

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

010-West–Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 ♦ FAX (785) 296-3824

kslegres@klrd.state.ks.us

<http://www.kslegislature.org/klrd>

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District Court Decision on State-Owned and Operated Lottery Gaming Facilities

This memorandum is being provided to update the members of the Legislature on today's court decision dealing with the constitutionality of state-owned and operated casinos and electronic gaming machines.

History of Gaming

Adopted in 1859, Article 15 Section 3 of the *Kansas Constitution* provided 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 that ". . . the Legislature may provide for a state-owned and operated lottery"

Attorney General Opinion 92-1 concluded that "[a]s long as the state owns the business and has ultimate control of the operation, article 15, section 3c of the constitution does not require the state actually own the building or equipment used in operation." Attorney General Opinion 94-26 answered questions of what it means to say state-owned and operated to provide some guidance to the Legislature.

Senate Bill 66

In the 2007 Kansas Legislative Session, the Legislature passed and the Governor signed Senate Bill 66 enacting the Kansas Expanded Lottery Act (KELA) authorizing a state-owned and operated lottery involving lottery and racetrack gaming facilities. KELA contains a provision stating that any action challenging the constitutionality of SB 66 shall be brought in the Shawnee County District Court. While the action was originally filed in the Kansas Supreme Court (August 23, 2007), the Supreme Court transferred the case to the Shawnee County District Court (*State ex rel. Paul Morrison v. Kansas Lottery and Ed Van Petten*, Case No. 07-C-1312).

State ex rel. Paul Morrison v. Kansas Lottery and Ed Van Petten, Case No. 07-C-1312

Kansas District Court Judge Charles Andrews ruled on February 1, 2008, that the KELA as enacted by the 2007 Kansas Legislature, is **constitutional** (emphasis added). In the lawsuit, Former Attorney General Paul Morrison alleged that the State would not be the real owner and operator of the lottery gaming facilities. Judge Andrews' decision concluded, among other things, that "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." In addition, he stated that the lottery owns and operates the game of chance by owning the software and has complete control over the games played. Also, the lottery owns and operates the consideration that is paid by controlling the daily revenue procession and distribution.

If you have any questions, please feel free to contact us.