

June 30, 2008

ATTORNEY GENERAL OPINION NO. **2008-17**

Stephen L. Martino, Executive Director
Kansas Racing and Gaming Commission
700 SW Harrison, Suite 420
Topeka, Kansas 66603

Re:

State Boards, Commissions and Authorities--State Lottery--Kansas Lottery Act; Lottery Gaming Facilities; Gaming Facility Management Contract Requirements; Minimum Investment in Infrastructure

Synopsis:

The Kansas Expanded Lottery Act (KELA) does not prohibit phasing-in the minimum amount of investment in infrastructure for a proposed lottery gaming enterprise over a period of time. Rather, the KELA requires only that the Lottery Commission *determine* that the proposed development consists of a minimum investment in infrastructure in the statutory amount prescribed for each gaming zone. Cited herein: K.S.A. 2007 Supp. 74-8702; 74-8734; 74-8736.

* * *

Dear Mr. Martino:

You inquire whether the Kansas Expanded Lottery Act (KELA) prohibits phasing-in the minimum amount of investment in infrastructure for a proposed lottery gaming enterprise over a period of time.

In this regard, the Kansas Expanded Lottery Act (KELA) provides, in part:

"The [Lottery] commission shall not approve a management contract unless:

....

"[T]he commission determines that the proposed development consists of an investment in infrastructure, including ancillary lottery gaming facility

operations,⁽¹⁾ of at least \$225,000,000 in the northeast, southeast, and south central Kansas gaming zones and \$50,000,000 in the southwest Kansas gaming zone."⁽²⁾

Our understanding is that the Lottery Commission has executed a contract with Kansas Penn Gaming L.L.C. (Penn) for the southeast gaming zone. You advise that the contract provides that Penn will expend \$125,000,000 in Phase 1 and will expend the remaining \$100,000,000 periodically over a twelve-year period.⁽³⁾ You also indicate that Penn's failure to meet the phased-in infrastructure investment schedule constitutes an "event of default."⁽⁴⁾

In interpreting the KELA provision at issue, we are mindful that the first rule of statutory construction is to determine the intent of the legislature as expressed in the language of the statute.⁽⁵⁾ When the language is plain and unambiguous, we are bound to implement the expressed intent:⁽⁶⁾

"Ordinary words are to be given their ordinary meanings *without adding something that is not readily found in the statute* or eliminating that which is readily found therein."⁽⁷⁾

The KELA does not require that the minimum investment in infrastructure be expended all at once. Were we to interpret this provision as requiring such, we would be imposing a requirement that is not found in the KELA. Rather, the plain language requires only that the Lottery Commission *determine* that the proposed development consists of a minimum investment in infrastructure of \$225,000,000 for the gaming zone at issue here.

Our understanding is that the Lottery Commission has made this determination by virtue of its execution of the contract.

This is all the KELA requires.

Sincerely,
Stephen N. Six
Attorney General
Mary Feighny
Deputy Attorney General

SNS:MF:jm

FOOTNOTES

Click footnote number to return to corresponding location in the text.

¹ *E.g.* Restaurants, hotels, motels, museums and entertainment facilities. K.S.A. 2007 Supp. 74-8702(a).

² K.S.A. 2007 Supp. 74-8734(g)(2). Emphasis added.

³ Martino Letter dated June 9, 2008; Lottery Gaming Facility Management Contract, § 13; Exhibit D.

⁴ Martino Letter dated June 9, 2008.

⁵ *State v. Manbeck*, 277 Kan. 224, 227 (2004).

⁶ *Id.*

⁷ *Id.* citing *State v. Haug*, 237 Kan. 390, 391-92 (1985). Emphasis added.