

MINUTES

ARKANSAS LOTTERY COMMISSION

Wednesday, May 27, 2009

1:30 p.m.

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

The Arkansas Lottery Commission met May 27, 2009, at 1:30 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; Derrick Smith, Secretary/Treasurer; George Hammons; Susan Jones (via teleconference); Mike Malone; Ben Pickard; Patty Shipp and Joe White. Also attending were Representative Barry Hyde and Bureau of Legislative Research (BLR) staff: Marty Garrity, Assistant Director; Laura Gilson, Matthew Miller, and Jill Thayer, Attorneys; Nell Smith, Research Analyst; Estella Smith, Legislative Analyst; Kendra Drone, Secretary; and Patrick Ralston.

Chairman Thornton called the meeting to order and commended each Commissioner for their dedication to the principle of developing a lottery that is not only beneficial to the education of students, but also honest and spotless.

During his opening remarks, Chairman Thornton addressed the need for the Commission to focus its attention primarily on the selection of a Director. He addressed the need to move next week's meeting up to Monday, June 1. He added that it is critically important to move forward in drafting bylaws and rules. A priority is also selecting a skilled attorney with experience in lottery start-up procedures. Office space is also a pressing need. Chairman Thornton addressed the need to hear from the Arkansas State Police on how they will process the enormous amount of retailer applications. Chairman Thornton cautioned against discussing Commission business with outsiders as he has received calls from persons with concern that the Commission was attempting to work with vendors without going through the RFP process, which is certainly not true. The Commission agreed to accept the Chairman's suggestion and move forward, concentrating on the most important tasks.

Chairman Thornton advised that he will be attending the Legislative Oversight committee meeting on Thursday, June 4, at 1:00 pm., and asked as many commissioners as possible to accompany him. Paul Louthian, Administrator, Office of Accounting, Department of Finance and Administration, would be in attendance to answer questions regarding the expenditure of monies.

Approval of Minutes

Chairman Thornton recommended that approval of the draft minutes of the meetings held May 14, 15 and 20 be deferred until the next meeting.

Meeting date

Chairman Thornton stated that the Commission set June 1 as the date it would begin reviewing the applications for the position of director and, therefore, next week's meeting will be held Monday, June 1, at 2:30 p.m. During this meeting, each commissioner will receive a copy of all applications for use in determining which applicants are best suited for the position. The Commission will decide on the process by which to make a decision. The Commission will only meet the week of June 8 if it has a progress report to make on the application process.

Director Search

Ms. Laura Gilson, Attorney, BLR, stated that the position for Director was advertised worldwide and that applications are being received online from the Arkansas jobs website and by regular mail. Currently, 33 applications have been received. She noted that the group of applicants is very diverse.

Committee Reports:**Higher Education Committee**

Commissioner Pickard stated that the Higher Education Committee met at 1:00 p.m., with Commissioners Pickard, Shipp, Lamberth, White and Hammons in attendance. The Committee discussed the need to coordinate with the Arkansas Department of Higher Education, Dr. Jim Purcell, Director; and Tara Smith, financial aid coordinator. Commissioner Pickard addressed the pressing need to educate the Commission concerning higher education issues, including the distribution of the Challenge Scholarship, reporting requirements, and the financial aid application process. He suggested that the Commission act as an advocate with the Higher Education Coordinating Board to insure that the scholarship process works smoothly through student distribution. He also requested that the Committee address these issues during mid to late summer.

Vendor Committee

Commissioner Malone reported on the Friday, May 22, meeting of the Vendor Committee. Attending the meeting were Commissioners Malone, Smith and White; attending by telephone were Commissioners Jones and Lamberth. Commissioner Malone stated that Ms. Jane Benton, State Procurement Officer, assisted the Committee through a useful exploration of procurement options and vehicles that are under the State system. The Committee discussed general terms regarding steps the Commission can take to be prepared to help the Director when he/she is hired. There was also discussion regarding the availability of model RFPs with standard terms and conditions specific to Arkansas that State Procurement can assist with. Commissioner Malone added the Committee asked about the process of a Vendor Conference, which may have been the reason for the concerns expressed to Chairman Thornton. He pointed out that the guest Lottery Directors suggested that the Commission have a Vendor Conference but the Vendor Committee made no recommendation in that regard. Commissioner Malone stated that there are some consultants who are experts or specialists that help lottery Commissions in drafting RFP's and Vendor Selection Consultants. He added that there was also discussion about the possibility of starting a process to "cast a net" to ask for proposals from potential consultants that could be there when the Director is selected.

Commissioner Malone addressed the discussion on the need to rename the Committee as it not only makes recommendations on vendors to the Commission but that there may be some technical matters for which the Vendor Committee might be a home. The recommended name change is "*Vendor/Technical Committee*". A motion was made by Commissioner Malone, and seconded by Commissioner Smith, to rename the Vendor Committee to the Vendor/Technical Committee. The motion carried unanimously.

Legal Committee

Chairman Thornton stated that legal/bylaws is a big assignment on which Commissioner Smith is working hard. He expressed his hope that the Committee would be able to report progress on the issues. Commissioner Smith reported that Commissioner Hammons has agreed to join Commissioners Shipp and Smith on the Legal Committee. Commissioner Smith advised they have received copies of bylaws from a number of different states and noted that the Committee has reviewed the Model Rules of Procedure published by the AG's office.

Rulemaking

Commissioner Thornton inquired if the rulemaking agenda item fits in with the report just given by the Legal Committee. He noted that rulemaking means making the rules for the Commission itself. Commissioner Smith pointed out that, in addition to the rules of procedure, there are a number of rules required by statute. These include rules concerning consideration of claims and contract, conducting hearings before the Commission, establishing a system to verify the validity of tickets for shares of claims, payment of lottery projects, and the procurement process for major procurement contracts. The Legal Committee has not considered these yet but, if the Commission wishes to refer those items to it, the Legal Committee will be happy to do so. Looking at required rules the Commission will have to promulgate, it seems that in addition to the rules of practice and procedure and the bylaws the Committee is currently working on, the Committee should probably review the rules for the procurement process and those for contract and court claims. Chairman Thornton questioned if the

Legal Committee will be able to work on this simultaneously with the selection of a Director. Commissioner Smith felt that, in light of the timeline and knowing that time must be allowed for public comment and the opportunity for the Legislative Oversight Committee to review any rules adopted, it is a necessity to get started on the rules.

RFQs for Start-Up Legal Counsel

Chairman Thornton stated it was critically important to go forward with the efforts to draft the bylaws and the rules of the Commission and to select a particularly skilled attorney with experience in lottery start-up procedures who would be able to walk the Commission through the start-up requirements. He noted that Commissioner Pickard has been very active in support of the idea and Commissioner Smith has been working toward this end. Chairman Thornton feels it is essential that the Request For Qualifications (RFQ) be prepared and that the Attorney General's (AG) Office be involved in the selection process as that individual would have to work closely with the AG's Office.

Commissioner Smith stated there are a number of legal considerations to be addressed starting out, some of which require particular expertise in starting up lotteries. The Commission should begin a search specifically for a start-up legal counsel, not outside counsel. It will probably require more detailed in-depth knowledge of Arkansas law as opposed to the immediate consideration of starting a lottery. Chairman Thornton stated that DFA has RFQs in the process of being drafted for legal counsel but may not specify startup; this may be a place to begin. Chairman Thornton stated his view is that this is not a long-term commitment to a lawyer or law firm but rather for a legal counsel experienced in giving fledging commissions a start and avoid mistakes that set us off track. In response to a question by Commissioner Shipp, Chairman Thornton stated an inquiry of the national organization listed three or four attorneys in the United States who specialize in start-up advice for new lotteries. Chairman Thornton suggested looking at that list and do whatever advertising is appropriate to invite anyone who thinks they have that knowledge to apply.

Commissioner Pickard clarified that there are two different sets of legal assistance; one is a short-term contract, which is being discussed, and the other would be a long-term commitment (general counsel) from a firm probably in Arkansas which would require a Request for Proposal (RFP). Ms. Gilson clarified that RFQs require a one day advertisement and a 5-day waiting period. Commissioner Pickard expressed the need to do both an RFP and RFQ, stating general counsel will be hired by the Director rather than by the Commission. It might be of benefit to the Director to go ahead and get the RFP out. Chairman Thornton's concern was in mixing the two because each is clearly distinct. Bishop Woosley, AG's office, stated that the RFQ in reference to the short-term legal counsel is just a solicitation for respondents to submit their qualifications. This start-up counsel will probably be a law firm instrumental in helping with start-up considerations. They will probably involve themselves in rulemaking, which is a very intensive process that takes quite a bit of time and they have the expertise to help on a short-term basis, especially when there is no staff to speak of. Mr. Woosley stated he counted at least nine separate sets of rules that the Commission will have to promulgate at some point, which can take a month or two and is addressed in the memo from Matthew Miller, Administrative Rules Counsel, BLR (Attachment #1). Attachment #2 addresses Code Sections inapplicable to the Arkansas Lottery Commission

Commissioner Pickard asked what is the time period involved with RFPs. Ms. Jane Benton replied it is a minimum of five days. Ms. Benton stated you must make sure you give adequate time for your targeted audience to submit an adequate proposal, whether for an RFP or RFQ, judged by DFA on the basis of the item requested. Ms. Gilson referred to Friday's meeting of the Vendor Committee during which it was stated that there is the requirement of one day and five-day waiting period (6 days total) after which there is an evaluation committee that has to go through and look at your bids. In the case of a small project, i.e., a RFQ for a start-up counsel for a small group of attorneys, that would not take as much. A RFP for a vendor could take 30 to 60 days because the evaluation committee would be comprised of many people and would take an enormous amount of time. Ms. Benton added that more complex requests, such as equipment and other items, will take longer. Ms. Gilson clarified that the Commission is exempt from the current procurement process for major

procurements (over \$75,000) but can adopt what DFA has in place if the Commission so chooses. For example, you could adopt DFA requirements for a particular contract over \$75,000 and later adopt a different set of rules. For contracts below \$75,000, you must follow the procedures set forth for other state agencies.

Chairman Thornton asked Commissioner Smith if, based on the above discussion and DFA's help in this area, the Legal Committee could work on bringing a draft document back to the Commission and under what timeline. Commissioner Shipp stated the Legal Committee might have to delay working on the bylaws to more timely get the RFQ ready. Commissioner Lamberth stated that the legal counsel will help with the bylaws and with numerous other things, and possibly help secure general counsel for the long-term. Commissioner Pickard suggested that a part of the responsibility of the short-term counsel, as soon as possible after they come on board, should be to help the Commission be prepared to put out a request for general counsel to assist the Director with arduous day-to-day issues. Commissioner Jones voiced her support of this suggestion. In response to Chairman Thornton's question, Commissioner Smith stated the Legal Committee would undertake this as a high priority matter.

Website Update

Ms. Gilson advised that, in response to the Commission's request, a retailer application page has been added to the website and that when last checked, there were two applications being held for when the Director and senior management comes on board. A benefit of the website is that when people call to express their desire to be a retailer, advertiser, etc., they can be referred to the web page. There previously was discussion about creating an email address and BLR would be happy to explore having an email address separate from the email addresses currently with BLR that would be set aside for the Commission. Ms. Gilson stated it may be designed so that it would have a "contact us" link and an email would pop up. Commissioner Lamberth asked if the Commission needs to get more permanent staff in place to do that or defer that feature due to the Commission burdening BLR staff with so much responsibility. Ms. Gilson replied that if it is the will of the Commission, BLR staff is willing to help any way it can. Chairman Thornton commented that BLR has been very dedicated in coming forward to provide every assistance asked for and performing in a very professional manner.

Budget Classification Transfer

Chairman Thornton recognized Mr. Paul Louthian, Administrator, Office of Accounting, DFA, and thanked him and his colleagues for their attendance and constant efforts. Mr. Louthian explained that the budget classification transfer routinely goes before the Arkansas Legislative Council's Performance Evaluation and Expenditure Review (PEER) Committee for approval. This transfer takes money characterized as professional fees and services and moves it to conference fees and travel. These classifications give a summarization of what money has been spent for each and is easy for the legislature to review those expenditures rather than going through some 500 general ledgers accounts used by DFA on a daily basis. This is a housekeeping matter and very routine for state agencies to go to the PEER Committee and explain why they need the transfer. Mr. Louthian added it helps keep track of expenditures over a two-year period of time. Mr. Louthian recommended approval by the Commission to take the transfer request before the Legislative Oversight Committee and ask their review of the transfer so DFA can make the transfer on their books. A motion was made by Commissioner Shipp, and seconded by Commissioner Lamberth, to approve the transfer request; the motion unanimously carried.

Temporary Office Space

Chairman Thornton stated that it was significant to proceed with finding space available for the new Director and his/her staff for a start-up place. Chairman Thornton recognized Ms. Anne Laidlaw, Director, Arkansas Building Authority (ABA), for an update on the location of office space. Ms. Laidlaw presented a summary for eight properties which ABA feels are appropriate options (Attachment #3). The information included the part of town in which the property is located, available square footage, availability date, rate per square foot, lease term, services, and parking (always a concern for the State). Extra comments are included as "other". Ms. Laidlaw expounded on the services category stating that the State typically hopes to secure property that provides full services where the tenant pays rent and the property owner/lessor pays all of the expenses; i.e.,

utilities, janitorial, trash removal, and security. All of the properties are full service with the exception of the 720 W. 3rd Street location. She pointed out that the downtown locations are close to BLR staff and other state agencies. ABA has sought very aggressive proposals, recognizing it is a short-term lease but also the opportunity for possibly more long-term. Ms. Laidlaw suggested that several commissioners preview some of the options or those on a short list. Chairman Thornton asked if ABA entered into discussions/negotiations with regard to the 720 W. 3rd Street property, as requested. Ms. Laidlaw replied they did and it is the first one listed.

Commissioner Smith advised that his law firm represents ATRS and, therefore, he must recuse himself from consideration of this matter.

Chairman Thornton asked that Mr. George Hopkins, Executive Director, Arkansas Teacher Retirement System, come forward. Chairman Thornton stated it appears that the rate per square foot for the property on West 3rd is \$3.30 rather than \$10. Ms. Laidlaw stated the amount listed is an annual rate per square foot. Chairman Thornton based his calculation on the first two months being rent free and the cost for the next four months at a little over \$4,000/month. Mr. Hopkins stated ATRS' plan was to make space available essentially immediately with the understanding that there will be some painting and things going on for more than two months. The Commission could move in by early June and pay no rent through September 1st. ATRS has also agreed to go into the back part behind the conference room and knock out all the walls and make a commission meeting room. They would also take the conference room on the first floor and divide it into two offices. ATRS would do all of the internal maintenance, general work and keep the utilities in their name and bill the Commission at the end of the six months. Ms. Laidlaw stated that ABA presented the information as an annual rate per square foot. There are several cases where others have provided a month's free rent but ABA didn't calculate that in to reduce the lease rate. She added that for the ATRS property, there would be additional cost for utilities, janitorial, dumpster and any other services you wish to add to that lease. In response to Commissioner Shipp's question, Ms. Laidlaw stated that security would be another expense.

In response to a question from Commissioner White, Ms. Laidlaw stated that currently use at the West 3rd property would be limited to the first floor until the elevators are repaired for public access to the building. Mr. Hopkins stated that ATRS will make immediate repairs to the old elevator and, with an indication of long-term commitment (1-2 years), they would begin immediately to place a new modernized elevator in a separate location and quickly move to make the other floors available. Commissioner Lamberth stated that during last week's meeting, the square footage was stated as 30,000 and during the tour of the property it was stated as 15,000. Mr. Hopkins verified that 15,000 square feet is correct. Commissioner Pickard asked for clarification on the monthly amount for the West 3rd Street property to which Ms. Laidlaw stated the amount as \$4,325. At the request of Commissioner Malone, Ms. Laidlaw will provide information on the building's monthly cost for utilities and services. Commissioner Lamberth requested information on the utility cost for each floor and whether heat and air for the entire building is on one bill. Mr. Hopkins stated the 3rd floor has a separate unit and, if there was any electric usage on the second floor, ATRS would definitely prorate the cost so that the Commission only pays for what it uses. Commissioners Shipp and Lamberth expressed a desire to hear about each property and, if there is a short list, Commissioner Lamberth is available this week to look at those properties with other commissioners.

Chairman Thornton stated the West 3rd property would cost \$17,370 for six months; from now until the end of the year (about \$6.70/sq. ft.). Commissioner Malone would like to know the cost of utilities before proceeding. Commissioner Thornton asked that the parking fees also be included in the costs. Commissioner Malone requested that Ms. Laidlaw make some assumptions (# of staff, number of parking spaces and amount of square footage needed) for an even comparison of all properties, and get the utility expenses for the West 3rd property for a six-month period. At the request of Commissioner White, Ms. Laidlaw will email this information to Ms. Gilson. Ms. Laidlaw stated that ABA and the lessors are ready whenever any of the commissioners want to visit the properties. She pointed out that many of the properties are available now. All options were negotiated for six months as a minimum or month to month. They can be terminated with 30 days notice. Commissioner Lamberth asked if they are short-term with long-term options, to which Ms. Laidlaw replied yes and were

sought with as much flexibility as possible. They can be extended for a much longer period of time. Chairman Thornton stated that space is needed by the end of June. Chairman Thornton stated that his assumption was based on a figure he heard but it is not reflected on the report. The proposal from ATRS was for two months free and four months at \$4,345/month. Ms. Laidlaw stated that figure is correct.

Chairman Thornton thanked Ms. Laidlaw for her attendance and testimony and Mr. Hopkins for his attendance and efforts to give the Commission a good price.

Committee meetings

Commissioner Lamberth asked that the Retail Committee meet upon adjournment of today's meeting.

Commissioner Smith announced that the Legal Committee will meet Monday, June 1, prior to the Commission meeting, for the purpose of discussing the bylaws. The location will be announced.

The meeting adjourned at 3:05 p.m.