

MINUTES

KANSAS GAMING OVERSIGHT PANEL

December 7, 2007
Room 313-S—Statehouse

Members Present

Senator Pete Brungardt, Chairperson
Representative Arlen Siegfried, Vice-Chairperson
Senator Marci Francisco
Senator John Vratil
Representative Tom Burroughs
Representative Don Dahl

Staff Present

Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Mary Torrence, Office of the Revisor of Statutes
Jason Long, Office of the Revisor of Statutes
Theresa Kiernan, Office of the Revisor of Statutes
Mike Heim, Office of the Revisor of Statutes
Connie Burns, Committee Assistant

Others Present

See attached list.

Morning Session

The meeting was called to order by Chairman Pete Brungardt and the Legislative Coordinating Council charge was reviewed.

Overview of 2007 SB 66

Jason Long, Office of the Revisor of Statutes, provided the Committee with an overview of the various provisions of 2007 SB 66, the Expanded Lottery Act (the "Act") (Attachment 1). The Act permits the state to own and operate lottery gaming facilities, or casinos, in certain areas of the state,

and slot machines and other electronic gaming machines at racetrack facilities. The law provides ownership and control of the games with the state. The casinos and the racetrack gaming machines will be managed by independent third parties, pursuant to a management contract. The Act contains detailed provisions governing the terms and approval of the management contracts, the oversight and control of the gaming operations, and various other aspects of gaming activities.

Lottery Gaming Facilities

The Kansas Lottery may operate one lottery gaming facility, or casino, in each of four specified gaming zones. The four zones are statutorily defined as:

- Northeast zone consists of Wyandotte County;
- Southeast zone consists of Crawford and Cherokee counties;
- South Central zone consists of Sedgwick and Sumner counties; and
- Southwest zone consists of Ford County.

Only one facility may be placed in each zone and the zones that have two counties. Whichever county has the facility, the other county will receive a percentage of the revenues produced by the facility in that gaming zone. The Act prescribes the percentage of revenues each county and city will receive. Each casino may operate lottery facility games; the games are defined as any electronic gaming machines and any other games which are authorized to be conducted or operated at a tribal gaming facility, as defined in KSA 76-9802. The state-owned casinos may operate any games which are already permitted in tribal casinos in this state and are subject to the rules and regulations adopted by the Kansas Lottery Commission.

The casino manager must agree to pay a privilege fee of \$25 million if the facility is to be located in the northeast, southeast, or south central gaming zones, or \$5.5 million if the facility is to be located in the southwest gaming zone, and the contract must provide that the state will receive not less than 22 percent of the lottery gaming facility revenues, which are the total revenues from all games conducted at the facility after all prizes have been paid. Complete and full control over gaming operations must be placed with the Kansas Lottery Commission and the Racing and Gaming Commission is to oversee all facility operations. The state may not enter into management contracts for more than one facility in each gaming zone and may not designate additional gaming zones until January 1, 2032.

The Act also requires an election in each county within a gaming zone on the question of whether gaming should be permitted within the county. A majority of the votes cast determines whether the Kansas Lottery is permitted to operate a lottery gaming facility within that county. Other limitations are:

- Eminent domain cannot be used to acquire any real property for use in a lottery gaming enterprise and includes real property that would be used for ancillary business not conducting any gaming;
- The management contract is deemed null and void if the privilege fee is not paid within 30 days after approval of such contract;

- The manager of a racetrack gaming facility located within a gaming zone is ineligible to be the manager of a lottery gaming facility within the same zone;
- All software programs and all lottery facilities games are the property of the state; and
- The lottery gaming facility must comply with all planning and zoning regulations of the city or county in which the facility is located.

Racetrack Gaming Facilities

The Kansas Lottery may place electronic gaming machines at pari-mutuel licensee locations and enter into management contracts with private third parties for the management of such games, provided, the Kansas Lottery adopts the rules and regulations as required by sections 10 through 16 of the Act. Electronic gaming machines may be placed at one pari-mutuel licensee location or racetrack in each gaming zone except the southwest gaming zone. The state must, until January 1, 2032, not operate more than 2,800 electronic gaming machines at all pari-mutuel licensee locations. Each manager is required to pay a privilege fee of \$2,500 per machine placed at such manager's facility. The Kansas Lottery must approve the management contract. Information was provided on:

- Oversight of Gaming Activities;
- Unlawful Acts;
- Other provisions relating to gaming activities;
- Confidentiality of information;
- Prohibition on special financing and tax abatements;
- Indemnification of the state;
- Legal actions;
- Alcohol sales and consumption;
- Tax exemptions;
- Criminal record disclosures; and
- County home rule.

Questions were asked and discussion followed the presentation.

Gaming Litigation and Rules and Regulations Process

Mary Feighny, Deputy Attorney General, Office of the Attorney General (AG), stated that oral arguments were presented to the district court during the last week of November on the lawsuit that was filed on SB 66. Judge Charles Andrews indicated he would give a decision in the case within the next two months.

The *Kansas Constitution* requires that the Kansas Lottery own and operate the Lottery. The question being asked of the courts is whether SB 66 violates the own-and-operate provision by giving too much authority to managers of the casinos that operate in Kansas. The Attorney General filed a friendly lawsuit to try and determine the answer.

Ms. Feighny explained that there are two types of regulation: permanent, and temporary rules and regulation. Temporary rules and regulations for the Kansas Lottery require approval by the Office of Attorney General (AG) and publication. The permanent rules and regulations process requires additional steps in that they are submitted to the Department of Administration to review for technical correctness, and followed by submission to the Attorney General's Office for approval of legality. Once approved by the AG, the agency must publish the rules and regulations for a 60-day comment period. The notice is published in the *Kansas Register*. During that 60-day period, the Joint Committee on Rules and Regulations reviews the regulations at a public hearing, changes can be made, followed by final adoption. The Kansas Lottery Commission has been given temporary regulation authority by statute since its inception and has adopted 18 temporary regulations with regard to SB 66. The Kansas Racing and Gaming Commission, which is required to adopt permanent rules and regulations, could do hundreds with regard to the Act.

Ms. Feighny also provided the Committee the four formal legal opinions in interpreting the Act from the Attorney General's Office (Attachment 2).

Overview of the Duties and Responsibilities of the Kansas Racing and Gaming Commission

Robert Krehbiel, Kansas Racing and Gaming Commission, testified about his position's history and responsibilities (Attachment 3). In August 2007, the Governor asked the Kansas Racing and Gaming Commission to consider utilizing the statutory authority given in SB 66 to create a position which would oversee or monitor the activities of the Kansas Lottery Commission and the Kansas Racing and Gaming Commission with regard to the Act. The Governor specifically sought a single "coordinating authority" that could be utilized to coordinate and implement the newly created duties and responsibilities of all government entities, such as city and county zoning boards, county commissions, state agencies and review boards, while keeping the Governor's Office and the Legislature informed of the process. The Kansas Racing and Gaming Commission responded to the Governor's request by developing a job description for the position of Chief Gaming Officer.

Mr. Krehbiel explained that there is a need for communication between commissions, agencies, boards, directors, the Governor's Office, and the Legislature. This position was intended to help fill that need.

The Act also created the Lottery Gaming Facility Review Board, which will be responsible for determining which lottery gaming facility management contract will be awarded in each gaming zone that best serves the interests of Kansas. In addition, the Executive Director of the Kansas Lottery is directed to negotiate a racetrack gaming facility management contract to place electronic gaming machines at one pari-mutuel licensee location in each gaming zone except the southwest gaming zone.

Mr. Krehbiel believes that the implementation of SB 66 is dependent upon public confidence and trust, which can only be maintained by strict, effective, and transparent regulation of all persons and activities related to the ownership, operation, and management of gaming facilities. The tasks are not easy and the implementation of gaming across America is a relatively new and evolving process with substantial social, economic, and political consequences, and all Kansans should be kept fully informed as the impact of SB 66 is discovered. To that end, he recommends that a Gaming

Oversight Panel or a Gaming Policy Committee be considered as permanent part of the Kansas Legislature to deal with the policy issues that will require continuing legislative oversight and direction.

A position description and the request for funding were provided to the Committee (both of which are part of Attachment 3). A copy of the National Gambling Impact Study Commission Report, which was referenced by Mr. Krehbiel, can be found at the following website: <http://govinfo.library.unt.edu/ngisc/reports/fullrpt.html>.

Afternoon Session

The Kansas Lottery

Ed Van Petten, Executive Director, Kansas Lottery, provided the Committee an updated on the activities of the Kansas Lottery (Attachment 4).

In general:

- Based on 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. After public hearing, both requests were approved.
- County referendum votes were successful in Wyandotte County (for a casino and racetrack), and Cherokee and Ford counties (casino only). The referendum votes in Sedgwick County failed on both the casino and racetrack initiatives.
- The Kansas Lottery, the Kansas Racing and Gaming Commission (KRGC), and the Chief Gaming Officer continue to consult and cooperate on a number of issues related to implementation of the Kansas Expanded Lottery Act (KELA).
- All parties have worked with the Governor's Division of the Budget to arrive at consensus estimates of projected gaming income for the current and budget years.
- The Lottery issued a "Request for Information" pertaining to the central computer system and received five replies from interested vendors; 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 racing and casino activities.
 - Providers have conducted demonstrations for the Lottery and KRGC and provided information regarding their respective systems.
- The Lottery has hired Mr. Dan Biles, of the law firm Gates, Biles, Shields and Ryan P. A., of Overland Park, to represent its interests in the lawsuit filed by the Kansas Attorney General, 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 KELA.

- The Kansas Lottery Commission has approved a total of 19 rules and regulations pertaining to KELA.
- The Assistant Attorney General assigned to the Lottery for the past eight years has been promoted to Director of Gaming Facilities to devote most of his time to implementation of KELA.
 - Stephen Durrell, former Assistant Attorney General at the Kansas Racing and Gaming Commission, has transferred to Assistant Attorney General Position at the Lottery, where he will take over all Lottery duties and assist with implementation and ongoing operations of KELA.
- The Lottery currently is considering transferring one individual from its Security Department to focus more attention to KELA matters.
- The Lottery and KRGC have been in contact with individuals, including the gaming facility managers, who may be retained as experts on various matters such as financial ability to perform, market potential, and general review and recommendation regarding the manager contracts.

Mr. Van Petten updated the Committee on casinos, racetracks, and the litigation. The implementation of the Kansas Expanded Lottery Act continues to be a challenge for several agencies with the State of Kansas

The Racing and Gaming Commission

Stephen Martino, Executive Director, Racing and Gaming Commission, provided the Committee with a presentation on the Racing and Gaming Commission (Attachment 5). The presentation included charts on employee positions:

- Executive Division;
- Administration Department;
- Animal Health Department;
- Audit and Electronic Security;
- Licensing Department;
- Racing Department; and
- Security Department.

The 2007 Legislature provided KRGC with 25 additional FTE positions to begin the process of implementing gaming regulations. SB 66 requires that all electronic gaming machines be linked directly to a central computer at a location determined by the Lottery Commission's Executive Director for purposes of security, monitoring and auditing, and a list of the approved standards.

KRGC staff looked at several options for a licensing system. The Iowa Racing and Gaming Commission provided the agency with its licensing system, free of charge. The agency's total IT

project cost is estimated at \$1.8 million. Additional expenditures will include IT infrastructure expenses at all six of the gaming sites. These costs will be billed back to the destinations as the costs are incurred.

The 2007 Legislature gave KRGC the authority to draw down up to \$3.0 million in funding to cover the start-up costs associated with gaming regulation. These funds will need to be repaid once all gaming facility managers have been selected. KRGC estimates spending \$2.35 million in FY 2008 to be fully staffed and prepared to regulate electronic gaming machines at the Woodlands and Camptown racetracks. Of this amount, KRGC expects to be reimbursed approximately \$550,000 in FY 2008 from the two racetrack gaming facilities creating a loan draw of approximately \$1.8 million for the current year. In FY 2009, it is estimated that two of the casino management companies will be selected early in the fiscal year, and will have adequate funds for operation with a \$3.0 million loan until all four gaming facilities have been selected and the agency is able to bill for reimbursement of costs.

Other items will be website redesign, document imaging, live fingerprint scanning, and additional space. Three major policies that have already been adopted this year are:

- Code of conduct – setting standards of ethical conduct for both the Commission and staff;
- Employee background investigations – formalizing the initial and updating process for background investigations of employees; and
- Fingerprinting of licensure – updating our current process to allow for reasonable reciprocity standards in pari-mutuel licensing and allowing for the inclusion of gaming licensees.

Committee Recommendations and Conclusions

Chairman Pete Brungardt asked for any actions that should be highlighted in the report. Senator Vratil asked that the agencies that presented today be commended for their work over the summer.

The question was raised about background checks on the Lottery Facility Manager to be completed in ten days. Mr. Martino said that to achieve that in ten days would be very difficult and to do a complete job, the solution would be to remove the deadlines.

The meeting was adjourned.

Prepared by Connie Burns
Edited by Kathie Sparks

Approved by Committee on:

January 22, 2008
(date)