



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

April 7, 1986

ATTORNEY GENERAL OPINION NO. 86- 50

Harley T. Duncan  
Secretary  
Kansas Department of Revenue  
State Office Building, 2nd Floor  
Topeka, Kansas 66612-1588

Re: Taxation -- Lottery and Pari-mutuel Wagering --  
Enabling Legislation

Constitution of the State of Kansas --  
Miscellaneous -- Lotteries

Synopsis: The provisions of 1986 House Bill No. 2789 and 1986 House Concurrent Resolution No. 5024 create the support mechanisms for proposed amendments to the Kansas Constitution concerning lotteries and pari-mutuel wagering. Presently, both gambling activities are prohibited by Article 15, Section 3 of the Kansas Constitution. However, approval of these amendments would permit such activity. The legislature may enact statutes in support of these measures with effectiveness contingent upon the approval of the constitutional amendments. Cited herein: Kan. Const., Art. 15, §3; K.S.A. 1985 Supp. 79-1476; 1986 House Bill No. 2789; 1986 House Concurrent Resolution No. 5024.

\* \* \*

Dear Secretary Duncan:

As Secretary of the Department of Revenue, you have requested our opinion on 1986 House Bill No. 2789 and 1986 House Concurrent Resolution No. 5024. Specifically, you inquire whether the legislature may legally pass enabling legislation

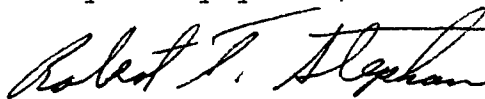
creating a state lottery and allowing pari-mutuel wagering if it contains conditional language.

It is a general rule of law that the legislature holds a present power to enact laws in anticipation of amendments to the constitution, even though the laws appear to permit presently constitutionally-prohibited conduct. 171 A.L.R. 1070, 1075 (1947). These statutes do not actually legislate unconstitutional conduct, but may create the support mechanisms for impending constitutional legislation contingent upon the amendments' passage. If the amendments fail, then these support mechanisms are, in essence, frivolous laws that are constitutionally unsupportable.

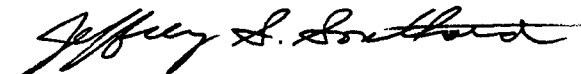
Kansas has followed this general rule several times, most recently with respect to property reclassification. The enabling legislation has been passed and will be effective on January 1, 1989 if voters approve reclassification in the 1986 elections. K.S.A. 1985 Supp. 79-1476. If voters reject this amendment, then it will be ineffective until a constitutional amendment allowing use valuation is adopted.

The same would hold true with lottery and pari-mutuel wagering. They may be enacted and support mechanisms put in place contingent upon legislative and voter approval of an amendment to Article 15, Section 3 of the Kansas Constitution. If amendments are not passed, then the statutes could either have a self cancellation provision or remain in place until a lottery and/or pari-mutuel wagering provision is passed. Accordingly, both 1986 House Bill No. 2789 and 1986 House concurrent Resolution No. 5024 would be constitutional if enacted.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard  
Deputy Attorney General