



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

July 27, 1984

ATTORNEY GENERAL OPINION NO. 84- 75

Gene M. Olander
District Attorney
Suite 212
Shawnee County Courthouse
Topeka, Kansas 66603

Re: Crimes and Punishments -- Crimes Against the
Public Morals -- Gambling; Definitions

Synopsis: An entertainment program consisting of certain games of chance which is offered by a class "B" private club, whereby a participant stands to win or lose "chips" which may be exchanged for a cocktail or other prize, is upon acceptance by a patron of the "chips" a transaction which constitutes a "bet" as that term is defined in K.S.A. 21-4302(1). The program accordingly constitutes gambling under Kansas law (K.S.A. 21-4303). Cited herein: K.S.A. 21-4302, 21-4303.

*

*

*

Dear Mr. Olander:

You request our opinion as to whether an entertainment program being offered by a class "B" private club violates state laws prohibiting gambling. You advise that the operating procedure for the program is as follows:

1. The club provides a television display of horse races live from New York via satellite.
2. Each member and his guest receives a "chip" upon entry into the club.
3. There is no cover charge or payment of any kind required before a person receives a "chip."
4. Each person at the club also receives an additional "chip" every 20 minutes.
5. The chips may be used to play either "blackjack" or a horse race game.
6. Racing programs and play sheets are provided.
7. "Chips" may at any time be exchanged for prizes and/or cocktails. Four chips may be exchanged for a cocktail. They may not be redeemed for cash.

Under the Kansas Criminal Code, gambling, which includes making a "bet," is a class "B" misdemeanor. K.S.A. 21-4303. A "bet" is defined in K.S.A. 21-4302(1) as follows:

"A 'bet' is a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. A bet does not include:

"(a) Bona fide business transactions which are valid under the law of contracts including but not limited to contracts for the purchase or sale at a future date of securities or other commodities, and agreements to compensation for loss caused by the happening of the chance including, but not limited to contracts of indemnity or guaranty and life or health and accident insurance;

"(b) Offers of purses, prizes or premiums to the actual contestants in any bona fide contest

for the determination of skill, speed, strength, or endurance or to the bona fide owners of animals or vehicles entered in such a contest;

"(c) A lottery as defined in this section;

"(d) Any bingo game by or for participants managed, operated or conducted in accordance with the laws of the state of Kansas by an organization licensed by the state of Kansas to manage, operate or conduct games of bingo."

It requires no elaboration to conclude that parties participating in the above-described games enter into a bargain whereby they agree that, dependent on chance, the patron stands to win or lose a "chip." The decisive factor, therefore, in determining whether the subject bargain is a "bet" is whether the chip constitutes "something of value."

In this regard, the Kansas Supreme Court has held that a machine which offers only free replays of a video card game as a prize does not offer "something of value" within the meaning of K.S.A. 21-4302(4). Games Management, Inc. v. Owens, 233 Kan. 444 (1983). In reaching this conclusion, the court stated as follows:

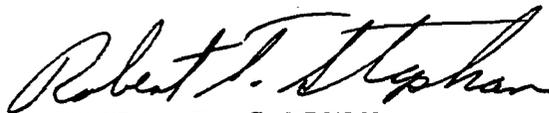
"In the broadest sense virtually anything can be considered 'something of value.' However, in light of the strict construction required of criminal statutes, the Pennsylvania court offers the better rule. A free replay stays on the machine from which it has been won. It cannot be exchanged for money or other property. If it is not played it is lost. Accordingly, we hold a machine offering only free replays as a prize does not offer 'something of value' and is therefore not a gambling device under K.S.A. 21-4302(4)." (Emphasis added.) 233 Kan. at 448.

Gene M. Olander
Page Four

In our judgment, the above-quoted pronouncement of the court is controlling in determining whether chips which are won or lost during the course of the above-described entertainment program constitute "something of value." Specifically, unlike the free replay which was at issue in the Games Management case, "chips" which are won or lost playing the subject blackjack or horse race game may be exchanged for other property, i.e. a cocktail or other prize. Therefore, they are "something of value," as that term is used in K.S.A. 21-4302(1).

In conclusion, it is our opinion that an entertainment program consisting of certain games of chance which is offered by a class "B" private club, whereby a participant stands to win or lose "chips" which may be exchanged for a cocktail or other prize, is upon acceptance by a patron of the "chips" a transaction which constitutes a "bet," as that term is defined in K.S.A. 21-4302(1). The program accordingly constitutes gambling under Kansas law (K.S.A. 21-4303).

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:may