

MINUTES

ARKANSAS LOTTERY COMMISSION

Tuesday, May 12, 2009

1:00 P.M.

**University of Arkansas System's Board Room
Little Rock, AR**

The Arkansas Lottery Commission met May 12, 2009, at 1:00 p.m., in the University of Arkansas System's Board Room in Little Rock, Arkansas. Arkansas Lottery Commissioners present were: Ray Thornton, Chairman; Dianne Lamberth, Vice Chair; George Hammons, Susan Jones, Mike Malone, Ben Pickard, Patty Shipp, Derrick Smith and Ray White. Also attending were Representative Barry Hyde and Bureau of Legislative Research (BLR) staff: David Ferguson, Director; Marty Garrity, Assistant Director; Laura Gilson, Attorney; Estella Smith, Legislative Analyst; Nell Smith, Research Analyst; Kendra Drone, Secretary; and Patrick Ralston.

Commissioner Ray Thornton welcomed the Commissioners and called for the approval of the May 5, 2009 Commission meeting minutes. Commissioner Joe White made a motion for approval of the minutes; the motion was seconded by Commissioner Ben Pickard and adopted by the Commission.

Commissioner Thornton recognized Mr. Jim Schratz, Chief Information Officer, BLR, for a power point presentation regarding the development of a temporary lottery website. Commissioner Thornton requested that Commissioner Mike Malone handle questions regarding the lottery website. Commissioner Malone stressed the importance of the Commission having a virtual home. Mr. Schratz presented a prototype of the Arkansas Lottery Commission website, noting that the examples given were representational. The prototype website would be specifically for the Commission and is not the type the Commission would want to use for an actual lottery.

Mr. Schratz discussed items for possible inclusion on the Commission's website such as the home page, a link to other pages, list of commissioners, enabling legislation, Commission papers, calendar, RFP's for bid documents, staff position openings, and related links. He stated the Commissioners can decide whether to include their e-mail addresses. Also to be decided is a name for the website, how the Commission would like the website organized, who would create the website, and other considerations. Mr. Schratz confirmed that the Arkansas Scholarship Lottery Act was the name of the bill passed by the legislature.

Mr. Schratz advised that the BLR information technology (IT) division could work with the Commission to get a temporary or quick website on the web so the Commission's presence would be accessible. He added that the enabling legislation specifically exempts the Commission from using the State's quasi-government agency, Information Network Agency (INA), and added the INA is a very good resource whose services are free. The Department of Information System is also willing to assist the Commission. Commissioner Malone asked how quickly they could go to a prototype and publish it for the public. Mr. Schratz replied this would probably take 2-3 days. The Commission would have to decide whether or not to have accounts for their e-mails and, if they chose to go that route, where they would be posted, and how they would be managed. He added the Commissioners e-mail accounts would be public record and noted that the Commission's website would be more of an informational website. Mr. Schratz stated the Commission could use the 'Arkansas.gov' domain free of charge. He will provide a hard copy of his website presentation to the Commissioners. Commissioner Thornton thanked Mr. Schratz for his presentation. Commissioner Malone reiterated the importance of a virtual home for the Commission along with some of the basic information for future meeting announcements and publication of meeting minutes.

Commissioner Thornton recognized Commissioner Malone for a motion. Commissioner Malone made a motion requesting that BLR take the necessary action to set up a temporary website for the Commission, as soon as reasonably possible, containing information and links to information as the Commission directs (Resolution No. 1). The motion was seconded by Commissioner Shipp. Commissioner White spoke in favor of the motion, stating the Commission needs to move forward to getting the website operational as soon as possible. The motion was then approved by the Commission.

Commissioner Thornton referred to the previous meeting during which Commissioner Shipp expressed concern regarding the name of the Commission, how it would be publicized and domain possibilities. He noted that the name of the Act seems awfully close to the name recommended by Commissioner Shipp. Commissioner Shipp stated that her recommendation was not an original thought; however, she feels it is important that the word 'scholarship' be included in the Commission's name. She pointed out that this is what the Commission is all about and including scholarship will help to keep the Commission's focus on scholarships. Commissioner Shipp then made a motion to adopt "The Arkansas Scholarship Lottery Commission" as the name for the Commission. The motion was seconded by Commissioner White. During discussion on the motion, Commissioner Smith agreed with the sentiment of changing the Commission's name, noting that it was appropriate to put up a website domain for the Commission. However, he questioned if the Commission could change its name since it was provided by statute. Commissioner Thornton stated that he had come to the conclusion that the Commission could not go wrong in accepting the name that was used by the legislature in filing the Act.

Warren Readnour, Senior Assistant Attorney General, and Bishop Woosley, Assistant Attorney General, Attorney General's Office, were introduced. Mr. Readnour noted that the Act states "there is hereby created The Arkansas Lottery Commission" and that the entire act is The Arkansas Scholarship Lottery Act. He also pointed out that the Act does a number of things other than create the Commission. He doubted that the Commission could change its name. Commissioner Thornton stated that he would not want to think of changing the name of the Commission but he would like the website and address to reflect the scholarship. Mr. Readnour stated his belief that the Commission could use the suggested name for its website. Commissioner Shipp pointed out that the original motion was to change the name of the Commission and, as that is not possible, she withdrew her motion to change the Commission's name. Based on her experience with internet dealings, she suggested that the Commission not have a long website name, such as "The Arkansas Scholarship Lottery Commission". She also suggested that the word "scholarship" always be associated with the Commission so that their focus remains clear; that they are not just running a lottery but a lottery to benefit scholarships. Commissioner Malone thanked BLR for being proactive with reserving lottery names for the Commission. Commissioner Thornton suggested that Commissioners keep "arkalot.com" in mind as a website domain name. Commissioner Shipp asked that BLR, regarding the informational purposes, give a recommendation that goes along with making conventions that are currently used by government.

Commissioner Thornton continued the discussion regarding the Freedom of Information statute (FOI). Mr. Readnour cited the information as a useful influence in fostering public confidence in the integrity and transparency of the Commission. He clarified and followed up with questions regarding the issue of Commission meetings and notices for conducting a meeting. He added that he had pulled some AG's opinions and noted that an unofficial gathering of two or more Commissioners meeting for the purpose of discussing any matter on which foreseeable action might be taken by the governing body would constitute a meeting. He suggested that, when there is any doubt regarding what can be discussed, the Commissioners should wait until the matter can be discussed in a public forum. He encouraged the Commissioners to refer to the FOI handbook. He also stated that an emergency meeting requires two hours notice to all media outlets that have requested a notice of meetings. Currently, there is no specified time for regular meetings but the statute requires a reasonable notice of the meeting time and location. Legislation passed this session goes into effect later this summer that requires a meeting notice publication on the internet three days prior to any regularly scheduled meeting. Commissioner Dianne Lamberth received confirmation that the meeting notifications could be sent through the Commission's website. Mr. Readnour also cautioned the Commissioners that e-mailing each other and replying back could lead to a meeting without a notice being given. He recommended that the Commissioners go thru BLR to prevent such a meeting. Commissioner Thornton thanked the AG's office representatives for their participation and faithfulness in providing the Commission with legal counsel.

The designation of a temporary disbursing officer was discussed by the Commission. Commissioner Thornton stated Mr. Richard Weiss Director, Department of Finance and Administration (DFA), is willing to help the Commission, on an emergency basis, until staff is hired. Mr. Weiss was introduced and stated that DFA is happy to assist the Commission on an emergency basis and provide a temporary disbursing officer. He expressed his hope that the Commission would appoint someone for the position as soon as possible. Mr. Paul Louthian, Administrator, Office of Accounting, DFA, was introduced. Mr. Louthian stated he would offer the Commission

a two-fold process that included him serving as the Disbursing Officer for the Commission and as overseer of a group of individuals that routinely process accounts payable, payroll, and other accounting transactions necessary to support commissions, boards, and DFA. He also stated that, hopefully, the Commission would appoint a person to work directly with him and noted this individual would be responsible for approving the payment for disbursements sent to his office for processing. Warrants would be issued with the transaction records inside the State's accounting system for Legislative Audit to audit at the end of the State's fiscal year. He added that when the \$6 million dollars is repaid from the Budget Stabilization Trust Fund and the Commission begins to operate on a cash basis without appropriations and without the use of the Treasurer's Office, they would begin to facilitate that transformation with proceeds deemed secure. The Commission would then be able to stand alone and act as authorized through the Arkansas General Assembly.

Commissioner Lamberth made a motion designating DFA and Paul S. Louthian as temporary Disbursing Officer for the Commission until such time as the Commission hires its own employee with disbursing responsibility (Resolution No. 2). Commissioner Thornton thanked Commissioner Lamberth for reading the motion and the designation of Mr. Louthian as the specific person involved and noted that Resolution No. 2 should make that correction. The motion was seconded by Commissioner Malone. Commissioner White asked if there was a timeline identified in the legislation that specifies at what point the Commission must have its own staff. Commissioner Thornton stated that he did not think a date had been given; however, it was his impression that this was one of the actions to be addressed at the first meeting. He also commended DFA for providing an extraordinary service to the Commission. The motion was unanimously adopted.

Commissioner George Hammons asked how the Commission would implement approval of expenditures. Mr. Louthian replied the Commission would need a contact person on the Commission to approve the expenditures and forward them to his office for processing. Mr. Readnour reminded the Commissioners that they could select a commissioner to serve as Secretary/Treasurer. Commissioner White nominated Commissioner Derrick Smith and Commissioner Smith consented to serve, if selected. Commissioner Hammons made the motion to elect Commissioner Smith to serve as Secretary/Treasurer of the Commission. The motion was seconded by Commissioner Pickard and approved by the Commission. Commissioner Pickard made a motion that the Commission authorize expense reimbursement for its board members according to the guidelines for reimbursement as set out under Arkansas law at the rate and terms established for state employees by state travel regulations (Resolution No. 3). The motion was seconded by Commissioner Lamberth and approved by the Commission. Commissioner Thornton stated to the members of the public that, in case there is any suspicion that the Commission has been going around the corners and doing its work in a secluded place, it should be pretty clear that the Commission is open and completely transparent in that they did not know who would be making the various motions.

Commissioner Smith discussed the issue of liability insurance, stating the Commission is not at a point today to make a recommendation on purchasing coverage. He added that with the assistance of BLR and the AG's Office, consideration was first given to what other state agencies, if any, have sought or applied for insurance. He noted that thus far, it has been determined that the overwhelming majority of state agencies, boards and commissions do not have separate coverage. The two questions the Commission would have to decide are if there is a need for liability insurance coverage and its availability.

Commissioner Smith stated he focused primarily on the need for insurance coverage. He noted that the insurance currently available is through the State Fidelity Bond Program that provides coverage for damage to the Commission by actions of the Commissioners and its officers and employees. He added that the Commission still needs to visit with the Bond Program regarding the costs for participating in the Program. He also stated that beyond those acts, there is also sovereign and statutory immunity that do not prevent anyone from being sued but do prevent having a liability finding. Some of the other risks include lawsuits caused by retailers but there is a retailer Fidelity Fund Program designed to cover such risks. While he made no recommendation at this time, Commissioner Smith suggested that Director and Officer (D&O) coverage might not be necessary because other state agencies have not obtained such coverage and risks appear to be covered by state law. Although other state agencies have not obtained D&O coverage and most

liability risks appear to have been addressed by state law, the unique responsibilities associated with operating a lottery may, however, require private D&O coverage. He added he would need to visit with other lottery commissions, as well as conduct further study of the Arkansas lottery act, before making a final recommendation. Commissioner Thornton thanked Commissioner Smith for a very thorough report.

Commissioner Thornton stated that at last Tuesday's meeting, there was a clear consensus regarding the need for a two-day planning session as quickly as possible and the inclusion of representatives from other state lotteries. He also stated that at least two commissioners made motions that were passed. Commissioner Thornton has contacted the lottery chief executive officers in South Carolina and Georgia and the BLR staff contacted the Winthrop Rockefeller Institute in Morrilton, Arkansas, for time availability. The only available time for the next few weeks were Thursday, May 14th, and Friday, May 15th. Mr. Ernie Passailaigue, Executive Director, South Carolina Education Lottery Organization, and Ms. Margaret DeFrancisco, President and CEO, Georgia Lottery Corporation, are available on these dates but not available again until a future month. He added that this news was communicated to the Commissioners by BLR e-mail and noted he was gratified by the Commissioners' responses. Commissioner Thornton called for the Commission's next meeting to convene on Thursday, May 14, 2009, at the Winthrop Rockefeller Institute at 1:00 p.m., and continue throughout Friday, May 15, 2009, to complete the Commission's agenda. Commissioner Thornton prepared a model list of items which should be considered and which, by their nature, are so complex that they would encompass all available time (Handout #1). Commissioner White made a motion to approve the call of the Commission's next meetings to convene Thursday, May 14, 2009, at 1:00 p.m., and Friday, May 15, 2009. Commissioner Lamberth seconded the motion and the motion was approved by the Commission.

Commissioner Thornton presented draft copies of the "Start-Up Lottery Considerations" (Handout #2) sent by Mr. Ernie Passailaigue, which he will use as a study guide for the upcoming two-day meetings. He asked that that Commissioners place the list of matters for consideration (Handout #1) in front of the "Start-Up" document as this is a list of things that should be considered at the two-day planning meetings. Commissioner Thornton stated he was very impressed by the willingness of Mr. Passailaigue and Ms. DeFrancisco to come to Arkansas without compensation to devote their time as Executive Director and President/CEO, respectively, of two of the most successful lotteries. He cited them as diamonds of the lottery industry who are eager to meet with each of the Commissioners and devote the time necessary to show the Commissioners, from their experience, how the Commission should move forward in preparing to create the lottery. He added that the Commission was going to have a good two-day meeting and invited the press to attend. Commissioner Lamberth asked if the North American Association of State and Provincial Lotteries (NASPL) was unavailable for the meeting dates. Commissioner Thornton stated that they were unavailable but an email response was received from a representative with the Multi-State Lottery Association (MUSL) (Handout #3).

Commissioner Thornton expressed his pleasure with the readiness of the lottery representatives coming to meet with and help the Commission. Ms. Laura Gilson, Attorney, BLR, was introduced and stated that members of various associations were willing to attend the upcoming meeting but were not available next week. She also stated the members had made contact with BLR and provided information and offered to help the Commission in anyway. The NAPSL Association is an association of all the states that have lotteries and serve as a resource in sharing information about vendors and other matters. Commissioner Thornton noted that Mr. Passailaigue is the Immediate Past President of NAPSL. Ms. Gilson stated that MUSL would be the group to contact when the Commission wants to pursue a multi-state lottery and noted that they provide other services such as protecting trademarks. She stated if the Commission were to enter into a multi-state game situation, they would actually own the trademark with the other states. Commissioner Lamberth confirmed that her questions regarding the Associations had been answered. Commissioner Thornton clarified that the Commission would be providing transportation from the Little Rock Airport and paying for the airline tickets for the out-of-state lottery representatives and noted that they were not charging the Commission for their time and services.

Commissioner Pickard made a motion that the meeting adjourn.

There being no further business, the meeting adjourned at 2:08 p.m.