 3). All electronic gaming machines under the act are subject to the ultimate control of the Kansas Lottery (Sec. 13(e)), but broad discretion is given to the licensees for the operation of the machines. In a contract with the licensee, the executive director "may" determine the location and operation of the machines, but the director cannot determine days and hours of operation or the number of machines (Sec. 13(g)(2)). The personnel operating the machines must meet minimum requirements (Sec. 13(g)(3)), but they are employees of the licensee, not the State.



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Payout must average not less than 87% of the amount wagered over the life of the machine, but discretion for determining payout is otherwise left with the private licensee (Sec. 13(j)(1)). Each machine must be linked to a central lottery communications system for auditing purposes, but there is no provision for disabling the machine by state officials (Sec. 13(j)(2)). The decision of which machines to purchase is left to the licensee.

House Bill 2632, in our opinion, gives so much discretion to the licensees that it gives the "operation" of the electronic gaming machines to the private licensees, and is therefore unconstitutional.

Very truly yours,

*Blackwell Sanders Pepper Martin LLP*

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January 8, 2004

Kickapoo Tribe in Kansas  
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Attn: Ms. Fredia Perkins, Vice Chair  
305 North Main Street  
Reserve, Kansas 66434

**Re:** Constitutionality of Proposed Gaming Legislation in Kansas

Dear Ms. Conklin and Ms. Perkins:

You have requested our opinion concerning the following issue:

Would Senate Bill 249, introduced in the Kansas Legislature in the 2003 Session, or similar legislation which would authorize various types of casino gambling at parimutuel racetracks, violate the Kansas Constitution?

We believe the answer is that they would be found to be unconstitutional by the Kansas Supreme Court.

Since 1859 the Kansas Constitution has stated in Article 15, Section 3:

Lotteries and the sale of lottery tickets are forever prohibited.

In a number of cases over many years the Kansas Supreme Court has broadly interpreted the word lottery to include all forms of gambling or wagering so long as three elements are present: consideration, prize and chance. State ex rel Frizzell v. Highwood Service Inc., 205 Kan. 821, 473 P.2d 97 (1970). As the Court said in State v. Nelson, 210 Kan. 439, 502 P.2d 841, 845 (1972):

Although this constitutional provision was undoubtedly borrowed from states previously admitted to statehood, it is apparent that the framers of the constitution of this state consciously determined that prohibiting lotteries forever was a method of promoting a sound basis for the welfare and growth of this state. Since its adoption, many efforts have been made by persons and organizations to circumvent this constitutional provision. Such efforts have generally been made for profit, seeking to elicit money

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from those who cannot refrain from the instinctive weakness of humanity to gamble.

This court has steadfastly adhered to the constitutional provision by striking down such efforts. (State Ex. Rel. Kellogg v. Mercantile Association, 45 Kan. 351, 25 P.984, (distribution of prizes by chance); In Re Smith, Petitioner, 54 Kan. 702, 39 P.707, (sale of lottery tickets); State Ex Rel Anthony Fair Association, 89 Kan. 238, 131 P.626 (bets on horse races); State Ex Rel Beck v. Fox Kansas Theatre Co., 144 Kan. 687, 62 P.2d, 929, (theatre bank night); City of Wichita v. Stevens, 167 Kan. 408, 207 P.2d 386, (punch boards); State v. Brown, 173 Kan. 166, 244 P.2d 1190, (punch boards); State Ex Rel Moore v. Dissing, 178 Kan. 111, 283 P.2d 418, (parimutuel betting on dog races).

Slot machines and table games commonly found in gambling casinos such as blackjack, craps, roulette and poker are within the Supreme Court's definition of a lottery as the word is used in the Kansas Constitution.

In 1986 Kansas voters approved an amendment to the Constitution which states:

Notwithstanding the provisions of Section 3 of Article 15 of the Constitution of the State of Kansas, the legislature may provide for a state-owned and operated lottery, ...

The primary purpose of the amendment was to permit the establishment of a state-owned and operated lottery in the strict sense, that is, the sale of lottery tickets for which there is a drawing to determine prizewinners. At the same time, there is little doubt that because the Kansas Supreme Court has always broadly defined lottery to mean any game involving consideration, prize and chance, the Legislature can now authorize any game involving wagering, including all of those typically found in gambling casinos, so long as it is state-owned and operated.

In recent years various bills have been introduced in the Kansas Legislature which authorize private entities to engage in gambling activities, other than traditional lotteries. None have passed. Because such efforts are expected to continue, the question arises whether a statute which authorizes private interests to conduct gambling activities other than traditional lotteries, violates the constitutional requirement that lotteries be "state-owned and operated."

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The Kansas Supreme Court has reserved to itself the power to interpret and define the language of the state constitution. It has repeatedly struck down legislative attempts to define constitutional terms. For example, in State v. Nelson, above, the Court said at 846:

It is the function and duty of this court to define constitutional provisions. The definition should achieve a consistency so that it shall not be taken to mean one thing at one time and another thing at another time. It is the nature of the judicial process that the construction becomes equally as controlling upon the legislature of the state as the provisions of the constitution itself. (16 C.J.S. Constitutional Law, § 13.) Any attempt by the legislature to obliterate the constitution so construed by the court is unconstitutional legislation and void. Whenever the legislature enacts laws prohibited by judicially construed constitutional provisions, it is the duty of the courts to strike down such laws.

The legislature, by enacting the statutes in question, attempted to declare that 'consideration' shall not include money paid to participate in a bingo game. The legislature, in effect, sought to remove 'consideration' as one of the elements of a lottery. In so doing, the legislature exceeded its constitutional power. The constitution must be interpreted and given effect as a paramount law of the state, according to the spirit and intent of its framers. A legislative enactment in evasion of the terms of the constitution, that is properly interpreted by the courts and frustrating its general and clearly expressed or necessarily implied purpose, is clearly void.

The court struck down a legislative attempt to permit tax-free organizations to engage in bingo games. The Legislature had sought to avoid the constitutional prohibition of lotteries by saying that the amount paid to play was a contribution to the organization and was not "consideration."

Two primary rules of interpretation have been consistently followed by the Kansas Supreme Court. These are best expressed in the Frizzell case, above, at 825:

But while the constitutional ban against lotteries may be self-executing, it is not self-defining. That function is judicial in nature, evolving upon courts. We have heretofore had occasion to lay down general guidelines for its exercise. In Higgins v. Cardinal Manufacturing Co., supra, we observed that a constitution is not to be narrowly or technically construed but its language 'should be held to mean what the words imply to the common understanding of men' (P.18, 360 P.2d 462); that in ascertaining

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the meaning of constitutional provisions courts should consider what appears to have been the intendment and understanding of the people at their adoption. (See also, *State v. Sessions*, 84 Kan. 856, 115 P.641.) (Emphasis supplied)

The Court has never had occasion to consider the meaning of the words, "state-owned and operated," but application of the first principle stated above - - using the words in their commonly understood meaning - - can lead only to the conclusion that the State must own and operate the enterprise in fact, and not in name only. The second principle - - ascertainment of the intent and understanding of the voters at the time of adoption - - leads to the same result.

The Legislature can do little to influence the analysis. As stated above, even if the Legislature attempts to define "state-owned and operated," the Supreme Court will define those terms as it sees fit.

Only four other states have constitutions which contain language requiring the state to own and operate gambling activities. They are South Dakota, West Virginia, Rhode Island and Oregon. None of those states have defined "state-owned and operated" in either legislation or court opinions.

In South Dakota, video lotteries were struck down by the state supreme court before reaching the issue of "state-owned and operated." *Poppen v. Walker*, 520 N.W. 2d 238 (S.D. 1994). In West Virginia, the State Lottery Commission was found to have unconstitutionally licensed casino gambling operations without any legislative enactment. *Mountaineer Park, Inc. v. Polan*, 190 W.Va. 276, 438 S.E.2d 308 (1993). Neither Rhode Island nor Oregon have considered private gambling issues.

Kansas Attorney General Robert Stephan issued two formal opinions in the early 1990's which addressed the meaning of the "state-owned and operated" language. The first, Opinion 92-1, concluded that the phrase contemplates a situation where the state "owns the business and has ultimate and complete control of the operation." That opinion went on to say that the state does not need to own the building or equipment used in a lottery operation.

The second, Opinion 94-26, examined the issue in more detail, but many questions remained. After comparing constitutional provisions and stating that regulation alone would be insufficient, the Attorney General concluded:

- a. The state can contract with private entities to construct a casino.

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- b. The state can contract with private entities to operate specific games of chance “so long as sufficient control and responsibility over the business as a whole remains with the State.”
- c. Although not all of the personnel employed at a casino must be state employees, “sensitive positions” need to be held by state employees.
- d. The state can 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.” The state should 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.”
- e. Finally, “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.”

Although these opinions provide some guidance, a greater level of detail is desirable. Our thoughts on the subject are set out below.

As indicated above, the words “state-owned and operated” will be interpreted by the Kansas Supreme Court according to (a) the common understanding of the meaning of the words, and (b) the intent and understanding of the people when they approved the amendment.

The elements of “ownership” of a business, at a minimum, include (a) having title to or ultimate control over the assets of the business, and (b) taking the profits and suffering the losses of the enterprise. In other words, the state must bear the risk of the failure of the operation if it is to be considered the owner. Profits and losses must belong to the state.

Because the assets of a business can include leases of property as well as title to property, it is correct that the state need not own the building or the gaming equipment. All assets, however, whether leases, titles, accounts receivable, bank accounts, contracts or securities must be held in the state’s name. The state, as the owner of the business must have the ability to acquire, use and dispose of the assets as it chooses.

If the state is engaged in the “operation” of the business, the state must employ the persons who make the key decisions in carrying out the activities of the enterprise and be responsible for their conduct. In a gaming enterprise, the key decisions are those which make the enterprise competitive with other forms of entertainment in general, and with other area casinos in particular. In the Kansas City metropolitan area, casinos are well-established and can be

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expected to be aggressive competitors. Management of a state-owned casino would have to respond on a daily and weekly basis to that competition. Some of the day-to-day functions that state employees would be required to exercise are the following:

- Daily review of departmental net win and expenses.
- Review and approval of major marketing and promotional activities.
- Credit and comp review and approval.
- Major contract review and approval.
- Allocation of hotel rooms and amenities.
- Capital expenditures and gaming floor configuration.
- Table game limits.
- Chip control as it relates to slot odds.
- Compliance issues and related problems.
- Cage related issues.
- Compliance with federal and Department of Treasury regulations.
- Change in types of games.
- Labor union issues.
- Employee relations/discipline.
- Compliance with OSHA and other federal and state safety regulations.
- Compliance with state and local regulations for the sale of food and liquor.
- Participation in charity and community projects (contributions).
- Changes in employee benefits to remain competitive in the industry.

A competitive casino is usually operated in conjunction with a hotel, and the hotel is used primarily to satisfy gaming patron needs. The state's management personnel would therefore need to do such things as the following:

- a. Determine room rates and special hotel promotions.
- b. Upgrade or build additional rooms.
- c. Build and operate restaurants, determine menus, prices, and decide all buffet and food service issues.
- d. Build and operate a high-roller lounge.
- e. Make internal or external structural changes as needed to attract more business.

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- f. Reconfigure or expand the gaming floor, including gaming machines and tables.

A casino executive staff is likely to include the following positions:

Chief Executive Officer  
Chief Financial Officer  
Chief Operating Officer  
Vice President/Slots  
Vice President/Table Games  
Vice President/Marketing  
Vice President/Food & Beverage  
Vice President/Human Resources  
Vice President/Hotel Services

Below the vice-president level, experienced casino executives are needed at the Director level. All of these personnel will be required to hold "key employee" licenses. Because all are responsible for the operation of the facility, all must be state employees. The salaries needed to attract competent personnel to fill these positions are likely to be far higher than those of most state officials, including the governor and supreme court judges.

If these persons are truly state employees, they will need to receive their paychecks from the state, and the state will be liable for their tortious or criminal conduct. As the court said in Jeffries v. State of Kansas, 147 F.3d 1220 (10<sup>th</sup> Cir. 1998):

An employer is liable for: (1) any tort committed by an employee acting within the scope of his or her employment; (2) any tort committed by an employee in which the employer was negligent or reckless; or (3) any tort in which the employee purported to act or speak on behalf of the employer and there was reliance upon apparent authority or the employee was aided in accomplishing the tort by the existence of the agency relation.

The test of whether an employer-employee relationship exists is whether the employer has the right of control and supervision over the work of the alleged employee, and the right to direct the manner in which the work is to be performed, as well as the result which is to be accomplished. Mitzner v. Kansas Department of Soc. and Rehab. Services, 257 Kan. 258, 891 P.2d 435 (1995). On the other hand, if the state contracts for a person to work according to his or her own methods, without being subject to the state's control, except as to the results or product of his or her work, the person is an independent contractor and not a state employee. Id. If the



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gaming operation is truly a "state-operated" business, the state cannot use independent contractors in any of the key positions and cannot seek to insulate itself from liability for their conduct.

In 2003 one of the gambling bills considered by the Kansas Legislature was Senate Bill 249. That bill would have authorized the director of the Kansas Lottery to contract with parimutuel licensees for the operation of electronic gaming machines at parimutuel locations after local voter approval. Under the proposed statute, a licensee could, if permitted by the contract, do the following:

- a. Own the premises on which machines were located.
- b. Decide which machines to purchase or lease (subject to state approval).
- c. Decide payout percentages (within limits), location of machines, and all other day-to-day operating decisions.
- d. Conduct advertising and promotions.
- e. Determine hours of operation.
- f. Interact with players (cashiers, instruction, etc.)
- g. Provide security.
- h. Perform bookkeeping.
- i. Service and repair machines.
- j. Employ the personnel to perform all of the above functions.
- k. Receive 70% of the net funds generated.

If these functions were indeed performed by the licensee, we believe that the general public, and the Supreme Court as well, would consider such a "lottery" to be "operated" by the licensee rather than the State. It would thus violate the Kansas Constitution.

In the final analysis, whether a gaming enterprise authorized by the Legislature is constitutional will depend upon how the Legislature deals with the defining factors set out in this letter. If the Supreme Court does not perceive that the state owns and operates the enterprise, the legislation authorizing such the enterprise will be unconstitutional.

Very truly yours,



JB/cdc

**SENATE WAYS & MEANS COMMITTEE  
TESTIMONY BY RALPH SNYDER  
ASSISTANT ADJUTANT, KANSAS AMERICAN LEGION  
MARCH 14, 2005**

Thank you for providing the opportunity to appear before you today. I am Ralph Snyder, State Assistant Adjutant of The Kansas American Legion.

We are not going to argue the morality of gaming, but since it is here the veterans and fraternal would like a piece of the pie.

We are not asking our Legislature to allow us to build casinos, all we are asking is that we be allowed to have five video lottery machines (VLT) in our Class 'A' Clubs. Only our organization members and guests would be allowed in the lounge where the VLTs would be located. All guests would have to be 21 years old or older and would be required by State ABC law to sign a guest book with their host and the guests must leave when their host leaves.

We would like to see changes to SB 294, page 22, line 38 adding veterans and fraternal organizations by name: American Legion, VFW, Eagles, Elks, K of C, Moose, and Shrine.

Also on page 22, line 41 delete parimutuel locations.

Page 25, line 40, add 1,500 machines at veterans and fraternal locations to be determined by the lottery.

Our organizations with Class 'A' Club licenses need to have more dollars to carry on our community services.

In conclusion, I have two statements: First, nonprofit organizations put money back into their communities. Second, where would Kansas be without their veterans?

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FEDERAL AND STATE AFFAIRS COMMITTEE

TESTIMONY OF E.L. (TOM) FARR DISTRICT 1 COMMANDER

Thank you for the opportunity to testify on behalf of the Kansas Veterans of Foreign Wars and the Kansas VFW Ladies Auxiliary.

I am the district commander of northeast Kansas VFW, adjutant to Post 1650, Topeka, and the legislative chairman of District 1.

The Kansas Veterans of Foreign Wars has approximately 35,000 members and the Ladies Auxiliary has approximately 20,000 members.

VFW Post 1650 had 5 VLT machines, which were legal under the previous attorney general. They were removed at the request of Kansas Attorney General, Phil Kline. They were in our Post for approximately 9 months.

As we are all aware, the State of Kansas is in need of new money. We have made some calculations which are very interesting. We took one month's record of receipts when it was in legal operation. On the average a machine brought in \$3400 gross per month. We paid out \$2100 prize money, and sales tax per month was over \$250 per machine. Net profit was over \$1000 per month per machine.

The VFW Posts with Class A licenses would be at least 45 VFW Posts. Using these numbers, we could bring in \$56,250 sales tax per month for a total estimate of \$675,000 per year in sales tax from VFW posts (VLT machines). Our records show that there was a net profit of over \$1,000 per machine per month to split between the VFW Post and the vendor. It would be possible for the 45 VFW locations to have a net profit of \$225,000 per month or an amount of \$2,700,000 per year to be split between the post, state, and others.

Using the figure of a possible 43% net profit to the state of Kansas, \$1,161,000 per year could be earned by these machines. Adding the two together, you have the potential to earn (\$675,000 sales tax and \$1,161,000 profit) \$1,836,000 on Video Lottery Machines for the State of Kansas each year.

These machines would be used by VFW members and guests. An officer of the post would be on duty when these machines were available to the members and guests. We also have a lounge manager on duty.

The veterans' posts as well as the State of Kansas have a need for this money. Most VFW posts are open a maximum of 50-55 hours per week. Contrast this with the casinos which are open 24 hours a day, seven days a week.

Veterans of Foreign Wars posts operate as a nonprofit organization and support their community and the servicemen who are presently serving their country. The past three

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years we have the closing of 3 posts, and 5 posts who have had to give up their post homes due to the cost of maintaining them. We now have 20 posts in district 1.

Listed below is some of the projects which our posts do:

1. Aid to veterans and families
2. Poppy drive which distributes flowers made by disabled veterans. Proceeds are used to help veterans and families.
3. Adoption of military units who are posted overseas.
4. Operation Uplink which distributes phone cards to our servicemen.
5. Outstanding teacher awards (3 levels)
6. Clothing bank and other activities at the veterans hospitals.
7. Funeral detail for all veterans. Meals for their family on the day of the funeral.
8. Support of the local R.O.T.C.'s
9. Financial support to Topeka Rescue Mission, Doorstep, TARC, Muscular Dystrophy, Special Olympics, Let's Help, Cancer Society, Salvation Army, and others.
10. Special events at post home: Thanksgiving dinner, Run Across Kansas for students, children's Christmas party, endowment program for college students. Voice of Democracy program for grades 9 through 12; Patriotic pen essay contest for middle school students; Law officer of the year; Fireman of the year; EMT; support the boy scouts.
11. Special programs of the post: Korean War Veterans, World War II Vets; VietNam Vets; Gulf War Veterans; Desert Storm Veterans.
12. Memorial Day Service
13. Veterans Day Service
14. Many other events

It is the contention of the veterans' organizations that these organizations need to be included in the gaming bill in Kansas so that we can continue to operate for the good of our community, the State of Kansas, and the United States, in taking care of our veterans, their families and those serving our nation today. Never have we as a nation been more dependent on our veteran organizations and the service men and women overseas.

In closing, I would like to talk briefly about the Department Surgeon's report. (See attached).

Thank you again for giving me the chance to speak, and our thanks and support to each and everyone of you legislators.

## Park Lanes Family Fun Center

7701 Renner Road  
Shawnee, Kansas 66217  
Phone: 913-248-1110  
Email: [rbjohannes@aol.com](mailto:rbjohannes@aol.com)

## Ranch West Bowling Center

8201 State Ave.  
Kansas City, Kansas  
Phone: 913-299-1110

March 13, 2005

Good Afternoon:

My name is Robert Johannes. I am testifying in opposition to Senate Bill 294 concerning expanded gaming in the state of Kansas. I am a Bowling Center Proprietor with two centers located in the Kansas City Kansas area. The main issue for my opposition is the fact that this proposal limits gaming to a few casino/race track facilities. This in effect is a government-supported monopoly. To use the excuse that gambling is a vice and is bad for society and should be limited is just what it is, an excuse. I believe any type business large or small would like to have the government protect them from competition.

This proposal also ignores the impact that these types of facilities have on small entertainment businesses such as bowling centers, movie theaters, and restaurant and bar facilities, which have long been an economic factor in the state of Kansas. The fact of the matter is that if the destination casinos or tracks wanted to add a bowling venue to attract additional customers they could. Could existing bowling centers add a gaming venue to compete with them, **NO** they could not. I do not see how any of you as trusted guardians of our state economy can not see that helping create and then protecting them from competition is **WRONG**.

Government's purpose has long been to protect businesses from unfair monopolies and business practices let alone help create one. We have seen the break up of Standard Oil Company and AT&T, deregulation of the airlines and most recently the business practices of Microsoft.

Not only does this bill propose limiting the competition to these casinos & race tracks but the state then proposes to give these facilities preferred treatment in the form tax abatements or tax increment financing for facilities and equipment. Again this is **WRONG**.

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These facilities should be open to competition, obtain their own financing, purchase their own property and pay taxes just as the vast majority of other independent businesses do throughout the state. There are over 100 bowling centers in the State of Kansas with a combined investment in excess of \$150,000,000. My two centers alone pay over \$130,000 in real estate and personal property taxes each year and an additional \$200,000 plus in sales and liquor taxes.

Bowling centers also have long been a source of fund raising throughout the state. Hundreds of thousands dollars are raised annually for organizations each year, from little league baseball and football teams to large scale fund raisers such as El Centro in Kansas City, Kansas. Just last week El Centro held their annual fundraiser at our facility and raised in excess of \$40,000.

We either have gambling in the state or we don't. Do not allow a few "destination" casinos and/or race track with slots machines to operate as a monopoly protected from competition using the pretext that gaming is bad for Kansas society so we should limit the number of facilities and it will be OK. If it is not good for our state culture then we should not have "any" casinos, slots machines at the track facilities or expanded gaming of any kind in the state, let alone create an unfair business monopoly with it.

I would like to submit a proposed amendment that would allow existing entertainment businesses an opportunity to fairly compete with these large scale facilities you propose in SB294.

Thank you for your time.

Robert Johannes

1 censee specifically certified by the Kansas lottery to become a certified  
2 video lottery parimutuel sales agent and offer video lottery terminals for  
3 play at the parimutuel licensee location.

4 (m) "Video lottery terminal" means any electronic, electromechanical,  
5 cal, video or computerized device, contrivance or machine authorized by  
6 the Kansas lottery which, upon insertion of cash, tokens, electronic cards  
7 or any consideration, is available to play, operate or simulate the play of  
8 a game authorized by the Kansas lottery pursuant to the Kansas gaming  
9 act, including, but not limited to, bingo, poker, blackjack, keno and slot  
10 machines, and which may deliver or entitle the player operating the machine  
11 to receive cash, tokens, merchandise or credits that may be redeemed for cash.  
12 Electronic gaming machines may use bill validators and may be single-position  
13 reel-type, single or multi-game video and single-position multi-game video  
14 electronic games, including, but not limited to, poker, blackjack and slot  
15 machines. Video lottery terminals shall be linked directly to a central computer  
16 at a location determined by the executive director for purposes of security,  
17 monitoring and auditing.

18 (n) "Video lottery terminal associated equipment" means any proprietary device,  
19 machine or part used in the manufacture, operation or maintenance of a video  
20 lottery terminal.

21 (o) "Video lottery terminal management contract" means an agreement between  
22 the Kansas lottery and a video lottery parimutuel sales agent which governs  
23 the placement and operation of video lottery terminals, including allocation  
24 and payment of expenses, management fee and net lease, recovery of any  
25 accelerated video lottery net payment and the state's share of net video  
26 terminal income.

27 (p) "Video lottery terminal manufacturer" means any individual, firm,  
28 corporation or other legal entity certified by the Kansas lottery to assemble  
29 or produce video lottery terminals or video lottery terminal associated  
30 equipment for sale or use in this state.

31 (q) "Voucher" means a bearer instrument in the form of a printed ticket  
32 or facsimile issued by a video lottery terminal to a player that represents  
33 the existing credit balance accumulated by a player of the video lottery  
34 terminal. A voucher is a secure document that carries a unique identifier  
35 in the form of a serial number and bar code issued by the central video  
36 lottery terminal computer system.

37 New Sec. 25. (a) The Kansas lottery shall implement a video lottery program  
38 whereby the Kansas lottery places video lottery terminals at parimutuel  
39 licensee locations.

40 (b) The Kansas lottery shall not place video lottery terminals at any  
41 parimutuel licensee location unless the commission has adopted rules and  
42 regulations as provided in sections 24 through 35, and amendments thereto.  
43

BOB JOHANNES  
KANSAS BOWLING PROPRIETORS

1 and background standards as the executive director may deem necessary  
 2 relating to competence, honesty and integrity, such that a person's rep-  
 3 utation, habits and associations do not pose a threat to the public interest  
 4 of the state or to the reputation of or effective regulation and control of  
 5 the video lottery; it being specifically understood that any person con-  
 6 victed of any felony, a crime involving gambling or a crime of moral  
 7 turpitude within 10 years prior to applying for a certificate as such sales  
 8 agent or at any time thereafter shall be deemed unfit. The Kansas lottery  
 9 shall conduct the security, fitness and background checks required pur-  
 10 suant to such rules and regulations;

11 (D) a certification requirement and enforcement procedure for those  
 12 persons or entities, including video lottery terminal manufacturers and  
 13 the central video lottery terminal computer system providers, who pro-  
 14 pose to contract with a video lottery parimutuel sales agent or the state  
 15 for the provision of goods or services related to the video lottery, including  
 16 management services, which certification requirements shall include  
 17 compliance with such security, fitness and background standards of offi-  
 18 cers, directors, key employees specified by the executive director and  
 19 persons who own, directly or indirectly, 5% or more of such entity, as the  
 20 executive director may deem necessary relating to competence, honesty  
 21 and integrity, such that a person's reputation, habits and associations do  
 22 not pose a threat to the public interest of the state or to the reputation  
 23 of or effective regulation and control of the video lottery; it being specif-  
 24 ically understood that any person convicted of any felony, a crime involv-  
 25 ing gambling or a crime of moral turpitude within 10 years prior to ap-  
 26 plying for a certificate hereunder or at any time thereafter shall be  
 27 deemed unfit. The executive director may determine whether the certi-  
 28 fication standards of another state are comprehensive, thorough, and pro-  
 29 vide similar adequate safeguards and, if so, may in the executive director's  
 30 discretion certify an applicant already certified in such state without the  
 31 necessity of a full application and background check. The Kansas lottery  
 32 shall conduct the security, fitness and background checks required under  
 33 this rule and regulation;

34 (E) the number of video lottery terminals permitted in each pari-  
 35 mutuel licensee location, subject to the following: The total number of  
 36 video lottery terminals shall not exceed 2,000 at a parimutuel licensee  
 37 location in Wyandotte county; 1,500 at a parimutuel licensee location in  
 38 Sedgwick county; 1,500 at a parimutuel licensee location in Crawford  
 39 county; and an aggregate of 500 at parimutuel licensee locations in Green-  
 40 wood and Harper counties;

41 (F) standards for advertising, marketing and promotional materials  
 42 used by video lottery parimutuel sales agents;

43 (G) the registration, kind, type, number and location of video lottery

and 2,000 at other locations in the state determined by the Kansas lottery



# KANSAS

OFFICE OF THE GOVERNOR

KATHLEEN SEBELIUS, GOVERNOR

## Testimony on Senate Bill No. 294

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

Before the SENATE COMMITTEE ON WAYS AND MEANS

Monday, March 14, 2005

Mr. Chairman and Members of the Committee:

Thank you for allowing me to testify on Senate Bill 294. The Governor believes that a responsible, moderate expansion of gaming can be good for Kansas. It has the potential to encourage investment, create jobs, and attract tourists to Kansas. But we can harness this potential only if we expand it carefully and with the best interests of the state and the people of Kansas in mind.

We appreciate the work that has gone into Senate Bill 294. It has some good provisions, and can serve as a framework for advancing the discussion on gaming this year. But the bill has significant problems, which we hope this Committee will address. These problems include the following:

- **No limits on the number of casinos.** Although the bill limits where casinos can be placed, it allows for an unlimited number of casinos within the designated zones.<sup>1</sup> The criteria used to determine whether to construct another casino in a single market are weak and vague. Combined with other provisions of the bill, it appears that if someone with minimal qualifications showed up and wanted to build a casino, he could. This makes it more likely that we would build several smaller, less attractive casinos, rather than one large destination casino that would attract gaming consumers from beyond

<sup>1</sup> Sec. 4(c). Page 8, lines 13-22.

the immediate region. It also places the State of Kansas in the awkward position of owning and operating two casinos competing for the same dollars. **A better approach would be to authorize a limited number of state-owned casinos, subject the applicants to a competitive bidding process, and create clear criteria for the Lottery Commission to use to evaluate the proposals.**

- **No guaranteed percentage of the gross revenues.** Many previous bills have had a guaranteed percentage of gross gaming revenues for the state. This bill guarantees the state a 65% share of the net revenues—meaning the gross gaming revenues less the expenses for operating a casino—but has no particular guarantee of gross revenues.<sup>2</sup> The state’s take will depend on the casino’s expenses. Although the management contract and its enforcement may have some limiting effect on expenses, the actual protections in the bill are weak.<sup>3</sup> This leaves the real possibility of confusion and mischief. Moreover, it appears that if actual casino expenses exceed those contemplated in the management contract, the state will have to pay 65% of those excess expenses.<sup>4</sup> **A better approach would be to both (1) set a guaranteed percentage of gross revenues for the state, and (2) enact stronger protections for the state if actual expenses exceed expected expenses.**
- **Protections for casino managers, not for the state.** In several places, the bill seems more focused on protecting the interests of casino managers than the state. For example, the bill states that “a certificate of authorization shall not be unreasonably withheld,” and has similar language for management contracts.<sup>5</sup> And the bill places fairly strict timelines on the Lottery to make decisions.<sup>6</sup> This language should be exactly the opposite in its focus; it should make clear that the Lottery Commission and the Executive Director have full discretion to choose managers as they see fit, and under whatever timeline is appropriate under the circumstances. The current language seems to create a presumption that the first person in the door will receive a contract. It is an invitation to litigation. In addition, as noted above, there are insufficient protections for the state regarding casino expenses. **A better approach would be to remove all the language protecting casino managers, and insert language protecting the state’s interests.**

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<sup>2</sup> Sec 8(c). Page 14, lines 17-36.

<sup>3</sup> Sec. 4(e)(2). Page 8, lines 37-40. There are also some protections later in the bill, including an audit in Section 10(d). That audit, however, must be paid for by the Lottery.

<sup>4</sup> Sec. 8(d). Page 14, line 37 to page 15, line 6.

<sup>5</sup> Sec 3(e) and Sec. 4(a). Page 7, lines 11-21 and 31-36.

<sup>6</sup> *Id.*

- **Bonding from KDFA.** It is unclear why it would be appropriate for KDFA to issue bonds to build casinos.<sup>7</sup> There will no shortage of investors to put up money to build casinos. And there is no need to have the state own any part of the casino property for it to qualify as “state owned and operated.” And it is doubly unclear why the bonds should be issued for the manager’s accelerated payment. **A better approach would require casinos managers to build the casinos with their own money, and to keep the state’s ownership to the business of the gaming operation.**

I hope these suggestions are helpful. And we all hope that this bill can be improved so that it is in the best interest of the state and the people of Kansas.

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<sup>7</sup> Section 9. Page 15, lines 7-29.

## Testimony to Senate Ways and Means Committee on SB 294

By Kathy Bassett  
3817 SW Dukeries  
Topeka, Kansas 66610  
(785)478-9737

March 14, 2005

I am a private citizen of Topeka, Kansas, writing in opposition to SB 294. I adamantly oppose the expansion of legalized gambling in our state. It is with the heaviest of hearts that I write this testimony, but it is important that you understand what gambling has done to my own Kansas family. It has all but destroyed us, and in fact, did literally destroy one of us. Let me explain:

My brother and I were raised on a farm in St. John, Kansas. Our father is buried in the St. John cemetery. David, my brother, attended college, earning four degrees, the final being his Masters of Social Work. David married an attorney, and they resided in Topeka. David worked for nine years as a full time mental health counselor, treating acute and chronic mental illnesses. Along with his other duties, he manned both suicide and gambling hotlines.

I and my husband live in Topeka, as well as David's and my elderly mother. I have two sons, 29 year old Jason and 20 year old Blake, a KU student. Jason has three young sons, ranging in age from 6 years to 10 months.

We have always been a close and loving family. David and I loved each other deeply, and unconditionally, and David, Jason, and Blake were as brothers to each other.

Jason began working at Harrah's, close to Topeka, when they first opened, dealing Blackjack. He and his wife moved to Nevada where he continued to work for Harass, and eventually became a pit boss supervisor.

Back in Topeka, my 73 year old mother had begun to gamble, and so did David. Their gambling turned into full-blown addictions, necessitating my mother's eventual bankruptcy.

Jason began gambling as well, and in turn began to embezzle money from his employer to cover his gambling debts. In May of 2003, Jason was arrested and charged with theft.

In the fall of 2003, my mother filed her bankruptcy, and at the same time, my brother's life began to spin out of control. He tried with all of his might, and his training, to stop his gambling. He even took the step of having himself permanently banned for life from Harrah's.

On December 29<sup>th</sup>, 2003, my beloved 37 year old brother found himself in such a state of despair just 24 hours after his voluntary banning from the casino, that he drove himself to our fathers grave site, put his shotgun in his mouth, and committed suicide.

Five months later I stood behind my son, Jason, and listened to him receive the maximum sentence of 4 to 10 years incarceration on one felony count of theft.

David's suicide note spoke to the "panic, shame, and despair" that he felt every day. Even with the full support of a family of professionals (a mother and sister that are nurses, a physician brother-in-law, and an attorney wife), and his training, he could not break his addiction.

Jason will serve his sentence, and he at least will come home. But in loosing David, we have lost something immeasurably precious to us, because of a Kansas casino.

Before May 2003, I had no idea what a destructive force gambling is. I assumed gambling was a harmless "hobby" for those who chose to take part in it. Since this nightmare occurred, I have done hours of research. It is well documented that following the opening of gaming facilities, communities and families experience increased substance abuse, marital strain, bankruptcies, crime, and attempted and successful suicides. My family alone was dealt the most painful of these: death, incarceration, and financial ruin, in the space of one year's time.

Please do not pass this bill. No one should have to endure the heartbreaking tragedy of listening to the police chaplain explain how their beloved brother died.

My son, Jason, will continue to receive the full support of his family. He is determined to use his mistakes to help others avoid similar ones.

But we, as a family and even as a community, have lost something never to be regained. We have lost a most gentle and exceptional person, named David, as a direct result of his gambling at a Kansas casino.

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## Testimony of

**Dr. Paul E. Barkey**  
2514 Nutmeg  
Manhattan, KS 66502  
14 March 2005

### OPPOSITION TO SENATE BILL 294

My name is Paul E. Barkey. I am a retired Army Chaplain and currently pastor of Ashland Community Church near Fort Riley. I thank you for the opportunity to address my concerns for the social implications for our communities if Senate Bill 294 is passed and a gambling casino is located in close proximity to Fort Riley. I want to bring to your attention the toll that gambling has upon families and particular on military families.

I am concerned that switching this legislative action from the Federal and State Affairs Committee to the Ways and Means Committee will not allow you adequate opportunity to familiarize yourselves with the full picture of the negative effects of gambling upon our families and our society.

Please begin by reviewing the June 18, 1999 final report of the National Gambling Impact Study Commission (NGISC). The entire report may be obtained through the Internet at <http://govinfo.library.unt.edu/ngisc/index.html>. The nine member commission included three members of the Nevada casino industry as well as a member representing Native American gaming interests. I will summarize their findings as follows:

- 1) Gambling addiction is increasing in the United States as gambling expands.
- 2) The Commission predicts continued increases in gambling addiction in the future.
- 3) Increased availability of gambling results in growth in the numbers of people victimized by a gambling addiction.

The National Research Council (NRC) and the National Opinion Research Center (NORC) have also conducted studies of the impact of casino gambling on communities. The NORC found that the presence of a gambling facility within 50 miles roughly doubles the prevalence of problem and pathological gamblers. Their studies also determined that there are approximately 2.5 million adults who are pathological gamblers, another 3 million are problem gamblers, and they estimate that more than 15 million Americans are at-risk gamblers. What we don't have adequate information on is the millions of family members whose lives are devastated by the choices made by gamblers. Pathological gamblers engage in a variety of destructive behaviors; they commit crimes, run up large debts, damage relationships with family and friends, and they kill themselves. Suicide rates are twenty times higher among pathological gamblers. One in five pathological gamblers will attempt suicide, higher than any other addictive behavior. Families of pathological gamblers suffer from financial, physical and emotional problems. Many family members don't even realize that their loved one is at risk until it is too late. Families of pathological gamblers have much higher incidence of divorce, domestic violence, child abuse and neglect. Children of compulsive gamblers are more likely to be engaged in destructive behavior including, smoking, drinking, drug abuse and are at increased risk of becoming pathological gamblers themselves. The social costs of gambling are immeasurable. Dr. John Kindt, Professor of Economics at the University of Illinois, Champaign-Urbana has found that for every dollar of revenue from gambling, there are \$3 in social costs, and this doesn't even quantify the emotional and physical distress of the families.

A given with the advent of casino gambling is the influence of organized crime. Former FBI Director William has stated that he knew of no place with legalized gambling that did not eventually have organized crime. The FBI found that six years after casino gambling started in Atlantic City, New Jersey the crime rate had quadrupled. How can we possibly consider the state of Kansas owning and operating casinos, and inevitably partnering with organized crime. This bill would have the state of Kansas police and operate the casinos it owns. This makes it

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even more inviting to organized crime. No other state is in the casino business. The state has no constitutional authority to own or operate a business, particularly one whose sole purpose is to separate a sucker from his cash. The states responsibility is to protect the welfare of its citizens, and not to fleece them, and push those vulnerable to addictive problems to the pit.

My greatest concern is the victimization of Fort Riley soldiers and their families if a casino is operated near Fort Riley. Here is a population whose demographics make them most vulnerable to the vice of gambling. I could tell you many stories from my 24 years as an Army chaplain of the destruction caused by gambling. It is a vice that has plagued the military throughout history and is currently addressed in the Universal Code of Military Justice, article 134. The gambling industry knows that the most vulnerable are young, uneducated and poor. They are sucked in by the possibilities of solving all their problems by gambling.

Please don't put our soldiers and their families at risk by operating a casino on the doorstep of Fort Riley. Please do not buy into the ploy that gambling is good for the local economy. In the short run gambling may bring money into the community, but eventually gambling is a disaster for families, communities and the state.

## RELEASE FOR BACKGROUND INFORMATION

Kansas Medicaid requires us to have Background Investigations on all employees doing direct service with HCBS clients. Please provide us with the following information so that we can meet this requirement. Send the release form to the following address.

Dynamic Patterns, Inc.  
2514 Nutmeg  
Manhattan, KS 66502

I release the following information to Dynamic Patterns, Inc. for the sole purpose of Background Investigation for employment.

-----  
Signature

Printed Name -----

Address -----

Phone -----

Social Security Number-----

**Steve Ward  
President  
Kansas Greyhound Association**

Testimony on Senate Bill 294

**Before the Senate Ways and Means  
March 14, 2005**

The Kansas Greyhound Association is proud to be part of a coalition of Breed interests to support SB 294. We've worked hard with our friends in the Live Horse Racing industry to find common ground to present legislation, which benefits the state, by helping fund education without a tax increase, and creates an opportunity for dramatic growth of the Greyhound and Horse industries in our state.

We believe this legislation is a careful balance that meets the needs of everyone.

Kansas is a leader in the Greyhound industry. We like to tell people that Kansas is to Greyhounds what Kentucky is to Thoroughbreds. Kansas Greyhound operators are the best in the world. Greyhounds bred and trained in Kansas are racing all over the world today. Last year, a Kansas breeder from Emporia sold one of his 2-year-old pups for over \$70,000. It was a record.

Unfortunately that valuable dog was bought by a man from Colorado and shipped to West Virginia to race. Because purses in Kansas have been hurt by the development of Missouri riverboats and Indian Casinos, our operators are increasingly taking their best dogs to states where Video Lottery terminals are authorized at the tracks. Places like Iowa, West Virginia, Delaware and Rhode Island where purses are substantially higher. The good news is those folks bring home to Kansas millions of dollars in purses. Unfortunately, it is extremely difficult and expensive to spend all of your time in other states to make a living. In the end our industry is shrinking as Kansans decide they need to be closer to the locations where the business is competitive.

Passage of this bill will have an immediate impact on our industry. It takes two years to get a dog ready to run. And we believe there will be an immediate surge of investment and activity in Kansas just because this legislation has passed.

According to an economic impact study conducted last year, our industry generates more than \$150 million dollars in direct economic activity in the state. We believe this legislation will expand that by more than \$100 million dollars and have a direct positive impact in communities throughout the state – including in your community.

We would appreciate your favorable vote on Senate Bill 294. Thank you.

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# The Kansas Quarter Horse Racing Association

P.O. Box 228 • 210 N. Jefferson • Eureka, KS 67045

Phone 620/583-7510 • Toll Free 1-866-583-7510 • FAX 620/583-7118

Web Page Address: [www.kqhra.com](http://www.kqhra.com) • E-Mail: [kqhra@eureka Herald.com](mailto:kqhra@eureka Herald.com)

March 14, 2005

Chairman and Members of the Senate Ways and Means Committee:

Hello my name is Paul Treadwell, I am the President of the Kansas Quarter Horse Racing Association. This is to inform you that the **KQHRA strongly supports SB 294** and urges you favorably consider this historic legislation.

Kansas has a long history of horse and greyhound racing, which has and continues to play an important role in our agricultural economy as well as our entertainment industry.

When Kansas voters approved changing our Constitution to permit the lottery and parimutuel racing, they intended to permit gaming activities carefully regulated by our State which would return a benefit to taxpayers. Parimutuel racing, once the state's top tourist attraction, generated millions of dollars for our state government. Today those gaming dollars and the tourists who brought them are leaving the state for Missouri riverboats, Native American casinos, Iowa and Oklahoma. The state and its taxpayers receive nothing from those nearby gambling facilities while at the same time deposits of parimutuel gaming revenues have continued to decline.

The state of Oklahoma passed a gaming bill in November of 2004. Those funds were designated to education. The state of Oklahoma, as well as the state of Kansas, has come to realize that their public education system is not adequately funded. The public education system is the most important program that the state funds and help administrate. This not only keeps small towns and urban communities with strong economic development, but the children that are produced in that system are certainly the future of our state.

Secondly this state needs economic development, this bill provides several avenues for that to happen. One avenue is to increase breeding and racing of greyhounds and horses in the state of Kansas which will provide funds for economic development and support in small communities and rural areas in our state. It will also bring in a new industry with the casinos that will hire thousands of workers, create needed construction jobs and cause an influx of tourism in the state, which will help to create millions of dollars of additional revenue for the businesses in the state of Kansas.

We must not continue to export our gaming dollars to Missouri, Iowa and Oklahoma. We must keep those dollars in Kansas to help fund education and improve racing and breeding in Kansas and to build a new industry with the casinos. We as a racing industry are barely surviving due to the intense competition from Iowa, New Mexico, Louisiana and now Oklahoma, with their supply of funds from gaming in their states. By passing this bill we will be competitive with those states and we'll see huge increases in the racing and breeding industry of horses and greyhounds.

But the greatest benefit that this bill has is that it makes approximately \$100 million in state funds available for the education system in Kansas, this means that we will save \$100 million in taxes. When you increase these taxes locally or by state the people of Kansas will have to pay that money. So I strongly encourage you to stop the gaming dollars going to other states and keep those moneys here in Kansas.

**We ask that you favorably consider SB 294 and allow the full Senate an opportunity to do the same.** Thank you.

/s/ Paul Treadwell  
Paul Treadwell, President  
Kansas Quarter Horse Racing Association

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Attachment 21

# Kansas Horse Racing Industry

21-2

➤ **270 Million Dollar Investment**

➤ **103 Million Dollar Annual  
Economic Impact**



➤ **1300 Jobs**

➤ **1600 Kansas Owners**

**"IT'S AS BIG AS YOU THINK!"**

POPULATION SURVEY OF THE  
KANSAS RACE HORSE INDUSTRY

INTRODUCTION

This report is based on 351 questionnaires sent to owners of Kansas race horses, compiled from the membership records of the Kansas Quarter Horse Racing Association, (KQHRA), the Kansas Thoroughbred Association, (KTA), and the Kansas Horsemen's association, (KHA), which is the Kansas Bred registration agency. There were 160 usable responses to the questionnaire for a response rate of 46% from horse racing farms and ranches located in 55 of the 105 counties in the State of Kansas. The population did not include racetrack operations, tourism or commercial/industry support service providers.

The questions on the survey consisted of the following: (1) County in which the horses are located; (2) number of horses of Racing age; (3) number of Breeding stock horses; (4) number of Full Time employees; and (5) number of Part Time employees.

The survey was conducted by mail during the period commencing on January 6, 2005 and concluded on January 25, 2005. Considering the unusually high response rate of 46%, the results should provide reasonably accurate estimates of numbers and economic impact to the agricultural industry in the State of Kansas. Quoting from the 2003 Equine survey by the Pennsylvania Department of Agriculture and Pennsylvania State University "By recognizing all the breeding farms and stables, land, equipment, facilities and products necessary to produce and use horses, one begins to understand how the horses and people involved represent an influential industry. Finding a rival in

complexity would be a challenge". Such is the case with the horse racing industry in Kansas.

## SURVEY RESULTS

Table #1 Basic Facts about the Kansas Race Horse Industry:

Number of Horses	7783
Number of Owners/Breeders	1615
Number of Employees (JOBS)	994
<b><u>Kansas Horse Racing Property Value:</u></b>	
Value of Kansas Horses	\$23,349,000.00
Value of Real Estate & Equipment	<u>\$248,724,762.00</u>
<b>Total Kansas Horse Racing Property Value</b>	<b>\$272,073,762.00</b>
<b><u>Annual Kansas Horse Racing Expenditures:</u></b>	
Value of Feed & Hay	\$4,319,565.00
Bedding	\$1,183,016.00
Vitamins & Supplements	\$716,036.00
Supplies, Tack & Equipment	\$1,486,553.00
Training and Boarding	\$5,549,279.00
Farrier	\$1,159,667.00
Veterinary	\$2,926,408.00
Horse Transportation	\$902,828.00
Wages	\$15,200,199.00
Advertising	\$583,725.00
Car & Truck Maintenance	\$1,019,573.00
Insurance	\$1,836,788.00
Office Supplies	\$264,622.00
Facility Maintenance	\$980,658.00
Travel and Accommodations	\$918,394.00
Utilities	\$965,092.00
Dues and Subscriptions	\$171,226.00
Other Operating Expense	<u>\$3,183,247.00</u>
<b>TOTAL</b>	<b>\$43,366,876.00</b>

Values shown in Table #1, above, are compiled from surveys conducted most recently by the Pennsylvania Department of Agriculture and Pennsylvania State University, May 2003 and The American Horse Council, Washington, D.C., 1996, as adjusted by numbers for the State of Kansas. Each survey cited used the economic impact software program IMPLAN (Impact Analysis for Planning). The IMPLAN model

is used extensively throughout the United State to determine economic effects of 528 industries.

Economic multipliers, Table #2, below, are used to translate the economic DIRECT impact into the TOTAL ECONOMIC IMPACT; the multiplier gives an estimate of the additional economic activity generated by a change in output. This is the so-called "ripple effect" or "spin off" of direct economic activity generated.

Based on the IMPLAN model, the Kansas horse racing industry multipliers are as follows:

Table #2 Application of IMPLAN Economic Multipliers:

	ACTUAL/MILLIONS	MULTI.	IMPACT/MILLIONS
Industry Out Put	\$43,366,000.00	\$1.75	\$75,890,500.00
Employment (Jobs)	994	1.36	1351
Labor Income (Wages)	\$15,200,000.00	\$1.81	<u>\$27,512,000.00</u>
<b>ANNUAL ECONOMIC IMPACT ON KANSAS AGRICULTURE</b>			<b>\$103,402,500.00</b>

THE KANSAS HORSE RACING INDUSTRY

IT'S AS BIG AS YOU THINK

Compiled and Distributed by  
 WEELBORG FARM  
 CANTON, KS.  
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 KANSAS HORSEMEN'S ASSOCIATION