



Lathrop GPM LLP
lathropgpm.com

10851 Mastin Boulevard, Building 82, Suite 1000
Overland Park, KS 66210-1869
Main: 913.451.5100

R. Scott Beeler
Partner
scott.beeler@lathropgpm.com
913.451.5158

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Chairman John Barker
Vice Chair Francis Awerkamp
Ranking Minority Member Louis Ruiz
Federal and State Affairs Committee

Re: Testimony of R. Scott Beeler regarding potential referendum vote in
Sedgwick County, Kansas on placement of electronic gaming machines (EGMs).

Dear Chairman Barker and Members of the Committee:

My name is R. Scott Beeler and I am a partner with the law firm Lathrop GPM LLP. I am appearing this morning to testify regarding potential legislation pertaining to a referendum vote in Sedgwick County, Kansas concerning the placement of electronic gaming machines (EGMs) in the county.

As a number of the committee members are aware, the issue of Sedgwick County undertaking a referendum vote to allow placement of EGMs within the county has been considered as part of numerous iterations of prior submitted Bills. Moreover, the issue was also a principle subject of discussion in the opinion of our state's Attorney General dated April 22, 2016. In that opinion, General Schmidt made clear that it is this legislative body's prerogative to repeal or modify any statute existing in the state of Kansas. In that opinion he cites to *State ex rel Spear v. Barker* which dates back to the inception of our state and where our Supreme Court stated, "As a general principle, one legislature is competent to repeal or modify any act of a former legislature, and one legislature cannot abridge the power of a succeeding legislature". As such, there has never been any question but that the Kansas legislature has the authority to clarify, by modification or amendment that counties within our state, and specifically within the four geographic gaming zones identified in KELA may periodically entertain the issue as to whether or not gaming activities will be allowed in such counties.

In the case of Sedgwick county, a special election was held on August 7, 2007, nearly 13 years ago. With nearly 100,000 votes cast, the measure failed by a mere 243 votes. Once again, well over a decade has since passed and much has changed. There is a lottery gaming facility (a full-blown casino) located just down the road from Wichita in Sumner county. Three other full casino properties are up and operating in the state, filling each of the four statutorily permitted licenses in the four designated gaming zones.

I bring up designated gaming zones because from the inception of KELA, the state-owned and operated statutory protocol has always limited the number of lottery gaming facilities to four, one each in each of the four designated geographic zones. Similarly, that same statutory protocol has ALWAYS contemplated there would be three parimutuel gaming facilities ("racinos"), one each to be located in the northeast geographic zone, south central geographic zone, and southeast geographic zone. KELA mandates that the racinos each be located in the same defined zones as the casinos.

It would seem then that all should be good in the world. Four casinos and then three racinos, where live racing, simulcast racing, entertainment and EGMs are operated. But as most know, only the four casinos currently operate today. And despite the continuing efforts of proponents of legislation to enable racinos geographically approved by this legislature some 15 years or more ago to profitably operate, instead the operating casinos, riding the monopoly they have held since their first day of operation, appear each year before this committee to attempt to “boo” down the potential of the legitimate contemplated competition which would serve to raise the level of revenues received by the state. There most assuredly will be other dates and hearings to discuss the nuances of legislation to address those specifics, but today I am here to comment about a revote in Sedgwick county. Again, the Supreme Court and the Attorney General of this state have made it clear that this legislature can change the statute to clarify and modify in order to allow a revote of the gaming referendum in Sedgwick county. The only issue for debate is one that a court must address, and that is whether the addition of a racino in Sedgwick county, within the south central geographic zone approved by the legislature so many years ago could somehow constitute an expansion of gaming in violation of state statute or pre-existing contract rights between the Kansas Star Casino and the state. I personally do not believe that an affirmative Sedgwick county vote followed by a statutorily anticipated and approved racino locating in that geographic zone would ever be determined a breach or violation of contract creating liability for the state. But that said, I also believe that this body can craft legislation to address that worst-case scenario issue. Let me explain.

- **Pass legislation to clarify that re-votes on gaming referendums are permissible in compliance with statutory protocol;**
- **If the vote is favorable to allow the racino operation, then establish a 60-day timeframe for the lottery gaming facility licensee in that same geographic zone to file an original action with the Kansas Supreme Court for a declaratory determination of the voting breach allegation or any other claim related to alleged breach or claim of liability against the state for repayment for privilege fees or accrued interest, if any;**
- **If the Supreme Court rules that no breach has occurred causing such liability, then a license may issue to open the racino; and**
- **On the other hand, if the Supreme Court finds that a breach has occurred and orders the repayment of privilege fees and interest, if any, then the lottery director shall calculate that number and no license shall be issued to the applicant until such time as that amount is contemporaneously paid with the issuance of the license.**

This methodology insures that if the high Court of this state finds that a repayment of privilege fees and interest, if any, is payable by the state to the existing licensee in the south central gaming zone because a license for a racino is issued in that zone, then that amount will be paid by the applicant before any such license would issue. Simply stated, no issuance of an additional license means no additional competition for the existing casino. If the high Court were to find that privilege

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fees and interest are to be refunded then the applicant would pay those funds (thereby protecting the state's financial interest) and without such payment the new license does not issue.

Year after year the casino operations in this state have made unsupported arguments in opposition to legislation crafted in accordance with the original four casino and three racino structures contemplated by this legislature so many years ago. It is long overdue that this committee and the full legislature move Bills forward which make possible the original seven licensees contemplated. Moreover, it is time that a legislature which has its very existence borne out of crafting, modifying and amending statutory law in a manner that recognizes the current day and age we live in, allow a community such as Wichita, the most populous city in our state to hold a public referendum to decide whether the majority of that populous would like to have back their prior existing parimutuel, simulcast and EGM gaming facility.

I would be happy to answer any questions you may have and I thank you for the opportunity to speak.

Best regards,



R. Scott Beeler
Partner

