



Debbs Potts Oregon State Lottery Commission Building
500 Airport Road SE
Salem, OR 97301

OREGON STATE LOTTERY COMMISSION MEETING SEPTEMBER 25, 2009

Lottery Commission: Commissioner Steven Ungar, Chair
Commissioner Bill Ihle, Vice Chair
Commissioner Pamela Fogg
Commissioner Amy Lowery
Commissioner LeRon Howland

Lottery Executive Team: Dale Penn, Lottery Director
Larry Niswender, Assistant Director for Support Services
Tim Eaton, Assistant Director for Retail Operations
Carole Hardy, Assistant Director for Marketing
Major Craig Durbin, Assistant Director for Lottery Security

Lottery Staff Present: Ross Armstrong, Law Clerk Intern, Rules & Policies
Cornell Balagot, Product Development Manager
Chuck Baumann, Senior Communications Specialist
Detective Dan Beugli, OSP/Lottery Security
Linda DeBlasio, Senior Executive Assistant to the Commission
Mark Hohlt, Rules and Policies Manager
Brandi Hurtado, Executive Assistant for Marketing
Sergeant Vern Fowler, OSP/Lottery Security
Jason Levine, Law Clerk Intern, Rules & Policies
Mary Loftin, Public Affairs Manager
Marianne Manning, Retail Sales Support Manager
Kathy Ortega, Chief Financial Officer
Louise Plata, Traditional Product Manager
Nancy Rivera, Executive Assistant for Support Services
Brian Sullivan, Mar/Com Manager
Larry Trott, Senior Public Affairs Specialist
Heather Vogelstadt, Assistant Attorney General, Department of Justice

Guest Speakers: Michael Carrier, Board of Directors, SOLV
Sara Ryan, Program Coordinator, SOLV

Invited Testimony: Dana Hepper, Advocacy Director, Stand for Children Organization
Bill Perry, VP of Government Affairs, Oregon Restaurant Assoc. (ORA)
William K. Jaeger, Ph.D., Oregon State University for ORA

Others Present: Steve Bender, Legislative Fiscal Office
Mike Chamberlain, Elmer's Restaurants
Bob Klingman, GTECH
Kevin Krietemeyer, GTECH
KGW and KATU Television
Michael Mills, Attorney at Law
Roger Nyquist, Retailer
Grover Simmons, Independent Employer Association
Representation from Stand for Children
Kara Thallon, ORA
Lottery Retailers

OREGON STATE LOTTERY COMMISSION MEETING

The September 25, 2009, Oregon Lottery Commission Meeting was called to order by Chair Ungar. Chair Ungar stated for the record that Commissioner Howland and Vice Chair Ihle were previously excused from today's meeting but that a quorum was present. Commissioners present for the roll call: Commissioner Lowery, Commissioner Fogg and Chair Ungar.

MINUTES OF THE PREVIOUS MEETING

Presenter: Chair Ungar

The draft minutes of the previous meeting were sent to the Commission for review prior to today's meeting (*Exhibit #1*). Chair Ungar requested comments, if any; no comments or changes to the record were presented. Chair Ungar called for a motion to approve.

Commissioner Lowery moved that the minutes of the Oregon State Lottery Commission Meeting held on August 28, 2009, be approved as final as presented today. Commissioner Fogg seconded the motion. The motion passed by a quorum vote, 3-0.

SOLV of OREGON – ANNUAL PRESENTATION

Presenters: Michael Carrier, the Governor's Natural Resources Policy Director and member of SOLV of Oregon's Board of Directors; and, Sara Ryan, Program Coordinator

Chair Ungar welcomed Michael Carrier and Sara Ryan from SOLV of Oregon to present their annual report to the Commission. Mr. Carrier relayed the Governor's greetings and sincere appreciation to the staff and the Oregon Lottery Commission for the good work it does. Mr. Carrier further expressed his appreciation, on behalf of the Board of Directors of SOLV, for the Lottery's strong support of SOLV and its programs.

Last year, SOLV was commissioned by *Oregon 150* to organize "Take Care of Oregon Days," a sesquicentennial event held in conjunction with SOLV's annual "Down by the Riverside" event in May 2009. SOLV partnered with Rural Development Initiatives and Oregon Volunteers on this project. Over 24,000 volunteered this year for local community projects such as landscaping and cleaning outdoor areas, i.e., community welcome signs, downtown areas, school grounds, and libraries. This was held in conjunction with "Down by the Riverside," SOLV's annual project to clear stream banks of litter and non-native vegetation throughout the state.

Ms. Ryan provided a business overview of SOLV's major projects and events accomplished in the past year. The Commission received the event packets for both "Take Care of Oregon Days" and "Down by the Riverside". (*Promotional items and brochures that were provided by the Lottery were presented.*)

VIDEO LOTTERYSM COMPENSATION RATE – INVITED TESTIMONY

Presenters: Chair Ungar and Director Penn

Chair Ungar recapped the purpose of today's invited testimony at the Commission Meeting. The Commission is currently involved in the administrative rulemaking process to set the compensation rates for Video LotterySM retailers to be implemented in the new Retailer Contract, effective June 27, 2010. A public administrative rule hearing was held on August 18, 2009, at the Salem Armory Auditorium.

Chair Ungar noted that the invited testimony, by Stand for Children and the Oregon Restaurant Association (ORA), represents the primary opposing viewpoints received by the Lottery.

Director Penn relayed the administrative rulemaking process going forward in establishing a Video LotterySM compensation rate for the new Retailer Contract.

Director Penn:

"We have been accepting public comment by email, letters, and other correspondence since the Public Administrative Rule hearing on August 18, 2009.

One thing I need to announce is that later in the meeting the Commission will be asked to adopt a motion to extend the public comment period from Friday, October 16, to Monday, October 19, 2009 at 5:00pm, as the State has established October 16, 2009, as a furlough day and all state offices are closed.

After the public comment period ends on October 19, 2009, it is then my responsibility to review all information received during the comment period and prepare a recommendation to the Commission. At the Commission Meeting on October 30, 2009, the rulemaking process will be at a point where the Commission can discuss their views, make motions, and adopt a commission rate and Retailer Contract. Once the contract is adopted, they will be delivered and explained to each of the Lottery's 3,500+ retailers. The signed contracts need to be in place when the Contract takes effect at the end of June 2010. That is the process that the Lottery will be following on the Retailer Contract.

Much of the discussion you'll hear today will focus on the issue that it is the duty of the Commission to maximize revenue for public programs and to do so in a manner that provides a reasonable rate of return for retailers. That can be a bit of a dilemma because, as the [Oregon] Supreme Court stated, sometimes those issues can be competing goals. It is up to the Commission to try to balance those goals in an effort to produce maximum revenue for the State of Oregon.

There are other statutory mandates that we don't hear as much about that must also be factored in.

Lottery statute mandates that the Director shall continuously review the actions in other states and other nations regarding gambling facilities and gambling operations in general in an effort to make our operation better. There has been some discussion of that in the past, but certainly it is statutorily appropriate for the Commission to consider the analyses of other states and nations with Video LotterySM products and the various rates in other jurisdictions.

Lottery statute also mandates that the Commission be concerned about the convenient location of retail establishments where Lottery games are sold. In looking at the history of the Lottery, I think there are a couple of points to be made. Whatever we do in regulation and in rates or commissions, we want to make sure that we remain a statewide organization and that means that we have to have the financial capability to have retail establishments in Burns and in Gold Beach, just

as we would in Tigard and downtown Portland. Those are very different kinds of locations, different pressures, and different business costs with many other operating variables.

Not only is it important to be in every community but also our locations should be convenient in that community. I think the goal that clearly was put forward is to have the capability to be statewide and to be close by to any of our residents who wish to engage in different Lottery games. Now these directives are goals that I think have been followed by the Commission in the past but they are goals that don't get very much press or review.

With that overview of the procedure and where we go after today, I think we're ready to have invited testimony."

Chair Ungar called forward Dana Hepper, Advocacy Director of Stand for Children, to testify.

Dana Hepper:

"Stand for Children trains concerned citizens to ask decision-makers like you to ensure that children have the opportunities that they need to thrive. Today I'm here with about 50 Stand for Children members on behalf of over 2,650 Oregonians who signed a petition urging you to decrease commission rates in order to maximize revenues to public schools and other vital services. I ask that the people who are here today to deliver this petition stand while I read it:

'We the undersigned Oregonians support investing more Lottery dollars in education. We ask that the Lottery Commission uphold its mandate to maximize profits for the public good. Nearly 24 percent of Lottery proceeds go to tavern owners and other Lottery retailers despite state and external studies that show that 15 percent would be adequate. In these tough economic times our schools simply cannot afford to miss out on the dollars the Lottery could provide. Please invest in Oregon schools by adopting Stand for Children's proposal to phase in a two-tiered rate structure that provides all retailers with a higher percentage of Lottery proceeds until they have recouped their costs then a lower percentage of Lottery proceeds on additional revenue. After costs have been recouped the percentage paid to retailers should not exceed 16 percent.'

This morning I'll briefly share a little bit of background on the research that has been done on commission rates. I'll tell you about our proposal specifically, and I'll make the case for why the Oregon Lottery Commission should reasonably and responsibly decrease commission rates to retailers in this contract period."

Stand for Children's presentation materials are attached in file: Sep 2009

OSL Commission Meeting - Invited Testimony":

Exhibit A - Dana Hepper's Oral Testimony

Exhibit B - Outlook Newspaper Article dated Sep 22, 2009

Exhibit C - Oregonian Newspaper Article dated Sep 24, 2009

Director Penn:

"I am sure there are people here that would like to individually respond to the invited testimony but our meeting will not allow for testimony other than the two invited speakers. I want to remind everyone that we have three weeks or so for people to submit anything they want as written comment."

Chair Ungar:

"I just want to thank you for your testimony and also thank you for the show of people from Stand for Children who are very, very concerned, justifiably - and I would say understandably - for our school systems. I have children, a five-year-old who goes to kindergarten in the public schools and I have an eight-year-old in the second grade and I'm there pretty much five days a week and see the results of not enough funding and so I personally know that this is not some kind of a trick on the part of anybody. These are real needs and I guess I want to just assure the Stand for Children organization, as we are assuring everyone else that poses the question to us, we are looking at this very, very carefully. We have thousands of pages of things to read, but we pledge to read material and make responsible decisions and use our best judgment. Just like you say, a Lottery retailer has to use judgment in deciding whether to spend one amount of money or another amount of money in setting up shop, we have to use our judgment in folding into one formula or a formula that would be workable in a way to run this entire enterprise so that it maximizes revenue for the people of the state, which means, in turn, so that it can assist education and the environment and economic development as you mentioned. So, I just want to make it very clear that we take this very seriously. We cannot talk with each other outside of 1-to-1 conversations because of public meeting laws and quorum requirements. We'll have an opportunity to do that in about a month when we meet at the October 30th Commission Meeting when, most likely anyway, we will make a decision on this issue. In the meantime, we may call on you, your organization, and others that have spoken to some of the issues that you raise because some, I think, are either new issues or they've been stated in a different way, at least in my memory thinking back five years ago when I was sitting in another seat at this table. We have to look at it in terms of the situation we're in now and it is a little bit more complex than five years ago because of the smoking ban and because of the current economic downturn. But thank you again, and we appreciate your interest and your help along with everybody else for the Commission to consider all of these things."

Ms. Hepper thanked the Commission and offered to respond to any questions she could help with.

Chair Ungar called forward Bill Perry of ORA, to testify. Due to the time allotted for testimony, Mr. Perry deferred to William Jaeger, PH.D., Oregon State University. Dr. Jaeger presented an in-depth economic study prepared for ORA titled, *Economics and Compensation Study of Oregon's Video Lottery Program*. Mr. Perry provided a copy of his oral testimony, in writing, to the Commission.

Bill Perry:

"I just want to point out that on Option 2 of my testimony there is also an affiliated description in the back side of it which I call a two-tier 'dead zone,' for lack of a better term. I'll just say that I would appreciate it if you guys would look at that. It probably needs more explanation I was going to do in my testimony, but I think that's a key factor. I think you cannot affect the blended rate but change some of the internal tiers and actually increase sales without impacting the blended rate. Actually the blended rate will go down and increase sales for everybody. I think that I agree with Stand for Children, I think the objective is to get more money to the schools, I just don't think it is necessarily an "us" versus "them". I think we can improve the system and make it work better without negatively impacting businesses. I'd be happy to answer questions after you have taken a look at it."

Oregon Restaurant Association's presentation materials are attached, as follows:
Exhibit D – Copy of Bill Perry's Testimony
Exhibit E – Dr. Jaeger's Economics and Compensation Study (34 pgs)
Exhibit F – Hard copy of Exhibit E, the slide presentation (8 pages)

[End of Invited Testimony]

GOVERNANCE MATTERS and DIRECTOR'S REPORT

Presenter: Director Penn

Director Penn presented Chair Ungar with a letter from Governor Kulongoski reappointing him as the Chair of the Oregon State Lottery Commission for an additional one-year term. Director Penn thanked Chair Ungar for his direction and guidance as the Chair of the Lottery Commission and congratulations were offered.

[End of Governance Matters and Director's Report Section.]

RULES AND POLICIES

Presenters: Director Penn; and, Mark Hohlt, Rules and Policies Manager

• **PDX Kiosk Rules**

The Commission received the proposed rule amendments for the Lottery kiosk at the Portland International Airport (PDX) for review prior to the meeting (*Exhibit 2*). The amendments address operational issues associated with the sale of Lottery tickets for traditional games as well as the payment of prizes by Lottery employees. A public hearing was held. No one appeared at the hearing to testify and no public comments were received. The amendments were reviewed by the Attorney General and recommended by the Director for adoption.

In response to a question from the Commission, Mr. Hohlt defined "VISA® cash card" as the method of payment for Lottery prizes at the PDX kiosk. There were no further comments. Chair Ungar called for a motion.

Commissioner Fogg moved that the administrative rules, as listed on the agenda and in the materials presented today, be amended as proposed,

to be effective October 1, 2009. Commissioner Lowery seconded the motion. The motion passed by a quorum vote, 3-0.

- **Amend Rules to Replace "Online" with "Draw"**

The Commission received the proposed amendments to 36 rules in 15 divisions, and the repeal of 13 rules in one division, prior to the meeting for review (*Exhibit #3*). This rulemaking does five main things: (1) replaces the term "on-line" with "draw" to avoid confusion with internet games; (2) repeals BreakopenSM rules to be effective June 27, 2010; (3) repeals an obsolete rule on minimum sales; (4) authorizes the Director to enter into alternative compensation agreements for the future sale of new types of Lottery games; and, (5) clarifies the meaning of the terms "Traditional Games," "Video LotterySM Games" and "Video LotterySM Game Terminals."

A public hearing was held; no one appeared at the hearing and no public comments were received. The amendments were reviewed by the Attorney General and are recommended for adoption by the Director. There were no questions. Chair Ungar called for a motion.

Commissioner Lowery moved that the administrative rules, as listed on the agenda and in the materials presented today, be amended or repealed as proposed, to be effective October 1, 2009, with the exception that the repeal of the BreakopenSM rules be effective June 27, 2010. Commissioner Fogg seconded the motion. The motion passed by a quorum vote, 3-0.

- **Salary Freeze and Furlough Policy**

The Commission received the proposed Salary Freeze and Furlough Policy for review prior to the meeting (*Exhibit #4*). The policy sets forth a pay freeze and requires up to 10 furlough days (unpaid days) for all Lottery employees according to specified salary levels. The policy is proposed for a one-year period, aligning it with the Lottery's annual budgeting process. This policy is essential due to the economic crisis in the state. It is a part of the Governor's "Shared Sacrifice" approach and generally mirrors the state's plan for furlough days. The policy was reviewed by the Attorney General and is recommended for adoption by the Director.

There were no questions from the Commission. Commissioner Fogg stated on a personal level her appreciation for the efforts of staff. Chair Ungar concurred and called for a motion.

Commissioner Lowery moved that the Salary Freeze and Furlough Policy presented today, and recommended by the Director, be adopted by the Oregon State Lottery Commission as an Internal Operating Policy of the Oregon State Lottery to be effective from September 20, 2009 through June 30, 2010, and that the Lottery's existing Salary Freeze Policy Number 2.102 be repealed effective September 20, 2009. Commissioner Fogg seconded the motion. The motion passed by a quorum vote, 3-0.

- **Extension of Public Comment Period**

The Commission received the proposed motion to extend the public comment period for review prior to the meeting (*Exhibit #4*). As advised by the Attorney General's Office, Mr. Hohlt proposed that the public comment period for the Video LotterySM compensation rate rulemaking process be extended from Friday October 16, 2009, to Monday October 19, 2009 at

5:00 p.m., as October 16, 2009 was selected as a state furlough day and the Lottery Offices will not be open to receive public comment.

Chair Ungar moved that the public comment period on the Video LotterySM compensation rate rulemaking process be extended from Friday, October 16, 2009, until 5:00 p.m. on Monday, October 19, 2009, as October 16, 2009 is a state furlough day and the Oregon Lottery will be closed. Commissioner Lowery seconded the motion. The motion passed by a quorum vote, 3-0.

[End of the Rules and Policies Section.]

SUPPORT SERVICES

Presenters: Larry Niswender, Assistant Director for Support Services; and, Kathy Ortega, Chief Financial Officer

The Commission received the August 2009 Financial Statement for review prior to the meeting (*Exhibit #6*). Ms. Ortega reviewed the Financial Statement with the Commission.

- **Monthly Financial Statement for August 2009**

Operating Statement

For month ended August 31, 2009, net profit of \$41,365,129 on a budget of \$40,765,865 resulted in \$599,264 over budget.

Year-to-date through August 31, 2009, net profit of \$82,305,358 on a budget of \$80,542,057 resulted in \$1,763,301 over budget.

There were no questions or comments on the Financial Statement from the Commission. Ms. Ortega requested Commission approval of the August 2009 Financial Statement for the record.

Chair Ungar moved that the Oregon State Lottery Financial Statement for month ended August 31, 2009, be approved for the record as presented today. Commissioner Fogg seconded the motion. The motion passed unanimously by a quorum vote, 3-0.

- **Procurement Activity Report**

The Commission received a copy of the Procurement Activity Report for review prior to the meeting (*Exhibit #7*). AD Niswender reported that 23 items are on the report. Twelve contracts were executed this month, all within budget, for an approximate total of \$1.8 million.

- **FY10 Business Plan**

The Commission received a copy of the FY10 Business Plan for review prior to the meeting (*Exhibit #8*). Director Penn recommended approval based upon the FY Lottery Budget that was approved by the Commission at the June 2009 Commission meeting.

Commissioner Fogg moved that the Oregon State Lottery Commission adopt the FY2009-2010 Business Plan for the Oregon State Lottery as

presented today. Commissioner Lowery seconded the motion. The motion passed unanimously by a quorum vote, 3-0.

[End of the Support Services Section.]

RETAIL OPERATIONS and MARKETING

Presenters: Carole Hardy, Assistant Director for Marketing; Tim Eaton, Assistant Director for Retail Operations; Louise Plata, Traditional Product Manager; and, Brian Sullivan, MarCom Manager

- **Business Year Comparisons Report** *(AD Eaton)*

The Commission received the Business Year Comparisons Report for week ending Saturday September 19, 2009, prior to the meeting for review (*Exhibit #9*). The Report compares product sales from the most recent week to sales in the same week last year. AD Eaton did not report on individual product sales, due to time constraints, however, the Comparisons Sales Report is available at info.oregonlottery.org. The Commission offered no comments or questions.

- **Marketing Update** *(AD Hardy)*

- **Holiday Scratch-itSM Tickets to Launch in October 2009** *(Ms. Plata)*

"Night Cap Bear" and "Moosle Toe" are \$1.00 gift tag tickets with a top prize of \$1,000
"Jingle Bell Crossword" is a \$2.00 ticket with a top prize of \$15,000
"Winter Wonderland" is a \$10.00 with ten top prizes of \$20,000
"Life of the Holiday Party" is a \$2.00 ticket with a top prize of \$12,000

Ms. Hardy stated that the Lottery's holiday Scratch-itsSM are always high-selling tickets. The full media campaign will be presented at the October Commission Meeting.

- **Thanksgiving Raffle** *(Mr. Sullivan)*

Tickets for the Lottery's second RaffleSM game, the Thanksgiving RaffleSM, go on sale on Sunday October 4. Mr. Sullivan presented the campaign media for TV, radio, and print of sale ads. It was noted that tickets for Lottery's first RaffleSM game, the St. Patrick's Day RaffleSM, sold out in just 12 days.

[End of the Retail Operations and Marketing Section.]

OTHER BUSINESS

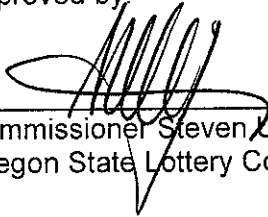
There was no other business brought before the Commission. Chair Ungar adjourned the September 25, 2009, Lottery Commission Meeting. The next meeting is scheduled on October 30, 2009, at the Debbs Potts Oregon State Lottery Commission Building.

Respectfully submitted,

Linda DeBlasio

Linda DeBlasio
Senior Executive Assistant to the Commission
Lottery Director's Office

Approved by:



Commissioner Steven Ungar, Chair
Oregon State Lottery Commission

* **"Sep 2009 OSL Commission Meeting – Invited Testimony" available @ info.oregonlottery.org**

TOTAL PAGES - 58:

- Exhibit A – Stand for Children, Dana Hepper, Oral Testimony (7 pages)*
- Exhibit B – Outlook Newspaper Article dated Sep 22, 2009 (3 pages)*
- Exhibit C – Oregonian Newspaper Article dated Sep 24, 2009 (2 pages)*
- Exhibit D – Oregon Restaurant Assoc., Bill Perry, Written Testimony (4 pages)*
- Exhibit E – Dr. Jaeger's Economics and Compensation Study (34 pgs)*
- Exhibit F – Hard copy of Exhibit E, slide presentation (8 pages)*

Sep 2009 OSL Commission Meeting exhibits are available from Public Affairs at 503.540.1016, or on-line at the following sites:

info.oregonlottery.org: Agenda, Minutes, Financial Statement, and B.Y. Comparison Sales Report
lottery.webcenter@state.or.us: Oregon Administrative Rules, and Lottery Internal Operating Procedures