

the LOTTO REPORT

"Watchdogs of the Texas Lottery"

Publisher
Dawn Nettles

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P. O. Box 495033
Garland, Texas
75049-5033

Phone: (972) 686-0660
Fax (972) 681-1048
lottoreport@comcast.net

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To All Members of the Texas Legislature:

I would like to bring to your attention another purchase made on August 29, 2003 by the Texas Lottery Commission - three and one half months after they assured the House Investigating Committee that this wouldn't happen again. This time, the amount spent was **\$12.4 million**. The intent of the expenditure was to solve a problem with retailers that could have been solved for FREE and was a problem that the Legislature has refused to allow the TLC to take care of in years past.

Executive Director Greer decided that the TLC was going to sell lottery tickets via self service lottery terminals and increase sales using signage. So, he amended the \$1 billion G-Tech contract on August 29, 2003. His purchase? 1,000 self service lottery terminals (SST's) and 8,000 LED's (display signs).

During the September 11, 2003 Commission meeting, Director Greer explained to the Commissioners that Rider 5 in the appropriation bill allowed for the purchase. I have since learned that the Rider in the appropriations bill was in place to allocate additional funds for the payment of existing contracts to operate the lottery IF sales exceeded the projected comptroller estimates.

The **\$12.4 million** was spent on a NEW contract for services, and was not within the operation of the lottery as it existed at that time.

Under the Commission's own guidelines, and as they testified at the May 15th General House Investigating Committee hearing, and per Sunset recommendations, any purchases over \$1 million are considered major contracts and should be made by the Commission.

During the September meeting, Director Greer described phone calls made to commissioners, "some" key legislators, and the Legislative Budget Board about his plan/idea, but there was no direction nor approval given by the Commissioners for the expenditure. It was never discussed in prior meetings.

Also of importance, during this meeting, Director Greer used the same justification in his **\$12.4 million** SST purchase as did Deputy Director Grief back in May 2003 - both said that it was within their "authority" to make this kind of expenditure and neither needed approval to make such purchases.

Yet Deputy Director Grief acknowledged, on May 15, 2003, that he made a mistake in judgement when he purchased new drawing machines, balls and promotional pieces prior to the end of the comment period and prior to adoption of the rule.

As a result of the **\$12.4 million** expenditure, on December 18, 2003, the Commission proposed a new rule, 16 TAC 401.369 that was published in the *Texas Register* on Jan 2, 2004. To use the SST's - the TLC has to have a rule. This is equivalent to a state starting a lottery then asking the People to vote for a state lottery.

Timeline for Purchase of Self Service Terminals

8/29/03: Option of contract with G-Tech exercised for \$12.4 million to purchase self service terminals (SST's).

8/31/03: End TLC's fiscal year.

9/11/03: Notified Commissioners at Commission meeting of new contract and expenditure for SST's.

12/18/03: Commission proposed SST rule for Public Comment

1/2/04: SST rule published in *Texas Register* for Public Comment

1/9/04: Proposed SST rule posted on TLC website under "Legal" (At my request)

1/27/04: Highly publicized proposed SST rule posted on TLC website

2/1/04: Comment period ends

Does this look and sound familiar? Below is timeline for the purchase of the drawing machines for the lotto matrix change without commission approval or considering public input first:

1/28/03: Purchase Order created for drawing machines

1/31/03: Commission proposed rule for Public Comment

2/11/03: New Lotto balls purchased

2/28/03: Drawing Machines purchased

3/16/03: Public Comment period over - 99% opposed to rule change

3/27/03: Commission approved new lotto rule

I attended the May 15th House General Investigation Committee hearing and appreciated the concerns on how public input was disregarded regarding the early purchase of the balls and machines but was disappointed in that an investigation concerning "considering comment" was never conducted.

I was somewhat hopeful of Deputy Executive Director Gary Grief's response and the committee regarding "*hind sight is 20/20*" and that "*he would re-think the decision next time.*" Unfortunately, as you can see, the people still have no say in the Texas Lottery, and the Executive Director, Deputy Executive Director and General Counsel at the lottery still think they can spend money and change rules however they want with no regard for the "will of the people."

I am here to tell you that the People, by way of a form that was posted on my web site, are appalled that the state would spend taxpayer dollars at this time and in this manner when funds are so desperately needed elsewhere. Between Jan 8th and Jan 12th, I received well over 7000 letters, emails, and forms - most from school teachers - who were angry at me because the first sentence on my form said, "*Self service terminals could be good thing for players and retailers alike.*" They let me know, in no uncertain terms, that retailers didn't need two lottery terminals and the state had better use for the money. In my defense, at the time I wrote the form, I understood the retailers problems and knew that self service terminals was a "raise" for them. Unfortunately, I focused more on the retailers rather than realizing the true financial impact of the TLC's actions in this matter. (I did oppose the rule for two other reasons which is explained towards the end of this letter and so did your constituents.)

Clearly, the People do not believe that the Executive Director of any state agency should have "sole" authority to spend \$12.4 million and especially given the following circumstances:

- (1) The operation of the agency, on the day the decision was made to expend \$12.4 million dollars, did NOT include the operation of self service terminals. The existence of self service terminals is dependent on a rule change, and the commission did not post the rule for public comment until January 2004.

(2) The TLC's main objective in purchasing self service terminals was to lessen the workload of grieving retailers. The Legislature has not allowed the TLC to increase retailers commissions, so this is how the TLC did it "behind your back."

The retailers "major" complaint is the tremendous increase of store transactions required daily without pay. Retailers receive NO pay for checking or cashing winning tickets and because of the rule changes made to online games in the past couple of years, the retailers now have hundreds of thousands of \$2, \$3, \$5 prizes to pay DAILY which they did not agree to when they became lottery retailers. With each rule change, retailers were promised sales would increase but all that increased was their work load because of the increase of low tier prizes associated with the rule changes.

The saddest part of all is that the solution to the TLC's retailer problem was FREE and would have been embraced by retailers and players alike. To solve the "excessive retailer transactions" problems - all the TLC had to do was: (1) change the prize structure on the online games - in other words, get rid of the \$2, \$3, \$4 prizes that players opposed anyway and is causing the excessive transactions, and (2) write a rule or law that says that "players shall bear the sole responsibility of checking their own tickets." Since it's a known fact that lottery terminals and clerks err in checking players tickets, this would have protected the people.

It is one thing for the TLC to tell me one thing and do another, I expect that and it happens all the time. However, I do not think they should be able to play this game with Representatives of the People. For the sake of the People of Texas, please investigate these allegations.

Regarding the proposed SST rule itself - I and roughly 3000 of your constituents respectfully request that you ask the TLC to specify in the new rule EXACTLY where the terminals SHALL be placed in the stores. We need to insure that minors have NO access to gambling devices and the rule is vague and unrealistic on this issue. The terminals have the capabilities to read drivers licenses but the TLC opted to use shut off valves instead - as if clerks are "really" going to observe everyone who uses the terminals. By all rights, it should be mandatory that one has to show a valid ID before purchasing lottery tickets like they do when they purchase beer or cigarettes.

Also, because terminals and clerks are known to err in checking players tickets - this results in players becoming unsuspecting victims to a known flaw and their prizes are going unclaimed. If players are big enough to purchase lottery tickets, then they should be big enough to check their own tickets. This action alone would reduce the daily transactions enormously. The rule does not state the capabilities of the terminals but the TLC has every intention of allowing and encouraging players to check their tickets via the terminals - again, the purpose is to take the load off of the retailers. To me, this is their way of intentionally robbing the People of Texas.

The comment period ends Feb 1, 2004 for proposed rule 16 TAC 401.369. Your constituents, through my web site, have asked for your assistance in this matter. We are asking you because we already know from past experiences that the TLC does not consider public input. I'm not sending you their individual comments this time - I was advised to write one letter instead & here it is.

Sincerely,

Dawn Nettles

cc: Sunset Commission - Karen Latta