

MINUTES
ARKANSAS LOTTERY COMMISSION
Wednesday, August 5, 2009
1:30 p.m.
Legends Room
Jack Stephens Center
University of Arkansas at Little Rock

Arkansas Lottery Commissioners present were Commissioners Ray Thornton, Chairman; Dianne Lamberth, Vice Chairman; George Hammons; Mike Malone; Ben Pickard; and Patty Shipp; with Commissioners Susan Ward-Jones; and Joe White present by telephone.

Arkansas Scholarship Lottery staff in attendance: Director Ernie Passailaigue; David Barden, Vice President Gaming Operations; Ernestine Middleton, Vice President Administration; Julie Baldrige, Bridgette Frazier, Bishop Woosley, Patricia Vick and Sarah Thomas.

Bureau of Legislative Research staff present: Marty Garrity, Assistant Director, Legal Division; Estella Smith, Administrative Analyst; Kendra Drone, Secretary; and Patrick Ralston, Legislative Oversight Committee staff.

The meeting was called to order by Chairman Thornton, who introduced UALR Chancellor Joel Anderson, praising him as one of the great academic leaders of Arkansas. Chancellor Anderson welcomed the Commission to the UALR campus, asking the members to spend time looking at the remarkable changes and growth of UALR and urging them to attend the Trojans basketball games played in the Stephens Center, where the meeting was taking place. He noted proudly that UALR is a comprehensive University with 35 master's programs and six doctoral degrees, along with the juris doctorate degree at the UALR Bowen School of Law. He said he was

looking forward to the Lottery Scholarships that would meet the educational needs of Arkansas citizens. He commended the Commissioners for their dedication and hard work and said the educational institutions of Arkansas and their students and prospective students look forward to the fruits of the Commission's labor.

Minutes, July 29, 2009

The minutes of the July 29, 2009, meeting were reviewed and approved unanimously after a motion by Commissioner Shipp and a second by Commissioner Malone.

Permanent Promulgation of Arkansas Scholarship Lottery Operational Rules

Commissioner Thornton pointed out that Commissioner Derrick Smith had worked tirelessly with ASL Attorney Bridgette Frazier to formulate and write both these rules and the rules to be discussed in the next order of business. Director Passailaigue recognized Ms. Frazier, who explained that every lottery has operational rules to regulate the conduct and operation of lottery games. They cover draw integrity, player error, how to determine ticket validity, whether a debt is owed to the state, consumer complaints and other such things. Given the ASL timeline, Ms. Frazier asked that the Commission authorize these rules be put into place, which allows a 30 day public comment period. Ms. Frazier further stated that she had spoken with Commissioner Smith, and following the 30 public comment day period, the Legal Committee would meet and report the permanent rules back before the Commission for review and approval. Upon a motion by Commissioner Malone, a second by Commissioner Hammons, the Commission approved the Permanent Promulgation of ASL Operational Rules unanimously.

Emergency Promulgation of Rules for Claims in Contract and in Torts and Authorization for Permanent Promulgation

Ms. Frazier said that an emergency exists because these rules cover the procedure to handle any dispute with any party that enters into a contract with the Commission. Ms. Frazier stated that Commissioner Smith feels very strongly that these rules be adopted

before the Commission enters into any contract with a vendor. The scope of the rules covers any dispute involving a contract, such as a misrepresentation, a mistake or any tortuous act, such as conversion of trade secrets or conspiracies. She said the rules also contain definitions and reaffirm that there is no waiver of sovereign immunity; and that they set forth procedures for prehearing negotiations, which include a detailed timetable for action. The rules include the procedures for conducting a negotiation and negotiating a settlement agreement. Further, the rules provide time for the Commission to delay the process if necessary, require all dispute hearings to be open to the public and press, and define the appeal process. Commissioner Malone asked if there is a difference between these rules and the procurement rules. Ms. Frazier replied that these rules require neither a bond nor subpoena power. After these rules are approved, the Commission would end up with four different sets of rules. By motion of Commissioner Malone, seconded by Commissioner Thornton, the emergency promulgation was approved unanimously. By motion of Commissioner Malone, seconded by Commissioner Lamberth, the permanent promulgation was approved unanimously.

Online Contract Execution Pending Legislative Oversight Committee Review

Director Passailaigue recognized Mr. Woosley to discuss the Execution of the Online Contract, pending Legislative Oversight Committee (LOC) review. Mr. Woosley stated reminded the Commission that last week they unanimously passed the Online Contract Intent to Award. The LOC informed the Commission that they would review the Online Contract when the Commission had formally passed a resolution to Execute and Award the Contract. Therefore, the Commission needed to proceed to adopt the motion of Execution before the LOC would conduct its review. Commissioner Pickard moved approval of the Execution of the Online Contract, pending LOC review, which was seconded by Commissioner Hammons. Commissioner Lamberth inquired whether this was simply a change of wordage to add "pending LOC review." Mr. Woosley responded that this would add Commission approval to execute the Contract, pending LOC review. Commissioner Malone asked what the LOC review entailed and whether

the Contract award could be executed by the Commission with this contingency attached. Mr. Woosley answered in the affirmative and stated this was the guidance provided by the LOC. Further, Mr., Woosley indicated the Oversight review process is defined in the statute, that a major procurement contract must be filed with the LOC, and the LOC would conduct a review, and then issue an opinion within 30 days, based upon its review of the documentation. Commission staff was provided guidance on the mechanics of this process on July 31st and supplemented on August 3rd, by the LOC. Commissioner Malone inquired that, if this resolution was passed as worded, whether this would be the Commission's final action necessary to award the Online Contract; and, Mr. Woosley answered affirmatively. Commissioner Shipp asked if this would preclude any further contractual negotiations between the Commission and the Successful Vendor; Mr. Woosley stated that there would be a signing of the contract, which would include a satisfaction of the bond requirement. Mr. Passailaigue stated that the Staff is satisfied with the major elements of the Successful Vendor's proposal. The motion was unanimously approved.

Instant Ticket RFP Intent to Award and Execution Pending LOC Review

Mr. Woosley was recognized to discuss a Staff proposal for the Commission to adopt a resolution of both Intent to Award and Execution of the Instant Ticket Contract, pending LOC review. Mr. Woosley directed the Commission's attention to the Executive Summary, the Evaluation Scoring Spreadsheet, and the Official Price Proposal Sheet submitted by the Vendor that achieved the highest number of points on the RFP's Evaluation Criteria, Scientific Games International (SGI). Mr. Woosley also noted that SGI's Official Price Proposal Sheet offered the Commission a percentage rate of 1.75, the lowest percentage rate proffered by the three vendors that bid on the Instant Ticket RFP. Mr. Woosley directed the Commission's attention to a comparison of Instant Ticket vendors and prices prepared by *LeFleur's* Magazine, which may be helpful in the deliberations of the Commission. Mr. Woosley stated that SGI was ranked number one of the three vendors submitting proposals on the Instant Ticket RFP, based upon the points awarded by the Evaluators selected to review the proposals. It was Staff's

recommendation that the Commission approve both the Intent to Award and also Execution of a Contract with SGI, based on its receiving the highest number of points. Commissioner Hammons asked about the evaluation process; Mr. Woosley conducted an in depth discussion of the mechanics of the evaluation criteria, the relationship to the RFP and the awarding of points, noting a scoring grid was utilized by the Evaluators that referenced back into the RFP. Commissioner Hammons then asked whether there was evidence of minority-owned business participation proposed by the vendors and Mr. Woosley stated that this element was specifically and thoroughly scored by the Evaluators in each proposal submitted. Commissioner Hammons further inquired whether the cost element was a driving factor in vendor ranking and Mr. Woosley pointed to the fact that cost was weighted at 50 percent of the Evaluation Criteria pursuant to the RFP; therefore, cost was a significant element of the scoring and ranking of each vendor. Mr. Woosley indicated that the Lottery Scholarship Act's intent was to maximize revenues and, therefore, cost was deemed a significant factor in the RFP approved by the Commission. The Director pointed out that three world recognized vendors bid on the contract, and that three experts (the Evaluators) – one with marketing skills, one with IT skills, and one with security skills – had combed through the bids and prepared a thorough, objective assessment of each proposal. He said that the process was thorough, fair and impartial and the rankings reflected the appropriate point totals awarded to the vendors. Mr. Passailaigue reminded the Commission that the RFP provided for a secondary Instant Ticket Vendor, noting that the Commission may select up to seven games annually from this source and therefore, it likely the ASL would actually be doing business with one of the two unsuccessful vendors. The Director further emphasized cost was significant and that there must be integrity of the process to assure that the Commission maintain high standards. Attention was called to the *LeFleur's* Instant Ticket statistics, reflecting that SGI was a recognized leader in the Instant Ticket business for lotteries across the United States. Mr. Passailaigue stated that one sentence in the RFP was modified to give the Arkansas Scholarship Lottery access to a vendor's online games royalty-free, and pointed to the absence of that one sentence in South Carolina's Instant Ticket RFP,

resulting in additional cost to the state of \$500,000 a year for seven years, for only two online games. The Director said the savings brought by this one sentence was a lesson learned from South Carolina that would potentially save the ASL significant money. He said that the early startup date provided by SGI (October 1) gave him confidence that SGI could be ready by September 28 and be a part of that early startup. He recommended that they move forward with the Motion discussed previously by Mr. Woosley.

Before the vote, the Director made an announcement that Jill Thayer, a Bureau of Legislative Research attorney who provided invaluable assistance to the Commission in drafting the Online and Instant Ticket RFPs, had this week given birth to a baby boy named Benjamin Grant Thayer. Mr. Passailaigue said he took flowers to the hospital on behalf of the Commission and gave her credit for the exemplary difference she had made in the process.

Commissioner Malone asked about the mechanics of the evaluation formula and Mr. Woosley explained the mathematical process of computing the cost and early start up date into a numeric score.

A motion was made by Commissioner Hammons and seconded by Commissioner Pickard for the approval of the Intent to Award of the Instant Ticket Contract and the Contract Execution, pending review by the LOC. The vote was unanimous to approve the Intent to Award and Execution.

Advertising RFP Intent to Award and Execution Pending LOC Review

Commissioner Thornton stated that although his participation in the Advertising and Marketing RFP would not be a violation of statutory law, he would recuse himself from any discussion or vote on this matter, because of prior relationships with the Vendors that were under consideration. He then relinquished the chair to Vice Chairman Lamberth, who assumed the Chairmanship temporarily.

Mr. Woosley called the Commission's attention to the evaluation scores and executive summary of the Communications Group, along with the Official Proposal Sheet.

Mr. Passailaigue elaborated that the RFP was published on July 15 by the Commission, with a number of criteria—both subjective, to be scored by evaluators and objective, scored by a mathematical formula. Prospective vendors were offered an opportunity to ask questions and receive answers. Under the Procurement Rules adopted by the Commission, a vendor has the opportunity to protest the RFP process up until the date of the bid opening. Once the bids are open, those rights of protest of the RFP process lapse. Mr. Woosley affirmed the Director's statement. The bid closing was July 31st at 4 p.m. and six firms submitted proposals. Mr. Woosley then reviewed all six bids for compliance with the criteria outlined in the RFP. There had been no protest filed of the process before the bid opening. There were two firms deemed responsive and four firms deemed nonresponsive, based upon the criteria outlined in the RFP. Further, the Director selected four evaluators, all Arkansas residents and ASL employees, who had demonstrated skills in the field of advertising and marketing. This fact was pointed out to the Commission because he heard that a firm from South Carolina may partner with a vendor submitting a proposal and the Director wanted to make it clear that no one employed by the Commission from South Carolina would have anything to do with the evaluation of the Advertising and Marketing RFP proceedings.

As was the case in the other RFPs covering the Online and Instant contracts, the Commission developed a plan to award points based on subjective criteria (Evaluators reviewing the documents submitted by the Vendor and relating that material to the RFP specifications) and objective criteria (points assigned by arithmetical calculation based upon the cost criteria outlined in the RFP). Commissioner White (by telephone) stated he was unable to understand Mr. Woosley's explanation of the reasons four bids were found nonresponsive. Mr. Woosley explained that the RFP required vendors to provide specific responses, including documentation, to the specifications approved by the Commission. Four vendors failed to provide the appropriate documentation required by the RFP; specifically, three years of financial statements audited by an independent accounting firm which resulted in vendor net income of at least \$300,000 or more in two of the three prior years. Also, one vendor failed to sign an addendum, which was a requirement. Director Passailaigue addressed the issue, saying that in the lottery

business, there must be a high standard of integrity in the procurement process, in order that the people of Arkansas can have confidence in the awarding of major contracts. Audited financial statements provide assurance to the Commission and the public that a respected, independent third party has formed an opinion as to the vendor's financial condition and results of operations. It addresses issues such as, is a vendor a viable entity able to administer a multi-million dollar, annual media campaign.

Commissioner Ward-Jones asked what date the four bidders were told that their proposals had been deemed nonresponsive. Mr. Woosley said they were told Sunday morning, after a review stretching from Friday at 4 p.m. to Sunday morning.

Commissioner Malone inquired about the organizational chart presented by one vendor submitted in the Executive Summary provided to the Commission. Mr. Barden discussed the relationship of the skill sets incorporated in the RFP criteria and the aforementioned organizational chart, and how the Staff would interact with the vendor to acquire the requisite level of services.

Mr. Gary Lay, Owner of GWL Advertising and a vendor deemed nonresponsive to the RFP bid requirements, asked to address the Commission. Mr. Lay stated that a formal protest had been filed by his firm and that he had visited with Mr. Woosley. He said that he had owned the business for 20 years and that he had sought a low net income because of taxation. He further stated that his business did not need an audit since he is the sole owner of his Company, has no debt and he had furnished his firm's unaudited financial statement prepared by a CPA. He said that his Company's proposal had been eliminated before it was reviewed, as were the proposals of the other three vendors who were deemed nonresponsive. Mr. Steve Jacuzzi, GWL President, noted that RFPs in other states did not use net income as a qualifier. Commissioner Malone asked whether the staff received questions prior to the bid opening. Mr. Woosley affirmed that there were questions submitted by vendors regarding specifications of the RF prior to opening the bids; however, the Procurement Rules clearly state that any dispute regarding the bid process must be filed before the bid opening. Mr. Passailaigue commented that he realized that the Arkansas RFP may be different from RFPs issued previously by other states, but in light of the current

financial crisis, the economic conditions have changed and the resultant expectations have also changed, in order to protect the public. The Director further stated that net income and working capital are important considerations in gauging the financial health of a business, as many companies generate substantial sales, but are not profitable. Commissioner Lamberth said that her personal corporation has audited financial statements every year as a requirement of their business and that the bank which she serves on as a board member also requires audited financial statements from borrowers. She said she wanted to go on the record that she thinks it is imperative that this half-billion dollar enterprise, such as the ASL, require audited financial statements. Commissioner Shipp moved and Commissioner Pickard seconded a motion to approve the Advertising and Marketing Intent to Award and Execution of a Contract with the Communications Group, pending LOC review. The motion received passed unanimously.

Other Business

Commissioner Thornton resumed the Chair at the request of Commissioner Lamberth. He then recognized Commissioner Lamberth, who said that the Arkansas Building Authority had completed work with Union Plaza for permanent space for ASL headquarters and had signed a contract. The contract could be delivered to the ASL office by Thursday morning. She said that Mr. Passailaigue was authorized to sign the contract. Commissioner Malone asked about the terms, and Commissioner Lamberth reported that the terms were the same with an early out, with three renewals of the six year contract. The only change involved the early startup, permitting the Staff to move forward. By motion of Commissioner Lamberth, second by Commissioner Ward-Jones, Mr. Passailaigue was asked to review and sign the headquarters lease contract.

Commissioner Lamberth stated that the Arkansas Scholarship Lottery Commission had worked diligently, meeting up to three times some weeks to move the process forward responsibly. Commissioner Lamberth stated she had received letters asking what she makes, and she responded 42 cents a mile and it was her view that Commissioners serve because of the desire to improve the quality of life for the people of Arkansas and

are excited at the opportunity to meet a September 28 startup goal. Commissioner Lamberth noted the compact timeframe of this early startup and strongly encouraged the LOC to be mindful of these date(s) as it schedules the review of the major procurement contracts, because time is of this essence. She further observed that a delay could push back the targeted startup date of September 28 and that may mean fewer scholarships available.

Top Lottery Talent Makes a Difference

Commissioners Thornton and Lamberth called to the Commission's attention to the current issue of *Arkansas Business*, published August 3, 2009, to a Letter to the Editor from Paul Jason, CEO of the Public Gaming Research Institute of Kirkland, Washington, and titled "Top Lottery Talent Makes a Difference," which read as follows:

"The question of salaries for the Employees of the Arkansas lottery has become a flash point for controversy.

"The right to challenge the decisions of our political leaders is one of our most cherished freedoms. Thus, the perfectly justifiable question: Why should employees of the state lottery be paid as much as they are?

"The answer is that the salaries are an investment that yields a higher Return on Investment than any other lottery expenditure, hands down. As Gordon Medenica, director of the New York lottery, puts it, 'The critical insight for understanding lottery economics is realizing that it is not, for the most part, a cost-driven business. Revenue growth trumps all.

"That is to say, a relatively small difference in top-line revenue produces a quite dramatic difference in the funds available to support good causes like education. For example: If 33 percent of the revenue goes to support education, and an effective

management team increases sales just 10 percent, from \$300 million to \$330 million, that's an additional \$10 million in net funds going toward education per year.

"How does a lottery get that extra 10 percent? Top management talent. The difference between top management talent and competent management adds up to many millions of dollars in net funds. It does cost more money to acquire this top talent, but it's worth it. Management makes all the difference.

"In Ernie Passallaigue, the Arkansas Lottery Commission has hired one of the most accomplished lottery executives in the United States. He started the South Carolina Education Lottery in 2001 and served as its executive director for the past eight years. He executed a large-scale conversion in lottery terminals and central system just last year, increasing the state's profits and making the lottery even more efficient. Financial performance metrics in South Carolina have been among the best in the nation (with the lottery's administration expensis held at 4.7 percent within a U.S. range of 2.6 percent to 19.1 percent for non-video lottery states).

"Ernie Passallaigue is as good as it gets, and the difference he will bring in lottery performance will result in many millions of additional dollars per year for Arkansas education programs."

Commissioner Lamberth and Commissioner Thornton asked that the letter be included in the minutes.

Commissioner Thornton said he believes that Arkansas should always aspire to be the best and has been dismayed by the criticism directed at some people because they are the best at what they do. He further stated he wants to see scholarships for the young people of Arkansas, many of whom in the past have not been able to attend college, which impacts their job prospects and potentially requiring them to move out of state to earn a livelihood.

Director Passailaigue thanked the Commissioners and noted that there is no "I" in team. He said that Arkansas people had been welcoming, had made the little group from South Carolina feel right at home, and he was happy to be Arkansan. The Director further stated that he was confident the Commission and Staff will be able to satisfy the requirements of the LOC in a timely manner to meet the September 28th startup date and that everyone has one common goal, to provide as much financial assistance to the young people of Arkansas, while at the same time maintaining the vision of running a world class lottery.

Next Commission Meeting

Commissioner Thornton thanked Chancellor Anderson for their hospitality today and noted that UALR would once again make available facilities for next week's August 12 all-day meeting at the UALR Bowen School of Law. He thanked Commissioner Pickard for planning the session with the Higher Education Department concerning the required scholarship application process at 10 a.m., followed by a box lunch and the afternoon session beginning at 1 p.m. Commissioner Malone said that he would need to call in, and Commissioner Thornton said that would be arranged. He thanked the Commissioners for their attendance and work.

There being no further business, the meeting was adjourned.