



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

DEREK SCHMIDT
ATTORNEY GENERAL

MEMORIAL HALL
120 SW 10TH AVE., 2ND FLOOR
TOPEKA, KS 66612-1597
(785) 296-2215 • FAX (785) 296-6296
WWW.AG.KS.GOV

March 14, 2016

Honorable John Barker
State Representative, 70th District
State Capitol, 519-N
300 SW 10th Avenue
Topeka, Kansas 66612

Honorable Mark Kahrs
State Representative, 87th District
State Capitol, 286-N
300 SW 10th Avenue
Topeka, Kansas 66612

**Re: Status of Attorney General's Opinion Request related to
Kansas Expanded Lottery Act**

Dear Representatives Barker and Kahrs:

In recent days, each of you separately has asked me about the status and expected date of issuance of an attorney general's opinion related to the Kansas Expanded Lottery Act. It is my impression that the two of you stand on opposite sides of the current policy debate in the legislature about the merits or demerits of allowing installation of electronic gaming machines (EGMs) at racetrack gaming facilities. Because of that, and because I am mindful of the strongly held views on the subject of expanded gaming in Kansas, I am providing this joint, written explanation of the status of the opinion request to avoid any misunderstanding. The information contained herein is consistent with, but somewhat more detailed than, what I have told each of you separately.

As you know, the Kansas Lottery, the agency that is a party to the contracts with existing lottery gaming facility managers, previously has indicated its opinion that allowing installation of EGMs at a racetrack gaming facility in Wichita likely would violate provisions in those contracts because the state is prohibited from designating additional areas of the state where gaming facilities are authorized until July 1, 2032.¹ The fiscal notes on these various bills introduced in the legislature in recent years to authorize a "revote" in Sedgwick County and subsequent installation of EGMs have reflected the financial cost if such a contract violation would require the State of Kansas to refund privilege fees paid by lottery gaming facility managers in possibly

¹ See Fiscal Notes on 2016 H.B. 2537, 2015 H.B. 2322 and 2014 H.B. 2709.

all four gaming zones. Although the Kansas Lottery is the agency that is party to the contracts with existing lottery gaming facility managers, and thus its expressed legal concerns should carry weight as they apparently have with those who draft fiscal notes, Representative Kahrs nevertheless has requested a formal attorney general's opinion on the subject.

The Nature of Formal Attorney General Opinions

Like judicial opinions, formal Attorney General Opinions are thoroughly researched legal analyses. We do not issue an opinion until we are confident we have received sufficient input to have identified all pertinent legal issues and conducted sufficient legal research and analysis to have addressed those pertinent legal issues. Because a formal opinion must be thorough, the process of producing opinions takes time. Attempting shortcuts unacceptably risks compromising the integrity or legal accuracy of the opinion. The amount of time necessary to properly prepare an opinion varies depending on the complexity of the legal issues involved, but as a rule of thumb opinions typically require 60 to 120 days between request and issuance. Representative Kahrs submitted his opinion request to us on February 8, 2016, just more than 35 days ago.

When drafting formal opinions on legal questions that are particularly controversial, complex or difficult, we often invite interested parties to submit legal research and analysis for our review. See Attorney General's Statement of Policy Relating to the Furnishing of Written Opinions, #10, available at <http://ag.ks.gov/docs/documents/opinions-policy.pdf?sfvrsn=2>. This process, which is analogous to parties in a lawsuit submitting briefs to assist a court in its review of a case, helps ensure that all legal issues pertinent to the question or questions asked in the opinion request are identified so that we may fully consider them. In the case of Representative Kahrs' opinion request, we have recently completed this process of gathering input and analysis from interested parties.

Our next step is to complete our own independent legal research on the issues pertinent to the opinion request. In the case of Representative Kahrs' opinion request, our research is well underway but we have additional research to complete now that input from interested parties has been received.

The final step is to actually draft the opinion itself based on the information gathered, the results of our legal research, and the application of legal analysis to the question presented in the opinion. The drafting process typically involves the work of the principal attorney assigned to the opinion, input and review by five other attorneys in the division of our office that handles legal opinions, and of course my own careful review. We use this thorough process of review in drafting every opinion to ensure to the maximum extent practicable that all issues have been spotted, the legal analysis and conclusions have been scrutinized and challenged, and thus the opinion is as legally accurate as we are capable of making it. I would note that writing legal opinions is only one of dozens of legal tasks handled by the attorneys in the Legal Opinions and Government Counsel division of our office. Those six attorneys also represent roughly 30 state agencies, boards and commissions as general counsel; review bond issuances throughout the

state; review and process every rule and regulation issued by a state agency; review for legality all interlocal agreements in Kansas; handle legal matters related to open records, open meetings and records retention; provide informal assistance on inquiries from the legislature and other officials; and perform a variety of other tasks. They are stretched thin.

Status of the Opinion Requested by Rep. Kahrs

I am mindful that the legislature may wish to have our opinion when debating legislation related to the subject of expanded gaming. Therefore, upon receiving Representative Kahrs' request, I promptly instructed our staff to make completion of this particular opinion a priority so it could be available during the current legislative session. They have done so, and indeed at my instruction other pending opinions have been "leapfrogged" in an attempt to accelerate to the fullest extent possible the completion and issuance of this opinion. Work on this opinion is well underway.

However, I also am mindful that our opinion likely will be relied upon by a variety of persons interested in this subject matter, some of whom serve in the legislature and some of whom do not, and that litigation related to gaming issues in Kansas is not uncommon. Although we are accelerating our work on this opinion request, we will not sacrifice thoroughness and accuracy for speed.

As I have told each of you separately, I am confident we will issue this opinion before the legislature returns to commence the veto session in April. It is possible the opinion might be issued in the coming days before the first adjournment of the legislature, but I cannot promise that will occur. We will issue it as soon as it is completed and we are confident it is legally correct. We will not issue it until then.

I trust this information is helpful to both of you as you wrangle over legislative process issues, including the timing of any potential legislative debate related to expanded gaming in Kansas, over which I have no control. I remind you I am not a member of the legislature and have no role in setting the debate calendar in either legislative chamber; that task is reserved exclusively to you and your legislative colleagues. I also have no vote on legislation related to expanded gaming. Our timing in issuing the opinion requested by Representative Kahrs will be determined exclusively by what is required for us to complete our legal analysis and writing thoroughly and accurately to the best of our professional ability.

Best wishes,



Derek Schmidt
Kansas Attorney General