

Performance Review

West Virginia Lottery Commission

**The Legislature Should Consider Revisiting
the Statute Regarding the West Virginia
Lottery Commission's Administration
of the Gamblers Treatment Program**

**The Lottery Commission Inappropriately
Requested Information Concerning
Lottery Employees Who May Be Clients
of the Problem Gamblers Help Network**



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John Sylvia
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January 7, 2008

The Honorable Edwin J. Bowman
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The Honorable Jim Morgan
House of Delegates
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1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Performance Review Act, we are transmitting a Performance Review of the *West Virginia Lottery Commission*, which will be presented to the Joint Committee on Government Operations and Joint Committee on Government Organization on Monday, January 7, 2008. The issues covered herein are "*The Legislature Should Consider Revisiting the Statute Regarding the West Virginia Lottery Commission's Administration of the Gamblers Treatment Program*" and "*The Lottery Commission Inappropriately Requested Information Concerning Lottery Employees Who May Be Clients of the Problem Gamblers Help Network.*"

We transmitted a draft copy of the report to the West Virginia Lottery Commission on December 14, 2007. We held an exit conference with the West Virginia Lottery Commission on December 19, 2007. We received the agency response on December 28, 2007.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

JS/tlc

Joint Committee on Government and Finance

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Executive Summary

Issue 1: The Legislature Should Consider Revisiting the Statute Regarding the West Virginia Lottery Commission’s Administration of the Gamblers Treatment Program.

The Lottery Commission has had some influence on the advertising of the Problem Gamblers Help Network of West Virginia.

According to West Virginia Code §29-22A-19, the Lottery Commission is to provide funds for a compulsive gambling treatment program. Furthermore, according to Code, the Lottery Commission is to provide oversight into the distribution of funds. The Lottery Commission has had some influence on the advertising of the Problem Gamblers Help Network of West Virginia. According to Code, the Lottery Commission had no authority to influence the advertising of the Problem Gamblers Help Network. Under the current arrangement, the Lottery Commission administers the contract to operate the Problem Gamblers Help Network. The Legislative Auditor finds that this influence could be considered a conflict of interest since the Lottery Commission’s mission is to maximize revenues for the State of West Virginia by administering and marketing lottery gaming. It is the opinion of the Legislative Auditor that it was not the intention of the Legislature for the Lottery Commission to administer, provide oversight or directly be involved in the operation of a gambling treatment program.

The Lottery Commission does not have the right to receive the names of Lottery Commission employees who may have contacted the Problem Gamblers Help Network without a court order.

Issue 2: The Lottery Commission Inappropriately Requested Information Concerning Lottery Employees Who May Be Clients of the Problem Gamblers Help Network.

The Lottery Commission requested confidential information from the Problem Gamblers Help Network concerning Lottery employees who may be clients of the Network. West Virginia Code §29-22-11c states Lottery Commission employees are not to play West Virginia Lottery games. The Code applies exclusively to Lottery tickets and does not include other types of gambling. The Problem Gamblers Help Network is not allowed or required to release confidential client information. West Virginia Code §27-3-1 defines the information acquired by the Problem Gamblers Help Network as confidential therefore, the Network appropriately denied the request of the Lottery Commission. The Lottery Commission does not have the right to receive the names of Lottery

Commission employees who may have contacted the Problem Gamblers Help Network without a court order.

Recommendations

1. *The Legislative Auditor recommends that the Legislature should consider reevaluating the current arrangement between the Lottery Commission and First Choice Health Systems and determine its future intent in what state entity should oversee the compulsive gamblers treatment program.*

2. *The Legislative Auditor recommends that the Lottery Commission should discontinue its review and approval of advertising by the Problem Gamblers Help Network.*

3. *The Legislative Auditor recommends that the Legislature consider requiring the Lottery Commission to discontinue the use of its logo on advertising and other materials disseminating from the Problem Gamblers Help Network.*

4. *The Legislative Auditor recommends that the Lottery Commission refrain from making future requests for client information from the Problem Gamblers Help Network or any other entity providing gambling addiction counseling or intervention.*

Review Objective, Scope and Methodology

This is a Performance Review of the West Virginia Lottery Commission as authorized by §4-2-5 of the West Virginia Code.

Objective

The objective of this performance review was to determine if the West Virginia Lottery Commission influenced the operation of the Problem Gamblers Help Network of West Virginia.

Scope

The scope of this review includes activities from 1999 to 2007.

Methodology

Information compiled in this report has been acquired through the West Virginia Code, Acts of the Legislature, documentation submitted by the former Executive Director of the Problem Gamblers Help Network of West Virginia to the Joint Committee on Government and Finance and survey results from a study conducted by the Association of Problem Gambling Services Providers. The report included correspondence with Legislative Services legal counsel, the West Virginia Lottery Commission, and a survey conducted by the Legislative Auditor of members of the North American State and Provincial Lotteries. Every aspect of this review complied with Generally Accepted Government Auditing Standards (GAGAS).

Issue 1

The Legislature Should Consider Revisiting the Statute Regarding the West Virginia Lottery Commission's Administration of the Gamblers Treatment Program.

Issue Summary

It is the opinion of the Legislative Auditor that it was not the intention of the Legislature for the Lottery Commission to directly be involved in the operation of a gambling treatment program.

According to West Virginia Code §29-22A-19, the function of the Lottery Commission in relation to the Compulsive Gambling Treatment Fund is to provide oversight into the distribution of funds. Upon reviewing evidence submitted by the former Executive Director of the Problem Gamblers Help Network, the Legislative Auditor concludes that the Lottery Commission has had some influence on advertising of the Problem Gamblers Help Network. Under the current arrangement, the Lottery Commission administers the contract to operate the Problem Gamblers Help Network. It is the opinion of the Legislative Auditor that it was not the intention of the Legislature for the Lottery Commission to directly be involved in the operation of a gambling treatment program.

West Virginia Code §29-22A-19 created a Compulsive Gambling Treatment Fund from the Lottery Commission's administrative expense account to provide funds for compulsive gambling treatment programs.

Lottery Commission Funds Are Statutorily Mandated to Be Used for Compulsive Gambling Treatment

In 1999, West Virginia Code §29-22A-19 created a Compulsive Gambling Treatment Fund from the Lottery Commission's administrative expense account to provide funds for compulsive gambling treatment programs. As required, the Department of Health and Human Resources (DHHR) developed criteria for a treatment program for compulsive gamblers. West Virginia Code §29-22A-19 states:

...the department, in conjunction with the commission, shall develop a formula for the distribution of available funds which will result in an equitable distribution among programs submitted which meet the eligibility criteria for grants as developed by the department.

The Lottery Commission entered into a contract with First Choice Health Systems to operate the Problem Gamblers Help Network of West Virginia (PGHN). The Lottery Commission contract expired with First Choice in 2003. From 2003 until June 30, 2007, the Lottery Commission and the Department of Health and Human Resources entered into an

The Legislative Auditor finds that this influence could be considered a conflict of interest since the Lottery Commission's mission is to maximize revenues for the State of West Virginia by administering and marketing Lottery gaming.

Interagency Agreement that DHHR would administer a grant funded by the compulsive gambling treatment fund to First Choice to operate the Problem Gamblers Help Network. As of July 1, 2007, DHHR ceased to administer the Problem Gamblers Help Network. Thus, the Lottery Commission has resumed administering the contract with First Choice to operate the Problem Gamblers Help Network.

The Lottery Commission Has Had Some Influence on the Problem Gamblers Help Network

In June 2007, the former Executive Director of the Problem Gamblers Help Network of West Virginia stated to the Joint Committee on Government and Finance that she documented 20 to 30 different instances over the past 7 years where the West Virginia Lottery Commission has attempted to control the content or timing of advertising; alter data; obtain confidential records and interfere with operation of the Problem Gamblers Help Network. This time-frame would have been while the Lottery administered the program, and also during the period of time that DHHR was overseeing the program. Documented correspondence shows that the Commission specifically attempted to influence the PGHN in two areas:

The Legislative Auditor examined the evidence submitted by the former Executive Director of the Problem Gamblers Help Network and concludes that the Lottery Commission influenced advertising of the Problem Gamblers Help Network.

1. Advertising of the Problem Gamblers Help Network (discussed below), and
2. Attempting to Obtain Confidential Client Information (discussed in detail in Issue 2).

The Legislative Auditor finds that this influence could be considered a conflict of interest since the Lottery Commission's mission is to maximize revenues for the State of West Virginia by administering and marketing Lottery gaming.

The Lottery Commission Influenced Advertising of the Problem Gamblers Help Network of West Virginia

The Legislative Auditor examined the evidence submitted by the former Executive Director of the Problem Gamblers Help Network and concludes that the Lottery Commission influenced advertising of the Problem Gamblers Help Network, most notably pertaining to the

Lottery Commission's logo. The Deputy Director of Marketing for the Lottery Commission sent an email dated October 12, 2001 to the former Executive Director of the Problem Gamblers Help Network expressing concerns over the advertising inadequately portraying the role of the Lottery Commission. The entire text follows:

The Lottery continued to influence advertising even though the gambling hotline was being overseen by DHHR.

I think that it would be safe to say that the Lottery would like more "prominent" credit for the Program than just the tag line at the end.

Instead of "A West Virginia program line..." in the lead, why not say, "The number of calls to the West Virginia Lottery's hotline for people affected..."

The following are examples showing that the Lottery continued to influence advertising even though the gambling hotline was being overseen by DHHR.

In a letter dated August 29, 2003, the Director of the Lottery Commission indicated to the Director of the Division on Alcoholism and Drug Abuse within DHHR that the \$50,000 to fund an advertising campaign called the Significant Other Billboard Advertising Campaign was contingent upon the Lottery Commission's approval of content.

On two separate occasions in 2006 and 2007, the Lottery Commission had the final decision about the size of the Lottery Commission's logo on advertisements.

On two separate occasions in 2006 and 2007, the Lottery Commission had the final decision about the size of the Lottery Commission's logo on advertisements. The email on June 16, 2006 from the Lottery Commission stated:

The logo looks good to me. I'm printing them and having them taken to [the Secretary] at 10:00 a. m. If he doesn't approve, I will call you immediately.

In addition, television advertisements did not meet the approval of the Lottery Commission. The entire text of the February 7, 2007 email follows:

Your emails came through fine on the home computer. I'm going to look at the DVD too, but from my first review, the Lottery logo is way too small – much smaller than the yellow page logo. Also, the dark colors fade into the dark background. Have then make the Lottery logo all white and enlarge it, please.

Funds for the PGHN were earmarked exclusively for the Network but the Lottery is requiring that its logo be visible which could be viewed as another form of advertising.

The current contract which went into effect on July 1, 2007 contains language that requires the PGHN to receive the Lottery Commission's approval of advertising.

At least 28 of the states with publicly funded programs rely on their respective health departments or comparative social service agencies to oversee or administer those programs.

The arrangement in West Virginia is not the norm as compared to the arrangement with other states that have a gaming agency along with a publicly funded gambling addiction program.

The Legislative Auditor questions the Lottery Commission's involvement in the PGHN's advertising. In addition, the Commission in essence is getting free advertising by requiring the placement and size of its logo, and appears to be a conflict of interest. Funds for the PGHN were earmarked exclusively for the Network but the Lottery is requiring that its logo be visible which could be viewed as another form of advertising. Lottery Commission officials maintain that their advice and assistance was requested by the PGHN. It must be noted that previous contracts and grant agreements with PGHN did not include language requiring the Lottery Commission's approval of advertising. The current contract which went into effect on July 1, 2007 contains language that requires the PGHN to receive the Lottery Commission's approval of advertising.

Most States With State-Sponsored Gaming Do Not Oversee or Administer Gambling Addiction Help Programs

The Legislative Auditor contacted the President of the Association of Problem Gambling Service Administrators to obtain the results of a survey conducted in March 2006. The survey consisted of 35 lottery states with publicly funded compulsive gamblers help programs. At least 28 of the states with publicly funded programs rely on their respective health departments or comparative social service agencies to oversee or administer those programs. **According to the President, there are only two other states currently having similar roles as the West Virginia Lottery Commission.** The Ohio Lottery directly funds services but is not mandated by legislation. Colorado Lottery provides "in-kind" support and contributes funds to a helpline service but has no oversight. Thus, the arrangement in West Virginia is not the norm as compared to the arrangement with other states that have a gaming agency along with a publicly funded gambling addiction program. In the remaining four states, separate problem gambling councils provide administrative structure over problem gambling programs.

In addition to the Association of Problem Gambling Service Administrators survey, the Legislative Auditor undertook its own survey of all 42 United States members of the North American Association of State and Provincial Lotteries (NASPL). The goal was to determine how many other states that require the lottery logo on advertising by the state supported gambling addiction program similar to West Virginia. Of the 29 respondents, the Legislative Auditor found only 7 states that require the lottery logo on materials disseminating from the problem gamblers

program. Thus again, the involvement of the West Virginia Lottery Commission is not the predominant arrangement.

The Legislative Auditor Concludes That the Legislature Did Not Intend for the Lottery Commission to Be Directly Involved in the Operations of a Gambler's Addiction Program

Based on West Virginia Code §29-22A-19 the Lottery Commission does not have the authority to be directly involved in the operations of a gambling treatment fund.

The Legislative Auditor questioned the involvement of the Lottery Commission with operation of the Problem Gamblers Help Network. Thus, the Legislative Auditor sought a legal opinion from Legislative Services questioning whether it was the intention of the Legislature for the Lottery Commission to administer, provide oversight, or be directly involved in the operations of a gambling treatment program or to strictly provide funds. The legal opinion from Legislative Services stated:

The Lottery Commission has the authority to develop a formula for the distribution of funds, as well as authority that the grants are being spent for the purposes intended. However, based on West Virginia Code §29-22A-19 the Lottery Commission does not have the authority to be directly involved in the operations of a gambling treatment fund.

It is the opinion of the Legislative Auditor that it was not the intention of the Legislature for the Lottery Commission to administer, provide oversight or directly be involved in the operation of a gambling treatment program.

As stated in Code, the Lottery Commission is to provide oversight into the distribution of funds. The Lottery Commission had no authority to influence the advertising or any other operations of the Problem Gamblers Help Network. It is the opinion of the Legislative Auditor that it was not the intention of the Legislature for the Lottery Commission to administer, provide oversight or directly be involved in the operation of a gambling treatment program.

The Legislature Should Consider Determining By Statute Which Entity Administers the Compulsive Gambler Treatment Program

The Legislative Auditor has determined that the current intent is for the Lottery Commission to not be involved in administering the contract with the Problem Gamblers Help Network. The current contract will expire on June 30, 2008. The Legislature should consider modifying

The Legislature should consider modifying the Lottery Commission's statute to clarify its intention as to which entity should administer the compulsive gambler program.

the Lottery Commission's statute to clarify its intention as to which entity should administer the compulsive gambler treatment program. The Legislature could choose to require the Lottery Commission to oversee the program, DHHR, or another state entity – although DHHR was criticized in the Legislative Auditor's report by the Post Audit Division, which identified problems with DHHR monitoring the grant to the Problem Gamblers Help Network. **In addition, the Legislative Auditor recommends that the Lottery Commission discontinue its review and approval of the Problem Gamblers Help Network's advertising, unless the Legislature modifies the Code or any relevant legislative rules stating such.**

Conclusion

The Lottery Commission funds the compulsive gambling treatment fund as required by West Virginia Code §29-22A-19. In 2007, the former Executive Director of the Problem Gamblers Help Network submitted documentation to the Joint Committee on Government and Finance showing that the Lottery Commission attempted to control the content or timing of advertising, obtain confidential records and interfere with operations of the Problem Gamblers Help Network. After reviewing the documentation provided by the former Executive Director, the Legislative Auditor concluded that the Lottery Commission did influence the advertising of the Problem Gamblers Help Network. Furthermore, in a legal opinion from Legislative Services, the Lottery Commission had no authority to be directly involved in the operations of a gambling treatment program.

The Legislative Auditor concluded that the Lottery Commission did influence the advertising of the Problem Gamblers Help Network.

Recommendations

1. *The Legislative Auditor recommends that the Legislature should consider reevaluating the current arrangement between the Lottery Commission and First Choice Health Systems and determine its future intent on what state entity should oversee the compulsive gamblers treatment program.*
2. *The Legislative Auditor recommends that the Lottery Commission should discontinue its review and approval of advertising by the Problem Gamblers Help Network.*
3. *The Legislative Auditor recommends that the Legislature consider requiring the Lottery Commission to discontinue the use of its*

logo on advertising and other materials disseminating from the Problem Gamblers Help Network of West Virginia.

Issue 2

The Lottery Commission Inappropriately Requested Information Concerning Lottery Employees Who May Be Clients of the Problem Gamblers Help Network.

Issue Summary

According to West Virginia Code §27-3-1, the Lottery Commission does not have the right to receive the names of Lottery Commission employees who may have contacted the Problem Gamblers Help Network.

The Lottery Commission requested confidential information from the Problem Gamblers Help Network concerning Lottery Commission employees who may be clients of the Network. First Choice Health Systems refused to release the confidential information of its clients. According to West Virginia Code §27-3-1, the Lottery Commission does not have the right to receive the names of Lottery Commission employees who may have contacted the Problem Gamblers Help Network.

The Lottery Commission Requested Confidential Information From the Problem Gamblers Help Network of West Virginia

The Deputy Director of Security for the West Virginia Lottery Commission requested from the Problem Gamblers Help Network of West Virginia (PGHN), the number of those who identified themselves as employees of the Lottery Commission.

On March 31, 2006, the Deputy Director of Security for the West Virginia Lottery Commission requested information about callers to the Problem Gamblers help-line. Specifically, the employee requested from the Problem Gamblers Help Network of West Virginia (PGHN), the number of those who identified themselves as employees of the Lottery Commission. According to the Director of the Lottery Commission, this request came as a result of comments made by the former Executive Director of the PGHN following her presentation to the Finance and Audit Committee of the Lottery Commission. The complete text of the e-mail dated March 31, 2006 is as follows:

Of the 248 if any of the callers identifying themselves as employed in the Gaming industry (Racetrack, VLT, and Lottery), how many of these callers are specifically identified as “lottery” employees. Also, you agreed to specify what type of gaming addiction they reported. You should be aware it is a violation of state law for any lottery employee or household members to play any WV Lottery game and we

are, also, pursuing this investigation from that standpoint. Thank you for your cooperation on this matter of mutual concern.

The legal opinion verified that the Code applies exclusively to Lottery tickets and does not include other types of gambling.

The Deputy Director of Security for the Lottery Commission was correct when stating that Lottery Commission employees are not to play West Virginia Lottery games. West Virginia Code §29-22-11c specifically states that:

...no ticket may be purchased by and no prize received by or awarded to any officers or employees of the commission or any member of their immediate household.

The Legislative Auditor requested a legal opinion from Legislative Services to determine whether Lottery employees were restricted from playing just Lottery ticket gaming or whether the Code restricted other types of state supported gambling such as video lottery and racing. The legal opinion verified that the Code applies exclusively to Lottery tickets and does not include other types of gambling.

PGHN is not allowed or required to release information disclosing the names of clients who have contacted the Problem Gamblers Help Network of West Virginia as the information is confidential.

The Problem Gamblers Health Network Is Not Allowed or Required to Release Confidential Client Information

The Problem Gamblers Help Network appropriately refused to release the requested information to the Lottery Commission. However, PGHN did provide the Lottery Commission with descriptive information found in annual reports. PGHN is not allowed or required to release information disclosing the names of clients who have contacted the Problem Gamblers Help Network of West Virginia as the information is confidential. **Thus, the Lottery Commission should not have requested the information, and does not have the authority to receive the information.** According to Legislative Services legal counsel, West Virginia Code §7-3-1 defines confidential information as:

...communication and information obtained in the course of treatment or evaluation of any client or patient are confidential information.

The work of the Problem Gamblers Help Network would clearly fall under this category since it is attempting to assist or act as a “first responder” to individuals with a possible addiction to gambling. From the text of the Lottery Commission’s e-mail request, the Commission was pursuing

an investigation of Lottery employees who may be improperly playing Lottery sponsored games. Thus, if the PGHN would have identified clients who were Lottery employees, the Lottery may have requested names of clients that are considered confidential. According to Legislative Services legal counsel, the Lottery does not have the authority to request and receive names from the PGHN, and would only be able to do so with a court order. The legal opinion is quoted as follows:

According to Legislative Services legal counsel, the Lottery does not have the authority to request and receive names from the PGHN, and would only be able to do so with a court order.

Lottery Commission officials may only receive the names of Lottery Commission employees who have contacted the Problem Gamblers Help Network of West Virginia or any other individuals or entity providing counseling services for addiction to gambling pursuant to a court order based on a finding that the information sought is sufficiently relevant to a proceeding to outweigh the importance of maintaining confidentiality.

Thus, the Problem Gamblers Help Network appropriately did not provide confidential client information to the Lottery Commission. The Legislative Auditor concludes that the Lottery Commission should refrain from making further similar requests from the Problem Gamblers Help Network or any other gambling addiction counseling entities. In a letter to the Legislative Auditor, the Director of the Lottery Commission indicated that he did not consult with counsel until **after** requesting the confidential information from PGHN. After the Director reviewed his actions with counsel, he was advised that the Lottery Commission could not request or possess the information. **As a result, the Lottery Director instructed the Deputy Director of Security to cease his efforts to obtain names.**

The Legislative Auditor concludes that the Lottery Commission should refrain from making further similar requests from the Problem Gamblers Help Network or any other gambling addiction counseling entities.

Conclusion

The Lottery Commission requested confidential patient information concerning Lottery employees who may be clients of the Problem Gamblers Help Network. West Virginia Code §29-22-11c prohibits Lottery Commission employees or any member of their immediate household to purchase a Lottery ticket and receive a prize from a Lottery ticket. A legal opinion from Legislative Services concludes that West Virginia Code §29-22-11c applies exclusively to Lottery tickets and does not include video lottery machines. The PGHN refused to release the confidential information to the Lottery Commission. According to West Virginia Code §27-3-1, the Lottery Commission does not have the right to receive the names of Lottery Commission employees who may have

contacted the Problem Gamblers Help Network without a court order.

Recommendation

4. *The Legislative Auditor recommends that the Lottery Commission refrain from making future requests for client information from the Problem Gamblers Help Network or any other entity providing gambling addiction counseling or intervention.*

Appendix A: Transmittal Letter

WEST VIRGINIA LEGISLATURE *Performance Evaluation and Research Division*

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John Sylvia
Director

December 14, 2007

John C. Musgrave, Director
West Virginia Lottery Commission
P.O. Box 2067
312 MacCorkle Ave, SE
Charleston, WV 25327

Dear Director Musgrave:

This is to transmit a draft copy of the performance audit of the West Virginia Lottery Commission. This report is scheduled to be presented during the January 2008 interim meeting of the Joint Committee on Government Operations and the Joint Committee on Government Organization. We will inform you of the exact date and time, once it becomes available. It is expected that a representative from your agency be present at the meeting to orally respond to the report and answer any questions the committees may have.

We need to schedule an exit conference to discuss any concerns you may have with the report. We would like to have the meeting the week of December 17. Please contact Miranda Nabers to schedule an exact time. In addition, we need your written response to the report by December 26, 2007 in order to be included in the final report.

We request that your personnel not disclose the report to anyone not affiliated with your agency. Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script that reads "Denny Rhodes".

Denny Rhodes
Research Manager

Joint Committee on Government and Finance

Appendix B: Agency Response



P.O. BOX 2067
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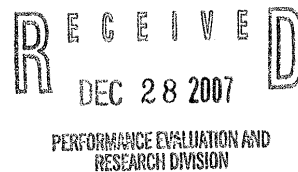
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Joe Manchin III
Governor

John C. Musgrave
Director

December 28, 2007

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Subject: **PERFORMANCE AUDIT OF THE WEST VIRGINIA LOTTERY COMMISSION**

Dear Mr. Rhodes:

I am in receipt of the draft copy of the performance audit of the West Virginia Lottery Commission and have reviewed the same. Please accept this as the Lottery's written response to draft copy of the audit to be included in the final report.

The Lottery Commission appreciates the thought and work that went into the draft of the performance audit. However, the Lottery Commission does take issue with portions of the draft performance audit report. Consequently, I have listed the Lottery Commission's objections to the draft performance audit report below:

1. The Lottery Commission objects to the draft performance audit report because many of the statements contained therein are based upon incomplete information. Specifically, the auditor(s) failed to question the Lottery Commission or its employees about the issues included in the audit. Further, the Lottery Commission objects to the format of the draft performance audit report with regard to the bold headings and issue summaries which could mislead the audience if the report is not read in its entirety.
2. The Lottery Commission objects to the inclusion of the statements in Issue 1 made by the former executive director of the Problem Gamblers Help Network. The Lottery Commission also objects to the statements that it influenced the Problem Gamblers Help Network and its advertising.

The substance of the performance audit under Issue 1 states only that the Lottery retained oversight over the size of its logo on advertisements by the Problem Gamblers Help Network. The Lottery Commission further states that it advised the Executive Director of the Problem Gamblers Help Network with regard to advertising mediums but only upon the solicitation of advice by the former Executive Director. The Problem Gamblers Help Network did not object to the Lottery's review of the logo or advice given regarding advertising and the Lottery Commission does not believe this rises to level of influencing the Problem Gamblers Help Network or its advertising. **The performance audit report does not contain any proof that the Lottery Commission influenced the content of the Problem Gamblers Help Network of West Virginia advertising,**

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or regulated, limited or restricted when and where to advertise the Problem Gamblers Help Network.

3. The Lottery objects to the summary conclusion statement that “under the current arrangement, the Lottery Commission administers the contract to operate the Problem Gamblers Help Network.... It is the opinion of the Legislative Auditor that it was not the intention of the Legislature for the Lottery Commission to administer, provide oversight or directly be involved in the operating of a gambling treatment program.” “Where the language of a statute is free from ambiguity, it[s] plain meaning is to be accepted and applied without resort to interpretation.” Syl. Pt. 2, Crockett v. Andrews, 172 S.E.2d 384 (W. Va. 1970); Syl. Pt. 4, Syncor International Corp. v. Palmer, 542 S.E.2d 479 (W. Va. 2001). However, where the law is not clear, interpretations as to the meaning and application of the governmental official charged with the administration and enforcement of the applicable statutory law of this State should be accorded deference if such interpretations are consistent with the legislation's plain meaning and ordinary construction. See State ex rel. ACF Indus. v. Vieweg, 514 S.E.2d 176 (W. Va. 1999).

Through the State Purchasing Division, the Lottery Commission began contracting with a third-party provider, First Choice Health Systems, Inc., to provide administration of the Problem Gamblers Help Network on July 1, 2007. The Lottery Commission reviews and processes First Choice’s invoices for review and approval by the State Auditor’s Office. West Virginia Code §29-22A-19 states that “the department, in conjunction with the commission, shall develop a formula for the distribution of available funds. . . .” The Lottery Commission is required by law to work with the Department of Health and Human Services to ascertain the amount of funding needed to fully support services for the existence of a program, or programs, for persons with a gambling problem. As such, the Lottery Commission is required to possess information not considered medically or clinically confidential to justify its appropriation of funds which is set with minimum and maximum range amounts. Further, the Lottery Commission believes it has a fiscal responsibility to ensure the funding is spent appropriately on the Problem Gamblers Help Network. **Accordingly, the Lottery Commission itself requested an audit of the program when it was determined that only 16-18% of the Problem Gamblers Help Network’s budget was going toward treatment and over 80% of the budget was utilized for outreach and administrative costs.**

4. The Lottery Commission objects to the following statements: “The Lottery Commission contract expired with First Choice in 2003” and “Thus, the Lottery Commission has resumed administering the contract with First Choice to operate the Problem Gamblers Help Network.” **The Lottery Commission held no contract with First Choice or the Problem Gamblers Help Network prior to 2007. The State contract was between the Department of Health and Human Services and First Choice from 2000 through 2003 and grants were awarded by DHHR between 2003 and 2007.**
5. The Lottery Commission objects to the inclusion of the statement by the former Director of the Problem Gamblers Help Network of West Virginia made in June, 2007 regarding allegations that

the Lottery Commission attempted to control the content or timing of advertising, alter data, obtain confidential records and interfere with the operation of the Problem Gamblers Help Network and the following statement set forth in the audit report: "This time-frame would have been while the Lottery administered the program, and also during the period of time that DHHR was overseeing the program." **The Lottery Commission denies the allegations set forth by the former director of the program. In addition, the Lottery Commission denies that it has administered the Problem Gamblers Help Network.** In July, 2007, it contracted with a third-party administrator through the State Division of Purchasing to administer the Problem Gamblers Help Network. Prior to that time, the Lottery Commission did not have a contract regarding the Problems Gamblers Help Network, although DHHR did from 2000 to 2003. The Lottery Commission is required by law to work with the Department of Health and Human Services to ascertain the amount of funding needed to fully support services for the existence of a program, or programs, for persons with a gambling problem.

6. The Lottery Commission objects to the reference to the letter dated August 29, 2003 from the Director of the Lottery to the Division of Alcoholism and Drug Abuse within DHHR. First, the communication is not directed to First Choice or the Problem Gamblers Help Network. Second, the entire communication and its context is absent from the report. In August, 2003, the funding for the program as requested by DHHR was not at the maximum allowed by law. The Problem Gamblers Help Network's former executive director sought increased funding after the Commission's initial appropriation in July, 2003. A multitude of projects and program activities were presented to the Lottery Commission, all requesting additional funding. The Significant Other Billboard campaign was one of many requests, and supplemental funding was approved by the Lottery Commission for this program and many others. In the letter itself, it lists a bullet point that states: "\$50,000 to fund the Significant Other Billboard Advertising Campaign (contingent upon the Lottery's approval of content)." (See attached August 29, 2003, Correspondence). The reference to approve the content for the Significant Other Billboard Advertising pertained solely to the review and approval of the Lottery logo.

The Lottery Commission stands by its requirement that the Problem Gamblers Help Network credit the Lottery for funding by placing the Lottery logo on its paid advertising. The Lottery logo alone does not garner *free advertising*, as it does not contain a call to action or promote playing the games. The logo is simply a symbol of a State agency responsible for regulating legal gaming in West Virginia. Assurance that the Lottery Commission is credited for the funding of the program is the only reason for the Lottery's review of the Problem Gamblers Help Network's advertising. **To the public, the logo signifies that the Problem Gamblers Help Network is the official, state supported program. The logo may not be displayed by private practitioners or other self-help groups that may exist to treat problem gambling.**

7. The Lottery Commission does not object to the review of surveys by the auditor. However, the Lottery Commission objects to the inferences drawn by the auditor in response to the survey findings. **The fact that the West Virginia Lottery Commission is not in the majority with**

regard to its role with publicly funding compulsive gamblers help programs does not mean that the West Virginia Lottery Commission's role is inappropriate or improper.

The Ohio Lottery directly funds its problem gambler's program without being mandated by the legislature, which means that its involvement with the program is not restricted. The United States Supreme Court has held that when the Government appropriates public funds to establish . . . a program, it may define the contents and limits of that program. Rust v. Sullivan, 111 S. Ct. 1759 (1991); Planned Parenthood of South Carolina, Inc. v. Rose, 361 F.3d 786 (4th Circ. 2004).

8. In the Conclusion section of Issue 1, the Lottery Commission again objects to the inclusion of the statement by the former director of the Problem Gamblers Help Network that the Lottery attempted to control the content or timing of advertising, alter data, or interfere with the operations of the Problem Gambler's Help Network. The Lottery Commission denies that the primary content, or message, of the Problem Gambler's Help Network's advertising was questioned or altered. As the funding entity and as an integral component of the Commission's corporate responsibility, the Lottery requires legible credit for its endeavors. The practice of acknowledgement for funding and underwriting entities is a standard business practice.

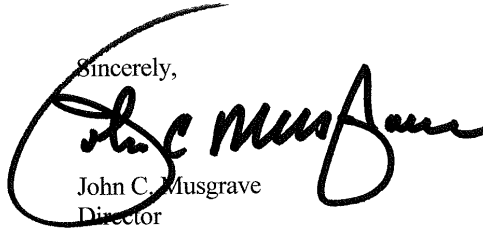
The Problem Gambler's Help Network's former executive director holds a Bachelors Degree in Social Work, and, as such, solicited advice from Lottery employees regarding media buying and graphic arts. **The former executive director frequently called upon the Lottery Commission's deputy director for marketing to provide input regarding media placement and purchasing.** The deputy willingly gave advice regarding the following: One medium (outdoor billboards) was not adequate to reach all potential clients; paid media should be avoided during elections as avails (spots or placements) were difficult to obtain and that no rate discounts were given at such time; and that legitimate phone directory advertising or listings were imperative for a program that relied upon a toll-free number as its primary source of contact with the public. (See attached statement by the Deputy Director of Marketing).

9. The Lottery Commission does not object to Recommendation 1 and requests that if an objection is maintained regarding the presence of the State Lottery's logo, Recommendations 2 and 3 be consolidated to state only that the Lottery Commission should discontinue its review of its logo on the advertising by the Problem Gamblers Help Network because the Lottery Commission did not review and approve the actual content of the advertising itself.
10. The Lottery Commission requests the following statement be inserted at the beginning of the Issue Summary under Issue 2: "In a public Lottery Commission meeting, the former executive director of the Problem Gamblers Help Network informed the West Virginia Lottery Commission and members of the public that Lottery employees had contacted the Problem Gamblers Help Network seeking treatment for problem gambling. As a result of the former executive director's statements and the Lottery Commission's knowledge that

it was against the law for a Lottery employee to gamble on lottery games, the Lottery Director requested information from the Problem Gamblers Help Network concerning Lottery employees who may be in violation of the applicable statute.” The auditor represented to the Lottery Commission that the former director’s announcement at a public meeting that lottery employees had contacted the Problem Gamblers Help Network was inappropriate and the Lottery Commission requests that such a statement be incorporated into the audit report.

11. The Lottery Commission agrees that the Deputy Director of Lottery Security, at the direction of the Lottery Commission, requested the information pertaining to the alleged Lottery employees who called the Problem Gamblers Help Network prior to the Director consulting with legal counsel and canceled the request immediately after receiving advice of counsel. Consequently, the Lottery Commission does not object to Recommendation 4 under Issue 2.

Sincerely,



John C. Musgrave
Director

JCM/mlr



P.O. BOX 2067
CHARLESTON, WV 25327

PHONE: 304-558-0500
FAX: 304-558-3321

Bob Wise
Governor

John C. Musgrave
Director

August 29, 2003

Mr. Stephen S. Mason, LICSW, CAC, Director
Division on Alcoholism and Drug Abuse
West Virginia Department of Health and Human Resources
350 Capitol Street, Room 350
Charleston, WV 25301-3702

Dear Mr. Mason;

This letter will serve to memorialize the West Virginia Lottery's acceptance of the Bureau of Behavioral Health Services and Health Facilities' proposal for an additional \$241,000 to fund increased services related to the Problem Gamblers Help Network Grant.

The proposed increase in the scope and funding for the Compulsive Gambling Treatment Fund does not require an addendum to the Interagency Agreement, dated 24 February 2003, (attached) as the annual financial request falls within the parameters of language set forth in the Interagency Agreement, *Section II, C: Obligations of the West Virginia Lottery. ...the Commission will appropriate at least three hundred thousand dollars, and no more than one million, five hundred thousand dollars.*

As Lottery Director, I am authorizing an additional \$241,000 in funding for Fiscal Year 2004 for the following projects:

- \$50,000 to offer outpatient treatment funding to clients who are without alternate payer nor means to self-pay for care
- \$25,000 to offer limited outpatient treatment funding, up to three sessions each, to loved ones of problem gamblers who are without alternate payer nor means to self-pay care.
- \$1,000 to compensate professional program clinicians for no show *ASST* referrals

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Mr. Stephen Mason, August 29, 2003
Additional Funding for Problem Gambling Program
Page 2

- \$10,000 to support creation of Operation Grow Gamblers Anonymous
- \$30,000 to fund production of Public Service Announcements to encourage responsible gambling
- \$30,000 to fund production of Public Service Announcements to discourage gambling among West Virginia's youth
- \$10,000 to fund the start-up of the West Virginia Council on Problem Gambling
- \$50,000 to fund the Significant Other Billboard Advertising Campaign (contingent upon the Lottery's approval of content)
- \$30,000 to fund the broadcast advertising campaign for women with gambling problems
- \$5,000 to fund additional production of brochures on problem gambling for the state's four licensed racetracks

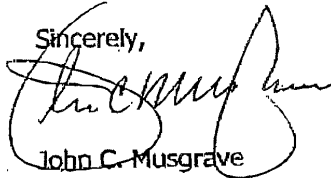
AD
out of 400

AD
out of 400

This funding shall be in addition to the \$500,000 annual amount previously approved for distribution to the Bureau's from the Compulsive Gambling Treatment Fund.

If you need further documentation concerning this appropriation, please contact my Deputy Director for Marketing, Libby White, at 558-0552.

Sincerely,



John C. Musgrave
Director

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P.O. BOX 2067
CHARLESTON, WV 25327

PHONE: (304) 558-0500
FAX: (304) 558-3321

Joe Manchin III
Governor

John C. Musgrave
Director

December 21, 2007

Ms. Miranda Nabers, Research Analyst
Legislative Auditor's Office
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Blvd., East
Charleston, WV 25305-0610

Dear Ms. Nabers;

In fiscal year 2000, when DHHR began its contract with First Choice, the Racetrack Video Lottery Act was the only law specifying funding for a West Virginia program for persons with a gambling problem. Starting the program was a monumental task, and we – DHHR, Lottery and First Choice - contributed our help and expertise in whatever manner possible to make the program work. By August 2000, the hotline was up and ready for callers.

I hold a degree in Journalism from the P.I. Reed School at WVU and have graduate hours in Communications from Marshall. I have worked in private and public sector advertising for many years, and I was the director of advertising for the State's Tourism Division prior to employment with the Lottery. The former executive director of the Problem Gambler's Help Network frequently called upon my experience during the early years of the program. I readily gave advice when asked concerning media purchasing.

One example of such advice was to not purchase paid media during large elections. Media buying is more of a negotiation or bidding art than a simple financial transaction. During elections, media outlets have more bidders than they have available placements. Therefore, the highest rate possible is charged unless one has a long-term contract in place. Even at other times, there is a skilled technique to purchasing media – a fact that you may confirm with an outside professional with experience in the field.

In late fiscal year 2005, the Lottery researched use of its contract with the Charles Ryan & Associates agency to help the program receive better rates with media procurement. Creative content was not a part of this concept. Our legal counsel determined that the program funds could not be used in this manner,

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Miranda Nabers, Page 2
December 21, 2007

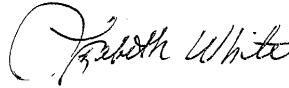
and the idea was dropped. The attached email from Ms. Moran-Cooper states that she thought it was a good idea.

I have offered only advice regarding media placement and purchasing as solicited by the former executive director of the program. As you are aware, I did review First Choice's advertising for confirmation of the presence of a legible Lottery logo.

In addition, the West Virginia Lottery has created and placed television and print advertising to support the program and its endeavors using our advertising budget funds. I have included a letter from Ms. Moran-Cooper that thanks Director Musgrave for the Lottery's advertising support, for your review.

If you have further questions or concerns, please feel free to contact me.

Sincerely,



Lizabeth C. White
Deputy Director for Marketing

Attachments: Email dated May 24, 2004
Letter dated May 20, 2003

Libby White

From: Mia Moran-Cooper [miamorancooper@citynet.net]
Sent: Monday, May 24, 2004 12:36 PM
To: Libby White
Subject: advertising

by the way, it was a good idea to see if we could benefit from lottery pr contracts...

----- Original Message -----

From: Libby White
To: 'Mia Moran-Cooper'
Sent: Monday, May 24, 2004 12:03 PM
Subject: RE: all is well

Hi,

John Musgrave signed the letter, and I have received a photocopy. It was mailed to Steve Mason. I asked for a response to indicate receipt, in the letter, also.

So, if you have any issues or questions, you may want to touch base with Steve or Kristi Pritt. You will need to do your own advertising, though. Lottery can't do it and have it count according to how law reads....

Thanks,
Libby

-----Original Message-----

From: Mia Moran-Cooper [mailto:miamorancooper@citynet.net]
Sent: Monday, May 24, 2004 8:06 AM
To: lwhite@wvlottery.com
Subject: all is well

Libby thanks for your message Friday eve...we were out on a stroll with Cana and it was a relief to hear the good news...appreciate all the work you did on this. I will let rest of staff know to watch for confirmation letter.

We are off on her first "road trip" tomorrow. Going to accompany my husband on a two-day business trip to Elizabethtown, Kentucky...

Mia

12/20/2007

**The Problem Gamblers Help Network of West Virginia
8 Capitol Street, Suite 600, Charleston, WV 25301**

RECEIVED
MAY 2 2003
WV LOTTERY

pc: Libby

May 20, 2003

John Musgrave, Director
West Virginia Lottery
PO Box 2067
Charleston, WV 25327

Dear Mr. Musgrave:

Thank you for providing television advertising to promote the lottery's problem gambling help-line. The ads were tremendously successful. As soon as they aired in April, that month's call volume skyrocketed to 77 callers! That represents a 47% increase over calls in March and a far cry from the early days when it took us 10 months to take our first 180 calls! The dramatic increase is evidence that the television ads worked: People called who had never heard of us in the past. I also want to tell you that numerous professionals around the state commented to me on how well done the ads were! Will the West Virginia Lottery continue to run those ads on statewide television?

Since starting the help-line on August 1, 2000 through today's date, we have helped 1200 callers. Their demographic data is included for your reference. As you can see, the West Virginia Lottery is generously funding help for many who report problems with bingo, sports betting, on so on.

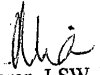
Keith Whyte, Executive Director, National Council on Problem Gambling, has commented that although the West Virginia program is less than three years old, it is "on the leading edge and a center of excellence in the problem gambling field." In fact, at the upcoming national conference in Louisville, I have been asked to present a workshop titled "Almost Heaven: Analysis of Help-line, Assessment and Outcome Data from the Continuum of Care Approach in West Virginia. Last year, after a similar presentation, I received calls from the New Hampshire Lottery and the Oregon Gambling Treatment Program, both wanting to know how we did so much! Mr. Musgrave, the West Virginia Lottery has a program of which you can be proud!

On August 1st, we reach our 3rd anniversary. I would like to invite you to be our guest of honor at a reception that day. Governor Bob Wise has tentatively agreed to attend as well. Area professionals who have had a role in our success will also be invited to attend.

If you accept our invitation, we will work with your schedule, as well as the Governor's, in order to set the time. We could do it as an early morning reception, such as 8am to 9:30am, one at mid-morning such as 10am-11:30am or a lunchtime one such as 11:30am to 1pm. I will contact your secretary shortly to see if you can attend and what time you prefer.

The West Virginia Lottery has demonstrated a true concern for gambling addicts, regardless of their game of choice. Thank you for recognizing their problem and helping do something about it!

Sincerely,


Mia C. Moran, LSW, Director

CC: Governor Bob Wise

