

MINUTES
ARKANSAS LOTTERY COMMISSION
Monday, February 6, 2012
8:00 a.m.
ALC Conference Room
Third Floor
124 West Capitol Avenue
Little Rock, Arkansas

Commissioner Lamberth called the meeting to order. Present were Commissioners Lamberth, Malone, Pickard, Campbell, Engstrom, Faris, Frazier, Hammons, and Shipp. Staff present were Julie Baldrige, Michael Hyde, Bishop Woosley (by teleconference), Mike Smith, Jerry Fetzer, Jeremy Smith, Rick Lee, Patricia Vick, Gwen Armbrust, Valerie Basham and Lance Huey. The minutes of the previous meeting on November 21 were approved without dissent, by motion of Commissioner Faris and second by Commissioner Hammons; and the minutes of January 23 were approved without dissent by motion of Commissioner Shipp, second by Commissioner Frazier.

The Commission next took up the matter of the annual approval of Commission expense reimbursement. Commissioner Malone, with a second by Commissioner Shipp, moved as follows: I move to authorize expense reimbursement for the calendar year 2012 for each Arkansas Lottery Commissioner for performing official Commission duties, provided the expense reimbursement not exceed the rate established for state employees by state and agency travel regulations. The motion was approved without dissent. Also, Interim Director Julie Baldrige asked the Commissioners to look over their current Ineligible Player forms before them, to make any corrections or additions needed, or no changes if they are correct, and to return them to Lottery staff.

Interim Director Baldrige was recognized to report on the status of the Lottery (report included in file). She discussed November and December sales and forecast generally the January numbers. She said that January to date had been somewhat slow. She noted that the FY2012 budget was developed in April 2011, pointing to references to the "Budget" in some of her reports. She said that the management team had expressed they would be more comfortable with a Budget with input from each of them, approximating amounts each month that would be spent and separating out more specific budget items. She said that CFO Jerry Fetzer had reached the same conclusion independently, and that the team felt the detailed budget was what the legislature has in mind. She said such a budget would provide more specific guidance as well as numbers to compare to actual and adjust for future years, in areas where there are great differences in the budget and the amounts that must be spent to operate.

Baldrige described the team's plan to develop a budget to extend the specificity of Lottery transactions, reflected department by department and classification by classification, to produce a document the management can rely on to more accurately produce income and outlay, and serve as an essential tool by which to judge the

Lottery's financial performance in categories large and small. This budget will form a basis for the Lottery business plan, she said.

Baldrige displayed a graph that showed strength in February sales. She pointed out that the \$2.6 Million in unclaimed prizes accumulated thus far in the Fiscal Year remain untouched. Commissioner Malone asked whether any action was needed, and Mr. Fetzer said none was needed at this time. Further clarifying discussion of unclaimed prizes followed.

She brought up the new Arkansas Millionaires' Club \$20 ticket and opined that part of the slow sales in January may have stemmed from all four \$1 Million prizes in the Diamond Dazzler \$20 ticket game had been won (with the last of the five reserved for Play It Again). She said the new \$20 ticket would be introduced the next day, noted that it was the first major ticket created by the new product development team, called attention to the design, and said that the development costs were much lower than the Diamond Dazzler ticket. On the new Powerball, she noted that comparing daily sales on the 197 days of FY2012, daily sales dollars in the three weeks since introduction of the \$2 ticket had risen in revenue by more than 30 percent. She predicted that Powerball sales would continue to be healthier than in the past and noted that since Powerball is a draw ticket, it generates more for scholarships for each dollar spent on tickets than the instants generate. She pointed to the one-night \$466,000 Powerball sales. There also was a discussion, brought forth by Commissioner Shipp, of the need for tutoring players to understand the benefit of Power Play.

On Mega Millions, she said that Mega Millions in the past three weeks were averaging slightly above (\$2000 per day) sales in periods of similar jackpots below \$100 Million. She reported that the 50/50 Raffle was producing 39% of its sales to scholarships. She noted that the new instants in January were introduced a week late, which she thought contributed to the absence of the usual new ticket "bump" each month.

Commissioner Pickard, Chair of the Audit and Legal Committee, was recognized to present a report on the Committee's meeting immediately prior to the Commission meeting, where a report from the Internal Auditor was received and the terms of the Request for Qualifications for outside legal counsel were discussed. He presented the record of the December 7 meeting. He then informed the Commission that the Committee had chosen the proposal from the Mitchell Williams firm for outside legal counsel, and asked Mr. Woosley to present. Woosley recounted that the Committee had considered proposals from Mitchell Williams, Williams & Anderson, the Quattlebaum firm and the Rose Law Firm. The Committee members present as well as Woosley all graded Mitchell Williams in first place, and he was tasked with negotiating specifics of the fee agreement with the firm, stated as \$1500 a month, with an hourly fee of \$200 per hour, significantly lower than all other firms. Derrick Smith, speaking for the firm, had responded that they would attend all Audit and Legal Committee meetings and Commission and other meetings upon request. In addition, they will perform special projects without billing the Commission until the retainer is exhausted at \$200 an hour (7.5 hours). The term of the contract is February 6, 2012, until February 6, 2014, with the option of renewing for one year. Commissioner Malone said he had determined that

the contract could be cancelled with either 10 or 30 days notice. Commissioner Pickard asked for questions and, there being none, moved to approve the contract as negotiated with Mitchell Williams, seconded by Commissioner Engstrom. The motion was approved without dissent.

Commissioner Pickard then called on Internal Auditor Hyde for his report, which is included in the file. He said that monthly review of MSR mileages had resulted most recently in no findings, and that these reports are now subject to good internal controls set up by Jerry Fetzer. Therefore, he said the review will henceforth be periodic as approved by the Audit and Legal Committee. He said they currently were performing monthly review of travel but would move to quarterly review on out-of-state travel. He discussed the retailer sweeps audit and said he would like to consolidate three other audits within the sweeps audit under the Audit Plan (retailer credit adjustments, retailer accounts receivable, and retailer commissions). Commissioner Pickard said that the change had been approved by the Audit and Legal Committee. He said the instant ticket audit report was completed along with that of four of five online games, with no recommendations for either.

Hyde said that his 100% review of travel was ongoing and although there had been discussion with Jerry Fetzer on a couple of minor questions, there were no reportable findings. He said that with Fetzer's new travel policies and procedures, the Lottery is in good shape on travel. Regarding the Legislative Audit, he said that all findings had been cleared except for the 2011 travel findings, and that clearance would occur in the next report to the LOC in February. Commissioner Engstrom said Legislative Audit has a habit of repeat findings and asked whether there would be a gap from July 1 through the implementation of the new travel policies to avoid repeat findings. Hyde said that he felt comfortable that there would be no repeat finding in that area. Commissioner Malone asked whether the new travel policies needed Commission approval, and it was decided that informing the Commission conforms with policy. Commissioner Pickard commended the cooperation between CFO Fetzer and Auditor Hyde. Commissioner Lamberth asked Mr. Fetzer to stand and the Commissioners greeted him and expressed their appreciation.

The Commissioners next heard from Commissioner Hammons, who said the Personnel Committee, of which he is Chair, had no new report for the Commission.

Following, Chief Legal Counsel Bishop Woosley presented a brief review of current legal matters. He referred to an email he had sent to the Commissioners on the trademark lawsuit, on the denial on the motion to dismiss, that the Arkansas Supreme Court had asked for more specificity. He said that he and the Attorney General's Office had drafted a document for submission to the Circuit Court to review, compliant with the ruling of the Supreme Court, and were awaiting the Circuit Court's response.

Also, he informed the Commissioners of the Legislative Audit's plan to send draw auditors who are not Certified Public Accountants to witness the daily draws at the Lottery, but that the fee would continue to be \$80 an hour, as it was when they sent CPAs. He said that he believed Commissioner Campbell had some concerns, including

whether the DLA was required to be the entity to witness the draw. He said there were no rules requiring a CPA to witness the draws. The computers are certified as accurate by a Quality Assurance firm. A CPA must be present for any manual draw, but thus far the Lottery has had no manual draws. Commissioner Engstrom said that finding external qualified non-CPAs who are graduate accountants to witness the draws, in his experience, would cost more than \$80 per hour. Commissioner Campbell said he was concerned that the Legislative Audit is not bonded. Commissioner Engstrom asked if the non-CPAs from Legislative Audit were graduate accountants. Mr. Woosley answered that they were. Commissioner Lamberth asked the staff to further research this matter, including what percentage of the net profits on the Cash 3 and Cash 4 games were going for these accountants.

Commissioner Engstrom said it was his understanding that there is an ongoing trial on the matter of the Beebe \$1 Million instant ticket lawsuit. Mr. Woosley reported that there was a hearing two weeks ago in Searcy Circuit Court. The second witness claimed that she was the original purchaser of the ticket and that she threw it away. The trial court stopped the proceedings during her testimony shortly after she said that she scanned the ticket and that the scanner said it was not a winner. The judge commented that not everyone who could be a party to the lawsuit was represented and that he would delay the trial. Since Lance Huey, the Lottery Security Director who was subpoenaed to testify, had not yet been called, the Lottery management felt that the information presented was not accurate. He said he wanted to reassure the Commissioners that the Lottery equipment, including the scanners, worked perfectly, that the scanner at the selling retailer showed the ticket to be a winning ticket, and that the ticket was scanned several times at several Beebe-area retailers including the selling retailer, by the second person, who was said to have found the ticket in the trash, and that the ticket scanned as a winner each time. Also, the ticket scanned as a winner in the Claim Center when it was brought to Lottery Headquarters. Following the ticket being claimed, the ticket was scanned again, and it again showed to be a winner. He wanted the Commissioners to understand this issue, since there had been press reports about the scanning testimony, including the Lottery's response.

Under Other Business, Commissioner Lamberth asked Commissioners Shipp, Malone and Faris to serve as a subcommittee to research and explore development of a line of succession for Lottery Commissioner officers.

Commissioner Lamberth opened the process of establishing guidelines and setting groundwork for the Director search. First, she asked Julie Baldrige to introduce Gwen Armbrust, HR Generalist, who handled the receipt and disbursement of all applications (and updates of applications) to Commissioners. Interim Director Baldrige praised Ms. Armbrust's excellent work and organization of the massive materials comprising the 96 applications, providing them details of Ms. Armbrust's work with the Lottery and educational achievements. The Commissioners thanked Ms. Armbrust for the weeks of work in getting these materials properly organized and sent out to them every two or three days, and gave her an ovation. Ms. Baldrige also thanked Patricia Vick for her hard and excellent work for the Commission during this process and for the last 2 years and seven months and was joined by the Commissioners in expressing their

appreciation. Ms. Armbrust informed the Commission about the books of applications and addenda, noting that there were 96 applicants and that the documents were arranged in both alphabetical and chronological order.

Commissioner Lamberth went over the preferred qualifications to be considered in selecting the Director, as listed in the job description. She then called on Mr. Fetzer about candidate travel. Mr. Fetzer said that provisions developed in the new Arkansas Lottery Commission Travel and Expense Reimbursement Policy can be utilized to classify those brought in from out-of-state to interview for the Director position as "Official Guests" of the agency, whose travel if authorized by the Director is paid or reimbursable so long as the proper documentation is provided. He explained that all expenditures are covered by a maximum, referred to as per diem, but they must be based on actual expenses.

Commissioner Lamberth brought up scheduling of the interviews and said that Julie Baldrige was prepared to handle the scheduling. She and Commissioner Malone spoke about the importance of the decision and urged all Commissioners be present. Commissioner Faris suggested the Commission consider a Saturday. It was decided to interview on Saturday, February 11, with February 12 and 20 as backup dates, with Julie Baldrige making the arrangements. Each interview is to be allotted an hour and 15 minutes. Commissioners said they would be willing to work all day and also through the day Sunday, up until 6 p.m. They said they would like to deliberate immediately following the last interview. Commissioner Pickard asked about checking references and otherwise vetting the applicants, and it was decided individual Commissioners would undertake that process. Julie Baldrige was asked to take each candidate on a tour of the Lottery Headquarters following each interview. The interview procedure was discussed, with the request that the furniture be rearranged for circular seating to allow all Commissioners and the candidate to easily see and hear each other.

Commissioner Lamberth said she had asked the Mitchell Williams law firm to address the group at the beginning of the first interview day on the rules for an executive session. The Commissioners discussed establishing a salary for the position. By motion of Commissioner Faris, seconded by Commissioner Campbell, the Commission approved a salary maximum of \$175,000, pursuant to the review of the Legislative Oversight Commission. Commissioner Pickard moved to enter Executive Session to discuss personnel, with a second by Commissioner Shipp, was approved without dissent.

Upon emerging from the Executive Session, Commissioner Lamberth thanked all applicants and announced that the Commission had narrowed the list as follows for interviews: Charles McIntyre, Richard Knight, Bob Nash, Joan Schoubert, Bill Stovall, Edwin Van Petten, and Bishop Woosley. The list was presented to Interim Director Baldrige, who was instructed to schedule interviews with the candidates and then notify the Commissioners. There being no further business, the meeting was adjourned.