



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 8

Mr. Gerald F. Simpson  
Executive Director  
Kansas Lottery  
128 N. Kansas Avenue  
Topeka, Kansas 66603-3638

Re: State Boards, Commissions and Authorities--State  
Lottery--Kansas Lottery Act; Kansas Lottery  
Commission, Powers

Synopsis: The Kansas lottery act does not authorize the  
commission to enter into an agreement to form or  
participate in a corporation which controls the  
lottery games through rules and regulations  
promulgated by the corporation's board of  
directors. Cited herein: K.S.A. 1990 Supp.  
74-8709(g).

\* \* \*

Dear Mr. Simpson:

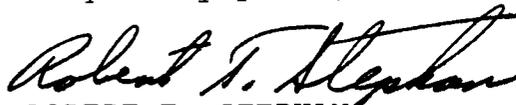
As executive director of the Kansas lottery, you request our opinion regarding the authority of the Kansas lottery commission to enter into a certain agreement developed through the Multi-State Lottery Association (MUSL). The proposed agreement would create a corporation having a board of directors comprised of states' agencies executing participation agreements. These states are generally those currently serving as board members of the MUSL. The directors would have general management and control of the corporation's affairs, and would control the lottery games through rules and regulations. You further state that the

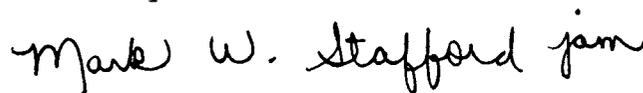
corporation was "formed for the purpose of the research, development and coordination of televised lottery games. . . ." State lottery directors have been asked to sign participation agreements, making a \$25,000 financial commitment to finance the project's development.

The lottery commission is a creature of statute. Its power depends on the authorizing statutes; administrative agencies have no general or common law authority. Pork Motel, Corp. v. Kansas Dept. of Health and Environment, 234 Kan. 374, 378 (1983). The authority may be expressly conferred or necessarily implied. State ex rel. Secretary of S.R.S. v. Fomby, 11 Kan.App.2d 138, 141 (1986).

The Kansas lottery act expressly authorizes the lottery commission to enter into agreements with other states for the operation of joint lottery games. K.S.A. 1990 Supp. 74-8709(g). This grant of power does not expressly authorize the agency to enter into an agreement to form or participate in a corporation which controls the lottery games. It is our opinion that this authority cannot be implied as necessary to accomplish the activity expressly permitted. Creating a new legal entity involves the exercise of open-ended discretion possessed by the legislature, but which administrative agencies lack.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Mark W. Stafford  
Assistant Attorney General