

Oklahoma Lottery Commission

Minutes of Meeting

Wednesday, October 5, 2005 – 1:30 p.m.

Members Present:

Mr. Orbison
Mr. Paul
Mr. Riley
Mr. Charlton

Members Absent:

Ms. Ball
Dr. Dzialo
Mr. Norick

Others Present:

Jim Scroggins, Executive Director of OLC
Jerry Havener, OLC
Rollo Redburn, OLC
Penny Nicholson, OLC
Jim Hazeldine, OU-CPM (OKDHS-CSED)
Tony Thornton, The Oklahoman
Bobby Stem, G-Tech
Ted Riley, KOSU
Jim ??, Journal Record
David Kinney, Attorney General's Office

ITEM 1

Call to Order. Roll Call and announcement of quorum

Roll Call: Mr. Orbison, Mr. Paul, Mr. Riley, Mr. Charlton were present. Ms. Ball, Dr. Dzialo, and Mr. Norick were absent. Mr. Orbison declared a quorum.

ITEM 2

Announcement of filing of special meeting notice and posting of the agenda in accordance with the Open Meeting Act

Posting of Special Meeting Notice and Agenda were confirmed, in accordance with the Open Meetings Act.

ITEM 3

Approval of Minutes of the September 27, 2005 Special Meeting

Mr. Riley made a motion to approve the minutes of the September 27th meeting. Mr. Charlton seconded the motion. Roll call: Mr. Orbison, Mr. Charlton, Mr. Paul, and Mr. Riley voted to approve. Motion was carried.

ITEM 4

Discussion and possible adoption of Emergency Rules

Mr. Scroggins stated that Mr. Kinney of the Attorney General's Office had pointed out three typographical errors in the draft version of the Rules under consideration (extra comma on page 11, incorrectly numbered items on page 25, and in a missing semi-colon in the same section). Mr. Scroggins thanked everyone for their input in formulating the Rules. He

explained the steps needed to have the Rules properly formatted and submitted for approval with the Governor. He stated that after approval by the Governor the Rules would be published in the Oklahoma Register.

Mr. Riley made the following motion:

“Because The Oklahoma Education Lottery Act authorized the Board of Trustees to promulgate rules; and, because The Oklahoma Administrative Procedures Act authorizes the adoption of emergency rules if an agency finds compelling public interest; and, since Implementing the Oklahoma Education Lottery requires rules be in place to interpret the Act and establish procedures and practice requirements of the Commission; I move, pursuant to 75 Oklahoma Statutes Section 253, that the Board finds a compelling public interest exists and the Board adopt and approve the emergency rules described in agenda item number 4, further described as the draft we were handed before the meeting.”

Mr. Paul seconded the motion.

In discussion, Mr. Riley stated that there had been a great deal of work done to formulate the Emergency Rules. He stated that it was necessary to have a set of Emergency Rules to take immediate steps to operate the Lottery, which is scheduled to begin ticket sales on October 12th. Prior to February 15th, the Board would be required to submit a set of Permanent Rules, which should address important issues not currently contained in the Emergency Rules. It is with that understanding that he made the motion to approve the Emergency Rules.

Mr. Orbison agreed that the Rules were still evolving, but Emergency Rules did need to be put in place. He complimented Mr. Scroggins, the Attorney General's Office and others who worked on the Rules and stated that the current version was well drafted.

Mr. Kinney stated that the Emergency Rules would be effective until July 14th, at which time they would be replaced by Permanent Rules, which would have undergone review by the Legislature and the Governor. If necessary, the Emergency Rules could be amended prior to the effective date of the permanent Rules.

Mr. Charlton stated that he had been ready to approve the draft of the Rules prior to the removal of the paragraph in Chapter 2, Section 2.01 which had read:

“It is the intent of OLC that contracting with supervised lenders (type A and B), pawnshops, payday lenders, deferred deposit lenders and businesses whose primary business is categorized as a check casher for the sale of OLC products is not in the best interest of OLC and the State, thus, applications from such businesses to become an OLC retailer will not be accepted or approved by OLC.”

Mr. Charlton stated he could not approve the Rules without those restrictions being in place.

Mr. Scroggins explained that in discussion with other Board members, his understanding was that absent further investigation, these restrictions should not be included in the Emergency Rules, but that they might be included in a later version of the Emergency Rules or Permanent Rules. Mr. Charlton was concerned that if the restrictions were not put in place in the first approved version of the Rules, these types of businesses would be approved and set up as retailers and it would then be difficult to withdraw approval and deny retailer status at a later time. He felt strongly that these businesses should not be approved because he felt it was not in the best interest of the citizens of Oklahoma, and particularly not in the best financial interest of lower-income Oklahomans. He asked Mr. Scroggins if he

could assure him that these businesses would not be licensed to sell lottery tickets if the language was not placed in the Rules. Mr. Scroggins replied that absent specific language in the Rules, he would have no basis upon which to deny retailer status to any of these types of businesses.

Mr. Orbison stated that originally pawn shops, supervised lenders, etc., had been excluded because Board members were concerned that it would not be in the best interest of OLC or the State to have them included as retailers. He stated that the reason for that provision was a shared concern that citizens, and particularly lower-income citizens, would be tempted to buy tickets that they really could not afford. However, he was also concerned with whether such retailers could or should be legally excluded. He pointed out that although the Statute had been subject to close scrutiny and numerous revisions, it did not contain any language excluding certain types of businesses from selling lottery tickets. He expressed concern about the propriety of excluding certain retailers, particularly on such short notice, when the Statute had not specifically directed the Board to do so.

Mr. Charlton stated that he thought it would be better to restrict the participation of these businesses at the outset, and then, if it was later determined that they should not be excluded, the Rules be revised at a later time.

Mr. Orbison agreed that was a good point, but stated that he thought it would be better to allow the businesses to become retailers for now in order that the Rules, as a whole, could be adopted and put in place.

Mr. Charlton stated that he was not comfortable allowing these businesses to become retailers, even for a one-year contract period, and that he felt the Board had been formed to make those sorts of judgments.

Mr. Paul stated that the Rules had to be adopted at the meeting today, although he was uncomfortable making a decision without the other members of the Board present and without further input from constituents, the Legislature or the Governor. He stated that it was his understanding from speaking with Mr. Scroggins that there were very few applications pending that would be effected by this decision. He asked Mr. Kinney, of the Attorney General's office, if the Board could approve the current draft, but pass a motion directing the Executive Director to temporarily reject applications from these types of retailers pending further investigation. Mr. Kinney stated this could not be done because there was no agenda item under which this motion could be made. Mr. Riley commented further that it was his understanding from other discussions with the Attorney General's office that anything not promulgated under the Rules had no force or effect.

Mr. Riley stated that he had hoped to find some guidance in the practices of other States, but in examining results of a survey conducted by the National Association of State and Provincial Lotteries, he had found there was no conclusive or compelling opinion about the inclusion or exclusion of these types of businesses. Mr. Charlton stated that he thought that the survey indicated a majority rejected these businesses. Mr. Riley agreed, but felt it was not a clear, compelling majority.

Mr. Scroggins stated that in his experience opinions varied widely from state to state, but the type of business most often excluded in other states was check cashing.

Mr. Orbison stated that he would like to know what types of limitations other states had imposed, how limited or broad the restrictions were, etc. He stated that he did not disagree with Mr. Charlton's reservations and if it were possible he would wish to delay the entire set of Rules until this issue was settled. However, he was aware that the Rules had to be put in place immediately, which did not allow the Board sufficient time to make an informed decision on such an important matter.

Mr. Riley also agreed that the exclusion of these businesses was probably a good rule, but he had concerns about denying free enterprise to an entire group of retailers.

Mr. Paul agreed and stated that that was the reason why he favored leaving out the language altogether pending more thorough investigation. He asked how many applications had been received from these types of businesses, and Mr. Redburn stated approximately 25 applications covering about 35 locations. Mr. Scroggins estimated that to be about 2% of the total locations currently pending or approved for lottery sales.

Mr. Paul asked the length of the retailer contract and Mr. Scroggins replied it was one year. Mr. Paul asked if the Board could pass the Rules as currently drafted and then have further discussion regarding these retailers at a meeting in November. Mr. Paul offered the opinion that under those circumstances, if the Rules passed without the language restricting those types of businesses, the worst case scenario would be that these few retailers would be allowed to sell tickets for one year and then would not be renewed. He also felt retailers in that category might be reluctant to apply while questions remained open. Mr. Charlton said he thought they would apply and that he could not vote to approve the Rules without the language excluding these vendors in place.

Mr. Orbison stated he did not disagree with Mr. Charlton's concerns, but that the primary reason for passage of the Oklahoma Education Lottery Act was to raise money for education and that excluding certain types of retailers would have the effect of lessening revenue. He again expressed concern that this issue was not addressed in the Act. Mr. Charlton replied that there were many issues not directly addressed in the Act and that was why the Board was created. He stated that he did not feel the revenue could be the sole consideration in this matter. Mr. Orbison expressed concern that excluding retailers simply because the Board did not like a particular type of business might be outside the scope of the Board's authority. He did not feel sure that the Board could or should pick and choose which retailers to include.

Mr. Riley stated that many good points had been brought up in discussion. He stated that the start-up time of the Oklahoma Lottery (approximately 6 months) was the shortest in U.S. history. Given that context, the Board's ability to study all aspects of this question had been limited. However, the critical issue at this point in time was to put the Rules in place for the start-up of ticket sales.

Mr. Paul asked how many votes were needed to approve the Rules with four Board members present. Mr. Scroggins directed him to the portion of the Act which stated an "affirmative vote of the majority of those present and voting members" was needed.

Mr. Orbison reiterated that although he and Mr. Charlton disagreed on voting on this version of the Rules, he was in sympathy and agreement with his feelings in the matter. Mr. Paul concurred. Mr. Scroggins told the Board that he would immediately begin to do more research on the issue so that it could be given further consideration by the Board in the future. Mr. Orbison called for a vote.

Roll Call: Mr. Orbison, Mr. Riley, and Mr. Paul voted to approve. Mr. Charlton voted against approval. The motion was carried by a vote of 3 to 1.

ITEM 5

Discussion and possible action on Requests for Proposals for development of internal controls

Mr. Riley stated internal controls were close to completion. He asked that Internal Controls be included on the Agenda for the meeting scheduled on October 11th so he could provide a final report.

Mr. Paul passed out an outline to Board Members, OLC staff, and Mr. Kinney of the Attorney General's Office of work he had done regarding Structure and Governance. He stated he would mail copies to absent members. He briefly discussed the outline and asked the Board and AG's office to review it and provide input. Mr. Orbison complimented Mr. Paul on the well-thought-out framework he provided.

ITEM 6

Discussion and Possible Action Regarding Budget Projections, Expenditures and Approval of Budget

There was no discussion held under this agenda item.

ITEM 7

Scheduling of Next Special Meeting

It was confirmed that the next Special meeting would be held at 10:00 a.m. on October 11, 2005, as had been decided at the previous meeting. Some discussion was held regarding agenda items to be included for the next meeting.

ITEM 8

Adjournment

Mr. Riley made a motion to adjourn the meeting. Mr. Charlton seconded the motion.

Roll call: Mr. Orbison, Mr. Riley, Mr. Charlton, and Mr. Paul voted yes and meeting was adjourned.

Submitted by:

George Charlton, Acting Secretary

James Orbison, Chairman