

DELIVERED VIA ELECTRONIC AND BUILDING MAIL

August 25, 2022

Derek Schmidt
Kansas Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612

RE: Whether your office's sudden desire to communicate its legal advice to the Lottery publicly without the Lottery's authorization violated attorney-client privilege

Attorney General Schmidt:

I am writing in response to the August 22, 2022, letter I received from Chief Deputy Attorney General Jeff Chanay. This letter was in response to my August 22, 2022, letter to you about the troubling conduct of your staff with regard to the Lottery Commission's sports wagering draft regulations.

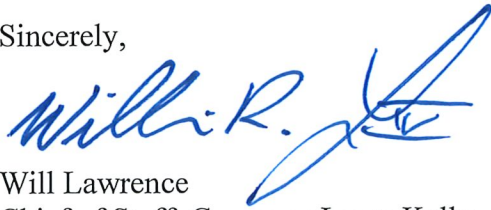
The letter mostly dodged the central point of the issue that still needs to be addressed. Your office was in possession of draft regulations that had not been disclosed publicly for the sole purpose of providing legal consultation and, ultimately, legal approval for the regulations to be filed with the Secretary of State's Office. Your office then breached that confidentiality by attaching the letter to a press release, an action that to the recollection of many has not previously occurred.

Mr. Chanay's response made clear that your office does not believe there is any duty to safeguard this confidentiality and attorney-client privilege does not exist in these relationships. While I do not agree with your staff's analysis, even if attorney-client privilege does not exist, your office still has no basis for disclosing otherwise confidential draft legal documents to the public. What Mr. Chanay essentially argues in his letter is that if documents shared with your Government Counsel's Office in anticipation of legal services are found to be somehow advantageous to you, they feel free to disclose it publicly along with making critical statements – even if those comments are deeply misleading as was the case here.

I believe you have a duty to either correct the position Mr. Chanay takes in his letter or you must update your website and adjust any Memorandums of Understanding your office has with agencies that have retained your legal services. You must alert those who rely on your office for professional legal services that they may do so at the risk of confidential information being publicly weaponized if it could be construed as helpful to you.

State agencies, boards, and commissions have long relied on the Attorney General's Office for these routine, yet important, matters. I know you are aware of this given your close relationship with former Governor Sam Brownback. I hope you will correct this error going forward so as to not further erode the public trust of the Attorney General's Office.

Sincerely,

A handwritten signature in blue ink that reads "Will Lawrence". The signature is stylized with a large, sweeping flourish at the end.

Will Lawrence
Chief of Staff, Governor Laura Kelly