

[Type text]

MARK A. KAHRs

REPRESENTATIVE, 87TH DISTRICT
201 N. POST OAK RD.
WICHITA, KANSAS 67206
(316) 684-0104

STATE CAPITOL

TOPEKA, KANSAS 66612

(785) 296-7476

mark.kahrs@house.ks.gov

STATE OF KANSAS



TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

CHAIRMAN: ELECTIONS
MEMBER: APPROPRIATIONS
JUDICIARY

February 8, 2016

HAND DELIVERED

The Honorable Derek Schmidt
120 SW 10th Ave., 2nd Floor
Topeka, KS 66612

**Re: HB 2537 and the effect of a re-vote on the placement of
Electronic Gaming Machines at Wichita Greyhound Park**

Dear Attorney General Schmidt:

On August 7, 2007, a majority of voters rejected placement of electronic gaming machines (slot machines) at the Wichita Greyhound Park. The referendum was conducted in accordance with the Kansas Expanded Lottery Act (KELA). The act contains no provision for a "revote." K.S.A. 74-8743, states "[i]f a majority of the votes cast and counted at an election under this section is against permitting placement of electronic gaming machines in the county, the Kansas Lottery shall not place or operate electronic gaming machines at a pari-mutuel licensee location in the county."

As a long-term incentive for casino investors, KELA imposes a large financial penalty on the state if the state authorizes, prior to July 1, 2032, operation of any casino, other than those authorized under KELA. Any management contract for a destination casino approved by the Kansas Lottery Commission must include the following enforceable provisions:

"(A) Prohibiting the state, until July 1, 2032, from: (i) Entering into management contracts for more than four lottery gaming facilities or similar gaming facilities, ... and (B) requiring the state to repay to the lottery gaming facility manager an amount equal to the privilege fee paid by such lottery gaming facility manager, plus interest on such amount, compounded annually at the rate of 10%, if the state violates the prohibition provision described in (A)." [KSA 74-8734(h)(19)]

All four management contracts between the Kansas Lottery and the Lottery Gaming Facility Managers contain this provision.

[Type text]

Nevertheless, proponents of expanded gaming in Kansas have introduced HB 2537 in the Kansas Legislatures for a revote. In addition to lowering the effective tax rate on electronic gaming machines at racetrack gaming facilities, HB 2537 would direct Sedgwick County commissioners to submit to qualified voters of the county a proposition to permit the operation of electronic gaming machines at the Wichita Greyhound Park.

The Kansas Lottery has expressed a concern that such a revote provision in a bill, if enacted, may impose a financial liability on the state. Such a concern was included in the fiscal notes of at least five bills introduced during the 2012 through 2015 sessions. For example, the fiscal note for HB 2709 from the 2014 session states:

"The Kansas Lottery indicates that the state is prohibited from designating additional areas of the state where gaming facilities are authorized until July 1, 2032. Allowing a revote to allow Wichita Greyhound Park to reopen with electronic gaming machines may be viewed as an expansion of gaming that is prohibited under the Kansas Expanded lottery Act. If it is determined that HB 2709 violates this provision, the state would be required to refund privilege fees from already selected gaming facility managers plus a compounded annual interest rate of 10.0 percent."

At this time, the total penalty on the state for a violation of KSA 74-8734 is approximately \$100 million and is increasing at the rate of 10% per year.

In addition to the statutory penalty, the management contracts between the Kansas Lottery and the Lottery Gaming Facility Managers provide for manager's remedies if the state breaches the contract. Anticipated lost profits could potentially increase such remedies to hundreds of millions of dollars

Therefore, would you please provide your opinion on the following questions:

1. Would enactment of a bill, such as HB 2537, that permits a revote on electronic gaming machines at a racetrack in Sedgwick County breach the management contracts between the Kansas Lottery and the Lottery Gaming Facility Managers and thereby result in imposing on the State of Kansas repayment of privilege fees plus interest, as specified in KSA 74-8734(h)(19)?

2. Would such a breach of contracts subject the state to additional liabilities for damages?

[Type text]

3. Would such a breach of contracts occur at the time the bill is enacted?

Given the speed that this legislation may move during this session, I respectfully request that your opinion be expedited.

Sincerely,

Representative Mark Kahrs
Kansas House of Representatives
87th District