

James A. Cox, Jr.  
Chairman

James A. Cox, Jr.  
Commissioner

Rolando Olvera  
Commissioner



# TEXAS LOTTERY COMMISSION

Reagan E. Greer, Executive Director

William L. Atkins, Director Charitable Bingo Operations

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OPINION COMMITTEE

October 27, 2004

**RQ-0287-GA**

The Honorable Greg Abbott  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

FILE # MC-44002-04

I.D. # 044002

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OPEN RECORDS DIVISION

Dear General Abbott:

Pursuant to the authority granted under Texas Government Code § 402.042, this is a request for an Attorney General Opinion regarding the authority of the Texas Lottery Commission (Commission) to offer promotional items for sale to its employees, vendors, and/or the general public to promote lottery ticket sales and to produce revenue for the state treasury.

### Background

The State Lottery Act authorizes the Commission's executive director to "establish procedures for the purchase or lease of facilities, goods, and services and make any purchases, leases, or contracts that are necessary for carrying out the purposes of this chapter...." TEX. GOV'T CODE ANN. § 466.101(a). It should be noted that the Commission has authority to promote the lottery.<sup>1</sup> The Commission regularly procures promotional goods (including, but not limited to, koozies, T-shirts, scratch-off coins, Christmas ornaments, towels, sports bags, etc.) to distribute to lottery players and retailers through contests and direct-sales events. The items promote sales of Texas Lottery products (online and scratch-off lottery tickets) and help to generate and maintain

<sup>1</sup> General Appropriations Act, Art. VII, 78<sup>th</sup> Leg., 2003

A.1.2 Strategy: Marketing, Research, and Promotion ... educate players and provide opportunities to learn about lottery products; ... communicate game information, marketing ideas and operational information to lottery retailers....

A.1.3 Strategy Advertising. Inform adult Texans by mass media (television, radio, newspaper, billboards), point-of-sale materials and merchandising regarding lottery games....

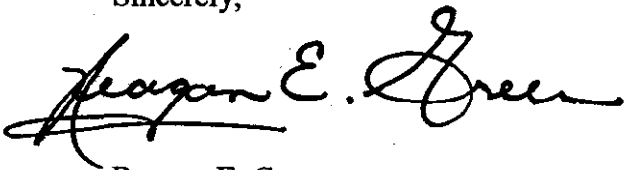
high levels of player awareness throughout the State. The Commission is considering offering promotional goods for sale to the public, Commission employees, and vendors. The offer and ultimate sales transaction of merchandise would be accomplished through different or multiple sales channels including the internet.

Questions

1. Does the Commission have authority to sell on either a cost recovery or for-profit basis promotional goods to the general public, Commission employees and/or vendors with whom the Commission contracts?
2. If so, into what treasury fund or account should the sales proceeds be deposited? Would the Commission be authorized to retain a portion of the sales proceeds to cover administrative costs?
3. What exposure to liability in contract, tort, or otherwise would the Commission have in connection with the sale of promotional goods?

Thank you for your attention to this matter. Should you have any questions, please contact the Commission's General Counsel, Kimberly L. Kiplin, at (512)344-5113.

Sincerely,



Reagan E. Greer  
Executive Director

cc: C. Tom Clowe, Jr., Chairman  
James A. Cox, Jr., Commissioner  
Rolando Olvera, Commissioner  
Gary Grief, Deputy Executive Director  
Kimberly L. Kiplin, General Counsel