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Jan 28, 2014

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

RE: Complaint - TX Lottery - Immediate Attention Needed

Dear General Abbott:

As a concerned tax paying citizen of Texas, it is my belief that the Texas Lottery is proposing to add an online (draw) game that would not be in the Commissions authority under Article III, Section 47 of the Texas Constitution. Let me briefly explain the game and why I say this.

About the Proposed Game

The proposed game (ripe for adoption Feb 3, 2014) is Texas Triple Chance. Players will select 7 numbers from a pool of 55 numbers but the Texas Lottery will draw 10 numbers. The Texas Lottery is proposing to play this game 6 nights per week at 10:12 p.m. Tickets cost \$2. For the \$2, players will receive 2 free Quick Picks plus their original set of numbers.

The prize structure - all fixed - preset prize amounts - Match 7 numbers: \$100,000; Match 6 numbers: \$500; Match 5 numbers: \$25; Match 4 numbers: \$5; Match 3 numbers: \$2. However, the jackpot is capped at \$1 million - meaning if more than 10 jackpot winners, it converts to a pari-mutuel payout. There is NO prize pool - it's one on one - player against the TLC.

Problems with the Proposed Game

1. Texas Lottery is a participant in the game
2. Texas Lottery has an interest in the outcome due to all fixed prizes
3. The proposed game is not a traditional "lottery game" as defined by the CA Supreme Court and in an opinion issued by the Illinois Attorney General who ruled the IL Lottery could not play an identically structured game.

The proposed game is not a true "lottery" game because the payouts do NOT depend on how much money was wagered. In the proposed game, when there are no jackpot winners, the Texas Lottery will retain the jackpot prize money. It does not carry forward to be paid to an eventual winner as does traditional lottery "jackpot" games. At the same time, the Texas Lottery may pay some or many low tier winners and the TLC may suffer losses.

State lotteries are designed to never suffer a loss due to the fact that lottery operators typically takes a percentage of monies pooled upfront. The proposed game has no prize pool and is played between two parties - the Texas Lottery and the player who bought a ticket.

I do not believe that Texas voters ever thought or intended for their lottery to become a participant in their own games - **against the players**. But in the proposed game, the Texas Lottery is a player because in each draw, the TLC will either win or lose.

Voters never anticipated when they voted for a lottery that the lottery itself would have an interest in the outcome of any game either. But because of the fixed payouts, clearly the Texas Lottery has an interest in the outcome. Either - a player loses, state wins; or player wins, state loses. This is unlike any traditional “jackpot lottery” game where lotteries generally don’t care who wins simply because they got their money upfront. Now they’ll care.

Jan 2006 - Illinois Attorney General Lisa Madigan Issues an Opinion

I feel this opinion would be applicable to Texas. (File NO. 06-001). It read in part ...

Ms. Madigan wrote: *“The distinction between a lottery and a policy game is based not on the manner of play, but on the nature of the betting involved in playing the games. In a lottery, the operator has no interest or stake in the outcome of the game, but merely awards the prize to the winner or winners. A prize is distributed from the amounts paid in, based on a chance event, to all who win. The operator, who typically takes a percentage off the total amounts pooled, has a financial interest in maximizing the number of players. In contrast, the operator of a policy game has an interest in the outcome of the game. Payouts to winners are not, as in the case of a lottery, structured as a distribution from amounts paid in, but instead are fixed, pre-set payouts. The operator has the chance to retain the wager if it wins, but also risks a loss. Because it pays all winners and suffers all losses, the operator of a policy game is a participant as surely as those who place wagers on the outcome.”*

The California Supreme Court’s Definition of a Lottery

A lottery must involve distribution of one or more prizes, rather than mere bilateral wagering. A prize must be distinguished from a bet between two persons upon an uncertain future event. When two parties - wager against one another on the outcome of a game, they engage only in gaming.”

The understanding and definition of a “lottery” is that prizes are based on sales - it was sold to the People of Texas that the state would take its money off the top and pay the balance of sales to the People in way of prizes. This game, nor the last game added to the mix - All or Nothing - falls under this premise. Both games should be removed from the mix as it is my understanding that this type of “gaming/wagering” is illegal in Texas.

I believe too, that the common public understanding of the term “lottery” - as it was considered by voters in 1991 - was that the lottery would make money and in no way would the lottery ever position itself to suffer any losses. It was a guaranteed “win/win situation.” It was heavily promoted ... from online games, 38% was allocated for public education, 5% to retailers, 7% was operating expenses and 50% would be returned to players in way of prizes.

If by chance the Texas Lottery were to claim that “*the state will not lose,*” then I sincerely hope that the Attorney General will consider the game a “scam” and take the same

action as it would to the public sector for selling a product under false pretenses.

The proposed rule also includes a statement that I feel may be abused. The proposed rule states that the Executive Director "*may issue further directives for the conduct of "Texas Triple Chance" that are consistent with this rule*" This means if Mr. Grief wanted to take the game to every 5 minutes he can once it's in the mix. As the matrix implies, Texas Triple Chance is a Keno style game (7/55/10) unlike traditional lottery games - ie 6/54. Keno is widely known/publicized as the worst odds game for gamblers to play.

Just so that you know, there are 202,927,725 combinations in selecting 7 numbers from a pool of 55. But because the Texas Lottery plans to draw 10 balls, the odds of the game are 1-in-1,691,064.

Questionable State Agency Procedures/Actions

The Texas Lottery Commission proposed this game without permission from the Commissioners. While the Executive Director has the authority to do so, it has not been a practice of the lottery in the past. There was no discussion in Commission meetings.

The rule appeared in the *Texas Register* on Friday, Jan 3, 2014. At the same time, they posted notice for a public comment hearing for Wednesday, Jan 8, 2014 - an unreasonable length of time for a notice. I feel this action was underhanded to say the least. Much like the Kentucky Lottery has done, I feel the Texas Lottery is attempting to sweep this game in under the radar too.

Finally, the Texas Lottery obtained permission to purchase balls and machines for this game some months back without explaining the game. This is the second time the Texas Lottery has made such a move and this to me, is a clear indicator, that it doesn't matter what public comment they receive, it is another done deal. The Administrative Code clearly states that they are to consider public comment prior to adopting a rule. How can anyone say they will consider Public Comment when they have already obtained permission to hire additional staff and the equipment to run such a game?

In Conclusion

Thank you in advance for your attention to this matter. I feel it needs immediate attention as the rule is ripe for adoption on Feb 3, 2014.

Sincerely,

Dawn Nettles
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The Lotto Report