



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 92- 68

The Honorable Kathleen G. Sebelius
State Representative, Fifty-Sixth District
224 Greenwood
Topeka, Kansas 66606

Re: Crimes and Punishments--Trading Stamps--Trading
Stamp Act Inapplicable to Certain Coupons and
Similar Devices; Coupons Redeemed by Retailer

Synopsis: A retailer promotion which involves distribution of
game cards to potential customers as they enter the
store whether or not those potential customers
purchase anything is not violative of the trading
stamp act since there appears to be no inducement
to buy the retailer's products in order to get the
game cards. Cited herein: K.S.A. 21-2801;
21-2802; 21-2803; K.S.A. 1991 Supp. 41-2701.

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Dear Representative Sebelius:

You request our opinion regarding a proposed grocery store
promotion and whether it would violate the trading stamp act
or the cereal malt beverage act. You provide the following
information:

"The promotion would involve customers selecting seven numbers
on game cards they receive when they enter the store. Game
cards would be provided free of charge. Same rules would
inform the customer that no purchase is necessary to
participate and that free game cards will be available upon
request.

"Cards with the customer's choices marked would be fed into an electronic scanner. The numbers chosen and other information would be printed on those cards and the printed card would be returned to the customer. The customer would receive, along with the printed card, product coupons or a low-value prize.

"Each week computer generated winning numbers would be selected and participants whose number choices matched those numbers in proper sequence would win or share in cash prizes. Unclaimed winnings would carry over to the following week."

You note that since the element of consideration has been eliminated, this does not appear to constitute an illegal lottery.

The Kansas trading stamp act generally prohibits furnishing, upon purchase of merchandise, coupons or similar devices redeemable in cash, merchandise or other thing of value. K.S.A. 21-2801; 21-2802. However, K.S.A. 21-2803 sets forth exceptions to the rule:

"This act shall not apply to any coupon, ticket, certificate, card or other similar device which is issued, distributed, furnished or redeemed:

. . . .

"(b) By a retailer, when such coupon, ticket, certificate, card or similar device is redeemable by the retailer, with or without accompanying cash, for any product which the retailer normally sells in its usual course of business."

Thus, coupons, or game cards, redeemable by the grocery store for products the grocery store normally sells are clearly not prohibited. See Attorney General Opinion No. 89-27. The redemption of coupons or game cards for cash raises a more difficult question since there is no similar exception for this.

In State ex rel. Stephan v. Pepsi-Cola Gen'l Bottlers, Inc., 232 Kan. 843, 846 (1983), the Kansas Supreme Court held that the trading stamp act applied to a Pepsi-Cola promotion which involved the furnishing of bottle caps to others "at least in part in conjunction with the sale of Pepsi-Cola products." Thus, even though no purchase was required to

procure the bottle caps, the act's prohibitions were nonetheless applicable. In so holding, the court relied on the following statement of the legislature's purpose in enacting the trading stamp act:

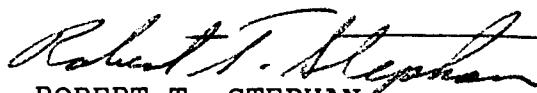
"If the use of trading stamps tends to induce persons to make purchases beyond the limit which they would otherwise observe, and beyond their reasonable needs, it may be regarded as to that extent inimical to the interest of the public. . . .

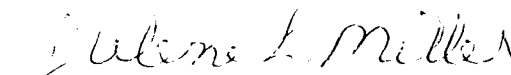
"The trading stamp device offers an inducement to make purchases from the merchant using them, which is not connected with the merits of his goods, or with his customers' need of them. It lends itself readily to fostering a belief on the part of the buyer that the stamps cost him nothing -- that they are given as *lagniappe*." State v. Wilson, 101 Kan. 789, 799 (1917).

The act itself only prohibits distributing coupons, etc. "in, with, or for the sale of goods, wares or merchandise." K.S.A. 21-1801. Since under the scenario you present the game cards are presented to potential customers at the door as they enter the store (as opposed to the check-out counter, etc.), no purchase is necessary, potential customers are advised that no purchase is necessary, and the promotion does not appear to induce persons to purchase products in order to obtain the game cards, it is our opinion that the promotion does not fall within the purview of the act. See also State v. American Savings Stamp Co., 194 Kan. 297, 300 (1965) (trading stamp act is penal in nature and must be strictly construed against the state).

With regard to the cereal malt beverage act, K.S.A. 1991 Supp. 41-2701 et seq. we are unaware of any provisions that would preclude a promotion such as this by a retailer-licensee.

Very truly yours,


ROBERT T. STEPHAN
Attorney General of Kansas


Julene L. Miller
Deputy Attorney General