

Subject

*Proposed Criminal
Statute - Bingo*

Copy to



STATE OF KANSAS

Office of the Attorney General

State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

VERN MILLER
Attorney General

October 31, 1974

Dr. Lyman S. Johnson
President of the Board
Kansans For Life At Its Best!
218 1/2 West Sixth Street
Topeka, Kansas 66603

Dear Doctor Lyman:

We have your letter of October 23, 1974.

You correctly note that non-lottery "bingo" itself is not illegal. It is illegal only when the participants are charged for their right to play and a prize is awarded. When these elements are present, the game constitutes a "lottery" and is presently prohibited by Article 15, Section 3, of our state constitution.

Question No. 1 places before the voters the issue whether Section 3 of Article 15 should be amended to allow the Legislature to "regulate, license and tax the operation or conduct" of "bingo" games by certain organizations.

The proposition in Question No. 1 must be understood in light of the section which it seeks to amend. In other words, no constitutional amendment is needed to legalize the game of "bingo" when it is played without charge or without prize. The proposition seeks to allow the Legislature to regulate the game of "bingo" when it is operated as a "lottery" by bona fide nonprofit religious, charitable, fraternal, educational and veterans organizations.

Very truly yours,

VERN MILLER
Attorney General

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FILE

Subject

*Legislative
Constitutional Provisions
License Issues
Private Club*

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VERN MILLER
Attorney General

October 23, 1974

Opinion No. 74- 351

Mr. Daniel B. Denk
Assistant City Attorney
Ninth Floor--Municipal Office Bldg.
One Civic Center Plaza
Kansas City, Kansas 66101

Dear Mr. Denk:

You advise that in the continuing effort to resolve the issue of closing hours of private clubs operating within the City of Kansas City, Kansas, the city commission on July 10, 1973, adopted an ordinance fixing 1:30 A. M. as the closing hour. Since that time, the commission determined to extend the closing hour once again to 3:00 A. M. Incidental to the passage of this ordinance, a question was prepared and presented to the Election Commissioner of Wyandotte County, to be placed on the ballot during the November general election, to ascertain the wishes of the people on this question. The question is stated as follows:

"Shall private clubs be permitted to allow the serving, mixing, or consumption of alcoholic liquors on their premises until the hour of 3:00 o'clock A. M. on any day other than a Sunday?"

As you state, the election is purely advisory in nature, and has no legal binding effect upon the city commission in fixing the closing hours of private clubs.

Under Art. 12, § 5 of the Kansas Constitution, Kansas cities are "empowered to determine their local affairs and government." In an opinion of the Attorney General dated May 3, 1972, addressed to Mr. Joe Levy, City Attorney of Coffeyville, we concluded that in the exercise of this power, the governing body could, if it so chooses, authorize the holding of an election, purely advisory in nature, at which a question of public concern is submitted for the expression

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of the wishes of the people. Prior to that time, previous Attorneys General had concluded that such elections were prohibited, because of the absence of statutory authority. Under the Kansas Constitution, however, cities need not look for statutory authority for each municipal act. In *Claflin v. Walsh*, 212 Kan. 1, 509 P.2d 1130 (1973), the court pointed this out:

"No longer are cities dependent upon the state legislature for their authority to determine their local affairs and government. Since home rule, cities have power granted directly from the people through the constitution without statutory authorization." 212 Kan. at 6.

The power, and indeed the duty, continues to rest with the governing body of the city to determine, in the exercise of its legislative authority the closing hours for private clubs. This decision cannot be delegated to an advisory election. However, this does not mean that such an election may not be conducted, or that the question may not be submitted to the voters for an expression of the views of the public upon the question.

It is our opinion that the calling of the election in question is fully within the authority of the city commission.

Yours very truly,



VERN MILLER
Attorney General

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