

MINUTES  
ARKANSAS LOTTERY COMMISSION  
As Corrected September 30, 2010  
Wednesday, September 8, 2010  
1:30 p.m.  
ALC Conference Room  
Third Floor  
124 West Capitol Avenue  
Little Rock, Arkansas

Chairman Lamberth called the meeting to order. In attendance also were Commissioners Pickard, Campbell, and White, in person, and Commissioners Hammons, Ward-Jones, Shipp, and Malone (on Skype), by conference call. The ASL was represented by Director Passailaigue, Internal Auditor Hyde, Ernestine Middleton, David Barden, Bishop Woosley, Julie Baldrige, and Patricia Vick.

Chairman Lamberth announced that the minutes of the August 19 meeting would be reviewed at the September 30 meeting.

She introduced the topic of the Office of Personnel Management response. She noted that she had asked Commissioner Hammons whether he wished to hold a meeting of the Personnel Committee in advance of the Commission meeting, and that he had said he would be present by phone and could make any statements or ask questions to help direct Personnel discussion in the Commission meeting. She then reviewed and read from the letter from Kay Barnhill-Terry and the OPM report. Director Passailaigue distributed a response to the OPM report. Commissioner Pickard thanked Commissioner White for requesting the report and expressed a preference to discuss the response at a later time, to allow time to read and review the document. Ms. Vick was asked to email a scan of the response document to Commissioners not personally present, which she left the room and accomplished. Commissioner Pickard introduced the following motion:

Due to the concerns expressed in the letter from Kay Barnhill-Terry, I would request that either Dr. Hammons or Chairman Lamberth contact Ms. Terry and ask that personnel from that agency work with and guide our Human Resources staff in adjusting our policies and procedures, including the compensation area, to better match other state agencies. I would further request that we provide compensation to reimburse the Office of Personnel Management for their work for us to date and in the future. If OPM is unable to provide this service, the Commission will request that they recommend an individual or firm that could provide this service.

The motion was seconded by Commissioner White. Discussion followed, including clarification that the scope of the motion was finite in time and was not intended to result in a permanent arrangement. The motion carried by voice vote, with no nays.

Commissioner Lamberth brought up the staff response for discussion, and several Commissioners expressed a preference to review it at a later date. Discussion of the OPM report continued. Director Passailaigue noted that the business hours of ALC had been changed from 8 a.m. to 4:30 p.m. He said the ASL would adjust its nepotism policy to comply with Arkansas Code. He said that a progressive discipline

requirement would undermine the at-will environment put in place by the Legislature for the entrepreneurial enterprise that is the Lottery, as a protection from litigation. He said changes to the law could be discussed with the Legislative Oversight Committee in its November meeting. He brought up the issue of compensatory time, noting that the South Carolina Lottery Commission had paid its exempt employees for the extraordinary time worked during the startup. He also said that OPM staff, including Ms. Barnhill-Terry, had informed Lottery staff that other agencies had allowed compensatory time and in at least one case paid bonuses to exempt employees. He said that the statute delegating authority to the Director on the matter was a protection of the Commission.

Commissioner Lamberth stated that she respectfully disagreed with the Director on the events as they occurred. She said that she believed there had been miscommunication, that perhaps the Director had been left out of the loop, and also that there had been an error in judgment. She read from a document the Commission received on November 17 proposing compensatory time and stating, "Clearly it is in the sole discretion of the Commission" to approve the compensatory time. She said it was clear to her that the Director intended for the Commission to decide the matter, that the Commission's intent was that the matter be decided by the Commission, and that the Commission intended for the ASL staff to consult with OPM and other agencies and report findings back to the Commission on the issue of compensatory time in other state agencies, to aid the Commission in making this decision. She then read from a January 4 memorandum from the Director to the Commission that the Commission interpreted to mean the proposal was being withdrawn and that there was to be no compensatory time awarded.

The Director agreed that there was miscommunication. He noted that the Lottery staff had been asked to work extraordinary hours to produce extraordinary results. He stated that prior to the January memorandum, the staff had indeed asked OPM for guidance and had received assurances from OPM that a decision on compensatory time was at the Director's discretion, and that he therefore dealt with it. Commissioner White commended the Lottery Director and staff for its excellent work. He stated that he disagreed with the compensatory time decision and said that he learned of the decision from the newspaper. He said he believed the Lottery was not operating in line with regular state policies and procedures.

The Director pointed to the statute, noting that he had granted compensatory time only from June 29 until November 30, 2009, during the world record launch and the accompanying production of additional scholarships. He noted that one of his reasons for acting was to insulate the Commission from liability. Commissioner Pickard said he agreed that the Director and staff had done a wonderful job starting the Lottery. He said the justification for the high salaries for Lottery employees was to compensate exempt employees for the extraordinary hours they would work. Commissioner Campbell asked Commissioner Pickard whether other agency exempt or "non-classified" employees received compensatory time. Director Passailaigue noted that he began work on June 5, even though his compensation didn't begin until June 29, and that he issued two RFPs on June 15. He said that when he looked at the totality of what employees accomplished and sacrificed, he thought the compensatory time was merited. He noted that one employee had logged extra 501 hours, but that it was unlikely that most of the compensatory time shown on paper would be taken because the management would have to approve it while considering

the needs of the agency. Commissioner Pickard asked for a copy of the form staff would use to request compensatory time off. Commissioner Ward-Jones asked whether the time off was approved in advance, with the Director answering in the affirmative. Commissioner Ward-Jones said that the Commission was grateful for the creation of a world-class lottery by the Director and staff. But, she said, she was concerned that she didn't know about the compensatory time until it appeared in the newspaper, which she said was an issue whether a Commissioner agreed with the decision or not. The Director said he accepted full and complete responsibility for everything that happens at the Lottery.

Commissioner Hammons said that he wanted the Commission to take a further look at whether the compensatory time could legally be granted by the Director. Commissioner Shipp said that it seemed evident that the Legislature intended that the Lottery be a hybrid agency encompassing state government and free enterprise, and she understands that Commissioners with a state government background may see this matter as having huge discrepancies. She said she believes that with the exceptional work and exceptional number of hours, many of the people who work for the ALC need to be rewarded. She also said those with the top salaries may have wanted to look at the matter a little differently, considering the size of their compensation. She said that the matter is in the past now, and that she hoped that the agency would move forward. Commissioner Malone said that he agreed with Commissioner Shipp entirely. Commissioner Campbell asked if any employees were underpaid under state guidelines, and the Director said that he thought that was a possibility. Commissioner Hammons then moved that the Commission go into executive session for the purpose of discussing job performance.

At the resumption of the regular meeting, Commissioner Pickard moved to remove Director Passailaigue from his position, with a second by Commissioner White. With no discussion, the motion was rejected, with aye votes from Commissioners Pickard and White, and nay votes from Commissioners Lamberth, Campbell, Malone, Shipp, Ward-Jones, and Hammons.

The meeting was adjourned, with the next meeting scheduled for September 30.