



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612-1597

ROBERT T. STEPHAN
ATTORNEY GENERAL

October 5, 1992

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
TELECOPIER: 296-6296

ATTORNEY GENERAL OPINION NO. 92- 125

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

Re: State Boards, Commissions and Authorities--State
Lottery; Kansas Lottery Act--Rules and Regulations;
Club Keno

Synopsis: Club keno, the recently proposed lottery game, is not a video lottery game as that term is statutorily defined or generally understood. It is an on-line game with frequent drawings, the results of which may be displayed on a television screen. Thus, it is not affected by the 1992 legislative prohibition on video lottery. There is no statutory limit on the number of on-line terminals that may be placed in a lottery retailers' place of business. Liquor retailers, clubs and drinking establishments are authorized to sell lottery tickets if selected to do so by the lottery and may do so even during times when liquor cannot be sold. Slot machines are not authorized under the Kansas lottery act. Cited herein: K.S.A. 1991 Supp. 41-308, as amended by L. 1992, ch. 169, § 1; K.S.A. 41-712; K.S.A. 1991 Supp. 41-2614; 74-8702, as amended by L. 1992, ch. 299, § 2; 74-8708; 74-8710, as amended by L. 1992, ch. 299, § 3; Kan. Const., art. 15, § 3c; K.A.R. 14-13-9; 14-13-13; 14-19-36; 14-20-38; 111-7-78; 111-7-81; 111-7-82.

*

*

*

Dear Representative Sebelius:

You request our opinion regarding the recently implemented Kansas lottery regulations establishing a game called club keno. K.A.R. 111-7-76 through 111-7-83.

Information provided by the lottery office indicates that club keno is a 10 of 20 of 80 game (K.A.R. 111-7-78) played like other on-line lottery games in that the player makes game selections on a game slip (K.A.R. 111-7-78) and the retailer then enters the game slip into the terminal, collects the player's money and gives the player the computer generated ticket reflecting that player's choices. The terminal used for club keno is the same terminal that is used to produce tickets for power ball, cash lotto and pick 3, the other on-line lottery games. The difference between club keno and other on-line games this state has offered is that the drawings to determine winning numbers are much more frequent; drawings occur every five minutes (K.A.R. 111-7-81) for a total of 214 drawings a day. Also, retailers, upon request, may be provided with a television for purposes of displaying the most current winning numbers. (The television will also display winning numbers for other on-line games.) Thus, the player may learn whether he or she has chosen winning numbers without having to ask the retailer. To collect on a winning ticket, however, the ticket must be presented to the retailer or lottery office for validation and payment of prizes. K.A.R. 111-7-82. In other words, there is no ability for the player to interact with the on-line terminal or the display mechanism. With this information in mind, we proceed to address your specific questions:

"1. Does the new game conform with the letter and spirit of the video lottery prohibition enacted by the 1992 Legislature?"

K.S.A. 1991 Supp. 74-8710, as amended by L. 1992, ch. 299, § 3 provides in part:

"The commission, upon the recommendation of the executive director, shall adopt rules and regulations governing the establishment and operation of a state lottery as necessary to carry out the purposes of this act. . . . Temporary and permanent rules and regulations may include but shall not be limited to:

"(a) The types of lottery games to be conducted, including but not limited to instant lottery, on-line and traditional games, but not including games on video lottery machines. . . ." (Emphasis denotes new language).

The term "video lottery machine" is defined at K.S.A. 1991 Supp. 74-8702, as amended by L. 1992, ch. 299, § 2:

"(n) 'Video lottery machine' means any electronic video game machine that, upon insertion of cash, is available to play or simulate the play of a video game authorized by the commission, including but not limited to bingo, poker, black jack and keno, and which uses a video display and microprocessors and in which, by chance, the player may receive free games or credits that can be redeemed for cash."

Club keno cannot be played by inserting cash into an "electronic video game machine." As mentioned previously, the television screen merely displays winning numbers, as do home television screens for other lottery games. Club keno may be played without the use of a television screen, and in fact will be in some locations. The game is actually played by filling out a game slip, giving it and the cost of the ticket to the retailer who in turn enters the game slip into the terminal. This is exactly the way other on-line games are played, and the same terminal is used. There is no one-on-one play interaction between the player and the television display, or between the player and the terminal. The winning numbers for each drawing are the same across the state. The numbers are produced by a secured random number generator at lottery headquarters and not by the on-location terminal or television display. Thus, club keno does not fit within the statutory or generally understood definition of video lottery. It is an on-line game, which is specifically authorized by K.S.A. 1991 Supp. 74-8710(a), as amended.

"2. Is the new prohibition so narrowly constructed that the Lottery could place traditional (nonelectronic) slot machines with its retailers within the current statute?"

Traditional, nonelectronic slot machines are not video lottery machines as defined by K.S.A. 1991 Supp. 74-8702, as amended. Therefore, the new language in K.S.A. 1991 Supp. 74-8710(a), as amended, does not operate to prohibit such games. It has been the contention of this office, however, that games which do not involve the sale of tickets are not currently authorized by the Kansas lottery act. Article 15, section 3c authorizes the legislature to provide for a state-owned and operated lottery. The legislature has provided for a state lottery in K.S.A. 1991 Supp. 74-8701 et seq. Those statutes appear to contemplate only games involving the sale of tickets or shares, such as instant lottery, pulltabs, draws, on-line games, etc. Since the lottery commission is a creature of statute, it may not act beyond the boundaries of the statutes authorizing its conduct. Thus, in our opinion, traditional slot machines are not authorized under the current statutes.

"3. Is there any law or regulation currently in place that would preclude a licensed liquor retailer (liquor store) or licensed club or drinking establishment from installing a large number of these terminals in a gaming room thus creating a casino-like enterprise?"

K.S.A. 1991 Supp. 41-308(b)(2), as amended by L. 1992, ch. 169, § 1, specifically authorizes licensed liquor retailers to "sell lottery tickets and shares to the public in accordance with the Kansas lottery act, if the retailer is selected as a lottery retailer." See also K.A.R. 14-13-13(a). There is no statutory prohibition against the sale of lottery tickets by licensed clubs or drinking establishments selected by the lottery to do so. Neither is there any statutory limit on the number of tickets that may be sold by any such entity. Thus, if the lottery believed it would be economically attractive, it could place more than one terminal or more than one television screen with a lottery retailer. However, more television screens will not necessarily enhance sales since the game is not played using the screen. Extra screens would merely allow players to spread out while watching for drawing results. Since the terminal is operated by the retailer and not the player, more terminals would require more terminal operators, supplied by the retailer, which may not be economically attractive to the retailer.

"4. Will a licensed retailer, club, or drinking establishment be able to be open

to the public for the purpose of playing this keno game or any other lottery game, but not for the sale of alcoholic beverages, outside current statutorily established hours of operation?"

K.S.A. 1991 Supp. 41-2614(a) provides that

"No club or drinking establishment shall allow the serving, mixing or consumption of alcoholic liquor on its premises between the hours of 2:00 a.m. and 9:00 a.m. on any day."

K.S.A. 41-712 prohibits the retail sale of alcoholic liquor on certain days and "before nine (9) o'clock a.m. or after eleven (11) p.m. on any day when the sale is permitted. . . ." See also K.A.R. 14-13-9(b); 14-13-13(f). Neither statute specifically requires that the establishment be closed, but merely that liquor sales cease. Thus, a liquor store, club or drinking establishment may remain open to sell lottery tickets, subject to K.S.A. 1991 Supp. 74-8708(g)(5), though there does not appear to be any real incentive to do so since overhead costs would likely exceed any commission earned from sale of tickets. (See K.A.R. 14-19-36 and 14-20-38, allowing clubs to open to the general public under certain conditions).

"5. Does the Division of Alcoholic Beverage Control currently have authority to prohibit placement of these lottery machines in establishments it licenses?"

No. ABC may take action based on violation of the liquor laws. Since there is no prohibition against having machines authorized by the lottery, ABC cannot prohibit such placement if the retailer, club or drinking establishment is a lottery retailer.

"6. If these video terminals are, strictly speaking legal, is there anything to prevent the Lottery from conducting multiple keno games simultaneously so that each terminal essentially becomes a separate game thereby creating an incentive to have multiple terminals in a single establishment?"

We refer you back to our response to your question number 3. As long as the game is not interactive with a "video lottery machine," there is no legal limit on the number of terminals or contemporaneous games.

"7. Did the Lottery establish rules and regulations for the new video keno game prior to offering it to Lottery retailers and, if it did not, was that a violation of the Lottery Act?"

This question requires a determination of fact and therefore cannot be addressed in an Attorney General Opinion. However, club keno rules and regulations were submitted to this office for approval prior to their approval by the Lottery commission on August 28, 1992.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General

RTS:JLM:jm