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January 29, 1987

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ATTORNEY GENERAL OPINION NO. 87- 16

The Honorable Edward F. Reilly, Jr.
Senator, Third District
Capitol Building, 255-E
Topeka, Kansas 66612

Re: Constitution of the State of Kansas --
Miscellaneous -- Multi-State Lotteries

Synopsis: The constitutional provisions allowing for a state owned and operated lottery would allow the state to enter into an agreement to provide a multi-state lottery. Cited herein: Kan. Const., Art. 2, § 30; Art. 15, § 3c; L. 1986, ch. 414.

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Dear Senator Reilly:

As Chairperson of the Senate Federal and State Affairs Committee you ask our opinion about multi-state lotteries. Specifically, your question centers on the enforceability of agreements with other states to form a multi-state lottery.

Before we answer your specific question, a more fundamental question must first be answered. Does the constitution allow for multi-state lotteries? Article 15, Section 3c of the Kansas Constitution provides in pertinent part, "the legislature may provide for a state-owned and operated lottery." In construing constitutional provisions the Supreme Court of Kansas has stated in State, ex rel. v. Highwood Services, Inc., 205 Kan. 821, 825 (1970):

"[A] constitution is not to be narrowly or technically construed but its language should be held to mean what

the words imply to the common understanding of men; that in ascertaining the meaning of constitutional provisions courts should consider what appears to have been the intendment and understanding of the people at their adoption." (Citations omitted.)

The legislature did not specifically preclude multi-state lotteries with the language used in 1986 Senate Concurrent Resolution 1609, L. 1986, ch. 414. The concept of multi-state lotteries was in fact mentioned in the minutes of the Federal and State Affairs Committee. Minutes of the House Federal and State Affairs Committee, January 21, 1986, testimony of Kansas Alliance for the Lottery, Patrick J. Hurley, Attachment C.

The intent and understanding of both the legislature and the people seems to have been to have a government controlled lottery as a revenue raising measure. Minutes of the House Federal and State Affairs Committee, January 21, 1986, testimony of Secretary of Revenue Harley Duncan, Attachment A. We must now determine whether a multi-state lottery meets this intent. A multi-state lottery would still be state-owned. The governments of the several states would own and operate this lottery in much the same fashion as a single state operates a lottery. A multi-state lottery would also meet the revenue raising aspect. A multi-state lottery would raise money similar to a lottery in a single state. Some would argue that sparsely populated states could raise more in a multi-state lottery than one run by a single state.

It appears that the intent of the voters in approving the lottery was to allow closely regulated gambling and to raise money for the state. A multi-state lottery would not be repugnant to the intent of the constitutional provisions.

Having determined that multi-state lotteries are permissible, we can now turn to your primary question dealing with enforceability of an interstate agreement. Article 2, Section 30 of the Kansas Constitution provides:

"The legislature may confer legislative powers upon interstate bodies, comprised of officers of this state or its political subdivisions acting in conjunction with officers of other jurisdictions, relating to the functions thereof. Any such delegation, and any agreement made thereunder shall be subject to limitation, change or termination by the legislature, unless contained in a compact approved by the congress." (Emphasis supplied.)

Thus, the legislature may provide for powers to negotiate such agreements as multi-state lotteries, subject to the constitutional limitations stated above. The general rule dealing with compacts between states was stated in 81A C.J.S. States §32(b) (1977). "Generally, contracts between states are made by the acts of their respective legislatures." This, coupled with the language cited above, leads us to conclude that the legislature can delegate to an agency the powers to negotiate a contract between this state and another, but the legislature itself must approve such a contract. This approval could be in the form of enacting the agreement as law, such as is done with other compacts to which this state is a party.

In conclusion, a multi-state lottery would not be contrary to constitutional provisions. The legislature may delegate power to enter into interstate agreements subject to the approval of the legislature.

Very truly yours,



Robert T. Stephan
Attorney General



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