

James A. Gow, Jr.
Chairman

C. Tom Glowe, Jr.
Commissioner



TEXAS LOTTERY COMMISSION

Anthony J. Sadberry, Executive Director

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OPINION COMMITTEE

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July 16, 2007

FILE # ML-45268-07
I.D. # 45268

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ - 0602 - GA

Dear General Abbott:

As chairman of the Texas Lottery Commission (the commission), I am seeking your opinion about the commission's authority under article III, section 47, of the Texas Constitution.

In recent years several state lotteries have offered raffle-style lottery games.¹ The commission is reviewing the possibility of offering such a game in Texas as well as the

¹ See, e.g., <http://lottery.state.de.us/raffle2006.html> (Delaware Raffle);
<http://www.calottery.com/Games/Raffle/> (California's Million Dollar Raffle);
<http://www.flalottery.com/inet/games-milRaffleSearchMain.do> (Florida Millionaire Raffle);
<http://www.galottery.com/stc/mediacenter/pressDetail.jsp?id=3469777> (Georgia Millionaire Raffle);
<http://www.illinoislottery.com/Raffle/> (Illinois' St. Patrick's Day Millionaire Raffle);
http://www.in.gov/hoosierlottery/main/media_room/pressdata.asp?pressid=1121 (Indiana's Holiday Raffle);
http://www.kylottery.com/milliondollar_howplay.html (Kentucky's Million Dollar Draw);
<http://www.mdlottery.com/resources/Countdown%20Rules.doc> (Maryland's Countdown to Millions);
http://www.michigan.gov/lottery/0,1607,7-110-812_43902---,00.html (Michigan Millionaire Raffle);
<http://www.lottery.state.mn.us/numbers.html#Raffle> (Minnesota Millionaire Raffle);
http://www.molottery.com/aboutourgames/promotions/dream_draw/details.shtm (Missouri's 20th Anniversary Dream Draw);
[http://www.state.nj.us/lottery/games/1-9_million\\$_.htm](http://www.state.nj.us/lottery/games/1-9_million$_.htm) (New Jersey's Million Dollar New Year);
http://www.nylottery.org/ny/nyStore/cgi-bin/ProdSubEV_Cat_1297952_SubCat_1297953_NavRoot_320.htm (New York's Raffle to Riches);
<http://www.ohiolottery.com/games/raffle/riches.html> (Ohio's Raffle to Riches);
<http://www.lottery.ok.gov/january252007.htm> (Oklahoma's First Anniversary Raffle);
<http://www.palottery.state.pa.us/lottery/cwp/view.asp?a=3&Q=479697&PM=1&lotteryNav=|29736|> (Pennsylvania Millionaire Raffle);
http://www.sceducationlottery.com/promotions/promotions_raffle.aspx (South Carolina's Carolina Millionaire Raffle).

possibility of participating in a multi-state raffle-style lottery game. Therefore, I am requesting an advisory opinion as to whether the commission has authority to operate this type of game.

The Texas Constitution requires the legislature to pass laws prohibiting "lotteries and gift enterprises." Tex. Const. art. III, § 47(a). See Penal Code ch. 47 (various statutory prohibitions against gambling activities). In 1991 the voters adopted an exception to this general rule by voting to amend the constitution to authorize the state "to operate lotteries."² Tex. Const. art. III, § 47(e), H.J.R. 8, Acts 1991, 72d Leg., 1st C.S. at 1113. Pursuant to that constitutional amendment, the legislature established the Texas Lottery Commission and gave the commission broad authority in regard to lottery games in Texas. Gov't Code chs. §§ 467.101, 466.014.

The commission currently offers both on-line games, such as Lotto Texas and Texas Two Step, as well as instant (scratch off) games. See generally 16 Tex. Admin. Code ch. 401, subch. D (lottery game rules). Lottery Commission rules define the term "on-line game" as:

A lottery game which utilizes a computer system to administer plays, the type of game, and amount of play for a specified drawing date, and in which a player either selects a combination of numbers or allows number selection by a random number generator operated by the computer, referred to as Quick Pick.

16 Tex. Admin. Code § 401.301(27). The proposed raffle game comports with that definition of on-line game. Tickets would be sold at licensed lottery retail locations that have access to a computer system that administers play, and plays would be for a specified drawing date. A raffle-style game would differ from the on-line games currently offered by the commission in that there could be no duplicate tickets and in that there would be a limited number of tickets available.³ These are the features that make the game more like a traditional raffle.

Although the proposed raffle-style game meets the commission's definition of "on-line game," I am seeking clarification regarding the commission's authority to operate the game in light of language in previous Attorney General opinions about the scope of the commission's authority.

²The voters had previously adopted two other exceptions to the general constitutional prohibition. One amendment, adopted in 1980, allows "bingo games" conducted by certain types of organizations. Tex. Const. art III, § 47(b), (c); S.J.R. 18, Acts 1979, 66th Leg., at 3221. The other amendment, adopted in 1989, allows "charitable raffles" conducted by certain types of organizations. Tex. Const art. III § 47(d); H.J.R. 32, Acts 1989, 71st Leg., at 6427.

³In a raffle-style game, all selections would be made by a random number generator. Apart from the Megaplier feature of the multi-state game Mega Millions, all other on-line games operated by the commission allow a player either to select numbers personally or rely on a random number generator.

Two Attorney General opinions have addressed the scope of the constitutional provision allowing the state to operate "lotteries." One concluded that the legislature could not authorize video lottery machines. Op. Tex. Att'y Gen. No. 103 (2003). The other concluded that the legislature could not authorize slot machines. Op. Tex. Att'y Gen. No. DM-302 (1994). Both opinions concluded that the constitution permitted the state to operate only games that were consistent with the 1991 voters' conception of a state lottery.

The 2003 opinion set out various dictionary definitions of the term "lottery" as follows:

Webster's Third New International Dictionary defines "lottery" as "[a] scheme for the distribution of prizes by lot or chance; esp., a scheme by which prizes are distributed to the winners among those persons who have paid for a chance to win them, usually as determined by the numbers on tickets as drawn at random from a lottery wheel." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1338 (1969). Other recent popular dictionaries accord with this definition. See, e.g., AMERICAN HERITAGE DICTIONARY 1034 (4th ed. 2000) ("lottery" is "[a] contest in which tokens are distributed or sold, the winning token or tokens being secretly predetermined or ultimately selected in a random drawing"); NEW OXFORD AMERICAN DICTIONARY 1010 (1st ed. 2001) ("lottery" is 'a means of raising money by selling numbered tickets and giving prizes to the holders of numbers drawn at random'). *Black's Law Dictionary* defines "lottery" as a "method of raising revenues, especially state-government revenues, by selling tickets and giving prizes (usu. large cash prizes) to those who hold tickets with winning numbers that are drawn at random." BLACK'S LAW DICTIONARY 959 (7th ed. 1999).

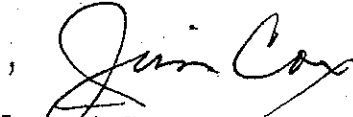
The opinion then stated that those definitions "reflect the common public understanding of the term 'lottery' as it was considered by the voters in 1991." Op. Tex. Att'y Gen. No. GA-103 at 6. Certainly, the proposed raffle-style game is consistent with those definitions. Nonetheless, I am requesting an opinion to clarify the meaning of a statement in the 1994 opinion that the term "state-operated lotteries" would have to be "understood to be a specific activity, and not to mean the entire class of activities to which bingo and raffles also belong." Op. Tex. Att'y Gen. No. DM-302 at 10.

The statement was part of a lengthy discussion leading to the conclusion that the 1991 constitutional amendment giving the state authority to operate "lotteries" did not use the term "lotteries" in the same broad sense as in the constitutional prohibition against "lotteries and gift enterprises." The opinion concluded that the 1991 amendment created a limited exception to the general prohibition, like the exceptions for the specific activities of "bingo games" and "charitable raffles." In light of the conclusions in GA-103, that statement may be read as an illustration of the point that the 1991 amendment is

to be interpreted narrowly, not to mean that the various activities can have no overlapping features, particularly since all three activities involve the drawing of numbers to determine winners. However, because I wish to be certain that the commission acts within its constitutional and statutory authority, I am seeking your opinion in this matter.

Thank you for your attention to this matter. If you need additional information, please contact Kim Kiplin, General Counsel of the Lottery Commission, at (512) 344-5105.

Sincerely,

A handwritten signature in cursive script, appearing to read "James A. Cox, Jr.", written in dark ink.

James A Cox, Jr.
Chairman, Texas Lottery Commission

cc: Commissioner C. Tom Clowe, Jr.
Anthony J. Sadberry, Executive Director