



Linda Cloud,
Acting Executive
Director

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Opinion Committee

December 30, 1997

RQ-1062

Honorable Dan Morales
Attorney General of Texas.
PO Box 12548
Capitol Station
Austin, TX 78711

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RE: Request for Opinion on whether promotional activities for the lottery occurring at events where alcohol is sold violates the State Lottery Act.

Dear General Morales:

This is a request for your opinion on questions of importance to the Texas Lottery Commission (the "Commission"). I make this request as Executive Director of the Commission. In accordance with Texas Government Code Sections 402.042(a) and (b)(2), these questions concern my official duties as well as affect the public interest.

BACKGROUND

Pursuant to House Bill 1 Article VII, 75th Legislature, Regular Session, the Commission is charged with operating a lottery that is self supporting, revenue producing and secure. To that end, as part of House Bill 1, the legislature has enacted strategy A.1.2 entitled "Marketing Research and Promotion." Under the Marketing Research and Promotion strategy the Commission is required to "determine the interests, opinions, awareness levels and purchase behaviors of adult Texans for the planning, development and implementation of effective games; educate players and provide opportunities to learn about lottery products; broadcast lottery drawings to ensure the integrity of the Lottery's numbers games; communicate game information, marketing ideas and operational information to lottery retailers; recruit new retailers; measure retailer satisfaction with lottery operations and service." One method by which the Commission attempts to achieve the objectives set forth in strategy A.1.2 is by conducting promotional events.

Under the State Lottery Act, the executive director may not award a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who would be denied a license as a sales agent under Texas Government Code § 466.155. One basis that the director must deny a person a license as a sales agent is if that person holds any one of several specified permits issued under the Alcoholic Beverage Code.

The Commission conducts promotional activities at some locations where alcoholic beverages are sold for on-premise consumption. However, the Commission does not contract with entities that hold a prohibited Texas Alcoholic Beverage Permit as listed under Texas Government Code §466.155(a)(4)(D). In order to ensure that the Commission does not contract with such persons the Commission regularly receives listings from the Texas Alcoholic Beverage Commission (the "TABC") of entities holding permits for on-premise consumption of alcohol. Prospective vendors are checked to verify that they are not a permit holder as identified by the TABC listings.

When the Texas Lottery conducts promotional activities at an event every attempt is made to distance the Lottery promotion from any location where alcoholic beverages are served for on-premise consumption by other businesses participating in the same promotional activity. Also, use of lottery logo is not allowed in conjunction with alcoholic beverage advertising.

Moreover, to ensure compliance with state law requirements, all vendors for promotional activities are required to sign contracts wherein the vendor certifies that it meets the requirements of §466.155.

LEGAL ISSUES

Texas Government Code § 466.014, entitled "Powers and Duties of Commission and Executive Director", provides as follows in subsection (b):

The executive director may contract with or employ a person to perform a function, activity, or service in connection with the operation of the lottery as prescribed by the executive director. A person with whom the executive director contracts to operate a lottery must be eligible for a sales agent license under Section 466.155.

Section 466.103 of the State Lottery Act provides as follows:

The executive director may not award a contract for the purchase or lease of facilities, goods, or services related to lottery operations to a person who would be denied a license as a sales agent under Section 466.155.

One of the requirements under Texas Government Code Section 466.155 (a)(4)(D) is that to be eligible to be a licensed sales agent, a person's location for a sales agency cannot be:

a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under chapter 25, 28, 29, 32 or 33, Alcoholic Beverage Code; ..

The referenced chapters of the Texas Alcoholic Beverage Code refer to permits allowing on-premise consumption as well as sale of alcoholic beverages.

QUESTION 1: Does the restriction contained in the State Lottery Act prohibiting the Commission from entering into a contract with a person who holds an alcoholic beverage permit issued under the Alcoholic Beverage Code Chapter 25, 28, 29, 32 or 33, also prohibit the Commission from entering into a contract to conduct promotional events with a person who does not hold any such permit, but where a different person with whom the Commission has no contract holds a prohibited alcoholic beverage permit at the location where the promotional event is scheduled to occur?

Section 466.014(b) states that "The executive director may contract with or employ a person to perform a function, activity, or service in connection with the operation of the lottery as prescribed by the executive director." This statement which appears under the heading of "Powers and Duties of Commission and Executive Director" seems to give the executive director some discretion in setting policies on selection of lottery vendors.

Section 466.155 includes a listing of various requirements that a sales agent would need to meet before he/she could be a licensed sales agent to sell lottery tickets. Most of the requirements are personal requirements that apply to an individual or

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entity such as criminal background, whether he/she has been a professional gambler, whether he/she is delinquent in paying any taxes and so forth.

Section 466.155(a)(4), instead of enumerating a personal requirement, specifies certain prohibited locations for a licensed sales agent to sell lottery tickets such as a location licensed for bingo games, on land owned by the state, on land owned by a political subdivision of the state and on which is located a school or a state agency or finally, a location for which a person holds a TABC permit allowing the on-premise consumption of alcoholic beverages.

QUESTION 2: If the location restriction in §466.155 applies to lottery vendors in addition to the personal restrictions, are the current policies and restrictions enforced by the Lottery sufficient to satisfy the requirement? Is the fact that the Lottery does not contract with a TABC permit holder for sale and on-premise consumption of alcohol sufficient to satisfy §466.155(a)(4)?

The second issue comes into play if lottery vendors for promotional activities are required by the State Lottery Act to meet the location requirements of Section 466.155(a)(4)(D). Does §466.155 applied through §466.103 and §466.014(b) control the location for lottery promotions?

For further explanation of the facts and a discussion of the relevant law, attached please find a brief prepared to address these issues.

Please contact Kimberly L. Kiplin, General Counsel at (512) 344-5113 if we can provide you any further information.

Sincerely,



Linda Cloud
Executive Director