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APPENDIX C

MEMORANDUM

TO: Administrative Rules Committee
FROM: Chuck Keller, Director, North Dakota Lottery
RE: North Dakota Admin. Code Article 10-16 Multi-State Lottery
DATE: March 12, 2008

This is a reply to the Legislative Council's February 27, 2008 letter. The answers to questions asked of the Lottery in adopting rules published in the April 2008 supplement to the ND Administrative Code are:

1. The rules do not result from statutory changes made by the Legislative Assembly.
2. The rules do not relate to any federal statute or regulation.
3. The Lottery drafted rules which the Lottery Advisory Commission approved. A notice of public hearing was filed with the Legislative Council on December 28, 2007. Notifications on the public hearings and availability of the proposed rules were publicized in 52 county newspapers during January 2008. The rules were provided to 400 Lottery retailers, Multi-State Lottery Association, and Lottery's online gaming system and ad agency vendors, and were provided to the public upon request. The rules could be reviewed on and downloaded from the Lottery's website.

The Lottery conducted one public hearing in Bismarck - no one attended.

The Attorney General's Office examined and approved the final version of adopted rules as to their legality. The Lottery filed the rules with the Legislative Council.

4. Four people expressed written or oral concern, objection, or complaint for agency consideration on the rules. The attached document "Public Comments through February 14, 2008 on Proposed Rules" summarizes these comments and contains the Lottery Advisory Commission's actions on the comments.
5. The approximate cost of giving public notice, holding a hearing, and developing and adopting the rules (excluding staff time) is:

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Publishing notices of public hearings	\$1,348
Printing & copying rules	500
Mailing rules	500
Holding public hearings	<u>0</u>
Total	\$2,348

6. The purpose of the rules is to clarify rules, make technical corrections, address industry issues, and update rules for the games Hot Lotto and 2by2.
7. A regulatory analysis was not required by NDCC Section 28-32-08.
8. A regulatory analysis or economic impact statement of impact on small entities was not required by NDCC Section 28-32-08.1.
9. A constitutional takings assessment was not required by NDCC Section 28-32-09.
10. Several rules were adopted as emergency rules under NDCC Sections 28-32-03 and 53-12.1-13. These rules relate directly to changes to the Hot Lotto and 2by2 games which were re-launched on January 3 and February 22, respectively.

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Public Comments through February 14, 2008 on Proposed Rules

North Dakota Administrative Code Article 10-16 Multi-State Lottery

1. A December 28, 2007 notification of a public hearing and availability of proposed rules were publicized in 52 daily and weekly newspapers during January 6-12, 2008. A copy of the proposed rules was provided to each member of the Lottery Advisory Commission, 400 Lottery retailers, Scientific Games International, Inc. (online gaming system vendor), H2M (ad agency), and Multi-State Lottery Association. Copies of the proposed rules were available at the public hearing, Lottery's office, and to the public on request. The proposed rules were available to be reviewed on and downloaded from the Lottery's website at www.lottery.nd.us.
2. The North Dakota Lottery conducted a public hearing on February 4, 2008 in Bismarck. Nobody attended the hearing.
3. Written and oral comments related to each chapter of proposed rules:

Chapter 10-16-01 General Rules

A. Page 2 - Section 10-16-01-01(7) (Definitions)

Comment: "Jurisdictions" would be more appropriate than "states" since the District of Columbia and Virgin Islands are not states.

Commission Action: The proposed rule was revised to include "jurisdictions."

B. Page 2 - Section 10-16-01-01(14) (Definitions)

Comments: Generally speaking, I think this kind of provision is forward-thinking based on the recent Canadian problems. However, "or any other act which causes financial harm to a player" at the end of the clause seems pretty broad (which was likely the intent) – but I'm not sure what it is intending to cover and am not sure how much notice this really gives to retailers for enforcement purposes.

Is it clear that "knowingly and intentionally" covers each subclause? Perhaps a colon after "cheats a player", with semicolons dividing each subclause, and the last line to read "or by performing any other act..." Maybe also drop "cheats a player" as that seems redundant to "retailer fraud" and since you're trying to define the whole concept it in the subclauses? Knowingly and intentionally is a pretty tough standard to prove, but seems appropriate to conclude "fraud."

Maybe something like this (and this is not perfect either): "Retailer fraud" means when an owner or employee of a licensed retailer knowingly and intentionally: (1) fails to properly validate the player's winning ticket; (2) fails to pay the player the proper prize amount on a winning ticket; (3) fails to provide the player the proper exchange ticket on a winning multi-draw ticket; or (4) performs any other act that causes financial harm to a player in violation of the rules of the game or the Lottery.

Commission Action: The proposed rule was revised to reflect the recommended definition of "retailer fraud."

Chapter 10-16-02 Retailer

C. Page 7 - Section 10-16-02-01(5) (License application and fee)

Comment: When would the Lottery license a retailer for a lottery promotion? [ND Lottery: For special promotions like the Lottery's "Your Dreams Deserve a Second Chance Promotion" for which tickets are temporarily sold at distinct locations, such as an automobile dealership that is providing financial support to the Lottery.]

Commission Action: The proposed rule was not revised.

D. Page 13 - Section 10-16-02-06(18) (Duties)

Comments: I'm not sure why this clause is being struck as it is pretty typical among lotteries – will retailers be expected to cash tickets of \$600 and over? There are IRS reporting implications as well as practical issues about retailers trying to cash a large prize ticket. It is unclear to me how 10-16-03-07 (2) works in conjunction with this provision.

Does this require retailers to pay a larger prize?

Commission Action: The proposed rule was revised by reinstating the proposed deleted provision and clarifying the rule by prefacing the provision with "may."

Chapter 10-16-03 Conduct and Play

E. Page 19 - Section 10-16-03-01 (Games authorized)

Comment: I am opposed to the Lottery conducting raffles since charitable gaming organizations already conduct raffles.

Commission Action: The proposed rule was not revised.

F. Page 24 - Section 10-16-03-07(2) (Validation of a ticket)

Comments: The rule states that a retailer must now give the customer both their branded winning tickets back and the terminal receipt. And keep a copy of the terminal receipt at the store for record-keeping purposes. Are you planning on having Scientific Games change the programming to our terminal, then, so that for any winning tickets 2 terminal receipts are spit out? It currently only prints one copy. Also, it states that we should be giving the customers their non-winning tickets back along with a terminal receipt. The terminal currently does not give any sort of receipt when we scan a non-winning ticket. Again, are plans to re-program the terminals to automatically print 2 terminal receipts on winning tickets and also start printing a terminal receipt for all losing tickets as well? [ND Lottery: The terminal will be programmed to always issue two receipts for a winning ticket. The terminal can already print a receipt for a non-winning ticket.]

What is a "branded" winning ticket? [ND Lottery: A winning ticket that a terminal has marked "Cashed" by an ink imprint on the face of the ticket.]

Commission Action: The proposed rule was clarified by inserting references to "player copy" and "retailer copy" of the terminal receipt, and addressing a manual validation of a winning ticket by a retailer.

G. Page 28 - Section 10-16-03-08.1 (Subscription)

Comment: I oppose allowing players to use debit cards and credit cards but I see that this is a present rule, not a proposed rule. I may have previously missed this.

Commission Action: The present rule was not revised.

Chapter 10-16-04 POWERBALL® Game

Chapter 10-16-05 HOT LOTTO® Game

Chapter 10-16-06 WILD CARD 2® Game

Chapter 10-16-07 2BY2® Game

H. Page 41 - Section 10-16-07-01 (Game description)

Comment: I oppose drawings on Sundays based on religious grounds.

Commission Action: The proposed rule was not revised.