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May 16, 2012

ATTORNEY GENERAL OPINION NO. 2012- 14

Dennis Wilson
Executive Director
Kansas Lottery
128 North Kansas Ave.
Topeka, KS 66603

Re: State Boards, Commissions and Authorities—State Lottery—Conflicts of Interests; Restrictions on State and Local Officials and Affiliated Persons

Synopsis: A Kansas Lottery employee may join a casino player's club, but may not allow a third party to gamble using the Lottery employee's player's club card. Kansas Lottery employees may not obtain free, discounted or non-discounted food or beverages from a casino's employee dining room. A Kansas Lottery employee may not receive the same discount offered to casino employees for food and beverages purchased at outlets open to the public. Cited herein: K.S.A. 2011 Supp. 21-5102; K.S.A. 46-215; 46-254; K.S.A. 2011 Supp. 74-8701; 74-8710; 74-8716; 74-8719; 74-8733; 74-8757; 74-8760; 74-8762; K.S.A. 75-704.

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Dear Mr. Wilson:

As Executive Director of the Kansas Lottery (Lottery), you ask for our opinion regarding whether Lottery employees may join a casino player's club or receive certain benefits or discounts offered to player's club members or casino employees. Specifically, you ask whether an employee of the Lottery may lawfully:

1. Join a casino player's club and receive non-gaming discounts and other benefits offered to such members;
2. Allow a third party to gamble using the Lottery employee's player's club, thereby accumulating points or credits on the Lottery employee's player's club account;

3. Obtain discounted or free food or beverages from a casino's employee dining room;
4. Obtain non-discounted food or beverages from a casino's employee dining room; and,
5. Receive the same discount offered to casino employees for food and beverages purchased at outlets open to the public.

In your letter, you note that you have submitted a similar request for an opinion to the Kansas Governmental Ethics Commission. To minimize duplication of efforts, we limit our opinion to application of the Kansas Lottery Act (Lottery Act)¹ and the Kansas Expanded Lottery Act (KELA).² We defer interpretation of the State Governmental Ethics Law³ to the Kansas Governmental Ethics Commission.⁴

For the purposes of this opinion, we assume that the description of player's clubs presented in your letter is factually accurate.⁵ As described in your letter, player's clubs are voluntary programs open to members of the general public who are not otherwise disqualified from gambling, i.e. player's club members must be at least 21 years of age⁶ and may not be on the casino's "self-exclusion list."⁷ There is no membership fee for such clubs, and actual gambling is not required to obtain or maintain membership.

While player's club benefits may vary from club to club, members generally receive discounts at the casino's public food outlets, discounted room rates or other amenities, and discounts at retailer outlets located at the casino. Members accrue "credits" or "points" by using a player's club card while gambling, and such credits or points can be redeemed for free gaming or extra discounts. Thus, a Lottery employee who joins a casino player's club would receive discounts on food and amenities, but would not accrue player's club credits or points unless the employee's player's club card was used while gambling.

Your questions require an analysis of certain statutes intended to prevent conflicts of interest by placing restrictions on Lottery commissioners and staff. K.S.A. 2011 Supp. 74-8716(f) states:

It shall be unlawful for the executive director, a member of the commission or an employee of the Kansas lottery to accept any compensation, gift, loan, entertainment, favor or service from any lottery gaming facility

¹ K.S.A. 2011 Supp. 74-8701 *et seq.*

² K.S.A. 2011 Supp. 74-8733 *et seq.*

³ K.S.A. 46-215 *et seq.*

⁴ Pursuant to K.S.A. 46-254, any person who acts in accordance with the provisions of a Kansas Governmental Ethics Commission opinion shall be presumed to have complied with the State Governmental Ethics Law.

⁵ Pursuant to K.S.A. 75-704, Attorney General Opinions address questions of law, not of fact.

⁶ K.S.A. 2011 Supp. 74-8757(b) ("...no person under age 21 shall play or make a wager on an electric gaming machine game or a lottery facility game...").

⁷ K.S.A. 2011 Supp. 74-8710(a)(13). An individual may place his or her name on a casino's "self-exclusion list," thereby barring the individual from access to gaming machines and other casino games.

manager, subcontractor or agent of a lottery gaming facility manager, manufacturer or vendor of electronic gaming machines or central computer system provider.

Additionally, K.S.A. 2011 Supp. 74-8762(d) states in relevant part:

No state or local official⁸ shall solicit or accept, directly or indirectly, any complimentary service or discount . . . from any lottery gaming facility manager or racetrack gaming facility manager, which such official knows or has reason to know is other than a service or discount that is offered to members of the general public in like circumstance.

Violation of either K.S.A. 2011 Supp. 74-8716(f) or 74-8762(d) is a class A misdemeanor.⁹ An individual convicted of a violation of K.S.A. 2011 Supp. 74-8716(f) also shall be removed from office or employment with the Lottery.¹⁰

We address your specific questions in order.

1. *May a Lottery employee join a casino player's club and receive non-gaming discounts and other benefits offered to such members?*

Answer: Yes. K.S.A. 2011 Supp. 74-8762(d) prohibits Lottery employees from accepting complimentary services or discounts other than those offered to the general public in like circumstance. Based upon the description of casino player's clubs provided in your letter, we conclude that membership in such clubs is offered to the general public, and any discounts deriving solely from player's club membership are offered to the general public in like circumstance. Additionally, a casino player's club membership is not a type of "compensation, gift, loan, entertainment, favor or service" prohibited by K.S.A. 2011 Supp. 74-8716(f). Accordingly, we opine that neither the Lottery Act nor the KELA prohibit a Lottery employee from joining a casino player's club.

2. *May a Lottery employee allow a third party to gamble using the Lottery employee's player's club card, thereby accumulating points or credits on the Lottery employee's player's club account?*

Answer: No. K.S.A. 2011 Supp. 74-8760(a) prohibits "(t)he executive director of the Kansas Lottery, a member of the Kansas Lottery Commission or any employee or agent of the Kansas Lottery" from placing a wager at a casino in Kansas. Violation of this statute is a class A misdemeanor.

K.S.A. 2011 Supp. 74-8760(a) is a criminal statute.¹¹ A criminal statute must be strictly construed in favor of the accused.¹² A court cannot extend a criminal statute to embrace

⁸ "State or local official" includes "any other state officer or employee with responsibility for matters affecting activities or operations of any lottery gaming facility . . ." K.S.A. 2011 Supp. 74-8762(a)(2)(A).

⁹ K.S.A. 2011 Supp. 74-8716(h); 74-8762(f).

¹⁰ K.S.A. 2011 Supp. 74-8716(i).

acts or conduct not clearly indicated within statutory prohibitions.¹³ However, these rules of strict construction “are subordinate to the rule that judicial interpretation must be sensible and reasonable to effect the legislative design and intent.”¹⁴

We note that K.S.A. 2011 Supp. 74-8760(a) does not expressly prohibit a Lottery employee from allowing a third party to gamble with the employee’s player’s club card. However, we must consider the various provisions of the Lottery Act and the KELA *in pari materia* with a view of bringing them into workable harmony.¹⁵ The Lottery Act and the KELA are intended to prevent conflicts of interest among Lottery commissioners and employees charged with overseeing Lottery activities and the approval of casino management contracts.¹⁶ Furthermore, we previously opined that the language of K.S.A. 2011 Supp. 74-8762(d) was enacted to “sanitize” Kansas gaming in order to eliminate not only actual conflicts of interest but also *appearances of impropriety* involving public officials and casino interests.¹⁷ Allowing a third party to gamble with the Lottery employee’s player’s club card creates the appearance of impropriety and violates the intent of the Lottery Act and the KELA by doing indirectly what is prohibited directly. Therefore, we opine that a Kansas Lottery employee may not circumvent K.S.A. 2011 Supp. 74-8760(a) by allowing a third party to gamble using the employee’s player’s club card.

3. *May a Lottery employee obtain discounted or free food or beverages from a casino’s employee dining room?*

Answer: No. K.S.A. 2011 Supp. 74-8762(d) prohibits Lottery employees from accepting discounts from a casino that are not offered to members of the general public in like circumstance. We assume that members of the general public are not invited to obtain discounted or free food or beverages from the casino’s employee dining room. Accordingly, we opine that a Lottery employee may not obtain discounted or free food or beverages from a casino’s employee dining room.

4. *May a Lottery employee obtain non-discounted food or beverages from a casino’s employee dining room?*

Answer: No. As noted above, K.S.A. 2011 Supp. 74-8762(d) is intended to eliminate actual conflicts of interest and the appearance of impropriety involving public officials and casino interests. Even if the Lottery employee paid full price for food or beverages,

¹¹ K.S.A. 2011 Supp. 21-5102.

¹² *State v. Donlay*, 253 Kan. 132, 134 (1993).

¹³ *State v. Palmer*, 248 Kan. 681, 691 (1991).

¹⁴ See *State v. Vega-Fuentes*, 264 Kan. 10, 14 (1998); *State v. Manbeck*, 277 Kan. 224, 227 (2004).

¹⁵ 264 Kan. at 14.

¹⁶ See, e.g., K.S.A. 2011 Supp. 74-8716(a) (prohibiting Lottery commissioners and employees from having an interest in a business that contracts with the Lottery for a major procurement); 74-8719 (prohibiting Lottery commissioners and employees from purchasing lottery tickets or sharing lottery winnings); see also Attorney General Opinion Nos. 2007-28, 2008-1, 2008-18 and 2011-16.

¹⁷ Attorney General Opinion No. 2008-1 (emphasis added).

the presence of a Lottery employee in a casino's employee dining room would create an appearance of impropriety prohibited by the Lottery Act and the KELA.

5. *May a Lottery employee receive the same discount offered to casino employees for food and beverages purchased at outlets open to the public?*

Answer: No. A Lottery employee could not accept the same discount offered to casino employees unless the discount is also offered to members of the general public in like circumstance.

As previously mentioned, the above opinions are based solely upon the Lottery Act and the KELA, and do not consider the State Governmental Ethics Law. Application of the State Governmental Ethics Law to your questions may yield a different result.

Sincerely,

Derek Schmidt
Kansas Attorney General

Sarah Fertig
Assistant Attorney General

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