



STATE OF KANSAS

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February 8, 1985

ATTORNEY GENERAL OPINION NO. 85- 15

Gene M. Olander
District Attorney
Third Judicial District
Shawnee County Courthouse
200 East 7th
Topeka, Kansas 66603

Re: Constitution of Kansas -- Miscellaneous -- Lotteries
Crimes and Punishments -- Code; Crimes Against Public
Morals -- Gambling

Synopsis: The purchase of Missouri lottery tickets by a ticket service business using Kansans' money and subsequent distribution of the tickets to customers within Kansas violates K.S.A. 21-4306. If Kansans wish to buy Missouri lottery tickets, they must personally purchase the ticket in Missouri, in that resale or redistribution of lottery tickets within Kansas is illegal. Cited herein: K.S.A. 21-4302; 21-4306; Kan. Const., Art. 15, §3; 18 U.S.C.A. §1301.

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Dear Mr. Olander:

As District Attorney for the Third Judicial District, you request our opinion on the legality of a lottery forwarding business. Information you provide indicates that individuals propose to set up a storefront

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in Topeka for the purpose of accepting money from Kansans wishing to purchase Missouri lottery tickets. A ticket service employee would go to Missouri to purchase the lottery tickets, then return to Topeka to distribute the tickets to Kansas customers. The service might also pick up prize money in Missouri for Kansas winners. There would be a service fee charged in addition to the cost of the lottery ticket.

The Constitution of the State of Kansas, Article 15, Section 3, states:

"Lotteries and the sale of lottery tickets are forever prohibited."

Kansas law defines a lottery as: "an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance." K.S.A. 21-4302(2). K.S.A. 21-4302 defines "gambling device" as:

"(4) A 'gambling device' is a contrivance which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device. (Emphasis added.)

K.S.A. 21-4306 defines the crime of dealing in gambling devices, and states, in part:

"(1) Dealing in gambling devices is manufacturing, transferring or possessing with intent to transfer any gambling device or sub-assembly or essential part thereof.

"(2) Proof of possession of any device designed exclusively for gambling purposes, which is not set up for use or which is not in a gambling place,

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creates a presumption of possession with intent to transfer.

"(3) Dealing in gambling devices is a class E felony."
(Emphasis added.)

In the plan you describe, consideration exchanges hands in Kansas and the lottery tickets are distributed to the customer within this state. In our opinion, given the above facts, the ticket service would be dealing in gambling devices in violation of K.S.A. 21-4306. Accordingly, it is irrelevant that the lottery itself takes place in Missouri, for it is not participation in the Missouri lottery which is prohibited by K.S.A. 21-4306, but rather transfer of the lottery tickets in Kansas.

The proponents of this plan should also be aware of 18 U.S.C.A. §1301, which states:

"Whoever brings into the United States for the purpose of disposing of the same, or knowingly deposits with any express company or other common carrier for carriage, or carries in interstate or foreign commerce any paper, certificate, or instrument purporting to be or to represent a ticket, chance, share, or interest in or dependent upon the event of a lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any advertisement of, or list of the prizes drawn or awarded by means of, any such lottery, gift enterprise, or similar scheme; or knowingly takes or receives any such paper, certificate, instrument, advertisement, or list so brought, deposited, or transported, shall be fined not more than \$1,000 or imprisoned not more than two years, or both."
(Emphasis added.)

In conclusion, the sale of lottery tickets is prohibited in Kansas. The law is violated when all or part of the sales transaction takes place in this state. Therefore, if Kansans wish to buy Missouri

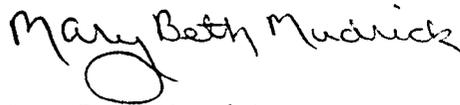
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lottery tickets, they must complete the entire sale transaction in Missouri. Resale or redistribution of tickets in Kansas is unlawful.

Very truly yours,



ROBERT T. STEPHAN
Attorney General



Mary Beth Mudrick
Assistant Attorney General

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