



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 87- 171

The Honorable Jeanne Hoferer
State Senator, Eighteenth District
1916 S.W. Oakley
Topeka, KS 66604-3255

Re: Crimes and Punishments--Code; Crimes Against the
Public Morals--Pull-tab Games at Bingo Games

Synopsis: Pull tab games are a form of lottery which may be
used in the state owned and operated lottery. Such
games may be legalized for others to operate only
by passing a constitutional amendment which would
be subject to a public referendum. Cited herein:
K.S.A. 1986 Supp. 21-4302; Kan. Const., Art.
15, §3a; Kan. Const., Art. 15, §§3b, 3c (1986).

* * *

Dear Senator Hoferer:

You ask whether K.S.A. 79-4701 et seq., "the bingo act,"
can effectively be amended legislatively to include pull tab
games, thus circumventing the requirements of constitutional
amendment and public referendum.

There are three essential elements of a lottery: (1)
consideration, (2) prize and (3) chance. K.S.A. 1986 Supp.
21-4302. See also, State, ex rel. v. Highwood Services,
Inc., 205 Kan. 821, 825 (1970). In Attorney General
Opinion No. 87-16 this office indicated that:

"the game of pull tabs would fall within
the scope of the Kansas Constitutional

Lottery Amendment [t]he amendment is an unrestricted provision that would include any game that meets the three essential elements of (1) consideration, (2) prize and (3) chance."

In State v. Nelson, 210 Kan. 439 (1972), the Kansas Supreme Court concluded that since the Kansas Constitution prohibited lotteries, the legislature could not legalize bingo (which was, by definition, a lottery) by simply changing the definition of consideration to exclude bingo games. Id. at 445. It was necessary to amend the constitution to permit bingo. Kan. Const., Art. 15, §3a. Following the State v. Nelson rationale, two additional amendments to the constitution were passed to allow for parimutuel wagering at dog and horse races and for a state owned and operated lottery. Kan. Const., Art. 15, §§3b, 3c (1986).

In that pull tab games are but another form of lottery, the State could utilize pull tab games within the state-owned and operated lottery. However, such games may not be legalized for others to operate simply by passing legislation. It would require both a constitutional amendment and a public referendum to legalize such games under those circumstances. To allow otherwise would circumvent both the intent of the constitution and the people of Kansas.

Very truly yours,

Robert T. Stephan
Attorney General of Kansas

Brenda L. Braden
Deputy Attorney General

RTS:BLB:cy