

Kansas Gaming Statutory Framework

21st Annual Tribal Law & Government Conference:
Indian Gaming in the 21st Century

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Overview

- Constitution of the State of Kansas
- Criminal and Nuisance Statutes
- Kansas Lottery Act (including the Kansas Expanded Lottery Act)
- Kansas Parimutuel Racing Act
- Kansas Charitable Gaming Act
- Tribal Gaming and Kansas, including the Kansas Tribal Gaming Oversight Act

Constitution of the State of Kansas

Art. 15, § 3. Lotteries: “Lotteries and the sale of lottery tickets are forever prohibited.”

- Laws 1861, P. 65.
- “...any game, scheme, gift, enterprise, or similar contrivance wherein persons agree to give valuable consideration for the chance to win a prize or prizes.” *State ex rel. Stephen v. Finney*, 254 Kan. 632, 867 P.2d 1034 (1992) (citations omitted).

Art. 15, § 3a. Regulation, licensing and taxation of “bingo” games authorized: “Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas the legislature may regulate, license and tax the **operation or conduct of games of bingo and instant bingo, as defined by law, by bona fide nonprofit religious, charitable, fraternal, educational and veterans organizations.**”

- Laws 1974, ch. 461, § 1; Laws 1995, ch. 275.
 - 1995 amendment added instant bingo.

Constitution of the State of Kansas

Art. 15, § 3b. Regulation, licensing and taxation of horse and dog racing and parimutuel wagering thereon: “Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may permit, regulate, license and tax, at a rate not less than 3% nor more than 6% of all money wagered, the **operation or conduct, by bona fide nonprofit organizations, of horse and dog racing and parimutuel wagering thereon** in any county in which: (a) A majority of the qualified electors of the county voting thereon approve this proposed amendment; or (b) the qualified electors of the county approve a proposition, by a majority vote of those voting thereon at an election held within the county, to permit such racing and wagering within the boundaries of the county. **No off-track betting shall be permitted in connection with horse and dog racing pursuant to this section.**”

- Laws 1986, ch. 416.

Constitution of the State of Kansas

Art. 15, § 3c. State-owned and operated lottery: “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**, except that such state-owned lottery shall not be operated after June 30, 1990, unless authorized to be operated after such date by a concurrent resolution approved by a majority of all of the members elected (or appointed) and qualified of each house and adopted in the 1990 regular session of the legislature. The state shall whenever possible provide the public information on the odds of winning a prize or prize in a lottery game.”

- Laws 1986, ch. 414.
- Extension authorized in Laws 1990, ch. 370.
- *State ex rel. Stephen v. Finney*, 254 Kan. 632, 867 P.2d 1034 (1992): “A state-owned lottery, as that term is used in art. 15, § 3c of the Kansas Constitution, means 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.”

Constitution of the State of Kansas

Art. 15, § 3d. Regulation of “raffles” authorized: “Notwithstanding the provisions of section 3 of article 15 of the constitution of the state of Kansas, the legislature may authorize the **licensing, conduct and regulation of charitable raffles by nonprofit religious, charitable, fraternal, educational and veterans organizations**. A raffle means a **game of chance in which each participant buys a ticket or tickets from a nonprofit organization with each ticket providing an equal chance to win a prize and the winner being determined by a random drawing**. Such organizations shall not use an electronic gaming machine or vending machine to sell tickets or conduct raffles. **No such nonprofit organization shall contract with a professional raffle or other lottery vendor to manage, operate or conduct any raffle**. Raffles shall be licensed and regulated by the Kansas department of revenue, office of charitable gaming or successor agency.

- Laws 2014, ch. 148.

Criminal and Nuisance Statutes

K.S.A. 21-6404. Gambling

- (a) Gambling is:
 - (1) Making a bet; or
 - (2) entering or remaining in a gambling place with intent to make a bet, to participate in a lottery or to play a gambling device.
- (b) Gambling is a class B nonperson misdemeanor.

Criminal and Nuisance Statutes

"Bet" means a bargain in which the parties agree that, dependent upon chance, one stands to win or lose something of value specified in the agreement. K.S.A. 21-6403(a).

- Exceptions:
 - Bona fide business transactions, including futures contracts and insurance
 - Purses, prizes and premiums in contests of skill, speed, strength or endurance
 - Lottery as defined in K.S.A. 21-6403
 - Bingo in accordance with the laws of Kansas
 - Lottery operated by the state of Kansas pursuant to the Kansas lottery act
 - Parimutuel wagering in accordance with the Kansas parimutuel racing act
 - Tribal gaming (class III gaming pursuant to a tribal-state gaming compact between the state of Kansas and any of the four resident tribes)
 - Charitable raffles
 - Fantasy sports leagues

Criminal and Nuisance Statutes

“Consideration” means anything which is a commercial or financial advantage to the promoter or a disadvantage to any participant. Mere registration without purchase of goods or services; personal attendance at places or events, without payment of an admission price or fee; listening to or watching radio and television programs; answering the telephone or making a telephone call and acts of like nature are not consideration. K.S.A. 21-6403(c)

- Other exceptions: Money paid by or for
 - Bingo conducted in accordance with Kansas law
 - Participants in a lottery conducted by the state pursuant to the Kansas lottery act
 - Participants in parimutuel wagering pursuant to the Kansas parimutuel racing act
 - Participants in tribal gaming

Criminal and Nuisance Statutes

“Lottery” means an enterprise wherein for a consideration the participants are given an opportunity to win a prize, the award of which is determined by chance. K.S.A. 21-6403(b).

- Exceptions
 - Lottery operated by the state of Kansas pursuant to the Kansas lottery act
 - Tribal gaming

Criminal and Nuisance Statutes

“Fantasy sports league” means any fantasy or simulation sports game or contest in which no fantasy or simulation sports team is based on the current membership of an actual team that is a member of an amateur or professional sports organization and that meets the following conditions:

(1) All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants;

(2) all winning outcomes reflect the relative knowledge and skill of the participants and are determined predominantly by accumulated statistical results of the performance of individual athletes in multiple real-world sporting events; and

(3) no winning outcome is based: (A) On the score, point spread or any performance or performances of any single real-world team or any combination of such teams; or (B) solely on any single performance of an individual athlete in any single real-world sporting event.

Criminal and Nuisance Statutes

Other miscellaneous criminal and nuisance statutes

- K.S.A. 21-6405. Illegal bingo operation
- K.S.A. 21-6406. Commercial gambling
- K.S.A. 21-6407. Dealing in gambling devices
- K.S.A. 21-6408. Unlawful Possession of a gambling device
- K.S.A. 21-6409. Installing communication facilities for gamblers
- K.S.A. 22-3901 to 22-3905. Abatement of common nuisances.

Kansas Lottery Act

- K.S.A. 74-8701 to 74-8732 (1987)
- Established the Kansas Lottery as a state agency
- Initially, purpose was to administer the operation of traditional lotteries through sale of lottery tickets

Kansas Lottery Act

- Existing provisions amended and expanded (K.S.A. 74-8733 to 74-8773) by the Kansas Expanded Lottery Act (2007)
 - “This act allows for the state of Kansas to own and operate a "destination casino resort" in four gaming zones – northeast, southeast, south central and southwest – within the state of Kansas. In addition to allowing for these destination casino resorts, KELA allows for licensed pari-mutuel tracks within the state to contract with the Kansas Lottery to have electronic gaming machines (slot machines) placed at the tracks. Race tracks that have electronic gaming machines are known as "racinos".” Kansas Racing and Gaming Commission website, <http://www.krgc.ks.gov/index.php/racing-gaming-law/statutes/kansas-expanded-lottery-act-kela>, accessed February 24, 2017
- HB 2173 – In general, geared towards making it easier for racetrack facilities to offer electronic gaming machines. The bill would also relax requirements on simulcasting and off-track betting.

Kansas Parimutuel Racing Act

- K.S.A. 74-8801 to 74-8802 (1987)
- Created the Kansas Racing Commission, now the Kansas Racing and Gaming Commission
- Established a regulatory framework for horse racing, greyhound racing, and pari-mutuel wagering in the state of Kansas.

Kansas Charitable Gaming Act

- K.S.A. 75-5171 to 75-5188 (2015)
- Replaced previous statutory framework for charitable bingo. Provides for regulation of charitable gaming by the Kansas Department of Revenue.
- "Charitable gaming" means bingo, including call bingo, and instant bingo and charitable raffles. K.S.A. 75-5173(f).

Tribal Gaming and Kansas

“Kansas Act” became law in 1940:

Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

18 U.S.C. 3243

Tribal Gaming and Kansas

California v. Cabazon Band of Mission Indians, 480 U.S. 202 (1987)

- Scope of California's jurisdiction to enforce its laws against Cabazon Band in connection with the Band's bingo and card room operations.
- Public Law 280, distinction between criminal and civil jurisdiction and *Bryan v. Itasca County*, 426 U.S. 373 (1976)
- Prohibitory or regulatory intent, with shorthand test of whether conduct violates state's public policy
- Prohibitory/regulatory distinction consistent with *Bryan*, but no bright line test. Balancing of interests.
- California characterized conduct at issue as high stakes, *unregulated* bingo and constitutes a misdemeanor under state law. Court rejected this approach, examined gambling generally.
- In 1988, Congress responded with the Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.*

Tribal Gaming and Kansas

Kansas Tribal Gaming Oversight Act, K.S.A. 74-9801 to 74-9809 (1996)

- Transferred the State Gaming Agency attached to and made a part of the Kansas Racing and Gaming Commission
- SGA responsible for oversight of class III gaming conducted pursuant to tribal-state compacts

Questions?

Russ Brien

Brien Law, LLC

russ@brienlawllc.com

913.205.7513 (m)

913.548.0691 (f)