



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

December 8, 1987

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

ATTORNEY GENERAL OPINION NO. 87- 178

Larry Montgomery
Executive Director
Kansas Lottery
128 North Kansas Avenue
Topeka, Kansas 66603

Re: State Boards, Commissions and Authorities--Kansas
Lottery Commission--Restrictions on Who May
Participate in the Lottery

Synopsis: Section 19(a)(2) of the Kansas lottery act
precludes only officers and certain employees of
those businesses providing supplies, services and
equipment used directly in the operation of a
lottery game from purchasing lottery tickets or
winning prizes. Persons only tangentially
connected to the Kansas lottery are not included
within this prohibition. Cited herein: L. 1987,
ch. 292, §§4, 11, 19.

* * *

Dear Mr. Montgomery:

As Executive Director of the Kansas lottery, you request our
opinion regarding the eligibility of certain persons to
purchase lottery tickets and win prizes pursuant to L. 1987,
ch. 292, §19(a)(2) of the Kansas lottery act. Specifically,
you wish to know the types of businesses whose officers and
employees would be prohibited from participating in the state
lottery by this section of the act.

L. 1987, ch. 292, §19 provides as follows:

"(a) It is unlawful for any person to purchase a lottery ticket or share, or for another to pay a prize to such person, knowing that such person is:

"(1) The executive director, a member of the commission or an employee of the Kansas lottery;

"(2) an officer or employee of a business which is currently engaged in supplying equipment, supplies or services being used directly in the operation of any lottery conducted pursuant to this act;

"(3) a spouse, child, stepchild, brother, stepbrother, sister, stepsister, parent or stepparent of a person described by subsection (a) (1) or (2); or

"(4) a person who resides in the same household as any person described by subsection (a) (1) or (2).

"(b) Violation of this section is a class A misdemeanor upon conviction of the first offense and a class D felony upon conviction of a second or subsequent offense.

"(c) Notwithstanding subsection (a), the executive director may authorize in writing any employee of the Kansas lottery and any employee of a lottery vendor to purchase a lottery ticket for the purposes of verifying the proper operation of the state lottery with respect to security, systems operation and lottery retailer contract compliance. Any prize awarded as a result of such ticket purchase shall become the property of the Kansas lottery and be added to the prize pools of subsequent lottery games.

"(d) Nothing in this section shall prohibit lottery retailers or their employees from purchasing lottery tickets and shares or from being paid a prize of a winning ticket or share.

"(e) Each person who purchases a lottery ticket or share thereby agrees to be bound by rules and regulations adopted by the commission and by the provisions of this act."

We note first that this is a criminal statute. See §19(b). Criminal statutes must be strictly construed in favor of persons sought to be subject to them. Sutton v. State, 6 Kan. App. 2d 831 (1981); State v. Thompson, 3 Kan. App. 2d 426 (1979). In construing criminal statutes, courts are required to place strict construction on the language used therein. State v. Roudybush, 235 Kan. 834 (1984). A criminal statute should not be extended to embrace conduct not clearly included within its prohibitions, State v. Fowler, 238 Kan. 213 (1985), nor to embrace persons not within its descriptive terms or the fair and clear import of the language used. Schmokey v. U.S., 182 F.2d 937 (10th Cir. 1950). Finally, where no definition of a term has been provided in a statute proscribing crime, the nature and purpose of the statute is of primary importance in construing that term. State v. Deutscher, 225 Kan. 265 (1979).

The statutory provision in question expressly excludes from its prohibition lottery retailers, §19(d), and any employee of the Kansas lottery or of a lottery vendor who has been authorized in writing to participate for purposes of checking the system, §19(c). Conversely, the statute expressly prohibits the executive director, members of the Kansas lottery commission and employees of the Kansas lottery from purchasing tickets and winning prizes, with the one exception noted above. §19(a)(1). The provision in question is much less clear as to its application.

L. 1987, ch. 292, §19(a)(2) states that "it is unlawful for any person to purchase a lottery ticket or share . . . knowing that such person is: . . . an officer or employee of a business which is currently engaged in supplying equipment, supplies or services being used directly in the operation of any lottery conducted pursuant to this act. . . ." (Emphasis added.) Subsections 19(a)(3) and (4) prohibit certain relatives and persons residing in the same household as any

person described by subsection (a) (1) or (2) from lottery participation. A strict construction of the above-quoted language in favor of persons sought to be subject thereto would indicate that only officers and employees (their relatives and persons residing in their households) of businesses providing equipment, supplies or services used directly in the operation of a lottery game would be covered by the prohibition. Thus, officers and employees of businesses which supply equipment, supplies or services to vendors who in turn do business with the Kansas lottery would not be covered by the prohibition because such equipment, supplies or services are not used directly in the operation of a lottery; the connection with the lottery is indirect or tangential. Further, officers and employees of businesses which supply equipment, supplies or services other than for the operation of any lottery game are not covered by the prohibition. An indication of what the legislature contemplated as necessary for a lottery's operation may be found at L. 1987, ch. 292, §§4(c) and 11(c)(1). The latter of these lists "goods and services needed for operation of the lottery, including but not limited to . . . tickets, independent studies and surveys, data transmission, advertising, printing, promotion, incentives, public relations, communications, and distribution of tickets and shares." These are goods and services necessary to the operation of a lottery game. Other goods and services which are commonly required by any state agency or private business concern and not used directly in the operation of a lottery game would include the services of utilities (electricity, gas, water), office space and most office supplies. Officers and employees of businesses supplying equipment, services and supplies not used directly in the operation of any lottery game are not covered by the prohibition.


This interpretation would appear to coincide with legislative intent and the nature and purpose of the statute. In establishing a state owned and operated lottery, the legislature hoped to generate revenues for the state. Prohibiting numerous persons only tangentially connected with the Kansas lottery from purchasing tickets would seem to defeat this purpose. The apparent purpose of L. 1986, ch. 292, §19 is to ensure the integrity of the lottery games. Prohibiting persons only tangentially connected with the Kansas lottery would not further this purpose.

With this legislative intent in mind, application of the rule of statutory construction which provides that the nature and purpose of the criminal statute is of primary importance in


construing its undefined terms further leads us to conclude that the prohibition may not extend to every employee of a business which supplies equipment, supplies or services to be used directly in the operation of a lottery game. A determination whether a particular employee is precluded from participation in lottery games will require a balancing of the legislative purposes involved, and a close evaluation of all the particular circumstances. For example, a person employed by a subsidiary of a large conglomerate corporation which has a separate company involved in supplying services for the operation of a lottery game probably was not intended as the subject of §19(a)(2) restriction. Such an individual probably has absolutely no ability to tamper with a lottery game, and the purchase of a ticket by that person would not even create the appearance of impropriety. Thus, the integrity of the lottery would not be compromised by such person's participation, and the Kansas lottery would produce revenues otherwise not available. We believe that including such persons only tangentially connected with the Kansas lottery within the scope of this criminal statute would be embracing persons and conduct not clearly within the statute's prohibitions, and thus would be contrary to the rules of statutory construction.

In conclusion, L. 1987, section 19(a)(2) of the Kansas lottery act precludes only officers and certain employees of those businesses providing supplies, services and equipment used directly in the operation of a lottery game from purchasing lottery tickets or winning prizes. Persons only tangentially connected to the Kansas lottery are not included within this prohibition.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Julene L. Miller
Deputy Attorney General