

MINUTES

ARKANSAS LOTTERY COMMISSION

Friday, June 19, 2009

1:30 p.m.

University of Arkansas System - Board Room

2404 North University

Little Rock, Arkansas

The Arkansas Lottery Commission met June 19, 2009, at 1:30 p.m., at the University of Arkansas System's Board Room in Little Rock, Arkansas. Arkansas Lottery Commissioners present were: Ray Thornton, Chairman; Dianne Lamberth, Vice Chair; Ernie Passailaigue, Director Elect; (via teleconference); Derrick Smith, Secretary/Treasurer; George Hammons; Susan Jones (via teleconference); Mike Malone; Ben Pickard; Patty Shipp; and Joe White. Bureau of Legislative Research (BLR) staff: Marty Garrity, Assistant Director for Legal Services; Laura Gilson and Jill Thayer, Attorneys; Estella Smith, Legislative Analyst; Kendra Drone, Secretary; Patrick Ralston, Legislative Analyst; James Schratz, Chief Information Officer; and Nell Smith, Research Analyst.

Chairman Ray Thornton called the meeting to order and noted that Mr. Ernie Passailaigue and Commissioner Susan Jones were present via teleconference.

Approval of Minutes

A motion was made by Commissioner Hammons and seconded by Chairman Thornton, to approve the minutes of the June 12, 2009, meeting. The motion was approved by the Commission.

Committee Reports

Retail Committee

Commissioner Dianne Lamberth recognized Mr. Jim Schratz, Chief Information Officer, BLR, for a progress report on lottery retail applications. Mr. Schratz reported that as of last night, the Arkansas Lottery website has received 231 submissions from retailers in 52 counties, 80 cities, and 935 locations (Attachment #1).

Background/Fingerprint checks

Lieutenant Cora Gentry, Arkansas State Police (ASP), was recognized. She discussed the procedures for background and fingerprinting checks and gave a brief report on background and fingerprint checks for retailers. She advised that the ASP has applied for fingerprint cards specifically for the Arkansas Lottery Commission to be distributed to retailers and available at local troop headquarters or mailed out with the application. The ASP is also working with fingerprint harvesters to gather and submit the fingerprints electronically.

Chairman Thornton noted that the ASP has space set-up in the small conference room for background checks and fingerprinting if any of the commissioners need to have this done today.

Legal Committee - Consideration of Rules

Chairman Thornton advised the Commission that emergency rules are now ready for discussion. These rules will allow the Commission to move forward with consideration of Requests for Proposals (RFP's). Commissioner Smith discussed the major procurement rules and the emergency promulgation process (Attachment #2). As the Committee reported last Friday, after reviewing the State's existing procurement rules, the Legal Committee determined that the rules are not a good fit for the unique circumstances presented by major lottery procurements. The Committee drafted a comprehensive set of procurement rules

applicable to major procurements with a value of \$75,000 or more and are specific to lottery services. Commissioner Smith stated that the rules include: requirements for the selection and maintenance of vendors, equal employment opportunity policies, prohibitions regarding the employment of the lead vendors, statements regarding the Commission's intent to encourage participation of minority-owned and female-owned businesses, and provide for the procedures and processes for solicitation of bids through an RFP or RFQ process, the evaluation and awarding of such bids, and a process of protesting the awards.

With regard to the promulgation of the rules on an emergency basis, it is clear that rules need to be adopted prior to the issuance of any major procurement solicitation. Arkansas agencies are allowed to adopt rules on an emergency basis without a notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare requires it. Once the rules are adopted by the Commission, they will be filed with the Secretary of State's office and the Legislative Oversight Committee. Commissioner Smith stated that Mr. Passailaigue has been working diligently to prepare RFP's for Instant Ticket and Online Games.

Commissioner Smith stated that Mr. Passailaigue, Jillian Thayer, Bishop Woosley, and Laura Gilson had provided a significant amount of assistance in preparing the rules. The rules will become effective immediately; however, the rules would only be effective for 120 days or until they have been replaced by permanent rules. Therefore, the Commission will have to begin the permanent rule promulgation process soon.

Commissioner Smith recommended that the Commission include the permanent rule promulgation process on the agenda for the next meeting. He added that the permanent rule promulgation process would allow the Commission time for public comment and the possibility of a public hearing, if necessary. It is important to immediately begin the procurement process for major procurement contracts in order to obtain services for the start-up operations of the Commission. Any delay of the procurement process will result in delays in start-up and selling lottery tickets with a loss of revenue for higher education scholarships and grants through the Arkansas Challenge Scholarship Program. Therefore, the Legal Committee is recommending that the Commission approve the aforementioned rules on an emergency basis.

Commissioner Smith addressed Resolution No. 1 (Attachment #3) that explicitly sets forth specific findings that support the rules on an emergency basis. A motion (Attachment #4) was made by Commissioner Smith, and seconded by Commissioner Lamberth, to adopt the Statement of Necessity for Emergency Promulgation (Attachment #5). The motion was unanimously approved by the Commission.

A motion was made by Commissioner Smith, and seconded by Commissioner Malone, to adopt the major procurement rules on an emergency basis, as per Resolution No. 1. The motion was unanimously approved by the Commission. Ms. Thayer stated that the rules would be filed today with the Secretary of State's Office and the Legislative Oversight Committee. Mr. Woosley stated that the aforementioned RFP's had gone through a very critical process of review. He added that they were confident in the contents of the RFP's.

Chairman Thornton commented on the speed with which the Instant Ticket and Online Games RFP's were brought before the Commission. Mr. Passailaigue stated it is a relief to have the two RFP's drafted and published, as it is the intention to start the Arkansas lottery on or before October 29, 2009 and the Online Games on December 14, 2009. He commented on the professionalism and high degree of integrity of vendors and those associated with vendors. Mr. Passailaigue added that the Commission has some responsibilities with the lottery and working with the ASP in complying with the laws regarding employees and making sure that retailers are licensed. A question included in the RFP by vendors specifically asks if the Commission is sure that they would have approximately 2,500 retailers for start-up. Any number less than 2,500 would mean fewer sales for scholarships.

Mr. Passailaigue stated the Commissioners have to be dedicated to building up the lottery infrastructure internally. He noted it is a Herculean task to get completed in four months, during which time 5,000 to 6,000 individuals will have to be trained. He expressed his dedication to the task of meeting the challenges and presenting the people of Arkansas with a world class lottery, successful launch, and, most importantly, educating children annually on scholarships. His arrival date in Arkansas is June 29, 2009 following his attendance at the upcoming Director's meeting in Nashville, Tennessee.

Mr. Passailaigue commended the following individuals for their work, Commissioner Smith, State Government Officials, Rebecca Hargrove, President and CEO, Tennessee Education Lottery, Thomas Shaheen, North Carolina Education Lottery, Jillian Thayer, Bishop Woosley, Julie Baldrige, BLR Staff, DFA Staff, President Pro Tempore Staff, Speaker of the House Staff and Bill Stovall.

Consideration of Instant Ticket RFP (Attachment #6)

Mr. Woosley advised that Resolution No. 2 (Attachment #7) is a statement of the statutory authority that allows the Commission to issue the RFP. A motion was made by Commissioner Lamberth, and seconded by Commissioner Pickard, to adopt Resolution No. 2. The motion was unanimously approved.

Commissioner Lamberth made a motion to authorize the immediate publication of the Instant Ticket Lottery Game Services RFP (Attachment #8). The motion was seconded by Commissioner White and unanimously approved by the Commission.

Consideration of Online Games Request for Proposal (Attachment #9)

Mr. Woosley advised that Resolution No. 3 (Attachment #10) is a statement of the statutory authority that allows the Commission to issue the RFP for online games and the fact that any delay in accepting and approving the RFP and putting it out for public bid would be detrimental to the lottery. Commissioner White made a motion that the Commission adopt Resolution No. 3. The motion was seconded by Commission Malone and unanimously approved by the Commission.

Mr. Passailaigue stated the vendors have to build a system where they validate the instant tickets so the lottery can start on or before October 29, 2009. The vendors also have to complete their work in terms of the types of online games that the Commission can offer.

Commissioner Malone referred to page 4 of the Online Games RFP and asked if the Commission was approving the games listed in the RFP. Mr. Passailaigue stated that they were asking the vendors to be prepared to launch the games listed. He added that these are the types of games that most lotteries authorize. He also noted that all of the online games would have to be approved by the Commission.

A motion was made by Commissioner White, and seconded by Commissioner Hammons, to authorize the immediate publication of the Online Lottery Game Services and Lottery Gaming System and Services RFP (Attachment #11). The motion was unanimously approved by the Commission.

Chairman Thornton stated his belief that the Commission had set a record in the history of lotteries in adopting two major RFP's before the Director comes on board and begins to draw a salary. This action has saved consultant fees which could have ranged from \$250,000 to \$750,000. By acting in lieu of a consultant on the RFP's, Mr. Passailaigue has already saved the Commission the amount of his salary for the rest of this year.

Chairman Thornton thanked every Commissioner for their hard work, diligence, trust, and confidence. He added the Commission is on track in developing a record-breaking Lottery Commission, one that has exceeded the performance of any other lottery commission in America.

Commissioner White stated that after reviewing the two RFP's, he was very pleased to have Mr. Passailaigue, Commissioner Smith, Bishop Woosley, and Jillian Thayer involved. He added it is gratifying to see what these folks have come together and done. As a Commission, without any lottery experience, we have hit the ground running. He added his appreciation for the posting of the Commission's meeting agendas on the website.

Job Vacancies

Mr. Passailaigue stated that the Commission is working on trying to develop the publication of the various lottery job opportunities available through the Arkansas lottery. The Commission intends to get this approved by the Legislative Oversight Committee. Ads for lottery jobs will be published in Arkansas newspapers on Sunday. He added that the majority of the individuals applying for the jobs will be Arkansans. Mr. Passailaigue noted that the Commission has to build personnel infrastructure rather quickly to get all of this done otherwise the celebration will be a little premature. Mr. Schratz advised that the lottery job postings are listed on the Arkansas Lottery Commission's website.

Budget Classification Transfer (Handout #1)

Chairman Thornton recognized Mr. Paul Louthian, Accounting Administrator, Department of Finance and Administration. He discussed the request for a budget classification transfer of \$30,000 dollars from Professional Fees to Capital Outlay needed to purchase a vehicle for the Director prior to June 30th. Mr. Louthian also stated the transfer will have to be reviewed by the Legislative Oversight Committee. Chairman Thornton made a motion that the Commission approve the budget classification transfer. The motion was seconded by Commissioner White and unanimously approved by the Commission.

Future meeting dates

Commissioner Pickard reminded the Commission that Wednesdays had previously been decided upon as meeting days for the Commission. He requested that the Commission consider scheduling regular meetings again on Wednesdays. He added that the University of Arkansas System had been overly gracious in allowing the Commission to use its facility for meetings and suggested that the Commission consider holding meetings on various college campuses. Chairman Thornton agreed with the idea of regular meetings held on Wednesdays on various college campuses and recommended that the other Commissioners contact their area college chancellors. Chairman Thornton stated the Director should have input into when and where the Commission will meet. Mr. Passailaigue agreed with holding Commission meetings on college campuses, adding the Commission would facilitate that in any way possible.

Location of next commission meeting

Chairman Thornton stated that if, at the conclusion of today's tours, the Commission decides on temporary office space, the Commission will not meet again until Mr. Passailaigue returns to Arkansas on June 29. However, if the Commission does not locate temporary office space, the Commission will have to meet again to finalize plans for an office space.

Permanent Lease Space Considerations

Mr. Passailaigue thanked Commissioner Lamberth and Ms. Anne Laidlaw, Director, Arkansas Building Authority, for their work. Commissioner Jones expressed her agreement to the Commission going forward in her absence and touring office space. The Commission will tour three (3) permanent space options and one (1) temporary office property today.

Ms. Anne Laidlaw stated that office space for the Commission has been narrowed to three: Union Plaza, 124 West Capitol and Louisiana; Bank of America, directly across Louisiana Street; and the Comcast Building, 1020 West 4th Street (16 to 18 other properties were considered). The permanent space options can provide the Commission temporary space by July 1, but will have to be furnished. Commissioner Lamberth stated that there were other temporary office locations that may be available long-term, but if the Commission has to put the infrastructure in for them, it may not be as good a deal. A 30-60 day lease may be a better option.

Proposed Temporary Office Space

Ms. Laidlaw stated that the Commission will conclude the tour at the River Market District in the Museum Center, 500 President Clinton Avenue, Suite 215. She noted the temporary space allows the Commission more time to make a decision on permanent space. She stated that it is important to get things moving as quickly as possible to meet the deadlines. Ms. Laidlaw noted that the temporary office space is fully furnished with office furniture, telephones, computer monitors, etc. She also stated that Mr. Schratz had visited the location and will determine what infrastructure is in place to determine the dollars that the Commission can postpone and only have to do those one time with the permanent space.

Chairman Thornton stated that he would like for the Commission to designate temporary space today, assuming that the Commission approves it.

The Commission recessed at 2:35 p.m. to tour the above referenced properties.

Tour of possible Permanent Locations

Commissioners Thornton, Lamberth, Hammons, Shipp, White, and Pickard toured the three (3) locations being considered for permanent space and concluded their tour at the Museum Center to preview temporary office space.

Discussion of Temporary Office Space (Handout #2)

Ms. Laidlaw stated the space in the Museum Center is offered to the Commission at a rate of \$15.91/square foot compared to the average rate of \$16.50/square foot. It includes full service and is fully furnished with office furniture, computer monitors, telephones, copier, fax, etc. This will allow the Commission to defer approximately \$100,000 until later, enabling Mr. Passailaigue to focus on getting the lottery up and running. The space is available for 60 days and possibly up to 90 days. It can accommodate 25-30 people with access to three conference rooms. According to Jim Schratz, the BLR may have some CPUs that can be used at the temporary location. The cost includes three parking spaces; additional spaces are available at \$59.13/month. Ms. Laidlaw stated spaces are available in the deck and parking lot monthly. She will check on availability and costs for the lots by the viaducts.

Commissioner Lamberth asked if the rate is a fair market price for this length of time. Ms. Laidlaw stated that the price had already been reduced to what is being offered to the general public. She stated that this is a very good value, citing the value associated with moving into office space and being able to defer the cost of purchasing furnishings. Commissioner Shipp asked if leasing temporary space for 60 days is enough time to acquire permanent space to which Ms. Laidlaw replied the 60 days time period was set by Mr. Passailaigue. She added that representatives at Comcast think that they will be out of the building on September 15; however, the contractor for Comcast indicated that they would be finished in August.

Ms. Laidlaw stated that Union Plaza and Bank of America can be ready July 1st. However, the Commission would have to buy furniture and office equipment. Commissioner White pointed out that Union Plaza's rate is \$13.89/square foot unfurnished and this space is \$15.91/square foot furnished and allows Mr. Passailaigue and his staff to move more quickly. Commissioner Lamberth pointed out that

Mr. Passailaigue will be interviewing for staff the first three (3) weeks or so. Commissioner Shipp added the temporary office space in the Museum Center would get the process going ahead quicker.

The commissioners discussed whether this location is the best option, during which concern was expressed that this location may appear too lavish. Commissioner Malone stated that he is not comfortable with the space and would abstain from voting.

Commissioner Lamberth made a motion that the Commission lease space in the Museum Center for immediate and temporary space. The motion was seconded by Chairman Thornton. The motion carried on a roll call vote with Commissioners Thornton, Lamberth, Pickard, White, Hammons, and Shipp voting in favor of the motion and Commissioner Malone abstaining.

Commissioner Pickard recommended that the Commission meet Wednesday, July 15, at Arkansas State University-Beebe. Mr. Passailaigue will be consulted on this proposed meeting date and location.

There being no further business the meeting adjourned at 5:15 p.m.

The meeting adjourned at 5:40 p.m.