

Approved: Feb 11, 2008
Date

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Arlen Siegfroid at 1:30 P.M. on January 22, 2008, in Room 313-S of the Capitol.

All members were present except:

Nile Dillmore
Oletha Faust-Goudeau - Excused
Robert Olson - Excused
Michael Peterson - Excused

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mike Heim, Revisor of Statutes Office
Jason Long, Revisor of Statutes Office
Jeannie Dillon, Committee Assistant

Conferees: Ed Van Petten, Executive Director, Kansas Lottery
Keith Kocker, Director of Gaming Facilities

Others attending:
See attached list.

Chairman Siegfroid opened the floor for bill introductions and recognized Representative Mah who requested a bill to expand the Veteran's benefit game on the scratch-off tickets. With no objection, this bill was accepted. as a Committee bill.

Chairman Siegfroid introduced Ed Van Petten, Executive Director Kansas Lottery who addressed the committee regarding the Lottery and SB 66. (Attachment 1)

Mr. Van Petten gave an overview and updated the committee on the traditional lottery. He stated that the Kansas Lottery would not be proposing any additional legislation for this session. He related that in 2007 the Kansas Lottery set another record with regards to sales of 240,000,000 dollars. This year's sales are running about 1.63 below where they were last year at this time.

Mr. Van Petten stated that traditionally February and March see the largest increase in sales, even more so than the holiday games which give them a bump during November and December. The Kansas Lottery launched the first time ever multi-scratch ticket. Although this has been done between provincial provinces in Canada, it had never been done in the United States. It has proven to be a very successful game for Kansas.

He stated that their primary concern continues to be security, both in the gaming system and field operations. He noted that the Lottery has eliminated the ability of programmers to access the gaming system unaudited by adding a test system, detached from the gaming system, for developing new programs.

He spoke to the issue of the Veteran's Benefit games as mentioned by Representative Mah, and said that they limited the sale of these games from May 1 until November 30th. Last year they sold three million dollars in Veteran's Benefit games which will amount to a transfer of almost 900,000 dollars for the fiscal year.

He concluded by noting the development of new game concepts which includes the Electronic Scratch Ticket.

A committee member asked if Mr. Van Petten had any reports regarding the partnership with the different Kansas companies and the Kansas Lottery and if they have seen an increase in their sales with some of these items.

Mr. Van Petten answered by saying that it is a little hard to tell with some of them. He stated that they have had a very good reaction from the commerce community statewide and that he would think that it is a good match.

CONTINUATION SHEET

MINUTES OF THE House Federal and State Affairs Committee at 1:30 P.M. on January 22, 2008, in Room 313-S of the Capitol.

A committee member asked Mr. Patten to break down the distribution of sales.

Mr. Van Petten said that he would not be exact but that administrative costs run about 4 percent of sales. The cost of prizes last year was either 54 or 56 percent. Online sales, which is terminal issue tickets, were at 5.1 percent and that goes down in conversion to 4.999. He noted that retailers receive 5 percent for the selling commission on all tickets, 1 percent for cashing winning tickets and 2 percent for cashing winning keno and Kansas Holdem' tickets.

A committee member asked Mr. Van Petten how much money is spent on advertising.

Mr. Van Petten said that advertising was part of the administrative costs and it runs approximately 3 million dollars a year.

A committee member stated that there was 3 million dollars in advertising for the lottery but the tourism budget for Kansas went from 4.1 to 3.4 million for the entire state for tourism. The Committee member questioned the states priorities regarding the cost of the lottery compared to the cost of supporting tourism which is supposedly bringing money in from out of state.

The Chairman asked Mr. Patten if the 1.63 drop in sales was related to the weather or the economy.

Mr. Van Petten said that the last few weeks could be weather related. He noted that there is always a spike in sales when the jackpots are larger.

The Chairman complimented Mr. Van Petten on his high security standard and thanked him for coming.

Mr. Van Petten introduced Keith Kocker, Director of Gaming Facilities, Steve Darrell, Assistant Attorney General for the Lottery and Sally Lundsford, Director of Communications at the Kansas Lottery.

A committee member was concerned that there was a perception that the Sumner County commission made recommendations and the appearance that some people decided that they wanted a larger proposal at the Sumner exit, implying that they favored a Mulvane exit site because it would generate more revenue being closer to Wichita.

Mr. Van Petten stated that he was positive that the Kansas Lottery had never made that comment. Maximizing revenue is one of the major factors to be considered and that he stood by that. He stated that is what Senate Bill 66 tells them to do but he does not think that is the only factor that they consider.

Responding to a question from a Committee member concerning the city of Mulvane, Mr. Van Patten replied that the Lottery does not have discretion as to who to negotiate with or who to forward to the Lottery Gaming Facility Review Board. He noted that the review board makes the final determination as to what is in the best interest of the state of Kansas.

Keith Kocker, Director of Gaming Facilities, presented testimony submitted by Ed Van Petten of the Kansas Lottery implementation of the Kansas Expanded Lottery Act as created by Senate Bill 66. The overview included casino information, rules and regulations regarding racinos and the litigation now pending in the District Court of Shawnee County, Kansas. (Attachment 2)

After answering all questions asked by the committee regarding SB66, the Chairman thanked Mr. Kocker for his testimony.

With no further business before the Committee, the Chair adjourned the meeting. The next scheduled meeting will be January 24, 2008.

HOUSE FEDEERAL & STATE COMMITTEE GUEST LIST

DATE: 1/22/08

NAME	REPRESENTING
MIKE REECHT	GBBA
JAN KRAMER	Carter Gray
Austin Hayden	Hein Law Firm
Ed Van Petten	Lottery
Sally Lunstford	Lottery
Keith Kocher	KS Lottery
MARK BOZAN y.a.k	CAPITOR STRATEGIES
JOAN MOYER	Jelly Puffs
AMY CAMPBELL	AMM JAMES GAMING INC
KEVIN MICK	LITTLE BOY - RELATIONS-
Whitney Jam	Distilled Spirts (thh)
Mick John	Kansas Gas Serv.
Kevin BARONE	Joseph + Hollander Leg. Con. LLC
Kaelyn Selmar	KAAAC
David Kensing	Perin-National



Ed Van Petten
Executive Director

Kathleen Sebelius
Governor

**Testimony Before The
House Federal and State Affairs Committee
Agency Update 1-22-08 for matters other than SB 66**

Presented By:
Ed Van Petten, Executive Director
Kansas Lottery

Mr. Chairman and members of the Committee:

I. Legislative Issues

The Kansas Lottery does not propose any additional legislation for this session.

II. Sales

Sales for FY 2007 totaled \$240 million, and we are presently 1.63% behind last year's sales. The jackpot games are not performing as well as in previous years, as those games are dependent on jackpots and we simply have not had many large jackpots thus far this year. We have taken the new game "Kansas Hold'em" statewide, after about a year in only 100 retail locations as a test. Although the game can be sold at all retailers we will have the monitors for the game at only 600 locations, due to the expense of installation of this equipment.

This year we launched the first multi-state instant game in the history of United States lotteries, with our partners at the Iowa Lottery. Sales of that game have been strong, and continue to be. On January 11, Secretary of Commerce David Kerr was the guest draw official for the first of two drawings in the game, for \$500,000. That drawing was held here at the Kansas Statehouse. The second drawing will be in Des Moines on April 18.

House Federal and State Committee

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Attachment 1

III. Transfers

The 2002 legislature allowed the Lottery to modify the method of calculating transfers made each month. Rather than the statutory provision of transferring 30% of gross sales each month, the Omnibus bill allowed for minimum monthly transfers of \$4.5 million, and a minimum annual total of \$59 million. This request was made to give us more flexibility in operations and make it possible to increase prize payouts to bolster sales. As a result of these changes, the lottery has been able to boost payouts on our instant products which has helped to boost our sales, and thus the overall amount of money transferred. This has been continued in the Omnibus bill each year since, with the target transfer for this fiscal year being \$73 million. With our November transfer, the lottery surpassed \$1 billion in transfers.

IV. Operations

Our primary concern continues to be security, both in our gaming system and field operations. We have eliminated the ability of programmers to access the gaming system unaudited by adding a test system, detached from the gaming system, for developing new programs. We have also increased the audit functions, or oversight, on the gaming system. In a recent security audit conducted for Legislative Post Audit, Delehanty Consulting LLC reported, "The Kansas Lottery's security culture may set the standard for the U.S. lottery industry."

We continue to reduce the use of paper to the greatest degree possible. Daily and weekly sales reports, which formerly were distributed on paper, are now paperless and maintained "on line." All draw information is also maintained paperless, and all investigation reports and work papers are stored electronically.

We are in the process of converting to a new gaming system, with our vendor GTECH. The new system will be wireless as we have operated for the past five years. The system will include the installation of all new terminals and related equipment statewide.

We are required to survey retailers to ensure compliance with the Americans with Disabilities Act, which is a continuing responsibility. We have enjoyed a good working relationship with Anthony Fadale, State ADA Coordinator. All surveys are conducted by our security division.

Last year we paid retailer commissions of \$13,936,849, with total commissions paid through FY 07 of \$180,568,409.

V. Partnerships

We continue to develop marketing partnerships with Kansas businesses and industries. As you are aware, we market games with Kansas Speedway, the Kansas State Fair, Cabela's, Midwest Ford Dealers and General Motors. In further developing our "Made in Kansas" line of tickets we have formed partnerships and marketed tickets featuring the Land Pride "Treker," manufactured in Salina, custom golf cars from Swartz Motorsports, in Strong City, Cobalt Boats, in Neodesha, and presently we are featuring bass boats made by Cougar Custom Boats in Hill City, Kansas. We have also promoted tourism in our state with "Flint Hills Treasures," "The Great Santa Fe Trail Horse Race," and this spring will launch a ticket featuring the "Sunflower State Games." Other partners include Big Dog Motorcycles in Wichita, the Wichita Riverfest, 3i Show, and Kansas Department of Wildlife and Parks. Our intent with these games is to increase the exposure of Kansas business, industry and tourism, as well as to generate enthusiasm in Kansas citizens for our games. Thus far with this project over the past few years, we have spent approximately \$3.4 million with Kansas businesses and tourism.

There are a number of businesses in the lottery industry that license certain products for use of logos and use their merchandise for prizes in conjunction with lottery games. These licenses are quite often very expensive, so we have tried to generate the same effect of "brand" or name recognition, and hopefully help a Kansas business in the process. Instead of costing the Lottery extra, the merchandise has been provided at reduced cost, with no charges or minimal charges for the use of logos and names. This seems to be a good way to stimulate economic development in Kansas, while generating revenue for the state.

VI. Veteran's Benefit Games

Unaudited sales figures for the Veteran's Benefit Games are a little under \$3 million, which should result in a transfer for those programs of almost \$900,000 in fiscal year 2008. These funds are distributed one-half to the National Guard Scholarship fund and one-half to the Veteran's Commission to assist with maintenance of the Soldier's Homes and Veteran's Cemeteries.

VII. 20th Anniversary

The lottery celebrated 20 years of operation with a birthday event on November 9, 2007. Sale of the first lottery ticket was November 12, 1987.

VIII. New Games this Year

We are working with Scientific Games International in the development of a new game concept called an Electronic Scratch Ticket. This will have a paper ticket, similar to our present scratch tickets, but will display the play of the ticket on an electronic handheld monitor. Security on the tickets has been the biggest hurdle, but I believe that issue has been resolved. A test printing is scheduled for next week.

We have recently joined with the other Hot Lotto states in adding a game option called "Sizzler." This doubles the cost of each wager and triples the payout on all prizes but the jackpot. We will be joining the other states selling the 2by2 game, in adding a feature we call "2by2 Tuesday." The game will change from six draws a week to seven, and any player that has a multi-draw ticket in multiples of seven, will double all prizes, including the grand prize, on Tuesday's draw.

We will have the capacity to conduct raffle style games after the completion of the system conversion and anticipate doing so during FY 09.

IX. Current RFP

We presently have a Request for Proposal (RFP) issued for our advertising agency. We anticipate receiving bids from a number of agencies.

We will also soon be issuing a RFP for the printing of instant tickets. There are now just three printing companies, our incumbent Pollard Banknote Limited, GTECH and SGI.



KANSAS LOTTERY

ED VAN PETTEN, EXECUTIVE DIRECTOR

KATHLEEN SEBELIUS, GOVERNOR

**KANSAS LOTTERY IMPLEMENTATION OF THE
KANSAS EXPANDED LOTTERY ACT (KELA)
AS CREATED BY SENATE BILL 66
January 22, 2008**

Chairperson Siegfried and members of the House Federal and State Affairs Committee: On behalf of the Kansas Lottery I am happy to report the Lottery's activities regarding implementation of the Kansas Expanded Lottery Act (SB 66). Following is a summary of our ongoing efforts.

IN GENERAL

1. Based upon the results of prior elections approving the expansion of gaming in their counties, the counties of Crawford and Sumner requested the Lottery Commission waive the requirement that a new county referendum vote be conducted (as provided in Sections 6(e) and/or 12(e) of the KELA). After public hearing both requests were approved.
2. County referendums votes were successful in Wyandotte County (for a casino and a racino), and Cherokee and Ford counties (casino only). The referendum votes in Sedgwick County failed on both the casino and racino initiatives.
3. The Kansas Lottery, the Kansas Racing and Gaming Commission (KRGC), and the Chief Gaming Officer (Mr. Robert Krehbiel) continue to consult and cooperate on a number of issues related to implementation of the KELA.
4. All parties have worked with the Office of the Division of the Budget to arrive at consensus estimates of projected gaming income.
5. The Lottery issued a "Request for Information" pertaining to the central computer system and received five (5) replies from interested vendors. The KELA provides that the central system must be purchased or leased on behalf of the Lottery Commission by, and at the expense of, the gaming managers. The same system will be utilized for all racino and casino activities.
6. Central system vendors have conducted demonstrations for the Lottery and the KRGC and provided information regarding their respective systems. The Lottery is currently in contract negotiations with these vendors in order to select the best

House Federal and State Committee

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Attachment 2

possible central system for the needs of the State. Per direction of the legislative Joint Committee on Information Technology, prior to award of a contract the plan for the central system will first be approved by the Executive Branch Chief Information Technology Officer.

7. Mr. Dan Biles of the law firm Gates, Biles, Shields and Ryan, P.A., of Overland Park, Kansas, has been hired by the Lottery to represent its interests in the lawsuit filed by the Kansas Attorney General (see below), to prepare and assist in the negotiation of contracts for all gaming facilities, to prepare applicable rules and regulations, and to act as a general consultant in other areas pertinent to implementation of the KELA.
8. The Lottery Commission has approved a total of 19 rules and regulations dealing with a variety of issues (see "Racinos," below). Other rules and regulations will be necessary to fully implement the KELA, most of which will be promulgated by the KRGC in their role as regulator.
9. The Assistant Attorney General assigned to the Lottery for the past eight (8) years, Mr. Keith Kocher, has been promoted to the position of the Director of Gaming Facilities where he will devote most of his time to implementation of the KELA.
10. Mr. Stephen Durrell, former Assistant Attorney General at the KRGC, has transferred to Assistant Attorney General position at the Kansas Lottery where he will take over all Lottery duties and assist with implementation and ongoing operations of the KELA.
11. The Lottery has transferred one individual from its Security Department to focus more attention on KELA matters. No additional personnel are expected to be added to the Lottery staff in the immediate future; however, as the racinos and casinos prepare to commence operations it is expected the Lottery will need to hire additional personnel in order to deal with the ongoing issues brought about by the KELA.
12. The Lottery and the KRGC have been in contact with individuals who may be retained as experts on various matters, including the gaming facility managers' financial ability to perform, market potential, and general review and recommendations regarding the manager contracts. Economist and gaming expert Richard Schuetz has been hired by the Lottery (subject to security investigation).

CASINOS

1. Within 30 days of enactment of the KELA, the Lottery Commission approved the procedure for receiving, considering and approving proposed "lottery gaming facility" (casino) applications, which procedure was then timely published in the Kansas Register (as required by KELA Section 3(b)).
2. The deadline for submission of applications was set at 90 days after certification of the local county vote (or certification of the last such vote to occur in those Zones with two counties), subject to reasonable extension by the Lottery Commission at the request of a governing body in that Gaming Zone. All Gaming Zones requested and were granted extensions by the Commission.
3. All deadlines for Lottery Gaming Facility Manager applications have now expired, as follows:
 - a. December 6 – **Southeast** Zone (Crawford and Cherokee)
 - b. December 26 – **South Central** Zone (Sumner)
 - c. December 26 – **Southwest** (Ford)
 - d. December 31 – **Northeast** (Wyandotte)
4. A total of thirteen (13) applications have been timely received, as follows:
 - a. **Southeast** Gaming Zone:
 - i. Kansas Penn Gaming (Penn National; only applicant)
 - b. **South Central** Gaming Zone:
 - i. Sumner Gaming Ventures (MGM, Foxwoods, Chisholm)
 - ii. Sumner Gaming Joint Venture (Harrah's)
 - iii. Penn Sumner (Penn National)
 - iv. Marvel Gaming (Binion family)
 - c. **Southwest** Gaming Zone:
 - i. Butler National Service Corp. (Boot Hill Casino)
 - ii. Dodge City Resort and Gaming (Ingenus Management; Long Branch Gaming)
 - d. **Northeast** Gaming Zone:
 - i. Golden Heartland Casino (Sartini Family Trust)
 - ii. Kansas Entertainment (Hard Rock Hotel & Casino; Kansas Speedway)
 - iii. Pinnacle Entertainment (PNK-Kansas)
 - iv. Legends Sun (RED Leg Sun; Mohegan Tribal Gaming Authority)
 - v. Sands Kansas (**Edwardsville**; Las Vegas Sands)
 - vi. Sands Kansas (**Kansas City**; Las Vegas Sands)

5. Mr. Biles is currently working with Lottery staff and is in the process of preparing a draft casino manager contract.
6. The Lottery will have 90 days from the expiration of each application deadline to determine if an applicant meets the various KELA requirements to become a manager, and if so the Lottery will attempt to negotiate a contract with each manager that qualifies. This 90-day deadline may be extended by the Governor for up to 60 days.
7. Within 30 days of signing a contract with the Lottery each applicant must pay the statutory privilege fee of \$25 million (\$5.5 million in the Southwest Gaming Zone). All privilege fees will be held in a special fund until a management contract becomes binding in a Gaming Zone.
8. One or more proposed contracts in each Zone will be forwarded to the Kansas Lottery Gaming Facility Review Board ("Board"). The Board will conduct hearings and select a manager for each Zone, or the Board may return one or more contracts to the Lottery for further negotiations. Unless extended by the Governor the Board's selection must be made, or the proposed contract(s) returned to the Lottery, within 60 days of receipt from the Lottery.
9. Upon the Board's selection of a final applicant for each respective gaming zone, the KRGC will conduct a background and security investigation of the prospective manager. If the applicant fails to pass the investigation the entire selection process is begun again.
10. No Lottery Gaming Facility Manager contract may be awarded unless the manager has obtained a "resolution of endorsement" from the city or county commission in which the facility is proposed to be located. The endorsement process is being handled in a number of different ways by the various local governments. Some proposals submitted to the Lottery have not yet been endorsed by the city or county in which the facility is proposed to be located. The Lottery will process those applications, but will not be able to enter into a contract with any applicant that does not have the local endorsement in time to execute the contract.
11. Once a management contract becomes binding in a Gaming Zone, all unsuccessful applicants will be refunded their privilege fee (without interest). The privilege fee of the manager selected, along with the interest accrued on all privilege fees, will then be transferred to the SGF.

RACINOS

1. Per the KELA, various rules and regulations were adopted by the Lottery Commission within 120 days of enactment of the KELA. There are 19 regulations covering items such as: certification of net electronic gaming machine income; advertising materials; kind, type and location of machines; accounting and reporting; floor plans; surveillance; security; and others (see KAR 111-101-1 through and including 111-101-19).
2. Per one of those regulations (KAR 111-101-2) the Executive Director of the Lottery made an initial allocation of gaming machines in each Zone, as follows:
 - a. Northeast Zone – 800
 - b. South Central Zone – 800
 - c. Southeast Zone – 600
3. Because the referendum vote was defeated in Sedgwick County (the county in which the parimutuel track was located in the South Central Zone), the Executive Director may reallocate the number of gaming machines available at the two remaining tracks.
4. Only existing parimutuel licensees may become Racetrack Gaming Facility (racino) managers, so no formal application process is required; however, each manager must still have the financial ability to fund the operation of the racino and be current in the payment of all taxes. If a current pari-mutuel licensee is unable or unwilling to come to an agreement with the State on how a racino is to be operated, then another pari-mutuel licensee may become eligible for a racino operation.
5. The only racinos currently authorized to offer games under the KELA are the Woodlands Racetrack in the Northeast Zone (in Kansas City) and Camptown Racetrack in the Southeast Zone (in Frontenac, near Pittsburg).
6. Mr. Biles has prepared a draft racino contract. It has been reviewed and modified by Lottery and KRGK personnel, and negotiations with both racetrack facilities are ongoing.

LITIGATION

1. On behalf of the State of Kansas, the Kansas Attorney General filed a lawsuit challenging the KELA on constitutional grounds, primarily questioning whether

the gaming contemplated under the KELA is actually "state-owned and operated." The Kansas Lottery and Executive Director of the Kansas Lottery, Ed Van Petten, were named as party defendants.

2. The case was filed as an "original action" with the Kansas Supreme Court, but the Supreme Court instead ruled the case should first be heard in the District Court of Shawnee County, Kansas.
3. Upon transfer of the case to Shawnee County it was assigned to the Honorable Charles Andrews.
4. The Prairie Band Pottawatomoni Tribe filed a motion to intervene in the lawsuit, which motion was heard and denied by Judge Andrews.
5. Judge Andrews did, however, allow the Pottawatomoni Tribe and the entity "Stand Up for Kansas" to file *amicus curie* ("friend of the court") briefs.
6. Briefs and reply briefs have been filed.
7. Oral arguments were conducted before Judge Andrews on December 4, 2007.
8. Judge Andrews hopes to render his opinion by February 1, 2008.
9. It is expected that no matter how Judge Andrews rules the case will be appealed. It is also likely the case will be certified directly to the Supreme Court rather than to the Court of Appeals. It is unknown when the Supreme Court will render its decision.

NOTE: A copy of the KELA, the application procedure, rules and regulations, and numerous other documents related to the KELA may be found on the Kansas Lottery's website at www.kslottery.com (click on the "Kansas Expanded Lottery Act" link in the left-hand margin of the home page).

CONCLUSION

Implementation of the Kansas Expanded Lottery Act continues to be a challenge for several agencies within the State of Kansas. As the owner and operator of the gaming operations the Kansas Lottery has diligently met the duties assigned to it under the terms of the KELA, and will continue to do so as the Act gets closer to full implementation.

Ed Van Petten
Executive Director of the Kansas Lottery