IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION NINE

STATE ex rel. PAUL MORRISON, Petitioner, v. KANSAS LOTTERY and ED VAN PETTTEN Respondents.	)	Case No. 07-C-1312

MEMORANDUM DECISION AND ORDER

The Petition in this case was filed by the Petitioner on August 23, 2007, in the Kansas Supreme Court. On August 31, 2007, a Motion to Intervene (or Participate as Amicus) was filed in the Kansas Supreme Court by the Prairie Band Potawatomi Nation. Petitioner and Respondent filed separate Responses to the Motion to Intervene on September 13, 2007. The Prairie Band Potawatomi Nation filed a reply to Petitioner's and Respondent's Responses to the Motion to Intervene on September 19, 2007. On September 20, 2007, the Kansas Supreme Court transferred this case, along with its pending motions and all other filings, to the Shawnee County District Court in light of New Section 2(c) of The Kansas Expanded Lottery Act. On October 11, 2007, the Court held a hearing on Prairie Band Potawatomi Nation's Motion to Intervene or In the Alternate Participate as Amicus Curiae during which the Court denied the Motion to Intervene and granted the Nation's request to submit briefs as *amicus curiae*. The Court also granted *amicus curiae* status to "Stand up for Kansas" and Cherokee/Sumner

Counties. On November 9, 2007, Respondent's brief and the *amici curiae* briefs were filed by the respective parties. On November 28, 2007, Petitioner's brief in reply to Respondents and Amici Cherokee and Sumner Counties, Respondent's reply brief, and the reply briefs of the *amici curiae* parties were filed. Oral arguments were presented by counsel for the parties and the *amici curiae* on December 4, 2007. Thus, since the issue presented has now been fully briefed and argued by the parties, after considerable deliberation, the Court is now prepared to determine the issues submitted and finds and concludes as follows:

FACTUAL BACKGROUND

Parties and Standing

Petitioner is the State of Kansas, on the relation of Kansas Attorney General Paul Morrison. The Office of the Attorney General was created in Article 1, Section 1 of the Kansas Constitution. Statutory provisions relating to the powers and responsibilities of the Attorney General are found in K.S.A. 75-701, *et seq*. The State is the proper party to bring this action. See *State ex rel. Stephan v. Finney*, 251 Kan. 559, 567, 836 P.2d 1169 (1992) (quoting *State ex rel. Brewster v. Doane*, 98 Kan. 435, 440, 158 P.38 [1916]).

Respondent, Kansas Lottery, is an agency created in 1987 by K.S.A. 74-8703, to operate lotteries pursuant to the Kansas Lottery Act. Respondent Ed Van Petten is the duly appointed Executive Director of the Kansas Lottery.

Legislative History

In 1859, the Kansas Constitutional Convention adopted Article 15, Section 3 of the Kansas Constitution, which provides that "lotteries and the sale of lottery tickets are

forever prohibited." In 1986 the Constitution was amended by Article 15, Section 3(c), which provides in relevant part: "Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may provide for a state-owned and operated lottery . . . ." In 1987 the Kansas Lottery was created to "administer the state lottery as provided in this act." K.S.A. 74-8703(a)

In 1992, the Kansas Supreme Court heard a mandamus and quo warranto action to determine the Governor's authority to negotiate compacts with Indian tribes which authorize casino gambling on Indian lands which is not specifically authorized by Kansas statute or by the Kansas Constitution. To answer the constitutional question presented, the Kansas Supreme Court had to define the term "lottery" as used in Article 15, Section 3 of the Kansas Constitution. After reviewing the legislative history, the judicial branch's interpretations of the term "lottery" in Article 15, Section 3 since 1891, and the Attorney General's opinions on the matter, the court defined a "state-owned lottery" as "any state-owned and operated game, scheme, gift, enterprise, or similar contrivance wherein a person agrees to give valuable consideration for the chance to win a prize or prizes," thereby including casino gambling in the definition of "lottery." *State ex rel. Stephan v. Finney* 254 Kan. 632, 867 P.2d 1034 (1994).

During the 2007 legislative session, the Kansas Legislature passed, and the Governor signed, Senate Bill 66: "An act concerning lotteries; enacting the Kansas expanded lottery act; (and) authorizing operations of certain gaming facilities, electronic gaming machines and other lottery games at certain gaming facilities . . . . " Senate Bill 66 became effective April 19, 2007, and is known as the "Kansas Expanded Lottery

Act" (the "Act"). See L. 2007, Ch. 110 (hereinafter cited as SB 66).

Jurisdiction and Prior Procedural History

The Act states that an action challenging its constitutionality shall be brought in the Shawnee County District Court. SB 66, § 2(c). While this action was originally filed in the Kansas Supreme Court, in light of the clear language of Section 2(c), the Supreme Court transferred the case to the Shawnee County District Court.

Relevant Case Law

The amicus and both parties cite extensively to case law from Rhode Island and West Virginia that dealt with lotteries owned and/or operated by the State. Article 6, Section 15, of the Rhode Island Constitution provides: "All lotteries shall be prohibited in the state *except lotteries operated by the state* . . . ." (Emphasis added.) Article 6, Section 36 of the West Virginia Constitution allows the operation of lotteries which are *"regulated, controlled, owned and operated* by the State of West Virginia in the manner provided by general law." (Emphasis added.)

The West Virginia Supreme Court found the state's statutes allowing a video lottery to be within the state's constitutional guidelines for several reasons. First, the video lottery terminals must be approved by the Lottery Commission and must conform to the exact specifications of the video lottery terminal prototype tested and approved by the commission. Second, the Lottery Commission directly or through a third-party vendor, maintains a central site system of monitoring the lottery terminals that may immediately disable the video lottery games and video lottery terminals. Third, applicants for a video lottery license must meet several qualifications before they can be

approved. Finally, the Lottery Commission is considered to own the main logic boards and all erasable programmable read-only memory chips. *State of West Virginia ex rel. City of Charleston v. W. Va. Econ. Dev. Auth*., 588 S.E.2d 655, 670 (W. Va. 2003).

The Rhode Island Supreme Court, in two separate advisory opinions, struck down proposed legislation as constitutionally defective to the Rhode Island prohibition on lotteries in the state except those lotteries operated by the state. In *In Re Advisory Opinion to the Governor,* (Casino I) 856 A.2d 320 (2004), the court stated that Rhode Island's Casino Act was unconstitutional because it proposed a scheme where Harrah's, rather then the state, would have operational control over the lottery facility because (1) Harrah's would make day-to-day decisions having to do with the functioning of the proposed casino while the Lottery Commission merely would enforce the applicable regulations; (2) Daily revenue generated at the casino would go directly to Harrah's rather than the state; (3) Harrah's would be acting as more than simply a state agent hosting games on behalf of the state because the lottery machines housed at the casino would not be linked to a centralized computer system for auditing; and (4) the Lottery Commission would have no authority to determine the type of video lottery games conducted as well as the price to pay and the prizes to be awarded. 885 A.2d at 330.

After the Rhode Island House of Representatives attempted to remedy the faults found in the Casino Act, the Rhode Island Supreme Court issued another advisory opinion in which it noted several significant shortcomings that rendered the act unconstitutional. The revised act gave the Division of Lottery total control in determining and approving the types of table games to be conducted at the casino gaming

facility. However, the act also allowed the casino service provider to conduct at the casino gaming facility any table game that is regularly conducted at any other casino gaming facility. Based on that language, the court concluded the Division had no control over what table games were played the casino, which was clearly inconsistent with the constitutional requirement that the state operate the lottery. *In re Advisory Opinion to the House of Representatives,* 885 A.2d 698, 703-04 (R.I. 2005) (Casino II).

Further, the act allowed for the casino service provider to extend credit to patrons, while giving the Division of Lottery no control over the extension of credit, which violated the Constitutional requirement that the state operate the lottery, for all aspects of the operation of the casino must be under state control. Further, the proposed act did not address the issue of sovereign immunity when dealing with Native American tribes, and if the tribe were to retain its sovereign immunity, then it would raise significant questions about the state's ability to control "all aspects" of the casino. *Casino II*, 885 A.2d at 704-06.

Finally, the Court had a significant concern with the role of the state – or lack thereof – in choosing the casino service provider. The casino service provider is an entity composed of the Narragansett Indian Tribe and *its chosen partner*, while giving the Division the power to investigate and determine the suitability of the casino service provider. The court concluded that this power to veto proposed partners to the casino contract on suitability grounds is more a nature of regulatory power and mere regulatory power over the most fundamental aspects of the gaming business – selection of the casino service provider – certainly falls short of "operating" "all aspects" of the facility. *Casino*

II, 885 A.2d at 706-707.

Casinos

The Act authorizes the Kansas Lottery to "operate one lottery gaming facility" in each of the four "gaming zones" across Kansas. SB 66, § 3(a). The Act creates four "gaming zones" located in (1) Wyandotte County, (2) Crawford and Cherokee Counties, (3) Sedgwick/Sumner Counties and (4) Ford County. SB 66, § 1(f).

Under the Act, the Kansas Lottery Commission "may approve management contracts with one or more prospective lottery gaming facility managers to manage, or construct and manage, on behalf of the State of Kansas and subject to the operational control of the Kansas lottery, a lottery gaming facility or lottery gaming enterprise [in the gaming zones] where the commission determines the operation of such facility would promote tourism and economic development." SB 66, § 3(d). The Lottery Commission is required to approve at least one proposed lottery gaming facility in each gaming zone. SB 66, § 3(f).

The Act defines a "[l]ottery gaming facility management contract" as "a contract, subcontract or collateral agreement between the state and a lottery gaming facility manager for the management of a lottery gaming facility, the business of which is owned and operated by the Kansas lottery, negotiated and signed by the executive director on behalf of the state." SB 66, § 1(n).

To approve a contract, the Lottery Commission must determine that the proposed "lottery gaming facility managers" will invest at least $225 million in infrastructure, including "ancillary lottery gaming facility operations," i.e, non-lottery facility gaming

products and services not owned and operated by the State which may include, but are not limited to, restaurants, hotels, motels, museums, or entertainment facilities. SB 66, §§ 1(a) and 3(g)(2).

If the prospective lottery gaming facility manager is a resident Kansas American Indian tribe, then the tribe must have sufficient access to financial resources to support the activities required of a lottery gaming facility manager and must have three consecutive years experience in the management of class III gaming as defined in K.S.A. 46-2301. Section 3(g)(1)(A)(i)(ii)

Finally, if the proposed lottery gaming facility manager is not a resident Kansas American Indian tribe, then the proposed manager must have sufficient access to financial resources to support the activities required of a lottery gaming facility manager; be current in filing all applicable tax returns and in payment of all taxes, interest, and penalties owed to the State of Kansas and any taxing subdivision where such prospective manager is located in the State of Kansas, excluding items under formal appeal pursuant to applicable statutes; and have three consecutive years' experience in the management of class III gaming as defined in K.S.A. 46-2301 SB 66, § 3(g)(1)(B)(i)-(iii).

Racetracks

Section 9 of the Act requires the Kansas Lottery to enter into "racetrack gaming facility management contracts" to place "electronic gaming machines" at parimutuel licensee locations (i.e., racetracks). The Act allows for one "racetrack gaming facility management contract" per gaming zone (except the Ford county zone). SB 66, § 10(a).

The "racetrack gaming facility management contract" means an agreement

between the Kansas Lottery and a racetrack gaming facility manager, negotiated and signed by the executive director on behalf of the State, for placement of electronic gaming machines owned and operated by the state at a racetrack gaming facility. SB 66, § 1(bb).

To be eligible to enter into a racetrack gaming facility management contract, the prospective racetrack gaming facility manager must have sufficient access to financial resources to support the activities required of a racetrack gaming facility manager under the Kansas Expanded Lottery Act, and must be current in filing all applicable tax returns and in payment of all taxes, interest, and penalties owed to the State of Kansas and any taxing subdivision where such prospective manager is located in the State of Kansas. SB 66 §§ 10(b)(1), (2). Any manager of a lottery gaming facility in a gaming zone is not eligible to be the manager of the racetrack gaming facility in the same zone. SB 66, § 10(e).

Furthermore, the terms of the contract must meet the requirements of Sections 10(c)(1)-(4) and may include provisions relating to the topics covered in Sections 10(d)(1)-(7).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a facial challenge to the constitutionality of the Kansas Expanded Lottery Act which provides a statutory mechanism to implement the 1986 amendment to the Kansas Constitution permitting the State to own and operate a lottery. The term lottery was defined by the Kansas Supreme Court in *Finney,* as games of chance in which consideration is paid for an opportunity to win a prize.

The Petitioner and the Amicus parties spend a considerable amount of time in their respective briefs arguing that Senate Bill 66 violates the Kansas Constitution because there is a lack of ownership by the State. They point to the fact that the State will not own the real estate, the buildings on the real estate, or the fixtures and equipment placed inside buildings that are to be constructed on the real estate. They also note that under the Act, the manager purchases all equipment needed to operate a casino game on behalf of the State.

However, all of those arguments are moot, because under the plain language of the 1986 constitutional amendment, what the State must "own" and "operate" are the games that share the three elements required by the *Finney* decision. The only factors the State must meet to satisfy the constitution requirement are that the State must "own" and "operate" games of chance in which consideration is paid for an opportunity to win a prize. The ownership of any other item related to the game of chance is merely incidental and inconsequential to the constitutional analysis. Thus, to determine the constitutionality of Senate Bill 66, the entirety of the bill must be looked at to see whether it allows for the State to own and operate the games of chance.

A. State Ownership

Petitioner and the *amicus curiae* repeatedly point out that the managers of the lottery gaming facility are the ones who purchase all necessary real estate, buildings, and gaming equipment and they use these facts to argue that it is the facility manager and not the State that owns the lottery. While these facts are true, a careful reading of the entire Act is required before ownership of the gaming operation is determined.

The legislature supplied the following provisions in Senate Bill 66 that pertain to state ownership of the lottery:

> "[A] 'Lottery gaming facility management contract' means a contract, subcontract or collateral agreement between the state and a lottery gaming facility manager for the management of a lottery gaming facility, the business of which is owned and operated by the Kansas lottery, negotiated and signed by the executive director on behalf of the state." SB 66, § 1(n) (Emphasis added.)

> "[A] 'Racetrack gaming facility management contract' means an agreement between the Kansas lottery and a racetrack gaming facility manager, negotiated and signed by the executive director on behalf of the state, for placement of electronic gaming machines owned and operated by the state at a racetrack gaming facility." SB 66, § 1(bb) (Emphasis added.)

> "Any management contract approved by the commission . . . . shall place full, complete and ultimate ownership and operational control of the gaming operation of the lottery gaming facility with the Kansas lottery." SB 66, § 3(h)(17) (Emphasis added.)

> "The Kansas lottery shall be the licensee and owner of all software programs used at a lottery gaming facility for any lottery facility game." SB 66, § 3(n)(1) (Emphasis added.)

Under the Act the managers pay all costs associated with building, implementing, and developing this gaming enterprise, but the State retains their ownership claim:

> "The Kansas lottery commission may approve management contracts with one or more prospective lottery gaming facility managers to manage, or construct and manage, on behalf of the state of Kansas and subject to the operational control of the Kansas lottery, a lottery gaming facility or lottery gaming enterprise at specified destination locations within the northeast, south central, southwest and southeast Kansas gaming zones where the commission determines the operation of such facility would promote tourism and economic development." SB 66, § 3(d) (Emphasis added.)

> A lottery gaming facility manager, on behalf of the state, shall purchase or lease for the Kansas lottery all lottery facility games. All lottery facility games shall be subject to the ultimate control of the Kansas lottery in

accordance with this act. SB 66, § 3(n)(2) (Emphasis added.)

> The lottery gaming facility manager or racetrack gaming facility manager shall lease or purchase for the Kansas lottery and at such gaming facility manager's expense all equipment necessary to implement such central communications and auditing functions. SB 66, § 18(b) (Emphasis added.)

Petitioner argues that these provisions – without more – are merely empty declarations, arguing that the legislature never stated how exactly the State will "own" the lottery, and thus the failure of the legislature to provide the essential elements of "state-ownership" beyond these declarations renders the Act unconstitutional. However, more than just these declarations are included in Senate Bill 66 that demonstrates state control and ownership of the lottery operation:

1. The manger selection process is controlled by the State.

While the Act directly provides in Section 3(d) that the lottery gaming facility managers will in fact be managing the gaming facility, the State owns the process that selects the manager by controlling the process that selects the manager and by forcing the manager to submit to the State's requirements to secure its selection. The State's selection process for gaming facility managers and racetrack managers is controlled entirely by state entities. The State is an active and controlling force in the selection of each lottery facility or racetrack gaming facility manager. This is accomplished by the following sections of the Act:

Section 3(e) of the act requires that the following factors be considered by the Kansas Lottery when selecting a gaming facility manager: (1) The size of the proposed facility; (2) the geographic area in which such facility is to be located; (3) the proposed

facility's location as a tourist and entertainment destination; (4) the estimated number of tourists that would be attracted by the proposed facility; (5) the number and type of lottery facility games to be operated at the proposed facility; and (6) agreements related to ancillary lottery gaming facility operations.

Section 3(g)(1)(A)(i)(ii) requires that if the prospective lottery gaming facility manager is a resident Kansas American Indian tribe, then the tribe must have sufficient access to financial resources to support the activities required of a lottery gaming facility manager; and have three consecutive years experience in the management of class III gaming as defined in K.S.A. 46-2301.

Section 3(g)(1)(B)(i)-(iii) requires that if the proposed lottery gaming facility manager is not a resident Kansas American Indian tribe, then the proposed manager must have sufficient access to financial resources to support the activities required of a lottery gaming facility manager; be current in filing all applicable tax returns and in payment of all taxes, interest, and penalties owed to the State of Kansas and any taxing subdivision where such prospective manager is located in the State of Kansas, excluding items under formal appeal pursuant to applicable statutes; and have three consecutive years' experience in the management of class III gaming as defined in K.S.A.

Section 3(g)(2) requires that the lottery commission reject a management contract unless it is determined that the proposed development consists of an investment infrastructure, including ancillary lottery gaming facility operations, of at least $225,000,000 in the northeast, southeast, and south-central gaming zones and $50,000,000 in the southwest gaming zone.

The gaming facility can only be built if it is of proper size, in the proper location, and viable as a tourist attraction. The manager can only be selected if it has the financial resources, 3 years experience, and if not resident Kansas American Indian tribe, is current on all applicable taxes. The manager can only be selected by the guidelines the Kansas Lottery has laid out, and this is a significant function of state control.

2. The manager selection process is conducted entirely by the State.

In *Casino II*, the Rhode Island Supreme Court criticized a statutory scheme that merely gave the state veto power over an Indian tribe's "chosen partner" for the proposed casino. The court stated that the power to veto proposed partners on suitability grounds is more of a regulatory power and that the power to choose a partner is qualitatively different from the lesser power of vetoing another's choice. The court held that this scheme violated Rhode Island's constitutional requirement that the lottery be "operated by the state" because it did not give the state "complete control" in the selection of the casino manager.

Here, the Act's statutorily-specified process of selecting a lottery gaming facility manager continues in a three-step process that is controlled entirely by state entities:

(1) Section 3(h)(10) requires that the applicant for a lottery facility management contract be endorsed by the city governing body, if the proposed facility is within the corporate limits of a city, or from the county commission, if the proposed facility is located in the unincorporated area of the county, both of which are political subdivisions of the State.

(2) The contracts and applications are forwarded by the Kansas Lottery to a

statutorily-created *ad hoc* seven-member "lottery gaming facility review board" which is comprised of three members appointed by the governor, two members appointed by the senate president, and two members appointed by the speaker of the house of representatives. This review board makes the manager selection on the State's behalf. SB 66 §§ 4 and 5(a).

(3) The Kansas Racing and Gamming Commission must approve each manager selected by the review board. SB 66, § 5(e).

If all three state entities cannot agree in the selection of the manager, the process would repeat itself until all three state entities concur in the selection.

3. Once selected, the Kansas Lottery controls the manager.

Per Section 3(h)(1)-(19) the management contract between the gaming facility and the Kansas Lottery is required to:

(1) Have a maximum initial term of 15 years from the date of opening of the lottery gaming facility;

(2) Specify the total amount to be paid to the lottery gaming facility manager pursuant to the contract;

(3) Establish a mechanism to facilitate payment of lottery gaming facility expenses, payment of the lottery gaming facility manager's share of the lottery gaming facility revenues and distribution of the state's share of the lottery gaming facility revenues;

(4) Include a provision that states the lottery gaming facility manager must pay the cost of oversight and regulation of the lottery gaming facility manager and the

operations of the lottery gaming facility by the Kansas racing and gaming commission;

(5) Establish the types of lottery facility games to be installed in the facility;

(6) Provide for the prospective lottery gaming facility manager, upon approval of the proposed lottery gaming facility management contract, to pay to the state treasurer a privilege fee of $25,000,000 for the privilege of being selected as a lottery gaming facility manager of a lottery gaming facility in the northeast, southeast, or south central Kansas gaming zone and $5,500,000 for the privilege of being selected as a lottery gaming facility manager of a lottery gaming facility in the southwest Kansas gaming zone;

(7) Incorporate terms and conditions for the ancillary lottery gaming facility operations;

(8) Designate as key employees, subject to approval of the executive director, any employees or contractors providing services or functions that are related to lottery facility games authorized by a management contract;

(9) Include financing commitments for construction;

(10) Include a resolution of endorsement from the city governing body, if the proposed facility is within the corporate limits of a city, or from the county commission, if the proposed facility is located in the unincorporated area of the county;

(11) Include a requirement that any parimutuel licensee developing a lottery gaming facility pursuant to this act comply with all orders and rules and regulations of the Kansas racing and gaming commission with regard to the conduct of live racing, including the same minimum days of racing as specified in section 15, and amendments

thereto, for operation of electronic gaming machines at racetrack gaming facilities;

(12) Include a provision for the State to receive not less than 22% of lottery gaming facility revenues, which shall be paid to the expanded lottery act revenues fund established by section 37, and amendments thereto;

(13) Include a provision for 2% of lottery gaming facility revenues to be paid to the problem gambling and addictions grant fund established by K.S.A. 2006 Supp. 79-4805, and amendments thereto;

(14) If the prospective lottery gaming facility manager is an American Indian tribe, include a provision that such tribe agrees to waive its sovereign immunity with respect to any actions arising from or to enforce either the Kansas Expanded Lottery Act or any provision of the lottery gaming facility management contract; any action brought by an injured patron or by the State of Kansas; any action for purposes of enforcing the Workers Compensation Act or any other employment or labor law; and any action to enforce laws, rules and regulations and codes pertaining to health, safety, and consumer protection; and for any other purpose deemed necessary by the executive director to protect patrons or employees and to promote fair competition between the tribe and others seeking a lottery gaming facility management contract;

(15) (A) If the lottery gaming facility is located in the northeast or southwest Kansas gaming zone and is not located within a city, then include a provision for payment of an amount equal to 3% of the lottery gaming facility revenues to the county where the lottery gaming facility is located; or (B) if the lottery gaming facility is located in the northeast or southwest Kansas gaming zone and is located within a city,

then include provision for payment of an amount equal to 1.5% of the lottery gaming facility revenues to the city where the lottery gaming facility is located and an amount equal to 1.5% of such revenues to the county in which
such facility is located;

(16) (A) if the lottery gaming facility is located in the southeast or south central Kansas gaming zone and is not located within a city, then include a provision for payment of an amount equal to 2% of the lottery gaming facility revenues to the county where the lottery gaming facility is located and an amount equal to 1% of such revenues to the other county in such zone; or (B) if the lottery gaming facility is located in the southeast or south central Kansas gaming zone and is located within a city, provide for payment of an amount equal to 1% of the lottery gaming facility revenues to the city where the lottery gaming facility is located, an amount equal to 1% of such revenues to the county where such facility is located and an amount equal to 1% of such revenues to the other county in such zone;

(17) Allow the lottery gaming facility manager to manage the lottery gaming facility in a manner consistent with the act and applicable law, but place full, complete and ultimate ownership and operational control of the gaming operation of the lottery gaming facility with the Kansas lottery. The Kansas lottery shall not delegate and shall explicitly retain the power to overrule any action of the lottery gaming facility manager affecting the gaming operation without prior notice. The Kansas lottery shall retain full control over all decisions concerning lottery gaming facility games;

(18) Include provisions for the Kansas racing and gaming commission to oversee

all lottery gaming facility operations, including, but not limited to: oversight of internal controls; oversight of security of facilities; performance of background investigations, determination of qualifications and credentialing of employees, contractors, and agents of the lottery gaming facility manager and of ancillary lottery gaming facility operations, as determined by the Kansas Racing and Gaming Commission; auditing of lottery gaming facility revenues; enforcement of all state laws and maintenance of the integrity of gaming operations; and

(19) Include enforceable provisions: (A) prohibiting the state, until July 1, 2032, from (i) entering into management contracts for more than four lottery gaming facilities or similar gaming facilities, one to be located in the northeast Kansas gaming zone, one to be located in the south-central Kansas gaming zone, one to be located in the southwest Kansas gaming zone and one to be located in the southeast Kansas gaming zone, (ii) designating additional areas of the state where operation of lottery gaming facilities or similar gaming facilities would be authorized, or (iii) operating an aggregate of more than 2,800 electronic gaming machines at all parimutuel licensee locations; and (B) requiring the state to repay to the lottery gaming facility manager an amount equal to the privilege fee paid by such lottery gaming facility manager, plus interest on such amount, compounded annually at the rate of 10%, if the state violates the prohibition provision described in (A).

With these required provisions included, the manager submits to the control of the Kansas Lottery. The gaming facility can only be built if it is of proper size, in the proper location, and viable as a tourist attraction. The manager can only be selected if they have

the financial resources, 3 years experience, and is current on all applicable taxes if it is not a resident Kansas American Indian tribe. The manager and management contract must be approved in a three step process that is controlled entirely by state entities. Further, once a manager and facility are selected pursuant to the State's control, the management contract signed by the State and the manager must contain the clauses in Section 3(h)(1)-(19), which gives the Kansas Lottery complete control of the manager and the gaming operation. The Kansas Lottery is able to overrule any action of the manager, and the Kansas Lottery is given full control over all decisions concerning lottery facility games.

4. The State controls daily revenue possession and distribution.

In *Casino II*, the Rhode Island Supreme Court explained: "A significant aspect of state control is the ability to direct daily revenue," and it "allows the state to exercise a greater degree of financial control over the gaming facility." 885 A.2d at 708-09.

In Kansas, Section 35 of the Act establishes in the state treasury the "expanded lottery receipts fund." It calls for the creation of separate accounts for receipt of moneys from each lottery gaming facility manager and racetrack facility manager. Further, Section 35(b) of the Act requires that all lottery gaming facility revenues and all net electronic gaming machine income be paid daily, electronically, and directly to the Kansas Lottery, which is then responsible for distribution per Section 35(c). All money collected that is not paid out immediately in prizes is paid directly and electronically on a daily basis to the Kansas Lottery. The distribution of that money is performed at a later date entirely by state entities, thus giving the state a significant aspect of operational

control.

5. The State owns the software.

While the State does not own the slot machine used to run the game, the Act expressly requires that Kansas Lottery "shall be the licensee and owner of all software programs used at a lottery gaming facility for any lottery game" SB 66, §§ 3(n)(1) and (5)(b).

The Kansas Lottery is required to "own" and "operate" the lottery game itself. Since the software, not the machine, is used to operate the electronic game, ownership of all software is significant evidence of state ownership of the lottery.

Petitioner argues that there is nothing in the Act itself that defines how exactly the lottery is to be the licensee and owner of the software programs. Respondent argues, and the Court agrees, that this issue will be addressed in the implementation phase of the lottery gaming facility management contract. If there is nothing in the lottery facility management contract addressing how the State owns the software, then sections 3(n)(1) and (5)(b) become empty declarations and the contract violates the Kansas constitution. However, as written, the Act does not violate the Kansas Constitution if the State does in fact become the licensee and owner of all software programs used at the lottery gaming facility.

6. The State Selects the Games.

All electronic gaming machines played in Kansas must be authorized by the Kansas Lottery. All other "lottery facility games" must be approved in advance by the Kansas Lottery, either through contract or by regulation. SB 66, §§ 3(e), 3(h)(5), 19(a),

and 44(a)(14).

It is important to note that the ability to engage in a lottery game in the State of Kansas is controlled by the State. If anyone in Kansas attempts to engage in a lottery style game without it being owned and operated by the State, then they have committed a criminal offense. SB 66, § 30 Thus, the State's control over which games are allowed is an significant aspect of state ownership of the lottery.

7. The State monitors the lottery through centralized monitoring and on-line control.

The Act requires the Kansas Lottery to have constant electronic monitoring and control over all electronic gaming machines through a centralized on-line communications system that literally permits the Kansas Lottery to individually monitor and shut down any machine at any time for any reason. SB 66, §§ 1(c) and 18(a)(2-4). In addition, all lottery facility games must be subject to the ultimate control of the Kansas Lottery. SB 66, § 3(n).

In *State of West Virginia ex rel. City of Charleston v. W. Va. Econ. Dev. Auth*., the court found a similar statutory requirement for a central site system of monitoring with the capacity to immediately disable any video lottery terminal, either directly by the state or through a third party vendor, to be a further positive demonstration of the statute's compliance with West Virginia's constitutional requirement for state "regulated, controlled, owned, and operated" gaming. 558 S.E.2d at 669-70.

The power to disable any gaming machine at any time for any reason is without question a function of state ownership and control. When it comes to electronic machines, the State owns and operates the lottery because it owns the software that runs

the game, has direct control over the gaming revenue from those games, and has the power to disable the machines for any reason.

8. The State controls payout.

The Act requires electronic gaming machines to pay out an average of not less than 87% of the amount wagered over the life of the machine and gives the Kansas Lottery discretion to adjust that payout above the 87% level if it chooses to exercise such discretion. SB 66 § 18(a)(1). In *Casino II*, the Rhode Island Supreme Court noted:

> "The power to set the number of VLTs [video lottery terminals] and non-slot table games (coupled with the power to set the odds) is a substantial one that undeniably would allow the state to exercise a significant degree of operational control over the casino." 885 A.2d at 710-11.

Similarly, the Act statutorily sets the minimum pay out percentage and the maximum aggregate number of electronic gaming machines that may be placed at racetracks, while giving the Kansas Lottery authority to control all such machines at all gaming locations. Control of the payout is another example of the power and control the State possesses over the lottery games.

9. All of the provisions relating to electronic gaming apply to the racetracks.

Section 10(c)(2) only requires the Kansas racing and gaming commission "to oversee all racetrack gaming facility operations," this includes oversight of internal controls, security facilities, certification and licensing of manager staff, of auditing, and of maintenance. *Amicus curiae* Stand Up for Kansas, contends that the state has no say in picking the games to be placed at the racetrack gaming facility or controlling the operations of such games, but is merely charged with "promulgation of rules and regulations concerning the operation of racetrack gaming facilities . . . ." SB 66, 13(a)(2).

While the State's operation of electronic gaming will be discussed below, it is clear the state owns the electronic gaming conducted at the racetrack.

The State selects the games played at the racetracks. The "racetrack gaming facility management contract" entered into between the state and the manager is an agreement between the Kansas Lottery and a racetrack gaming facility manager, negotiated and signed by the executive director on behalf of the State, for placement of electronic gaming machines owned and operated by the state at a racetrack gaming facility. SB 66, § 1(bb). The only gaming that is allowed at the racetracks is electronic gaming. The State has selected the games played at the racetracks by limiting the gaming conducted there to only electronic games.

As discussed in detail above, all electronic gaming is subject to the ultimate control of the Kansas Lottery. All electronic gaming machines played in Kansas must be authorized by the Kansas Lottery, the State must own the software used to run the electronic game, the State monitors the electric gaming through centralized monitoring and on-line control, and the State controls the payout of all electronic gaming machines. Clearly, the State owns the electronic gaming played at the racetracks just as they own the games played in the casinos.

Conclusion: the State owns the lottery.

A "lottery" is a game of chance in which consideration is paid for an opportunity to win a prize. In the matter of State Casinos and electronic gaming at racetracks enacted by the KELA the Kansas Lottery owns the game of chance by owning the software used to run the electronic game as well as by controlling which specific games are played. The

Lottery owns the consideration that is paid by controlling the daily revenue procession and distribution. Finally, the Kansas Lottery owns the opportunity to win a prize by statutorily requiring electronic gaming machines to pay out an average of not less than 87% of the amount wagered while retaining the right to adjust the payout as the State sees fit.

B. State Operation

The Kansas Supreme Court has not defined the term "operate" as used in Article 15, Section 3(c) of the Kansas Constitution so the Court must look to other sources to determine exactly what it means to operate a lottery.

In *Casino I*, the Rhode Island Supreme Court interpreted the word operate as "the power to make decisions about *all aspects* of the functioning of a business enterprise." 856 A.2d at 320, 331. The "business enterprise" in this case is the lottery, the games of chance in which consideration is paid for the chance to win a prize.

1. The problems the Rhode Island Supreme Court found in *Casino II* are addressed in the Act.

The Rhode Island Supreme Court in *Casino II* found that its state's gaming bill violated the constitution because the State did not have the power to make decisions on which table games will be played in the facility, the casino manager had the power to extend credit, the bill did not address Native American sovereign immunity, and the state only retained regulatory control over the choice of the casino service provider.

All of the concerns of the Rhode Island Supreme Court have been addressed in the Act. The State has the power to make decisions over all games played at the gaming

facility. All electronic gaming machines played in Kansas must be authorized by the Kansas Lottery. All other "lottery facility games" must be approved in advance by the Kansas Lottery, either through contract or by regulation. SB 66, §§ 3(e), 3(h)(5), 19(a), 44(a)(14). No new table lottery games can commence unless first approved by the governor or, in the governor's absence or disability, the lieutenant governor. SB 66, § 44(14)(b).

The State has the power to make decisions about *all aspects* of the types of games to be played at the lottery facility. There is nothing in the Act that allows the manager to put a lottery game in the facility without approval from the State. There is no loophole provision or any other way the gaming facility manager can install a lottery game without approval from the State.

The Act forbids the racetrack facility manager or lottery gaming facility manager from extending credit to patrons. SB 66, §§ 25(b) and (c). In *Casino II*, the court stated: "[T]he extension of credit also is an operationally significant aspect of the casino arrangement," which, if granted to a non-state entity, reflects a lack of state ownership and control. 885 A.2d at 704. The Act gives managers no authority to extend credit, and the concerns of the Rhode Island Supreme Court raised in *Casino II* do not apply to Senate Bill 66.

The Act also requires any management contract with an American Indian tribe to include provisions in which the tribe waives its sovereign immunity so that the State, state agencies, local agencies, vendors, employees, or patrons may enforce all applicable laws and regulations. SB 66, § 3(h)(14). In addition, all lottery gaming facility managers

or racetrack gaming facility managers must file with the secretary of state a written and irrevocable consent to jurisdiction in the proper court of any county in Kansas. SB 66, § 24. Thus, the Act addressed the pitfall of tribal immunity discussed in *Casino II* by requiring that all managers, even resident Kansas American Indian Tribes with long-established tribal immunities, be subject to the State's jurisdiction.

The last problem the Rhode Island Supreme Court found with that state's casino act was the role of the state – or lack thereof – in choosing the casino service provider. As discussed in detail above, this concern is addressed by the Act, because the process of selecting the manager is conducted entirely by state agencies.

2. All of the items the Rhode Island Supreme Court mentioned that vest operational control in the State are included in the KELA.

The Rhode Island Supreme Court took the time to articulate the ways in which the legislation appears to vest operational control in the state. The court pointed out that "a significant aspect of state control is the ability to direct daily revenue" and that "[b]y allowing the Division to hold the daily net gaming income, the proposed Casino Act clearly allows the state to exercise a greater degree of financial control over the gaming facility than was the case under the former legislation." (In which daily revenue generated at the casino would go directly to Harrah's rather than the state) 885 A.2d at 708-709.

As discussed above, Section 35(b) of the Act requires that all lottery gaming facility revenues and all net electronic gaming machine income be paid daily, electronically, and directly to the Kansas Lottery, which is then responsible for

distribution per Section 35(c). All money collected that is not paid out immediately in prizes is paid directly and electronically on a daily basis to the Kansas Lottery. The distribution of that money is performed at a later date and performed entirely by state entities, giving the state a significant aspect of operational control.

Further, the Rhode Island Supreme Court stated "[t]he power to set the number of VLTs (video lottery terminals) and non-slot table games (coupled with the power to set the odds) is a substantial one that undeniably would allow the state to exercise a significant degree of operational control over the casino." 885 A.2d 710, 711. The Act statutorily sets the minimum pay out percentages and the maximum aggregate number of electronic gaming machines that may be placed at racetracks, and the Act statutorily requires electronic gaming machines pay out an average of not less than 87% of the amount wagered over the life of the machine. Also, the State is able to set the odds on table games by having the ability to choose the games. For example, it is common knowledge that roulette has worse winning odds than blackjack, and thus, if the State wishes, it is able to set the odds in the casino by disallowing roulette and allowing blackjack or vice versa.

Finally, the Rhode Island Supreme Court agreed that the Rhode Island Division of Lottery's ability to exercise control over the casino was not limited to the powers expressly granted in the casino act. The act bestowed upon the Division "all powers necessary and proper to fully and effectively execute and administer the provisions of this chapter for its purpose of allowing the state to operate a casino gaming facility." While the court agreed that this statement was a "plenary power" with "wide latitude," it could

not cure all of the constitutional ills in the Rhode Island Casino Act that were discussed above. 885 A.2d at 711.

The KELA has many of these "necessary and proper" provisions. Section 3(h)(17) directs that the management contracts with each manager "place full, complete and ultimate ownership and operational control over the gaming operation of the lottery gaming facility with the Kansas Lottery." Section 3(n)(2) includes the catch-all provision that all lottery facility games shall be subject to the ultimate control of the Kansas Lottery in accordance with this Act. Finally, Section 21(b)(5) gives the executive director of the racing and gaming commission the power to "take any action as may be reasonable or appropriate to enforce the provisions of the KELA and any rules and regulations, orders and final decisions of the executive director of the Kansas Lottery, the Kansas Lottery commission, the executive director of the Kansas racing commission or the Kansas racing and gaming commission." By including these provisions and without having anything in the Act that would limit the State's power in the actual decision-making and functional control over the important aspects to gaming ownership and operation, the Act permits the Kansas Lottery to retain the control over gaming activities that is necessary to satisfy the Kansas Constitution. If this Court is to use the Rhode Island Supreme Court's interpretation of the word operate as "the power to make decisions about *all aspects* of the functioning of a business enterprise," then the Act has satisfied this definition. The Petitioner cannot point to any important aspect of the gaming enterprise that the State does not have the power to make decisions over.

Petitioner argues that despite the legislature's linguistic efforts to involve the State

in the functioning of the casinos and racetrack lottery terminals, the Act calls for the State to enter into contracts by which others will "manage" those facilities, and "manage" and "operate" are synonymous. However, no court decision cited by Petitioner or the *amicus curiae* briefs prohibits a state from contracting with a "manager" or a "casino service provider" to perform the necessary functions associated with gaming activities on behalf of that state.

For example, all parties refer to Rhode Island's *Casino I* and *Casino II*, and it is clear from a reading of those cases that Rhode Island may hire private vendors to manage on the state's behalf the lottery games to be played while following Article 6, Section 15 of Rhode Island's constitution which states; "All lotteries shall be prohibited except lotteries operated by the state."

Similarly, the parties and *amici curiae* refer the Court to *W. Va Econ. Dev. Auth.* in which the West Virginia Supreme Court ruled the state could use private vendors as managers on the state's behalf, but the state must own all equipment used in the gaming activities and its related functions to follow the West Virginia constitutional requirement that a lottery be "regulated controlled, owned and operated" by the state.

3. The power to observe and inspect the lottery gaming facilities does not show lack of state operation.

Petitioner repeatedly points to Section 21(a), which gives the executive director of the Kansas Lottery and the executive director of the Kansas Racing and Gaming Commission, or their designees, the power to *observe and inspect* all electronic gaming machines, lottery facility games, lottery gaming facilities, racetrack gaming facilities, and

all related equipment and facilities operated by a lottery gaming facility manager or racetrack gaming facility manager, as proof that the gaming facilities and machines are being "operated by a lottery gaming facility manager or racetrack gaming facility manager." Petitioner suggests that this clause confirms that the State will have a hands-off approach to the gaming actives and will only observe and inspect the lottery gaming facility, while the manager will be the actual operator of the casino.

However, by singling out this clause the Petitioner fails to see how this section fits in with the Act as a whole. The State *has* to be able to observe and inspect the manager if the State is to ensure the manager is managing the lottery gaming facility in a manner consistent with the Act and applicable law as required by Section 3(c)(17). Furthermore, the State must maintain a constant presence in the casino by observing and inspecting to retain full control over all decisions concerning lottery facility games in accordance with Section 3(h)(17).

Conclusion: The State operates the lottery.

The constitutional test to determine whether the lottery is owned and operated by the State is whether the State has preserved for itself the decision-making and functional control over the important aspects of gaming ownership and operation. The KELA meets this test because nowhere in the Act is the Kansas Lottery prohibited from taking all of the necessary steps to exercise ownership and control over the casino when one is eventually implemented. In the KELA, the State is given the power to do whatever is necessary under the Kansas Constitution to provide sufficient control to satisfy the constitutional limitation of a state operated casino. Therefore, the KELA meets the

constitutional requirement of a state owned and operated lottery.

C. Additional Challenges

Other challenges to the KELA were made beyond Article 15, Section 3(c) of the Kansas Constitution by the *amicus curiae* and need to be briefly discussed by the Court.

1. The KELA does not violate Kan. Const. Article 2, § 16.

Prairie Band Potawatomi Nation contends the KELA violates Article 2, Section 16 of the Kansas Constitution by including provisions regarding the greyhound breeding industry, which Prairie Band asserts are unrelated to the expanded lottery provisions and are not mentioned in SB 66's title. Article 2, Section 16 provides, in pertinent part that:

> "No bill shall contain more than one subject, except appropriation bills and bills for revision or codification of statutes. The subject of each bill shall be expressed in its title . . . . The provisions of this section shall be liberally construed to effectuate the acts of the legislature."

In *Harding v. K.C. Wall Products, Inc*., 250 Kan. 655, Syl ¶ 8, 831 P.2d 958 (1992), the Kansas Supreme Court held:

> "Article 2, § 16 of the Kansas Constitution should not be construed narrowly or technically to invalidate proper and needful legislation, and where the subject of the legislation is germane to other provisions, the legislation is not objectionable as containing more than one subject or as containing matter not expressed in its title. *This provision is violated only where an act of legislation embraces two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with or relationship to each other.* (Emphasis added.)

The KELA is a comprehensive legislative package that sets out the terms under which expanded state-owned and operated gaming is to occur. It provides standards and criteria applicable to its various provisions, sets out the manner in which new revenues will be raised pursuant to the Act, and then earmarks the distribution of those revenues.

There is certainly nothing inherently wrong in tying the additional revenues expected to result from the KELA's implementation with the distributions of those revenues so members of the legislature may see how that revenue will be applied before they vote on a new means for generating that revenue. See *U.S.D. 229 v. State*, 256 Kan. 232, 269, 885 P.2d 1170 (1994).

The KELA does not embrace two or more dissimilar and discordant subjects that cannot reasonably be considered as having any legitimate connection with, or relationship to, each other and, therefore, does not violate Article 2, § 16 of the Kansas Constitution.

2. The provisions pertaining to elections in Sumner and Crawford Counties are not an unconstitutional delegation of legislative authority.

Stand Up for Kansas, one of the *amicus curiae* in this matter, argues the KELA is constitutionally infirm because it directs the Kansas Lottery to determine whether certain elections to approve lottery activities were conduced with a statutorily-described framework and are in substantial compliance with other provisions in the Act. Stand Up for Kansas alleges that this statutory direction to the Kansas Lottery is an unconstitutional delegation of legislative authority in contravention of Article 2, Section 1 of the Kansas Constitution which states: "The legislative power of this state shall be vested in a house of representatives and senate."

The KELA provides that the Kansas Lottery Commission, if it wishes, may make an administrative determination to waive the requirements stated in Sections 6 and 12 of the KELA based upon a county election conducted in a designated gaming zone, provided the commission determines the following:

> "After December 31, 2004, and before the effective date of this act, the county has held an election of qualified voters pursuant to the county's home rule authority: (1) At which the ballot question was in substantial compliance with the requirements of this section; (2) which was administered by the county election officer in a manner consistent with the requirements of state election law; and (3) at which a majority of the votes cast and counted was in favor of the proposition." SB 66, § 6(e).

A similar provision applicable to racetrack gaming facilities is found in Section 12(e). Contrary to the arguments by the *amicus curiae,* these provisions do not convey to the Kansas Lottery Commission any legislative authority, but merely authorizes the Kansas Lottery to perform an administrative task, or to review existing facts, and then take action as authorized by law. The administrative power granted to the Commission by these provisions is no different than the power granted to any other administrative agency to review factual matters and then take appropriate action as authorized by law. Thus, the argument by the *amicus curiae* is without merit.

Section 6(e) allows the Kansas Lottery Commission to waive the election requirement if the county held an election after December 31, 2004, but before the effective date of the Act, presenting a similar ballot question. A waiver requires that (1) the ballot question presented was in substantial compliance with the requirements of the act (2) the election was administered according to state law and (3) a majority of casted votes favored the ballot question.

Stand Up for Kansas argues that the Sumner County election did not substantially comply with the Act because the ballot question was worded different than is suggested by the Act. Section 6(b) provides the wording for the proposition: "Shall the Kansas Lottery be authorized to operate a lottery gaming facility in _____ County?" The Sumner

County ballot question read as follows:

> "Question: Do you support a destination resort casino in Sumner County, Kansas, in the event such is legally permitted by the state and is otherwise deemed in the best interest of the County by the Board of County Commissioners?"

Stand Up for Kansas argues that the Sumner County ballot question did not substantially comply with the Act because it failed to inform Sumner County voters that the casino would be owned and operated by the State of Kansas. It suggests it is possible that while some Sumner County voters would support a private casino in Sumner County, they would not support a state-owned casino there, rendering the 2005 ballot question misleading and the election results meaningless. However, there is no evidence of this possibility, and Stand Up for Kansas cannot prove that this actually occurred. The question asked to Sumner County made clear the central question, which was whether the residents want a casino in the county. The voters answered in the affirmative with 4,842 votes in favor and 2,838 against.

There was no unconstitutional delegation of authority to the Kansas Lottery Commission. The Commission had a set of facts, a valid question that was presented, all the information they need about the Sumner County elections, and an established set of standards for determining substantial compliance. The Commission compared the standards and the Sumner County election in June 2007 and ruled the election was substantially compliant. Thus, the election and the lottery commission's actions comply with the Act, and the Act is constitutional on its face.

3. The Court will not retain jurisdiction in this matter.

Finally, Stand Up for Kansas asks the Court to stay the proceedings or retain

jurisdiction on this issue until after the gaming facility management contracts have been enacted in order to see if the contracts meet the statutory requirements set out in Senate Bill 66 which allow for a State owned and operated lottery. The Court refuses to do so. If during the implementation phase, it is discovered that the State is not doing what is necessary, including not securing ownership in the software used to run the electronic games, the proper remedy would be to challenge the constitutionality as applied in a new lawsuit.

CONCLUSION

The constitutionality of the Kansas Expanded Lottery Act, like all statutes, is presumed and all doubts must be resolved in favor of the law's validity. *Dillion Real Estate Co. Inc. v. City of Topeka,* 284 Kan. 662, Syl. ¶6, 163 P.3d 298 (2007); *Blue Cross & Blue Shield of Kansas, Inc. v. Praeger,* 276 Kan. 232, 276, 75 P.3d 226 (2003). In addition, and as with any statute under constitutional scrutiny, the question here is not whether the KELA is authorized by the constitution, but is instead whether the KELA is prohibited by the limitation contained within the constitution. *Dillon Real Estate Co. Inc.*, 284 Kan. at 662 Syl. ¶ 6, *Praeger*, 276 Kan. at 276. That limitation is a state-owned and operated lottery. The state owns and operates the lottery because it has complete power over the casino manager from manager selection through the manager's daily activities. A lottery is a game of chance in which consideration is paid to win a prize. The lottery owns and operates the game of chance by owning the software used to run the electronic game as well as by having complete control over which specific games will be played. The lottery owns and operates the consideration that is paid by controlling the daily

revenue procession and distribution. Finally, the lottery owns and operates the opportunity to win a prize by requiring that electronic gaming machines pay out an average of not less than 87% of the amount wagered, while being able to adjust that payout accordingly.

The State has preserved for itself the decision-making and functional control over the important aspects of gaming ownership and operation. Nowhere in the Act is the Kansas Lottery prohibited from taking all of the necessary actions needed to exercise ownership and control of the casino when one is eventually implemented. If during the implementation phase, it is discovered that the State is not doing what is necessary, including not securing ownership in the software used to run the electronic games, a new challenge can commence, but on its face, the Kansas Expanded Lottery Act is constitutional because it provides for a constitutionally permitted owned and operated lottery by giving the State all of the tools necessary to implement one.

ORDER

For the reasons given, Petitioner's request to declare the Kansas Expanded Lottery Act unconstitutional is denied. The Kansas Lottery is free to continue implementing State owned and operated casinos that are consistent with this opinion, Senate Bill 66, and other provisions of the law which may or may not be applicable. The foregoing Memorandum Decision and Order shall serve as the Court's final entry of judgment; no further journal entry is required.

Dated this 1st day of February, 2008

_____

Charles E. Andrews
District Judge