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Commissioner



TEXAS LOTTERY COMMISSION

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SEP 15 2005

OPINION COMMITTEE

FILE # ML-44401-05

I.D. # 44401

RQ-0393-GA

September 13, 2005

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

Dear General Abbott:

Pursuant to the authority granted this letter is to request an advisory opinion about the meaning of "minor" in section 466.405 of the Texas Government Code.

The 1991 legislation that created a state lottery contained a section prohibiting a person from selling a lottery ticket to an individual younger than 18 years of age. Acts 1991, 72nd Leg., 1st C.S., ch. 6, § 2 (originally codified at Vernon's Ann. Civ. art. 179g, § 4.02).

The 1991 legislation also contained a section regarding payment of prizes to minors, which provided that "minor" had the meaning assigned by section 141.002 of the Texas Property Code. Acts 1991, 72nd Leg., 1st C.S., ch. 6, § 2 (originally codified as Vernon's Ann. Civ. St. Art. 179g, § 5.04(e)). In 1991, section 141.002 of the Property Code defined a minor, in most cases, as a person under 18 years of age.

In short, the 1991 legislation made age 18 the threshold age for purchasing tickets as well as the threshold age at which the rules regarding payment to minors no longer applied.

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The section prohibiting the sale of a lottery ticket to a person under 18 is now codified as section 466.3051 of the Government Code, and the section governing payments to minors is now codified as section 466.405 of the Government Code. For purposes of the question raised here, amendments to those two sections have not been substantive.¹ There has, however, been a substantive change to section 141.002 of the Property Code. That section now defines a "minor" as a person under 21. Acts 1995, 74th Leg., ch. 1043, § 1; renumbered by Acts 1997, 75th Leg., ch. 165, § 31.01(72).

My question is whether "minor" in section 466.405 of the Government Code now means a person under 21 of age or whether it still means a person under 18 years of age, as it did at the time it was originally enacted.

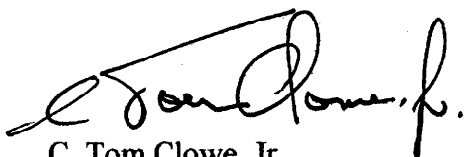
This issue has arisen in the context of a "second-chance drawing" in which a person may mail in a non-winning scratch-off ticket for a chance to win a merchandise prize in a drawing. In regard to merchandise prizes, section 466.405(c) provides as follows:

The director shall pay the cash equivalent of a prize other than prize money if the person entitled to claim the prize is a minor. Payment of the cash equivalent of a prize other than prize money to a minor shall be made as provided by Subsections (a) and (b) of this section.

If "minor" in section 466.405 means a person under 18 years of age, as it did when the provision was enacted, the Lottery Commission may award a merchandise prize to any person who may purchase a ticket. If, however, "minor" now means a person under 21 years of age, the Lottery commission may not award a merchandise prize to a person who is 18, 19, or 20 years old, even though a person who is 18, 19, or 20 years old may purchase a lottery ticket.

Thank you for your attention to this matter. If you need further information please contact Sarah Woelk at (512) 344-5358.

Sincerely,



C. Tom Clowe, Jr.
Chairman, Texas Lottery Commission

¹ The section prohibiting the sale of a lottery ticket to a person under 18 was amended twice in 1993 and once in 1995. Acts 1993, 73rd Leg., ch. 107, § 4.03; Acts 1993, 73rd Leg., ch. 284, § 20; Acts 1995, 74th Leg., ch. 76, § 6.55(2). The section governing payments to minors was amended in 1993. Acts 1993, 73rd Leg., ch. 107, § 4.03(b).