

TESTIMONY
By
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Butler National Corporation
Before the
HOUSE COMMITTEE ON APPROPRIATIONS
Regarding House Bill 2537
March 16, 2016

SUMMARY

Butler National Corporation encourages agriculture and economic development within the State. Consequently, Butler National has no objection to the full implementation of the Kansas Expanded Lottery Act ("KELA") as currently enacted for the advancement of horse and dog racing. Butler National opposes any further gaming expansion for multiple reasons, including, but not limited to the significant financial exposure to the State of Kansas through the refund of contract fees.

HORSE AND DOG TRACKS IN COMMERCE

Butler National has no objection to the promotion and re-vitalization of the agribusinesses of horse and dog racing in Kansas. We believe these businesses, like many other business, have significant roots in Kansas and may have a positive economic impact to the State. While we state this position, we believe it is the responsibility of the legislature to define the level of subsidy or appropriation that should be made to the businesses if the business cannot stand on its own.

We use the words re-vitalization of dog and horse racing for the Kansas situation because it has been a long time since either event has occurred. Consequently, we as careful stewards of the State are cautious to support anything more than reestablishing the horse and dog racing that previously existed at the Woodlands under the conditions that legislature specified in KELA.

KELA DIRECTLY BENEFITS THE STATE AND ITS CURRENT IMPACT SHOULD NOT BE DIMINISHED

KELA provides two key objectives to State, the attraction of people to destination locations for entertainment as well as much needed revenue to the State. In light of these two objectives, the legislature specified certain requirements by which the State would own and operate the facilities. Butler National does not want to impair or dilute the current requirements and efforts to attain these goals with any legislative or administrative change.

KELA provides comprehensive detail for the State ownership and operation of gambling equipment facilities in Kansas. In KELA, the legislature defined the constraints for gaming equipment operation, both at pari-mutuel locations and at lottery gaming facilities. We believe these constraints and the obligations of parties desiring to contract with the State relating to gaming facilities have been fairly stated. Moreover, since the enactment of KELA, there are at least four entities that have relied on the express terms of KELA to advance the economic situation of Kansas. The Lottery records indicate that fiscal year to date, State and local governments received approximately \$59,000,000 from KELA activity. To date, the State and local governments have received over \$415,000,000 as a result of activities at the State owned and operated Lottery Gaming Facilities.

We believe there is a balance question that the legislature previously spoke to in enacting KELA – What is the fair and reasonable expansion of gaming in Kansas? KELA answers the question with respect to the scope and extent of gaming machines and locations. The legislature provided express limits to the expansion of gaming under KELA as well as giving the local community the opportunity to voice its position, through a vote, to prohibit electronic gaming equipment in a gaming zone. See K.S.A. 74-8734(a). Butler National does not believe the structure of KELA should be changed with respect to the locations or in any manner that impact of revenue to the State. Moreover, we would oppose any activity that would dilute the impact of the present Lottery Gaming Facilities to draw new visitors to their destination facilities or decrease the revenue to the State.

STATE EXPOSURE IS SIGNIFICANT FOR EFFORTS TO EXPAND GAMING

While the hearing does not KELA directly imply the expansion of slot-gaming in support of pari-mutuel racing, that is the clear trend across the country. We strongly oppose any expansion of the gaming under KELA or similar provisions. Moreover, the consequence of the State expanding gaming in the form of allowing new gaming facilities or designating new locations where the operation of electronic gaming machines would be allowed is significant. The legislature went so far as to reinforce limiting the expansion of gaming by making it a contractual provision with Lottery Gaming Facility Managers. K.S.A. 74-8734(h)(19).

This prohibition is also contained in all four management contracts between the Kansas Lottery and the Lottery Gaming Facility Managers, stating:

30. Prohibitions Applicable to the State. The Kansas Lottery, acting on behalf of the State of Kansas, agrees by entering into this Agreement that:

a) Neither the Kansas Lottery nor the State of Kansas will enter into a management contract for more than four (4) lottery gaming facilities or similar facilities in the four gaming zones outlined in the Kansas Expanded Lottery act with one lottery gaming facility in each gaming zone;

b) Neither the Kansas Lottery nor the State of Kansas will designate additional areas of the state where operation of Lottery Gaming Facilities or similar gaming facilities will be authorized, other than those set out in the Kansas Expanded Lottery Act; or

c) Neither the Kansas Lottery nor the State of Kansas will operate an aggregate of more than 2,800 Electronic Gaming Machines at all pari-mutuel licensee locations.

31. State Payment for Breach. Manager will be entitled, as its sole monetary remedy, to payment in an amount equal to the actual privilege fee paid by Manager, plus interest on such amount, compounded annual at the rate of ten percent (10%), if the State of Kansas violates any provision in Paragraph 30 above during the term of this Agreement. The parties acknowledge and agree that nothing in this paragraph will be interpreted to prevent or limit any rights manager may have to seek specific performance or other equitable relief against the Kansas Lottery or the State of Kansas to enforce the prohibitions contained in Paragraph 30....

Lottery Gaming Facility Management Contract for Boot Hill Casino & Resort, pp. 19-20.

Whether taking a broad look at KELA or a very specific look at the terms of K.S.A. 74-8734(h)(19) and each Management Contract with the Lottery, the result is the same: The Kansas Legislature intended to inhibit the expansion of gaming. K.S.A. 74-8743; K.S.A. 74-8737. We do not challenge or imply that the State should not or is not entitled through the Kansas Lottery to own and operate games at the existing KELA pari-mutuel locations in Wyandotte or Crawford County. However, we do suggest that very careful attention be paid to any legislative action that might expand gaming or diminish the impact of the current KELA revenue to the State. Moreover, the state has been paid sixty-one million dollars in privilege fees from the four Lottery Gaming Facility Managers. A return of those privilege fees plus interest at ten percent equates to between \$90,000,000 and \$110,000,000 depending upon the timing for any gaming expansion.

CONCLUSION

Butler National Corporation encourages agriculture and economic development within the State. Butler National has no objection to the full implementation of the Kansas Expanded Lottery Act ("KELA") as currently enacted for the advancement of horse and dog racing. However, Butler National objects to any legislative action that may be an expansion of gaming within Kansas or that would decrease the impact of tourism or revenue to the existing Lottery Gaming Facilities.