



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 5, 1975

ATTORNEY GENERAL OPINION NO. 75- 346

James T. McDonald
Secretary of Revenue
Department of Revenue
State Office Building
Topeka, Kansas 66611

Re: Injunction; issuance of bingo licenses

Synopsis: The scope and effect of an order of injunction is to be determined from the language of the order. Where an order of injunction specifically prohibits the Secretary of Revenue from issuing bingo licenses to certain Class A private clubs within the 18th Judicial District of the State of Kansas, the Secretary of Revenue is not precluded from issuing bingo licenses to similar Class A clubs located outside the 18th Judicial District.

Dear Secretary McDonald:

On April 1, 1975, Senate Bill 116 became effective. Pursuant to its provisions, the Secretary of Revenue is authorized to issue bingo licenses to certain bonafide non-profit groups. Subsequent to its effective date, a petition was filed in the District Court of Sedgwick County, Kansas, by the District Attorney for the 18th Judicial District seeking to enjoin the Secretary of Revenue from issuing bingo licenses to certain Class A clubs including the Brookside Club, Inc., the Rolling Hills Country Club, Inc., and all other concerns which have been issued Class A club licenses under K.S.A. 41-2605 and which were organized and operated exclusively for pleasure, recreation and all other similar non-profitable purposes within the meaning of paragraph 501(c)(7) of the Internal Revenue Code of 1954 as amended.

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Thereafter, on May 28, 1975, the District Court of Sedgwick County, Kansas, Division No. 2, granted the plaintiff the relief requested and under its order of injunction permanently enjoined the Secretary pursuant to the terms of the following order:

"To James T. McDonald, Secretary, Department of Revenue: You and all of your agents, servants and employees are hereby permanently enjoined from issuing licenses to conduct and operate games of bingo to Class A clubs organized and operated exclusively for pleasure, recreation and similar non-profitable purposes within the meaning of paragraph 501(c)(7) of the Internal Revenue Code of 1954 including the Lakeshore Club, Inc., The Rolling Hills Country Club, Inc., and to any and all other such Class A clubs as defined by K.S.A. 1974 Supp. 41-2601(b)(2) which are exempt from federal income taxes under paragraph 501(c)(7) of the Internal Revenue Code and which are situated in the 18th Judicial District of Kansas. It is so ordered."

Thereafter, applications from other Class A clubs operating outside the 18th Judicial District have been received. You inquire concerning the legality of issuing licenses to these clubs.

The relief sought by the plaintiff in the action filed was in the nature of a permanent injunction. Injunctive relief is made available to the courts pursuant to their equity jurisdiction. The relief, if granted, is evidenced by an Order of Injunction which must be specific in terms and must describe in reasonable detail the act sought to be restrained. Inasmuch as no challenge was raised as to the court's jurisdiction over the subject matter, and insofar as the court had jurisdiction of the parties, the court had the jurisdiction and power to enter the order set out above. As of the date of the order and the subsequent notice, the Secretary of Revenue was under a legal duty and obligation to obey the command of the court as set out in the order of injunction at the risk of being

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brought before the court for contempt. Assuming the validity of the proceedings and the order issued thereunder the rights, duties and obligations of the parties are to be governed by the order.

In our opinion, the district Court Order relates solely to such of the enumerated concerns as are situated within the 18th Judicial District of Kansas and no reference in the order is made to any concern, however defined, in any judicial district other than the 18th. Presumably the District Court could have had the power to enjoin the Secretary in broader terms than those delineated in the instant order. However, insofar as the court chose not to do so, as evidenced by the language of the order of injunction, it cannot be said that the Secretary of Revenue is or has been precluded from issuing licenses to any Class A private clubs outside the boundaries of the 18th Judicial District. Accordingly, the Secretary of Revenue and his subordinate agents and employees are under no legal restraint from issuing such licenses as they deem advisable to Class A private clubs throughout the state other than those in the 18th Judicial District.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

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