

MINUTES

ARKANSAS LOTTERY COMMISSION

Wednesday, July 8, 2009

1:30 p.m.

**University of Arkansas System – Board Room
2404 North University
Little Rock, Arkansas**

The Arkansas Lottery Commission met July 8, 2009, at 1:30 p.m., in the University of Arkansas System Board Room, 2404 North University Avenue, Little Rock, Arkansas. Arkansas Lottery Commissioners present were: Ray Thornton, Chairman; Dianne Lamberth, Vice Chairman; George Hammons; Susan Jones (via teleconference); Mike Malone; Ben Pickard; Patty Shipp; Derrick Smith, Secretary-Treasurer; and Joe White. Lottery Commission staff in attendance: Ernie Passailaigue, Director, and Julie Baldrige.

Bureau of Legislative Research (BLR) staff present: Jill Thayer, Attorney; Marty Garrity, Assistant Director, Legal Division; Jim Schratz, Chief Information Officer, Information Systems; Kendra Drone, Secretary; and Estella Smith, Legislative Analyst:

Also attending: Bill Stovall, Administrative Assistant to the Speaker of the House of Representatives and Director, House Constituency Services

Chairman Thornton called the meeting to order.

Approval of July 1, 2009, meeting minutes

Commissioner Smith pointed out the July 1, 2009, minutes show him present via teleconference but should instead reflect that he called via teleconference to advise that he would not be attending the meeting. Commissioner Malone made a motion that the minutes be corrected and approved as amended. The motion was seconded by Commissioner White and approved by the Commission.

Comprehensive Banking Services Request for Proposal (RFP) (Attachments 1-5)

Mr. Passailaigue discussed the RFP for comprehensive banking services. He stated the lottery will need a full service financial institution to handle the lottery funds and discussed some of the types of services and specifications the lottery desires to acquire. The majority of the banking will be done at the retailer level. Most prizes will be \$600 or less and retailers are responsible for cashing prizes with a value of \$600 or less. The lottery intends to have 20 marketing sales representatives in various parts of the State. There is also the possibility of having another district office. However, the law has allocated only 88 individuals for hire until the lottery becomes independent.

Commissioners White and Lamberth noted they would abstain from voting on the RFP due to their memberships on bank boards. Both stressed the importance of selecting an Arkansas based financial institution to serve the "lottery needs, to which"; Commissioner Pickard expressed concurrence.

Commissioner Smith asked for clarification on the date the Vendor(s)' system must be fully operational -- October 15 or October 29 (Section 2.1). Mr. Passailaigue replied that he hopes to award the banking contract by the end of August. The process of licensing retailers will start, and each would have to setup a special trust account, according to State law. The banking vendor would have to be set up at least two weeks before launch on October 29 in order to fulfill these needs and assure a timely launch. This is to ensure that the group of retailers in the network complies with all aspects of the law. Commissioner

Hammons asked if the lottery is restricted to two (2) district offices. Mr. Passailaigue stated that Arkansas has approximately 2.8 million people and the goal is to start with a central office and claim center in Little Rock and "two district offices that each function" as a claim center/district sales office. Commissioner Malone asked for a description of the prize payment centers and district offices (Section 2.0) Mr. Passailaigue stated Little Rock would have a lottery headquarters and claims center. The sales manager would function as regional sales manager for the Little Rock region.

Commissioner Malone asked if the Commission could leave its options open in the RFP and further discuss the issue of an additional district offices at a later time. Mr. Passailaigue replied that the Instant Online RFP has been issued and contains the same language. With regard to the district offices, the Commission could make a decision as quickly as possible as to its flexibility in meeting its obligations as a State commission in servicing all the people of Arkansas. Mr. Passailaigue stated if he can get two (2) additional district offices lawfully, he will present a proposal for a third district office that would require amendments to the other two (2) RFP's including the aforementioned RFP. Mr. Passailaigue recommended that the Commission agree to include "2 or 3 district offices" in the language of the aforementioned RFP and the Online RFP Addendum and Instant Ticket RFP Addendum that will be presented today.

Chairman Thornton asked how the Commission should proceed in order to advance the RFP. Ms. Thayer stated the RFP could be adopted as amended or adopted as written and an addendum could be adopted and posted tomorrow. Mr. Bishop Woosley added the Commission could approve the RFP as written with the understanding that there would probably be an addendum that may change the banking center parameters. This could be done next week or as quickly as possible without changing the timetable.

Mr. Passailaigue stated that his proposal and personnel business plan for personnel and offices outside of Little Rock is the ability to meet the goals and objectives of the lottery in the state of Arkansas. Commissioner Pickard stated that the Commission has to deal with two (2) issues: the number of employees the lottery can hire and additional office space. He expressed concern that almost half of the State will not have a claim office, including northeast Arkansas. Commissioner Pickard asked if there was some way to service individuals in northeast Arkansas. Mr. Passailaigue stated if the demand is there, the lottery has the responsibility to deliver services throughout the State. He added that some of the suggestions for delivering services statewide include reducing the staff in Little Rock. He asked Mr. Stovall if it is possible to increase the headcount for hiring additional individuals. Mr. Stovall replied the law specifically allows the lottery 95 positions; however, there may be other options which would allow for additional hires that would include a possible contract situation. Commissioner Lamberth asked if all of the same positions stay in effect whether the Commission has paid back the \$6 million loan. Mr. Stovall replied the Constitution requires that the Arkansas General Assembly set the salaries for all state employees.

Mr. Passailaigue added that the South Carolina Lottery had 140 employees statewide and over \$1 billion dollars in sales with the same configuration. He will attempt to meet all of the service requests based upon the analysis. He noted that the Commission must make the final decision on office locations.

Commissioner Shipp made a motion to adopt Resolution No. 1 and authorize the immediate publication of the Comprehensive Banking Services RFP and initiate the process that will result in awarding a major procurement contract to a Vendor. Commissioner Malone seconded the motion. A roll call reflected Chairman Thornton and Commissioners Shipp, Hammons, Malone, Smith, Pickard and Jones voted in favor of the motion. Commissioners White and Lamberth abstained from voting. With a majority vote, the motion was approved by the Commission.

Chairman Thornton instructed the legal staff to prepare the appropriate addendum to address 2 or 3 district offices as discussed for consideration at the next meeting. Mr. Passailaigue stated that the aforementioned addendum for the Banking RFP would have to come out next week.

Online Games RFP Addendum No. 2 (Attachments 6-9)

Mr. Passailaigue discussed the Online Games RFP Addendum No. 2, pointing out the Commission published the Instant Ticket Online Game RFP on June 19, 2009. An aggressive timetable was set for the award of the contract. Three vendors are interested in providing online gaming services as outlined in the RFP. The lottery anticipates having up to 2,500 retailers ready to start up the lottery in October and this number may be expanded to 3,200 retailers within 7 years.

Mr. Passailaigue also discussed the pricing function of the Online Games RFP Addendum. Vendors need to know exactly how the contract is going to be scored to prevent misunderstanding. He stated next week's meeting would include a similar list of addendum items for the Commission's review.

Commissioner Pickard made a motion to adopt Resolution No. 2 and authorize the immediate publication of the Online Lottery Game Services and Lottery Gaming System and Services RFP Addendum No. 2, including the revised Official Proposal Price Sheet form. The motion was seconded by Commissioner Hammons and unanimously approved by the Commission.

In response to a question from Commissioner Lamberth, Mr. Passailaigue stated there are penalty provisions for vendors not meeting the terms and conditions in the contract, such as being awarded the contract for the early start-up date but missing the early start-up date.

Retail Report (Attachment 10)

Commissioner Lamberth reported the Commission has received 399 inquiries with a potential of 1,283 retailer locations in 66 counties.

Emergency Promulgation of Retailer Rules and authorization of Retailer Application and related forms (Attachments 11-15)

Mr. Passailaigue described the Retailer Rules as a road map specifying the rules to become a retailer with the Arkansas Scholarship Lottery. There are submissions of fees for retailers and they are required to pass a background check administered by the Arkansas State Police. The Commission is required by State law to ensure that all retailers have filed their tax returns and paid their taxes.

Mr. Passailaigue stated that state law requires that retailers set up a fidelity fund by location and pay an annual fee of \$100 per sales location to be deposited into the Commission's fidelity fund as established under state law.

Mr. Passailaigue also discussed retailer commissions. The lottery is required to pay retailers a minimum 5 percent commission, 5 percent of each \$1.00 sold. Retailers receive a "cashing commission" of 1% percent of each \$1.00 redeemed. Retailers also receive a "selling commission" of 1% percent of the prize amount on each ticket validated and paid to a player with a ticket prize amount of \$10,000 or more, which selling commission shall not exceed \$25,000 dollars.

Mr. Passailaigue addressed retailer application forms and requested that the forms be posted on the website and mailed out to the retailers, if necessary. Commissioner Malone asked if approving the Retailer Rules today would mean approval of the retailer application as well. Mr. Passailaigue stated he would like for the forms to be approved to begin the application process. He noted the Commission could make modifications later.

Commissioner Malone requested a definition of the language regarding “*persons related to and residing with any employee of the Lottery Commission*” on page 2 of the Retailer Application form. Mr. Woosley stated the Act has a definition outlining individuals that are excluded. Mr. Passailaigue stated he would reference the Arkansas Code in this section.

Commissioner Smith referred to page 4 and questioned the difference between owner and applicant and the different fees. Mr. Woosley stated applicant and owner are interchangeable; the applicant is the responsible party that would hold the license designated in the application. He added there would be a comment period for internal comments, public comments, and clarifications to the rules and definitions before the final promulgation process ends. Mr. Passailaigue stated the Commission could further refine the definitions. He added that he would like to get the Retailer Rules and Retailer Application approved today with the understanding that any misunderstandings would be clarified at the next meeting. Ms. Thayer stated that if the documents are approved today they can be filed today and also be effective today. This would allow the Commission to start the retailer application process.

Commissioner Hammons made a motion to adopt Resolution No. 3, authorizing the statement of necessity for emergency promulgation of the retailer rules and authorizing the filing of these retailer rules and retailer application with the Secretary of State’s Office and the Arkansas Lottery Commission Legislative Oversight Committee as an emergency rule effective immediately upon filing, with the understanding that the emergency rule is only effective for a period of one hundred twenty (120) days and the Commission will have to begin its permanent promulgation process under the Arkansas Administrative Procedure Act and the Arkansas Scholarship Lottery Act. The motion was seconded by Commissioner Lamberth and unanimously approved by the Commission.

Emergency Promulgation of Rules of Practice and Procedure (Attachments 16-19)

Commissioner Smith presented the Rules of Practice and Procedure, stating they are based primarily upon the Model Rules of Practice and Procedure of the Arkansas Attorney General’s Office. The primary difference is that there is not a general hearing or licensing procedure. It has been determined that most of the licensing would be taken care of in separate rules. The rules basically govern internal operations such as the way in which the Commission can call and conduct meetings, announcement of meetings, setting agendas, and the manner in which the rules are promulgated. Commissioner Smith commended the Legal Committee for their hard work on the rules. Commissioner Shipp stated that Commissioner Smith worked hard on the Rules of Practice and Procedure.

Commissioner Smith made a motion to adopt Resolution No. 4 authorizing the statement of necessity for emergency promulgation of the rules of practice and procedure and authorizing the filing of these rules with the Secretary of State’s Office and the Arkansas Lottery Commission Legislative Oversight Committee as an emergency rule effective immediately upon filing, with the understanding that the emergency rule is only effective for a period of one hundred twenty (120) days and the Commission will have to begin its permanent promulgation process under the Arkansas Administrative Procedure Act and the Arkansas Scholarship Lottery Act. The motion was seconded by Commissioner Shipp and unanimously approved by the Commission.

Mr. Passailaigue added that each Commissioner would be photographed and the pictures placed in the lottery headquarters and claim centers to remind employees they serve at the pleasure of the Commission.

Authorization to begin the permanent promulgation process of Major Procurement Rules (Attachments 20-22)

Ms. Thayer stated that the Major Procurement Rules were already in effect on an emergency basis and the Commission is now ready to start the permanent promulgation. The Commission will have to file a notice of rulemaking in the newspaper and with the Secretary of State's Office and the Legislative Oversight Committee. Commissioner Malone stated he has shared an internal comment with Ms. Thayer and understands that internal comments will be considered as part of the rulemaking process. He addressed the prohibition of the 6 month limitation on offers of jobs, bids or business arrangements with Commission members and recommended a 2 year prohibition limitation. Ms. Thayer stated that she has added Commissioner Malone's recommendation to her list of comments and it will be considered as a change to be made and as an internal comment.

Commissioner Lamberth made a motion to adopt Resolution No. 5, authorizing the notice of publication and the beginning of the permanent promulgation process for the Major Procurement Rules in accordance with the Arkansas Administrative Procedure Act and the Arkansas Scholarship Lottery Act. The motion was seconded by Commissioner White and unanimously approved by the Commission.

Other Business

Mr. Passailaigue stated he would make the flow chart available to legislative members and also post it on the website for viewing by the general public. He addressed his plan to start the Arkansas lottery as the earliest lottery start-up in the history of the world and his dedication to achieving the immediate objective of maximizing the amount of net income for the kid's future. He stated that if he could shave off 1 day for the lottery start-up, this would result in \$250,000 in scholarships, if 1 or 2 months could be shaved off, 3,000 Arkansans could go to college on scholarships. He noted that anyone associated with the Arkansas Scholarship Lottery staff would have this same passion and mindset.

Mr. Passailaigue advised that Ms. Ernestine Middleton, a former colleague, has accepted the position of Vice President of Administration and will arrive in Arkansas on Thursday. Mr. Passailaigue is confident that Mr. David Barden, Director of Marketing and Product Development for the South Carolina Lottery, will accept his offer to be Vice President of Gaming Operations. Mr. Passailaigue stated that he and the Vice Presidents will train lottery employees in the lottery business. He added that the Commission has the opportunity to put together a world class lottery staff. He noted that 1,500 to 2,000 resumes have been submitted. Arkansans will serve in senior management positions, such as Security Director, Sales Director, Advertising and Marketing Manager, HR Manager, and Banking, Licensure and Claims Director. Mr. Passailaigue introduced Mr. Bishop Woosley as the Lottery Procurement Director and Contract Compliance Officer and the House of Representatives Counsel, Ms. Bridgette Frazier, as the Lottery Staff Attorney.

Mr. Passailaigue stated he will begin traveling around the State hoping to visit every Rotary and Civic Club and Chambers of Commerce to ensure that every Arkansan gets the full and complete story of everything that the Commission is doing so they can make an independent judgment about the lottery. He also offered to discuss the lottery with any groups Commissioners would like him to visit.

Chairman Thornton addressed the position of Internal Auditor that must be hired by the Commission and suggested the creation of a task force to develop a job description and plan an advertising schedule. He suggested that the task force be comprised of the Personnel and the Administrative, Finance and Audit Committees. Chairman Thornton appointed Commissioner Lamberth chairperson of the task force. Members of the task force are: Commissioners Lamberth, Hammons, Jones, Malone, Pickard, Smith and White. Chairman Thornton added that Commissioners not on the task force are welcome to join.

Commissioner Lamberth advised that BLR staff has provided the Commissioners with CD's containing resumes for the Internal Auditor position. She requested that the three (3) additional resumes received today be emailed to the Commissioners.

Next meeting date and location

Commissioner Pickard stated, on behalf of Dr. Wyatt and the Board of Trustees of the Arkansas State University System, that the Commission is invited to hold its meeting on Wednesday, July 15, 2009, at 1:30 p.m., in the Student Center on the campus of the Arkansas State University-Beebe. Commissioner Pickard also invited the Commissioners to join him at 12:30 p.m. for a light lunch.

There being no further business, the meeting adjourned at 3:20 p.m.