

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 26, 2011, in Room 144-S of the Capitol.

All members were present except:
Senator Steve Morris - excused

Committee staff present:
Jason Long, Office of the Revisor of Statutes
Doug Taylor, Office of the Revisor of Statutes
Julian Efird, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Connie Burns, Committee Assistant

Conferees appearing before the Committee:
Dale Goter, City of Wichita
Janet Wright, Wichita Festivals, Inc.
Sandy Jacquot, League of Kansas Municipalities
Justin Stowe, Legislative Division of Post Audit

Others attending:
See attached list.

SB 25 – Authorizing temporary licenses for on-premises sales of cereal malt beverage

Chairman Brungardt opened the hearing on **SB 25**.

Staff provided an overview of the bill and Attorney General Opinion No. 2010-12 on the issue. (Attachment 1)

Dale Goter, Government Relations Manager, City of Wichita, spoke in favor of the bill. (Attachment 2) The City of Wichita asked the committee for favorable consideration of SB 25, dealing with temporary permits for the sale of cereal malt beverage (CMB). The bill would allow for a reasonable system of municipal oversight over CMB sales at special events of three days or less. It does not create a new category of CMB sales different from what has been in practice for past years in Wichita and other Kansas communities.

Janet C. Wright, President/CEO, Wichita Festivals, Inc., appeared in favor of the bill. (Attachment 3) Ms. Wright stated with changes in the law, it has become more difficult to know what permits are required for this temporary service and how to manage the purchase, delivery and equipment needed to sell the product at community events that Wichita Festivals, Inc. produces in Wichita. Wichita Festivals, Inc., would support any changes which would help streamline and clarify the process.

Sandy Jacquot, Director of Law/General Counsel, League of Kansas Municipalities, testified in support of the bill. (Attachment 4) This bill would allow for cities and counties to issue special event licenses for the sale of cereal malt beverage (CMB) on a temporary basis. A legislative solution is a better option in this case to avoid the confusion that could ensue by cities attempting to comply with law, but doing so in different ways that may result in wholesalers not delivering the CMB to the vendor.

Chairman Brungardt closed the hearing on **SB 25**.

SB 26 – An act concerning the state lottery; relating to security audits; background investigation requirements

Chairman Brungardt opened the hearing on **SB 26**.

Staff provided an overview of the bill.

CONTINUATION SHEET

Minutes of the Senate Federal and State Affairs Committee at 10:30 a.m. on January 26, 2011, in Room 144-S of the Capitol.

Justin Stowe, Deputy Post Auditor, Legislative Division of Post Audit, provided the written testimony of Scott Frank in support of **SB 26**. (Attachment 5) The bill would modify the background check requirement for an audit firm that is selected to conduct the triennial security audit of the Kansas Lottery. Because the background check requirement, as it currently stands in statute, may discourage large firms from pursuing the contract; it decreases competition for the contract and may increase the cost to the State. By removing the “major procurement contract” designation and the requirements that go along with that designation, it would eliminate the need for background checks on all officers and directors. The bill lays out the specific background check requirements for this audit project, which includes checks of:

- the vendor to whom the contract is to be awarded (part of the current requirements)
- all persons who own a controlling interest in such vendor (part of the current requirements)
- all applicable staff having involvement with the audit (new requirement)

Chairman Brungardt closed the hearing on **SB 26**.

The next meeting is scheduled for January 27, 2011. The meeting was adjourned at 11:03 a.m.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 1-26-4

NAME	REPRESENTING
Sandy Jaquost	LKM
Ed Van Patten	Lottery
Julie Pennington	Post Audit
Pope Routhier	Hein Law Firm
Patrick Hurley	CREAT
SARAH BURNE	ABC
TED HENRY	CS.
Jeff Bolley	Polsiville's shelf
Travis Lane	Little Co. Relations
Nancy Hennen	Shut Up For KS
Paul Wright	Wichita Festivals
Ann Kiefer	Wichita Downtown Develop Corp
JAMIE	House of Echman
Nicole Proulx Aiken	LKM
Dean Reynoldson	ABC
Phil Bradley	KLBA
Whitney Jackson	City of Topeka
Tom Lince	Power of KS
Barrie Ann Brown	Wine Institute
@	
Kari Prastay	Kearney & Assoc.

①

June 16, 2010

ATTORNEY GENERAL OPINION NO. 2010- 12

Thomas W. Groneman, Director
Alcoholic Beverage Control
Kansas Department of Revenue
Docking State Office Building
915 SW Harrison Street
Topeka, Kansas 66625

Re: Intoxicating Liquors and Beverages--Licensing and Related Provisions;
City Option; Beer Distributor's License; Rights of Licensee; Sale of Cereal
Malt Beverage to Holders of City-Issued Temporary Cereal Malt Beverage
Licenses

Intoxicating Liquors and Beverages--Certain Prohibited Acts and
Penalties; Gift and Loans by Distributor; Furnishing Equipment to the
Premises of a Holder of a City-Issued Temporary Cereal Malt Beverage
License

Intoxicating Liquors and Beverages--Cereal Malt Beverages; Retailer's
Licensee; Application; Ability of City to Issue Special Event Cereal Malt
Beverage License

Synopsis: Cereal malt beverage licenses issued pursuant to K.S.A. 41-2702 can only
be issued on an annual basis or for the calendar year. As beer
distributors can only sell cereal malt beverages to "retailers licensed under
K.S.A. 41-2702," such distributors cannot sell cereal malt beverages or
furnish equipment to a person holding a license that was not issued on an
annual basis or for the calendar year. This does not preclude a city from
imposing its own cereal malt beverage license requirement for festivals,
concerts, and other short-term events, in addition to the license required
pursuant to K.S.A. 41-2702. Cited herein: K.S.A. 2009 Supp. 41-307; 41-
703; K.S.A. 41-901; K.S.A. 2009 Supp. 41-2701; 41-2702; 41-2703; Kan.
Const., Art. 12, § 5.

*

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Dear Mr. Groneman:

You inquire whether a licensed beer distributor can sell cereal malt beverages (CMB) or furnish equipment¹ to individuals and businesses that hold a CMB license that does not conform to the requirements of the CMB statutes.²

Licensed beer distributors can sell CMB only to club and drinking establishments and "retailers licensed under K.S.A. 41-2702."³ Additionally, such distributors can, pursuant to the regulations of the Secretary of Revenue, supply furnishings, fixtures and equipment only to "[retailers] licensed . . . under K.S.A. 41-2702."⁴ As beer distributors can only sell and furnish equipment to "retailers licensed under K.S.A. 41-2702," it is necessary to determine what this phrase means.

A "retailer" is a person who sells CMB for use or consumption and not for resale.⁵ A person cannot sell cereal malt beverages without having "first obtained a valid license under . . . K.S.A. 41-2702."⁶ K.S.A. 41-2702 requires that a person who sells CMB secure a license from the governing body of a city or county where the business is located.⁷ A license applicant submits a license fee to the appropriate governing body and submits a copy of the application and a \$25 fee to the Director of Alcoholic Beverage Control (Director).⁸ Upon receipt of the application, the Director authorizes a state stamp to be affixed to the license.⁹ No retailer's license can be issued without this stamp.¹⁰ Retailers' licenses are issued on an annual basis or for the calendar year.¹¹

You indicate that some cities issue "special event" CMB licenses to individuals operating events lasting two or three days in order to accommodate individuals not interested in procuring a license for the entire calendar year. Our understanding is that the applicant goes through the same process that a retailer with a storefront uses to secure a calendar-year license, including obtaining a state stamp. The only difference is that the license indicates that it is for a shorter duration than a calendar year.

The problem with issuing a license that is for a period of time less than a calendar year is that a beer distributor can sell CMB and furnish equipment only to a "retailer licensed under K.S.A. 41-2702." Because licenses issued pursuant to K.S.A. 41-2702 can only be issued on an annual basis or for the calendar year, a beer distributor cannot sell CMB or furnish equipment to a person holding a license that was not issued on an annual basis or for the calendar year. This requirement is reinforced by virtue of the

¹E.g. refrigerated trailers, tapping trailers, tents.

²K.S.A. 41-2701 *et seq.*

³K.S.A. 2009 Supp. 41-307(c)(2).

⁴K.S.A. 2009 Supp. 41-703(a). Violations are punishable pursuant to K.S.A. 41-901.

⁵K.S.A. 2009 Supp. 41-2701(e).

⁶K.S.A. 41-901(a).

⁷K.S.A. 2009 Supp. 41-2702(a).

⁸K.S.A. 2009 Supp. 41-2702(d).

⁹*Id.*

¹⁰*Id.*

¹¹K.S.A. 2009 Supp. 41-2703(d).

fact that a city governing body must notify beer distributors before April 1 if the license is not renewed, presumably so that the distributors know not to deliver to the retailer.¹²

This conclusion does not mean that a city is precluded from requiring individuals and entities to secure a city-issued "special event" license to sell CMB, in addition to the license required by the CMB statutes. Cities have home rule authority to "determine their local affairs" by enacting ordinary ordinances.¹³ The fact that the state has an interest in regulating an activity such as CMB is no impediment to a city's exercise of authority provided there is no conflict with state law and the latter does not preempt a city from legislating in this area.¹⁴

With regard to preemption, the Kansas Supreme Court has concluded that the cereal malt beverage statutes do not preempt a city from enacting ordinances regulating CMB.¹⁵ In determining whether requiring a special event CMB license conflicts with the cereal malt beverage statutes, the appellate courts have held that there is no conflict where an ordinance simply adds to or complements state law.¹⁶ Applying this rationale, Attorney General Carla J. Stovall concluded that requiring a city license to sell alcoholic liquor in addition to a state liquor license did not conflict with the Liquor Control Act.¹⁷

While state law requires an annual license to sell CMB, it is silent regarding the sale of CMB during short-term events. Accordingly, a city desirous of regulating the sale of CMB at festivals, concerts, and other short-term events can impose reasonable requirements including licensure. However, beer distributors can only sell CMB and furnish equipment to individuals and entities licensed pursuant to the CMB statutes.

Sincerely,

Steve Six
Attorney General

Mary Feighny
Deputy Attorney General

SS:MF:jm

¹²K.S.A. 2009 Supp. 41-2703(d).

¹³Kan. Const., Art. 12, § 5.

¹⁴*City of Junction City v. Lee*, 216 Kan. 495, 498 (1975); *Clafflin v. Walsh*, 212 Kan. 1 (1973).

¹⁵*City of Lyons v. Suttle*, 209 Kan. 735 (1972).

¹⁶*Hutchinson Human Relations Comm'n. v. Midland Credit Management, Inc.*, 213 Kan. 308, 314 (1973); *Leavenworth Club Owner's Assn. v. City of Atchison*, 208 Kan. 318 (1971).

¹⁷Attorney General Opinion No. 96-55.



Dale Goter
Government Relations Manager

TESTIMONY

City of Wichita
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2

Senate Federal and State Affairs

Hearing on SB25

Wednesday, Jan. 25, 10:30 a.m. Room 144S

Chairman Brungardt and members of the Senate Federal and State Affairs Committee:

The City of Wichita asks your favorable consideration of Senate Bill 25 dealing with temporary permits for the sale of cereal malt beverage (CMB).

The need for this legislation arose when the City of Wichita was recently informed by the Division of Alcohol Beverage Control (ABC) in the Kansas Department of Revenue that the City's longstanding practice of granting temporary permits for the sale of CMB was in conflict with state statute.

The City of Wichita is in agreement with ABC and is currently using an interim system of annual licenses to allow CMB sales at special events. Under the interim system, approved by ABC, the licensee agrees to return the license at the end of the special event.

Adoption of SB25 will allow for a reasonable system of municipal oversight over CMB sales at special events of three days or less. It does not create a new category of CMB sales different from what has been in practice for past years in Wichita and other Kansas communities.

The proposed amendment has been vetted with lobbyists representing various alcohol-related interests in the State of Kansas. None have raised objections, and several have offered their individual endorsements. Those include Casey's General Stores, Kansas Beer Wholesalers Association, Petroleum Marketers and Convenience Stores Association (PMCA) and Kansas Wine and Spirits Wholesalers. The Kansas Association of Beverage Retailers is supportive as long as the legislation continues to apply only to CMB.

Thank you for the opportunity to present this request to the committee.



January 24, 2011

Federal & State Affairs Committee
Kansas State House
Topeka, KS

RE: Senate Bill 25

Chairman Brundgardt and committee members::

This letter testimony is in support of Senate Bill 25 and the revisions to K.S.A. 2010, Supp. 41-2703 regarding special event permits for the sale of cereal malt beverages. Wichita Festivals, Inc. produces community events in Wichita, the most notable, the Wichita River Festival. This annual nine-day event has been conducted for the last 39 years in downtown Wichita. We also produce a three-day art show and sale, Autumn & Art at Bradley Fair in September.

As a service to attendees at Riverfest we have served cereal malt beverage for the last 20+ years, contracting with a local State liquor license holder to manage and serve the product. With changes in the law, it has become more difficult to know what permits are required for this temporary service and how to manage the purchase, delivery and equipment needed to sell the product.

Managing CMB sales is a small component of the organizational structure required for Riverfest and Autumn & Art at Bradley. Unfortunately, it takes an inordinate amount of time to manage the process required for the rewards it brings. We would support any changes which would help streamline and clarify the process.

Thank you for your time.

Respectfully,

Janet C. Wright
President/CEO

1820 E. Douglas, Wichita, KS 67214, 316.267.2817, www.wichitafestivals.com

Sn Fed & State
Attachment 3

1-26-11



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TOPEKA, KS 66603-3951
P: (785) 354-9565
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WWW.LKM.ORG

TO: Senate Federal and State Affairs Committee

FROM: Sandy Jacquot, Director of Law/General Counsel

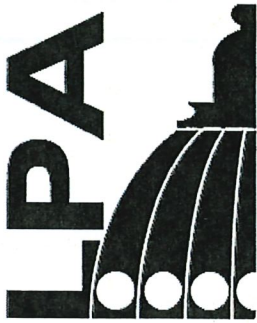
DATE: January 26, 2011

RE: Support for SB 25

Thank you for allowing the League of Kansas Municipalities to testify in support of SB 25. This bill would allow for cities and counties to issue special event licenses for the sale of cereal malt beverage on a temporary basis. For years, cities have issued temporary CMB licenses, without statutory authorization, under their home rule authority. Until the past couple of years, this was never an issue. At that time, the Alcoholic Beverage Control Division of the Kansas Department of Revenue began denying wholesalers the ability to deliver CMB to holders of licenses that were not issued on a calendar year or annual year basis, which is what K.S.A. 41-2703 currently requires.

LKM has begun advising cities to issue calendar year licenses that must be returned after the special event, or that are calendar year licenses only good for certain events. A legislative solution is a better option in this case to avoid the confusion that could ensue by cities attempting to comply with law, but doing so in different ways that may result in wholesalers not delivering the CMB to the vendor.

Therefore, LKM supports SB 25 and requests that this committee report the bill out favorably for passage.



MEMORANDUM

Legislative Division of Post Audit
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Topeka, KS 66612-2212
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fax: 785.296.4482
email: lpa@lpa.ks.gov
web: www.kslegislature.org/postaudit

TO: Members, Senate Committee on Federal and State Affairs
FROM: Scott Frank, Legislative Post Auditor
DATE: January 26, 2011
SUBJECT: Testimony on SB 26

I appreciate the opportunity to testify in favor of SB 26, which would modify the background check requirements for an audit firm that is selected to conduct the triennial security audit of the Kansas Lottery.

Background

K.S.A. 74-8707(b) requires an audit every three years to evaluate all aspects of security in operating the Kansas Lottery. Under that statute, the contract for this audit is a "major procurement contract" for the Lottery, and under the Lottery statutes, firms fulfilling such contracts have to undergo a background investigation (K.S.A. 74-8702).

Among other things, the investigation must include a background check on all officers and directors of the vendor (K.S.A. 74-8705). For large national and international accounting and consulting firms, some of who may have an interest and expertise in conducting security audits, this requirement may not be practical. In 2004, the consulting firm Deloitte and Touche submitted the lowest bid for the security audit, but declined the contract because of the background check requirement (*see Attachment A*). Similarly, the accounting firm KPMG submitted a bid for this year's security audit, but indicated that it would not be able to comply with the background check requirement if it were awarded the contract (*see Attachment B*). That is because firms like Deloitte and Touche and KPMG likely have hundreds, if not thousands, of partners located throughout the world.

Because the background check requirement, as it currently stands in statute, may discourage large firms from pursuing the contract, it decreases competition for the contract and may increase the cost to the State.

How SB 26 Addresses the Issue

SB 26 would modify the background check requirement for triennial security audit. By removing the "major procurement contract" designation and the requirements that go along with that designation, it would eliminate the need for background checks on all officers and directors. In its place, the bill lays out the specific background check requirements for this audit project, which include checks of:

- the vendor to whom the contract is to be awarded (*part of the current requirements*)
- all persons who own a controlling interest in such vendor (*part of the current requirements*)
- all applicable staff having involvement with the audit (*new requirement*)

The Legislative Post Audit Committee voted to introduce the bill at its January 7 meeting. The bill was developed in consultation with officials from the Kansas Lottery.

MINUTES
Contract Audit Committee
August 10, 2004

The meeting was called to order by Senator Derek Schmidt at 11:00 a.m.

Committee members present: Senator Derek Schmidt, Chair (by conference call)
Representative John Edmonds, Vice-Chair (by conference call)

Senator Chris Steineger (by conference call)
Marilyn Jacobson, Designee of Secretary of Administration
Barbara Hinton, Legislative Post Auditor

Approval of Minutes

Ms. Hinton moved that the minutes of the June 2, 2004, meeting be approved. Ms. Jacobson seconded the motion. The motion carried.

Change in Selection of Contractor

At its previous meeting, the Committee awarded the contract for a security audit of the Kansas Lottery to Deloitte & Touche. Because Deloitte & Touche was unwilling to provide information needed for the statutorily-required background check, Legislative Post Audit was unable to enter into a contract with that firm. As a result, the Committee needed to re-award that contract. The other qualified bidder—RedSiren, Inc.—had indicated that it was willing and able to conduct the work in the timeframe required for its originally bid fee of \$88,000.

Ms. Hinton moved that the contract for a security audit of the Kansas Lottery be awarded to RedSiren, Inc. Ms. Jacobson seconded the motion. The motion carried.

New Business

No new business came before the Committee.

Date of Next Meeting

Mr. Tongier pointed out that the Committee probably would not need to meet again until the next round of regular three-year audit contracts was to be awarded. That would most likely take place toward the end of calendar year 2006.

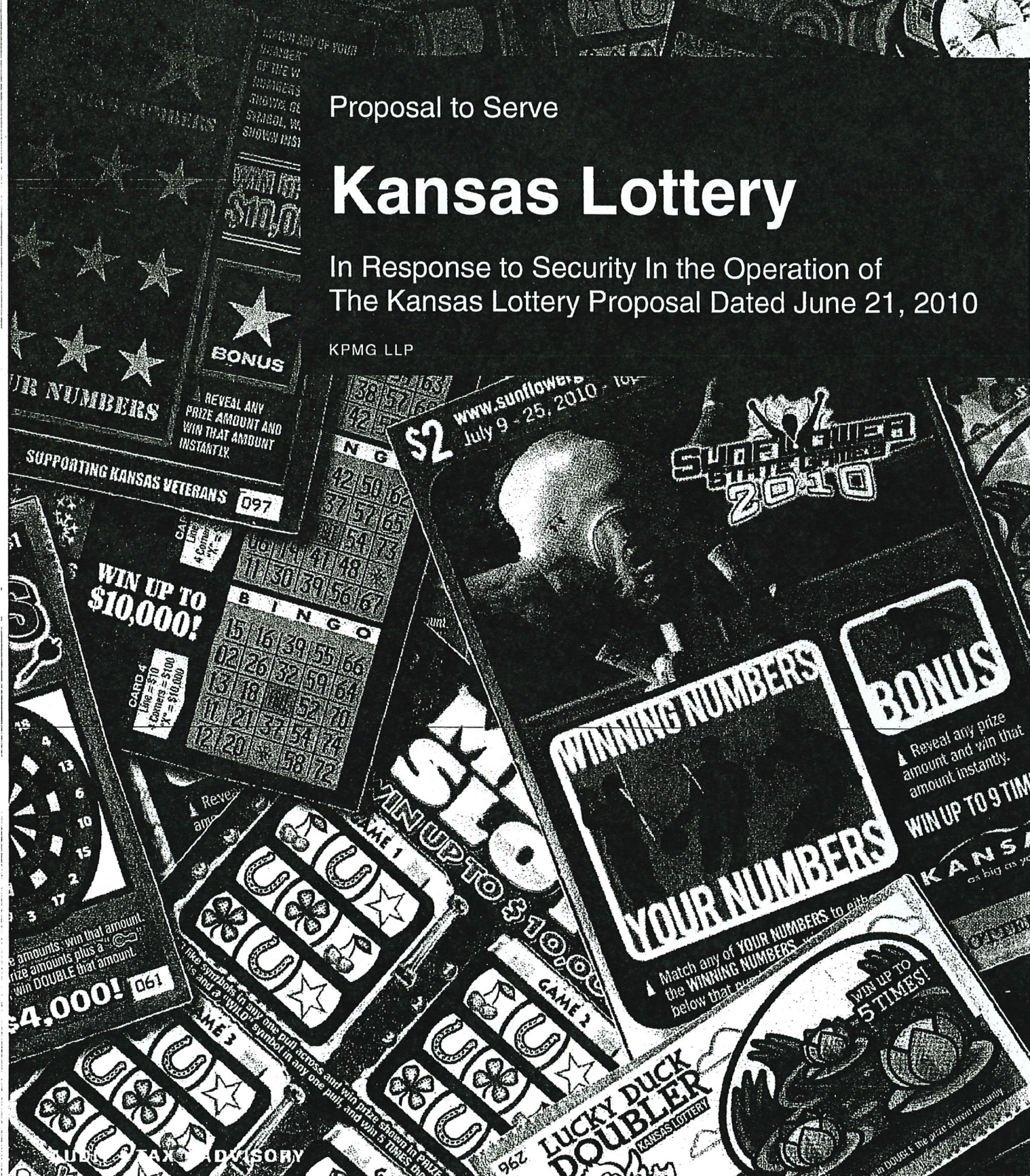
Senator Schmidt adjourned the meeting.

Proposal to Serve

Kansas Lottery

In Response to Security In the Operation of
The Kansas Lottery Proposal Dated June 21, 2010

KPMG LLP





Appendix D – Other Related Matters

As noted in Section I.0 of the RFP, state law requires a background investigation before the contract award is final. In regards to the five groups included in the background investigation, we would like to provide clarification on some of them. In regards to groups (2) and (4), there are several thousand “officers and directors” in the firm and conducting a background investigation on all of them would be burdensome and expensive. We would suggest limiting the background investigation to the engagement team members with their specific approval. Any individual who does not wish to undergo the background investigation will be replaced without penalty. In regards to group (3), no individual owns 5 percent or more of the firm.