

the LOTTO REPORT

"Watchdogs of the Texas Lottery"

Publisher

Dawn Nettles

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Jan 26, 2005

Marshall Vogt
Public Integrity Unit
Travis County District Attorney
P. O. Box 1748
Austin, TX 78767

RE: Juan Rodriguez Complaint (Jan 7, 2005)

Dear Mr. Vogt:

As requested by Juan Rodriguez, who has signed this letter, we are providing you with additional information. This information was given to the attorneys who may be representing the "cheated winners" and it was suggested that we provide it to you as well.

In the coming days, we'll be sending it to members of the Texas Legislature since they have asked for an explanation regarding the overpayments made to Lotto Texas winners. We feel they should see the conflicting information as well.

Exhibit 1 are excerpts taken from Commission meetings transcripts between May 2001 through Feb 2002. This is when the TLC was proposing to change the rule to guarantee the advertised amount to jackpot winners. You'll see, through these excerpts, that the TLC refutes both the 2002 and 2004 Internal Audit report findings.

Example: "MS KIPLIN: And then finally, clarifying the term "advertised jackpot." At the present time, the Texas Two Step rule, as voted, adopted, and effective, does provide for an advertised jackpot, and that meaning what -- the player has a winning ticket and submits it, and that's what the player will receive, is the advertised jackpot; not the case with Lotto Texas." (July 24, 2001 Commission Meeting)

Example: MS. KIPLIN: Just to be clear, the present rules in place -- the Texas Two Step is an advertised jackpot. We'll continue to pay the advertised jackpot. The Lotto Texas is a jackpot driven by sales. (May 30, 2001 Commission Meeting)

Example: MS. KIPLIN: At this point, that jackpot is an estimated jackpot for the purposes of the Lotto Texas rule at this point. If the Commission votes to adopt and convert it to an advertised, that jackpot amount, once approved by the executive director, is the advertised jackpot. (July 24, 2001 Commission Meeting)

In the excerpts, you'll also see how TLC staff occasionally misled and/or lied to the Commissioners.

Example: MS. CLOUD: Since the -- well, we've had -- we've had a couple of situations where before my time, it didn't happen but since I've been in here, we've been paying what the advertised jackpot is and if the sales came in higher, we've been paying the higher jackpots. Bart, do you want to -- (Nov 8, 2001 Commission Meeting)

Ms. Cloud said, "Since I've been here, we've been paying what the advertised jackpot is and if sales came in higher, we've been paying the higher jackpots." This is an absolute lie. She failed to pay 9 wins at least the amount in the prize pool. See the TLC spreadsheet or The Lotto Report spreadsheet for confirmation.

Example: "MS. KIPLIN: *The change is to make it consistent where it will read "upon validation of the ticket as a winning ticket, the Commission shall pay the claimant the amount due in accordance with Commission procedures."*

That is new language. That language does not now currently exist in 401.302 (F) (2). That language -- the purpose of that language is to make it consistent with, one, the Commission's practice, but also to make it consistent with existing language that's in 401.304 (D) (4). And that language, that is current language, is being amended to make both of these consistent: one, on how we pay instant games, which is 401.302, and then also on how we pay on on-line games, which is 401.304 (D) (4). (April 26, 2001 Commission Meeting) (Exhibit A)

"*In accordance with Commission procedures*" was NOT in 401.304 (D) (4) as Mrs. Kiplin said it was. (See exhibit A)

Exhibit 2 is a new spreadsheet which shows the methodologies used for calculating each jackpot win between 1996 - 2003. See column titled "Pay Code." The definitions for each classification and time lines referencing each rule change is also included on the spreadsheet.

We would strongly urge you to review page 4 of the spread sheet. Here you will see FIVE different ways winners were paid all on one page. Incidentally, Ms. Cloud was the Executive Director at the time these winners were paid. For those wins where the amount in the prize pool and the investment cost was the same exact amount - please know, this is virtually impossible.

Contrary to the Texas Lottery's recent statement in response to the lawsuit filed by Judicial Watch, lottery money IS taxpayer money. Every penny derived from sales of lottery products should be specifically allocated and paid accordingly. There should be no discretionary prize dollars available for them to debate "what to do with it."

The TLC takes 2% from the players share of sales - every draw - while telling players that they return "52% of sales to the players." This is an outright lie. As for what they do with the 2% (reserve), remains unclear.

As it stands today, and just since May 7, 2003, the 2% held by the TLC equates to \$7.3 million in prize money that has not been paid to Lotto Texas players.

Excerpt: *MR. SANCHEZ: I think, in a sense, because they were concerned that the reserve was getting too high and how -- what the discretionary use was going to be. I can see it at that point. Right now, I'm sitting with a reserve of 8 million. I would probably -- given the direction we get from these rules, I probably would start acting and trying to write up some more detailed parameters of ranges of what the reserve -- if the reserve goes in the neighborhood of 10 to 12 million, what to do with the reserve.* (Oct 9, 2001 Commission Meeting)

We'd like to make a few remarks about the 2004 Audit Report that we left with you on Jan 7th. On page 9 of the Dec 2004 audit report, under "Indirect Contribution," it says the indirect contribution consists of "*any amounts allocated from the prize reserve fund.*" Between 1992 - March 2002, the Lotto Texas rule(s) did not say this. (See Exhibit B - (II) A proposed 2001 rule)

The 2002 Audit Report refers to "*varying interpretations and methodologies*" - the 2004 report says nothing about varying interpretations. Why not?

The 2004 audit report says, "*Prior to March 6, 2002, TLC administrative rules did not specify the methods used to calculate the actual amount awarded to a Lotto Texas jackpot prize winner.*" Yes - it did. It clearly stated that prizes amounts would vary, EXCEPT the 4th prize, due to a pari-mutuel calculation and prize amounts are based on the total amount in the prize category. (See Exhibit D - (e) (1) 2001 Proposed rule)

As difficult as it is for us to believe, it appears the TLC would rather have the Legislature and the People believe they had a rule that gave no direction as to how they were suppose to compute prizes amounts.

The audit report says, "*The agency had discretion to determine the exact amount of the actual jackpot prize award.*" No they didn't. They were bound by the "adopted" rules.

Additionally, the history of jackpot prize payments supports the fact that all winners were to receive - at least - the amount in the jackpot prize pool.

Administrative rule, 466.015 said, "*(a) The executive director may propose rules to be adopted by the commission, but the executive directors rules have NO effect until adopted by the commission.*"

Further, adopted rules supercedes ANY internal policies and procedures.

Hopefully, the District Attorney of Travis County will take whatever action is available to you, by law, to protect the citizens of Texas and the State of Texas from the Texas Lottery Commission from its devious modes of operation.

Sincerely,

Juan Rodriguez

Dawn Nettles

Enclosures:

- Exhibit 1: Excerpts from Commission meeting
- Exhibit 2: Spreadsheet
- Exhibits A, B, C, D