



*West Virginia Lottery*

312 MacCorkle Avenue, S.E.  
P.O. Box 2067  
Charleston, WV 25327  
304/348-0500

*Arch A. Moore, Jr.*  
Governor

*Ralph C. Peters*  
Director

*Lottery Commission*

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*Charles H. Wendell,*  
Vice Chairman  
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SECRETARY OF STATE

NOTICE OF EMERGENCY RULE

Rule Title: REGULATIONS GOVERNING THE WEST VIRGINIA  
LOTTERY COMMISSION

The attached rule is filed as an Emergency Rule.

The facts and circumstances constituting the emergency are as follows:

The West Virginia Lottery Commission has been advised by the counsel for the Legislative Rule-Making Review Committee that the Commission's grace period for the Commission's initial start-up and operation has lapsed. In the event that the Committee is correct, the Lottery finds it is necessary that emergency rules be established to prevent the shutdown of the Lottery. Such shutdown of the Lottery and adverse affect on the economic and public welfare. Consequently, Code 29-22-1 et seq., are amended to preserve the public peace, economic stability and welfare.

Oscar Wallace, Jr., Deputy Director  
Finance and Administration

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SECRETARY OF STATE

EMERGENCY  
WEST VIRGINIA ADMINISTRATIVE RULES  
CHAPTER 22-29  
1987  
SERIES I  
WEST VIRGINIA LOTTERY COMMISSION  
ADOPTED FEBRUARY 13, 1987

WEST VIRGINIA ADMINISTRATIVE RULES  
WEST VIRGINIA LOTTERY

TITLE: State Lottery Rules and Regulations

Section 0. General

0.1 Scope and Purpose

The purpose of these rules is to provide for the organization and structure of the operation of the West Virginia Lottery, provide for licensing of agents for sale and dispensing of lottery tickets and materials and lottery games, and the operation of computer terminals therefor.

0.2 Authority

These rules are promulgated under the authority of W. Va. Code Chapter 29, Article 22, Sections 5, 9(b), 10, 17.

0.3 Effective Date

These rules will become effective on \_\_\_\_\_, 19\_\_\_\_.

0.4 These rules were filed in the Office of Secretary of State on \_\_\_\_\_, 19\_\_\_\_.

0.5 These rules are certified authentic by the Director of the West Virginia Lottery as of the date filed.

## 1.0 Definitions

For the purposes of these regulations, the following words and phrases shall have the meaning ascribed to them in this section unless the context of the regulations shall clearly indicate otherwise, or unless inconsistent with the manifest intention of the State Lottery Commission.

1.1 "Act" or "State Act" means the State Lottery Act, West Virginia Code § 29-22-1 et seq.

1.2 "Agency" means the State Lottery, its Director and the State Lottery Commission and its Commissioners which operate and administer the West Virginia State Lottery, pursuant to authority granted under the Act.

1.3 "Bank" means and includes all commercial banks, mutual savings banks, savings and loan associations, credit unions, trust companies, and any other type or form of banking institution organized under the authority of the State of West Virginia or the United States of America whose principal place of business is within the State of West Virginia and is designated to perform such functions, activities, or service in connection with the operations of the Lottery for the deposit and handling of Lottery Funds, the accounting thereof and the safekeeping of records.

1.4 "Certified Drawing" A drawing about which the lottery and an independent certified public accountant attest that the drawing equipment functioned properly and that a random selection of a winning combination occurred.

1.5 "Commission" or "State Lottery Commission" means the state lottery commission created by the State Lottery Act, W. Va. Code § 29-22-1 et seq.

1.6 "Depository" means any person, including a bank or state agency, performing activities or services in connection with the operation of the Lottery for the deposit and handling of Lottery funds, the accounting thereof, and the safekeeping of tickets.

1.7 "Director" means the individual appointed by the Governor to provide management and administration necessary to direct the Lottery office or any other person to whom the Director's authority is lawfully delegated.

1.8 "Drawing" The procedure determined by the Director by which the lottery selects the winning combination in accordance with the rules of the game.

1.9 "Employee of the Agency" means a person who is an employee of the agency and the commission unless the context clearly indicates otherwise.

1.10 "Game" means any individual or particular type of lottery authorized by the agency.

1.11 "Instant Game" A game in which a ticket is purchased and upon removal of a latex covering on the front of the ticket, the ticket bearer determines his or her winnings, if any, which are payable upon presentation to the Lottery for payment.

1.12 "Instant-Ticket" The ticket purchased for participation in an instant game.

1.13 "Lottery Game" means the public gaming system or games established and operated by the Lottery office.

1.14 "Lottery Retailer" or "Retailer" means any person licensed by the Commission to sell and dispense instant tickets and materials or lottery games, not to include operation of electronic computer terminals in such sales and dispensing, unless otherwise authorized.

1.15 "Lottery Sales Agent" or "Sales Agent" or "On-Line-Agent" means any person licensed by the Commission to sell and dispense lottery tickets, materials, and to operate electronic terminals, and lottery games in such sales and dispensing.

1.16 "Lottery Ticket" or "tickets" means tickets or other tangible evidence of participation used in lottery games or gaming systems.

1.17 "On-line Game" A lottery game in which a player pays a fee to a lottery agent and selects a combination of digits, numbers, or symbols, type and amount of play, and drawing date, and receives a computer-generated ticket with those selections printed on it. The lottery will conduct a drawing to determine the winning combination(s) in accordance with the rules of the specific game being played. Each ticket bearer whose valid ticket includes a winning combination shall be entitled to a prize if a claim is submitted within the specified time period.

1.18 "On-line Ticket" A computer-generated ticket issued by an on-line agent to a player as a receipt for the combination a player has selected. That ticket shall be the only acceptable evidence of the combination of digits, numbers, and/or symbols selected. On-line tickets may be purchased only from on-line agents.

1.19 "Person" means human being, association, corporation, club, trust, estate, society, governmental entity, company, joint stock company, receiver, trustee, assignee, referee, and anyone acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of human beings.

1.20 "Play Numbers" The numbers or symbols appearing in the designated areas as under the removable covering on the front of the ticket.

1.21 "Prize" means any award, financial or otherwise, awarded by the Commission.

1.22 "Provisional License" means a license issued by the commission which temporarily authorizes a person to act as a Lottery retailer or Lottery sales agent pending processing of the annual license or renewal.

1.23 "Regional Office" means one of the offices established statewide to provide services and assistance to lottery prize winners, retailers and sales agents.

1.24 "Retail Terminal" The electronic computer terminal through which an on-line agent enters the combination selected by a player and by which on-line tickets are generated and claims are validated.

1.25 "Ticket Bearer" The person who has signed the ticket or has possession of the unsigned ticket.

1.26 "Ticket Number" The pre-printed number found on the back of each ticket which identifies that particular ticket as one of a series of tickets.

1.27 "Ticket Stock Number" The printed number or numbers appearing on the back of each ticket.

1.28 "Validation" The process of determining whether an on-line ticket presented for payment is a winning ticket.

1.29 "Validation Number" The multi-digit number found on the face of the ticket. There must be a validation number on each ticket.

1.30 "Winning Combination" One or more digits, numbers, or symbols randomly selected by the lottery in a drawing which has been certified.

## 2.0 Financial Administration

2.1 Regional Daily Deposit Accounts: The Director shall establish and maintain accounts in each region to accept daily deposits from Lottery sales or on-line agents and lottery retailers.

2.1.1 The Director shall make the selection of regional depository banks in accordance with applicable law.

2.1.2 Each account established under this section shall be swept by electronic funds transfer ("wire transfer") to an account of the Treasurer of State.

2.1.3 The Director shall issue special instructions to "sweep" daily any funds in Regional Daily Deposit accounts established herein.

2.1.4 The Director may authorize a float by deposit banks, not to exceed five days duration, as necessary, to permit the banks and agency to determine and adjust any checks returned because of insufficient funds or other irregularities or deficiencies in deposits.

2.2 State Lottery Fund Account. The Director shall cause to be established a State Lottery Fund Account, which shall be an account of the State Treasury.

2.2.1 Such account shall be established in accordance with applicable provisions of state law, and any applicable regulations of the Treasurer of State.

2.2.2 In establishing the State Lottery Fund Account, there shall be established the following sub-accounts:

2.2.2.1 Operations Sub-Account - This sub-account shall constitute approximately fifteen (15%) percent of lottery revenue, except that in the event that the balance of this account is equal to or greater than \$250,000, any excess over that amount shall remit directly to the General Revenue Transfer Sub-Account herein described.

2.2.2.2 General Revenue Transfer Sub-Account - This sub-account shall constitute no less than thirty-four (34%) of gross revenue nor more than forty percent (40%) of gross revenue during any year of operation in the first three years; and shall constitute no less than forty percent (40%) of gross revenue in any succeeding year.

2.2.2.3 Lottery Prize Trust Sub-Account - This sub-account shall constitute approximately forty-five (45%) of gross revenue. The calculation of the forty-five percent (45%) shall be made for each instant or on-line game based on the design parameters for that game set out in specific game rules and recognizing that approximately 24 percent (24%) of this amount is automatically paid to low-tier winners in the instant game prize structure.

(a) This sub-account is subject to draw down from Lottery Prize Account and Lottery Jackpot Prize Trust Account.

(b) Funds remaining 180 days from drawing on Grand Prize Event or 180 days from game end upon which no valid claim has been made.

2.2.2.4 Lottery Jackpot Prize Trust Sub-Account - This interest-bearing trust account will permit accumulations of the jackpot prizes won in drawings and events and permit the disbursement by the lottery of annual payments of prizes on an annuity basis from accrued interest or, in the alternative, permit the purchase from trust funds of annuities from commercial firms for payment of prizes due to the winners.

2.3 State Lottery Prize Account The Director shall cause to be established a State Lottery Prize Account, which shall permit the immediate payment by check of winners of Lottery Prizes.

2.3.1 The Lottery Prize Account shall be a zero-balance demand-deposit account established by the Director in accordance with applicable law and regulations of the Treasurer of State, funded daily by transfers from the Lottery Prize Account in an amount equal to preceding day demands.

2.3.2 Access to the account for purposes of drawing checks shall be limited to those persons expressly authorized by the Director to operate secure checkwriting machines and who are provided security keys and computer keys for their operation incident to their official duties.

2.3.3 Checks: All checks issued from the Lottery Prize Account shall prominently display the logo of the West Virginia Lottery.

2.3.4 Checks in payment of prizes drawn upon the Lottery Prize Account may be issued under the signature of the Director or the authorized facsimile thereof.

2.3.5 No check from a regional office shall be issued for an amount greater than \$5,000; each check form issued from a regional office shall bear the legend: "NOT VALID FOR AMOUNTS GREATER THAN FIVE THOUSAND DOLLARS".

2.3.6 The Director may also cause checks to be issued from the Lottery Prize Account to Lottery sales agents and Lottery retailers to fulfill obligations of a bonus-incentive plan.

2.3.7 The agency shall settle accounts no less frequently than weekly, or upon terms which the Director and the State Auditor shall agree in writing.

2.3.8 The Director may make payments from Lottery Fund Account to sales agents and retailers for purposes of refund or credit for unsold tickets, other ticket sales adjustments or instant game account adjustments.

### 3.0 Licensing

The Commission shall license as Lottery sales agents and as retailers those persons who will, in the judgment of the Commission, meet the statutory requirements for licensing, promote the sale of lottery tickets and materials, promote the best interest of the Lottery and of the State, and achieve the goals of the statute.

3.0.1 Any person interested in obtaining a license as a lottery retailer or lottery sales or on-line agent must first file an application with the Director on a form supplied for that purpose by the

Director. The application form shall be designed to solicit sufficient relevant information from an applicant to permit the Director to make the determinations required by the Lottery Act and these rules for issuance of a license by the Commission.

3.0.2 License of a sales or on-line agent or lottery retailer in any capacity is a privilege personal to that person and is not a legal right. Such license is revocable by the Director or by a sales or on-line agent or lottery retailer by surrender of the License to the Director.

3.1 Eligibility for licensing.

Any person may submit an application for licensing as a lottery agent or retailer, except:

3.1.1 No person may submit an application who will engage in business solely as a lottery sales or on-line agent or lottery retailer.

3.1.2 No person under the age of twenty-one (21) may submit an application for licensing as a lottery sales agent or lottery retailer.

3.1.3 No person may submit an application who is a member of the Commission or an employee of the agency, or who is the spouse, child, brother, sister or parent, by blood or marriage, residing as a member of the same household or in the principal place of abode of a member of the Commission or employee of the agency.

3.1.4 No person may submit an application who is a vendor of Lottery tickets or material or data processing services, or, which is owned by, controlled by, or affiliated with a vendor of lottery tickets or materials or data processing services.

3.1.5 No foreign corporation may submit an application unless it is currently registered to do business within the State of West Virginia.

3.2 Disqualification, grounds of refusal of a license. The Commission shall refuse to grant a license to any applicant who has been convicted of any violation of this article, or of any felony or any crime related to theft or gambling or involving moral turpitude; or any person who is subject to an exception to subsection 3.1 of these rules.

3.3.1 Issuance of Licenses. - Upon receipt, review and investigation of applications and applicant background, the Commission may issue annual licenses for sales of lottery tickets in accordance with these rules. The Commission shall license only such persons or entities which, in its opinion, will best serve the public interest and public trust in the Lottery and promote the sale of lottery tickets. Prior to issuing any license, the Commission shall consider the following factors:

3.3.1.1 The moral character and reputation of the applicant.

3.3.1.2 The financial responsibility and security of the applicant and his business or activity.

3.3.1.3 The accessibility of the public to the licensed premises proposed by applicant.

3.3.1.4 The number and sufficiency of existing licenses to serve the public interest.

3.3.1.5 The volume of applicant's expected lottery ticket sales.

3.3.1.6 The security and efficient operation of the lottery.

3.3.1.7 Whether the applicant is ineligible under any provisions of the Lottery Act.

3.3.1.8 Whether the applicant has received or will hold, either as principal, entity, subsidiary agent, or subcontractor more than twenty-five percent (25%) of licenses to act as lottery sales agent in any one county or municipality, or more than five percent (5%) of such licenses issued statewide, unless eligible for consideration for an exception under the Act.

3.3.1.9 Whether the applicant has provided false or misleading information or has misrepresented information regarding qualifications or fitness for licensure.

3.3.1.10 Whether the applicant, is a West Virginia corporation or is currently licensed to do business within the State of West Virginia.

3.4 Revocation; Grounds for Removal or Suspension of License or Non-Renewal of License.

3.4.1 The Commission may, for any reason outlined in Section 3.0 of these rules, or its subsections, or for other cause shown revoke, suspend, or decline to renew a license of a lottery sales agent or lottery retailer.

3.4.2 If at any time after issuance of a license, it is determined by the Director that a sales or on-line agent or lottery retailer would no longer meet the standards for the issuance of a license provided in these rules, he may immediately suspend such license, which suspension shall remain in effect until the reason for suspension has abated, or he may ask the Commission to revoke such license.

3.4.3 If the sales or on-line agent or lottery retailer fails to observe and comply with the procedures and the rules of the Commission or with the provisions of the Lottery Act, or orders or instructions of the Director, the Commission may suspend or revoke the license of such person.

3.4.4 Additional grounds for suspension or revocation of license.

3.4.4.1 Non-compliance with Lottery Act, Rules or Regulations. The Director may suspend or recommend to the Commission that it revoke the license of a sales or on-line agent or lottery retailer who does not comply with the Lottery Act and all rules, conditions, regulations, standards and other adopted, promulgated or issued thereunder by the Commission or the Director.

3.4.4.2 Violation of Prohibitions. The Commission may suspend or revoke the license of any sales or on-line agent or lottery retailer who violates one of the prohibitions set out below.

3.4.4.2.1 A sales or on-line agent or lottery retailer shall not sell a ticket at a price greater than or less than that stated by the Commission. No ticket may be sold on a credit basis by an agent or retailer.

3.4.4.2.2 A sales or on-line agent or lottery retailer shall not sell a ticket at a location or premises different than that shown on the license certificate.

3.4.4.2.3 A sales or on-line agent or lottery retailer shall not permit any other person to sell tickets consigned to him; provided that a sales or on-line agent or lottery retailer may sell tickets through his employees.

3.4.4.2.4 No sales or on-line agent or lottery retailer shall sell a ticket to any person under eighteen (18) years of age.

3.4.4.2.5 No sales or on-line agent or lottery retailer, directly or indirectly, on behalf of himself, or another, nor any organization, shall invite, solicit, demand, or offer or accept any payment, contribution, favor, or other consideration to influence the award, renewal or retention of a license.

3.4.4.2.6 A ticket shall not be purchased with food stamps or coupons and the sales or on-line agent or lottery retailer shall not accept as consideration for a ticket food or food stamps or coupons.

3.4.4.3 Grounds relating to the honest and efficient conduct of the Lottery. The Director may suspend or recommend to the Commission to revoke a sales or on-line agent's or lottery retailer's license for any of the following:

3.4.4.3.1 The sales or on-line agent or lottery retailer has made a fraudulent misrepresentation in connection with his application for a license, in any of his reports, or to any person in connection with a lottery transaction;

3.4.4.3.2 The sales or on-line agent or lottery retailer has failed to maintain the sales levels set for him by the Director;

3.4.4.3.3 The sales or on-line agent or lottery retailer has begun to engage in the sale of lottery tickets as his sole business, occupation or activity;

3.4.4.3.4 The sales or on-line agent or lottery retailer has failed to take adequate security precautions for the safe handling of tickets, lottery materials or ticket sales proceeds due from the sales or on-line agent's or lottery retailers ticket sales;

3.4.4.3.5 The sales or on-line agent or lottery retailer has failed to regularly, promptly and accurately settle the accounts of his lottery transactions and pay the amounts due from the sales or on-line agent's or lottery retailer's ticket sales;

3.4.4.3.6 The sales or on-line agent or lottery retailer has failed to notify of any change in ownership;

3.4.4.3.7 The sales or on-line agent or lottery retailer has failed to open his books or records for reasonable inspection by the Lottery Commission or Director;

3.4.4.3.8 The sales or on-line agent or lottery retailer has failed to display his license or required advertising and display material; and

3.4.4.3.9 The sales or on-line agent or lottery retailer has failed to make a report of conviction of a Felony or Gambling-related offense. At any time during the term of this Agreement, if a lottery retailer or a lottery retailer's employee or a lottery sales or on-line agent or sales or on-line agent's employee is convicted of a felony or a gambling related offense, the lottery retailer or sales or on-line agent or licensee shall within 14 days, notify the Director, in writing, of the conviction and the offense. For purposes of this section, a sales or on-line "agent" or lottery "retailer" includes any natural person or in the case of other persons, as defined in Section 1.12 infra any person who holds ownership or a controlling interest in such an entity.

### 3.5.0 Transfers of licenses; Licensed Premises

3.5.1 Licenses nontransferrable. Each license will authorize a specified person to sell tickets at a specified location. No license may be transferred to another person. If the control of a sales or on-line agent or lottery retailer changes hands, the sales or on-line agent or lottery retailer may not sell any more tickets until he has submitted a new license application and the Director has issued a new license.

3.5.2 Change of sales or on-line agent or lottery retailer location. If a sales or on-line agent or lottery retailer changes the location of his place of business, he shall not sell tickets at the new

location until the Director has authorized the transfer of a sales or on-line agent's or lottery retailer's license to the sales or on-line agent's or lottery retailer's new location after he has considered all information concerning the sales or on-line agent's or lottery retailer's new location in the manner which would be required were the sales or on-line agent or lottery retailer making an initial application for a license at that location.

### 3.6.0 License term and renewal, Fees

3.6.1 Provisional Licenses. Pending a final resolution of any question arising in respect of a licensing decision, the Director may issue a license subject to such terms and conditions as he may deem appropriate. Any provisional license shall expire on the expiration date shown on its face which in any case shall not be more than one year from the date such license is issued.

3.6.2 Annual License. Every holder of a license other than a provisional license shall renew such license annually at least ten days before the anniversary date of the initial granting of the license.

3.6.3 Temporary License. For specific events and activities or under special conditions and for limited duration the Director may issue to organizations or other persons a temporary license for the duration of the event or conditions with such special terms as the Director may deem desirable.

### 3.6.4 License Fees

3.6.4.1 Upon initial application for licensing as a Lottery retailer, the applicant shall pay to the Commission a non-transferrable non-refundable license fee of \$25.00 dollars.

3.6.4.2 Upon initial application for licensing as a lottery sales agent, the applicant shall submit a fee of \$500.00 dollars, refundable only under certain terms to be set out in the Lottery contract for on-line sales agents.

3.6.4.3 Upon application for renewal of licensing as a lottery retailer or sales or on-line agent, and for all licenses expiring Jan. 1, 1987 or later, the lottery retailer shall submit an annual fee of \$25.00 dollars; and the lottery sales or on-line agents, an annual fee of \$500.00 dollars.

### 3.7 Bonds

3.7.1 Each lottery sales agent shall obtain for each licensed terminal on premises a Financial Guarantee Bond in the minimum amount of \$10,000.00 or for an additional amount in excess of \$10,000.00 to be determined by the Director, based upon volume of sales by the agent. Such bond shall be obtained on an annual continuing basis, and surety shall furnish a letter or certificate of continuation each renewal year, immediately upon renewal or continuation. Required bond for years following the first year of licensing will be based upon the average sales by the licensed terminal.

determined adequate to safeguard the State's interest in tickets to be sold by a licensed lottery retailer, if in his discretion such bond appears likely to be needed to secure such interest.

### 3.8 Contract

The Director shall enter into a contract with each lottery retailer and lottery sales agent. Such contract will set out the duties, responsibilities, and obligations obtaining to the parties thereto, such contract to continue in effect during the period which the retailer or agent complies with applicable statutes, rules and regulations, fee requirement, and any other duties or requirements under the terms of the contract.

### 4.0 Games

The Commission authorizes the implementation of instant lottery games and on-line games which meet the criteria generally set forth herein.

4.1 The Director is hereby authorized to select, operate and contract to and for the operation of instant games which meet the criteria generally set forth herein.

4.2.1 Instant Game Criteria. The price of an instant game ticket shall not be less than \$1.00 and not more than \$5.00.

4.2.2 Winners of an instant game are determined by the matching or specified alignment of the play numbers, digits and symbols on the tickets. The ticket bearer must notify the lottery of the win and submit the winning ticket to the lottery as specified by the Director. The winning ticket must be validated by the lottery through use of the validation number and any other means as specified by the Director.

4.2.3 The instant game shall be designed to pay out prizes in amounts on a numerical frequency to be determined by the Director.

4.2.4 The duration of ticket sales for an instant game shall be determined by the Director. The start date and closing date of the instant game shall be publicly announced.

4.2.5 The frequency of drawing and method of selection of a winner in any instant game shall be determined by the Director in specific game rules.

4.2.6 At the Director's discretion, an instant game may include (a) grand prize drawing or drawings. The general criteria for the grand prize drawing shall be as follows.

(a) Finalists for a grand prize drawing shall be selected in

an elimination drawing(s) from redeemed tickets or in a manner meeting the criteria stated in specified game rules as determined by the Director. Participation in the elimination drawing(s) shall be limited to such tickets which are actually received and validated by the Director on or before a date to be announced by the Director. The Director may reserve the right to place any semi-finalist whose entry was not entered in the elimination drawing(s) and who is subsequently determined to have been entitled to such entry into elimination drawing of a subsequent instant game, and the determination of the Director shall be final.

(b) The number of prizes and the amount of each prize in the grand prize drawing(s) shall be determined by the Director to correspond with the size and length of the instant game and to comply with 4.2.5 above.

(c) The dates and times as well as the procedures for conducting the elimination drawing and grand prize drawing shall be determined by the Director.

4.2.7 Procedures for claiming instant prizes are as follows:

(a) To claim an instant game prize of \$25.00 or less, the claimant shall present the winning ticket to the lottery retailer or sales or on-line agent from whom the ticket was purchased or mail the signed ticket to the Director. The lottery retailer or sales or on-line agent shall verify the claim and, if applicable, make payment of the amount due the claimant. In the event the lottery retailer or sales or on-line agent cannot verify the claim, the claimant shall fill out a claim form, as provided by the Director, which shall be obtained from any lottery retailer or sales or on-line agent and present or mail the completed form, together with the disputed ticket to the Director. If the claim is validated by the Director, a check shall be forwarded to the claimant in payment of the amount due. In the event that the claim is not validated by the Director, the claim shall be denied and the claimant shall be promptly notified.

(b) To claim an instant prize of \$50.00 or more the claimant shall complete a claim form, as provided by the Director, which is obtained from any lottery retailer or sales or on-line agent or the Director and mail or present the completed form together with the winning ticket to the Director. Upon validation by the Director, a check shall be forwarded to the claimant in payment of the amount due, less any applicable federal income tax withholding. In the event that the claim is not validated by the Director, the claim shall be denied and the claimant shall be notified within five days of the determination.

(c) Any ticket not passing all the validation checks specified by the Director is invalid and ineligible for any prize and shall not be paid. However, the Director may, solely at his option, replace an invalid ticket with an unplayed ticket (or tickets of equivalent sales price from any other current game). In the event a

defective ticket is purchased, the only responsibility or liability of the Director shall be the replacement of the defective ticket with another unplayed ticket (or tickets of equivalent sale price from any other current game).

4.3 Confidentiality of Tickets. No sales or on-line agent or lottery retailer or its employees or agents shall attempt to ascertain the numbers or symbols appearing in the designated areas under the removable latex coverings or otherwise attempt to identify winning tickets by any means.

4.4 Notification to Commission. The Director shall provide commission members with copies of specific game rules. The Chairman or a quorum of the Commission may ask for review of the instant game rules at the next scheduled meeting of the Commission following receipt of draft rules, and shall adopt or refer rules to Lottery staff for revision at that meeting.

4.5.1 Official End of Game. The Director shall announce the official end of each instant game. A player may submit a low-tier winning ticket to the licensed agent from whom the ticket was purchased or the lottery and a high-tier winning ticket to the lottery for prize payment up to one hundred and eighty days after the official end of game. In order to participate in a Grand Prize Drawing a player must redeem a ticket which qualifies for entry into that Grand Prize Drawing within the time limits set forth by the Director governing the conduct of that specific game.

4.5.2 A lottery retailer or sales or on-line agent may continue to sell tickets for each instant game after the official end of that game up to thirty days thereafter.

4.5.3 A sales or on-line agent or lottery retailer must return to the Lottery full or partial packs of unsold lottery tickets for each game within thirty days of the official end of that game in order to receive credit from the lottery as provided for in the lottery sales or on-line agent or lottery retailer contract. The Lottery has no obligation to grant credit for tickets returned more than thirty days after the official end of that game.

4.6.1 Ticket Validation Requirements. To be a valid West Virginia Lottery instant game ticket, a ticket must meet all of the following validation requirements:

(a) The ticket must have been issued by the Director in an authorized manner.

(b) The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner.

(c) The ticket must not be counterfeit in whole or in part.

(d) The ticket must not be stolen nor appear in any list of omitted tickets on file with the lottery.

(e) The ticket must be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

(f) The ticket must have exactly one play symbol and exactly one caption under each of the rub-off spots, exactly one pack-ticket number, exactly one agent verification code, and exactly one validation number. They must be present in their entirety, legible, right-side up, and not reversed in any manner.

(g) The validation number of an apparent winning ticket shall appear on the lottery's official list of validation numbers of winning tickets; and a ticket with that validation number shall not have been previously paid.

(h) The ticket must pass all additional confidential validation requirements established by the Director.

4.6.2 Any ticket not passing all the validation requirements in subsection 1 of this section and the specific validation requirements contained in the rules for its specific game is invalid and ineligible for any prize.

4.6.3 The Director may replace any invalid ticket with an unplayed ticket of equivalent sales price from any current instant game. In the event a defective ticket is purchased, the only responsibility or liability of the lottery shall be the replacement of the defective ticket with an unplayed ticket of equivalent sales price from any current instant game, or issue a refund of the sales price. However, if the ticket is partially mutilated or if the ticket is not intact but it still can be validated by other validation tests, the Director may pay the prize for that ticket in his discretion.

4.7 On-line Games Authorized-Director's Authority. The Director is authorized to select and operate on-line games which meet the criteria generally set forth herein.

4.8.1 On-line Games Criteria. The base price of an on-line ticket shall not be less than \$.50.

4.8.2 The manner and frequency of drawings may vary with the type of on-line game.

4.8.3 The times, locations, and drawing procedures shall be determined by the Director.

4.8.4 A ticket bearer entitled to a prize shall submit the winning ticket as specified by the Director. The winning ticket must be validated by the lottery or an on-line agent through use of the validation

number and any other means as specified by the Director.

4.8.5 Procedures for claiming on-line prizes are as follows:

4.8.5.1 To claim an on-line game prize of \$600.00 or less within thirty days of the drawing the claimant shall present the winning on-line ticket to any Lottery sales agent or to the lottery.

(a) If the claim is presented to a lottery sales agent, the agent shall validate the claim and, if determined to be a winning ticket, make payment of the amount due the claimant. If the lottery sales agent cannot validate the claim, the claimant may obtain and complete a claim form, and submit it with the disputed ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets will not be returned to the claimant.

(b) If the claim is presented to the lottery, the claimant shall complete a claim form, as provided by the Director, and submit it with the winning ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due, less any Federal Income Tax required to be withheld under the Internal Revenue Code. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets will not be returned to the claimant.

4.8.5.2 To claim an on-line prize of more than \$600.00, or any prize more than thirty days after the date of the drawing, the claimant shall obtain and complete a claim form, as provided by the Director, and submit it with the winning ticket to the lottery by mail or in person. Upon determination that the ticket is a winning ticket, the lottery shall present or mail a check to the claimant in payment of the amount due, less Federal Income Tax required to be withheld under the Internal Revenue Code. If the ticket is determined to be a nonwinning ticket, the claim shall be denied and the claimant shall be promptly notified. Nonwinning tickets will not be returned to the claimant.

4.9.1 Drawing and End of Sales Prior to Drawings. Drawings shall be conducted in a location and at days and times designated by the Director. Each on-line drawing script will contain the statement: "Digits/numbers/symbols drawn are not official until validated and drawing is certified."

4.9.2 The Director shall announce for each type of on line game the time for the end of sales prior to the drawings. Agents and retail terminals will not process orders for on-line tickets for that drawing after the time established by the Director.

4.9.3 The Director shall designate the type of equipment to be used, shall establish procedures to randomly select the winning combinations for each type of on-line game, and shall require the presence of an independent accountant to witness all pre- and post-drawing tests, and the drawing or winner selection.

4.9.4 The equipment used to determine the winning combination shall not be electronically or otherwise connected to the central computer or to any tapes, discs, files, etc., generated or produced by the central computer. The equipment shall be tested prior to and after each drawing to assure proper operation and lack of tampering or fraud. Drawings shall not be certified until all validation checks are completed. No prizes shall be paid until after the drawing is certified.

4.9.5 All on-line drawings shall be broadcast live on television provided the facilities for such broadcasts are available and operational.

4.9.6 The Director shall establish procedures governing the conduct of drawings for each type of on-line game. The procedures shall include provisions for deviations which include but are not limited to: (a) drawing equipment malfunction before validation of winning combination; (b) video and/or audio malfunction during the drawing; (c) fouled drawing; (d) delayed drawing; and (e) other equipment, facility and/or personnel difficulties.

4.9.7 In the event a deviation occurs, the drawing will be completed under lottery supervision. The drawing shall be video taped for later broadcast, if broadcast time is available. The drawing shall be certified and the deviation documented on the certification form. The winning combination will be provided to the media for dissemination to the public.

4.9.8 If, during any live-broadcast drawing for a game, a mechanical failure or operator error causes an interruption in the selection of all digits, or symbols, a "foul" shall be called by the Lottery Drawing Official. Any digit/number/symbol drawn prior to a "foul" being called will stand and be deemed official after passing lottery validation tests.

4.9.9 The Director shall delay payment of all prizes if any evidence exists or there are grounds for suspicion that tampering or fraud has occurred. Payment shall be made after an investigation is completed and the drawing certified. If the drawing is not certified, another drawing will be conducted to determine the actual winner.

4.10.1 Validation Requirements. To be a valid winning on-line ticket, all of the following conditions must be met:

(a) All printing on the ticket shall be present in its entirety, be legible, and correspond, using the computer validation file, to the combination and date printed on the ticket. The ticket shall not be valid unless the ticket number and other information is recorded in the Lottery computer and transaction master file.

(b) The ticket shall be intact.

(c) The ticket shall not be altered, mutilated, unreadable, reconstructed, or tampered with in any manner.

(d) The ticket shall not be counterfeit or an exact duplicate of another winning ticket.

(e) The ticket must have been issued by an authorized licensed agent in an authorized manner.

(f) The ticket must not have been stolen or cancelled.

(g) The ticket must not have been previously paid.

(h) The ticket shall pass all other confidential security checks of the lottery.

4.10.2 Any ticket failing any validation requirements listed in the preceding section is invalid and ineligible for a prize subject to the condition of 10.3 and 10.4 infra.

4.10.3 The Director may replace an invalid on-line ticket with an on-line ticket for a future drawing of the same game. The Director may pay the prize for a ticket that is partially mutilated or is not intact if the on-line ticket can still be validated by the other validation requirements, at his discretion.

4.10.4 In the event a defective on-line ticket is purchased, the only responsibility or liability of the lottery or the Lottery sales agent shall be the replacement of the defective on-line ticket with another on-line ticket for a future drawing of the same game.

4.11.1 Payment of Prizes By On-line Agents. (1) An on-line agent shall pay to the ticket bearer on-line games prizes of \$600.00 or less for any validated claims presented within thirty days of the drawing to that Lottery sales agent. These prizes shall be paid during all normal business hours of that agent, provided, the on-line system is operational and claims can be validated.

4.11.2 A sales or on-line agent may pay prizes in cash or by business check, certified check, or money order or a combination thereof. A sales or on-line agent that pays a prize with a check which is dishonored may be subject to suspension or revocation of its license.

4.12 Payment of Prizes - General Provisions.

4.12.1 Each lottery retailer or sales or on-line agent shall pay all prizes authorized to be paid by the lottery retailer or sales or on-line agent by these rules during its normal business hours at the location designated on its license.

4.12.2 A claim shall be entered in the name of a single person or legal entity. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses a federal employer's identification number (FEIN) as issued by the Internal Revenue Service and such number is shown on the claim form. Groups, family units, organizations, clubs or other organizations which are not a legal entity, or do not possess a federal employer's identification number, shall designate one individual in whose name the claim is to be entered.

4.12.3 Unless otherwise provided in the rules for a specific type of game, a claimant shall sign the back of the ticket and complete and sign a claim form provided by the Director. The claimant shall submit the claim form and claimant's ticket to the lottery in accordance with the instructions as stated on the claim form and on the back of the ticket. In the event of a difference or conflict in the name appearing on the ticket and the claim form, the name which appears on the ticket shall control. The claimant, by submitting the claim, agrees to the following provisions:

4.12.3.1 The discharge of the State, the Lottery Commissioners, its officials, officers and employees of all further liability upon payment of the prize: and

4.12.3.2 The authorization to use the claimant's name and photographs for publicity purposes upon award of the prize.

4.12.4 A prize must be claimed within the time limits prescribed by the commission in the instructions for the conduct of a specific game, but in no case shall a prize be claimed later than 180 days after the official end of that instant game or the on-line drawing for which that on-line ticket was purchased.

4.12.5 The Director or Commission may deny awarding a prize to a claimant if the ticket is stolen, unissued, mutilated, altered, unreadable, counterfeit in whole or in part, miscut, misregistered, defective, printed or produced in error, multiply printed, or blank or partially-blank.

4.12.6 No person entitled to a prize may assign the right to claim it, except:

4.12.6.1 That payment of a prize may be made to any court-appointed legal representative, including, but not limited to, guardians, executors, administrators, receivers, or other court-appointed assignees: or

4.12.6.2 For the purpose of paying federal, state or local tax; or to satisfy executions, judgments, or orders or other processes legitimately obtained from federal or state courts.

4.12.7 In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the Commission or Director may refrain from making payment of the prize pending a final determination by the Commission or by a court or competent jurisdiction relative to the same.

4.12.8 A ticket that has been legally issued by a licensed retailer is a bearer instrument until signed. The person who signs the ticket is considered the bearer of the ticket. Payment of any prize may be made to the bearer, and all liability of the State, its officials, officers, and employee and of the agency, commission, and employees of the agency terminates upon payment.

4.12.9 All prizes shall be paid within a reasonable time after the claims are verified by the Director and a winner is determined. The date of the first installment payment of each prize to be paid in installment payments shall be the date the prize event is validated and certified. Subsequent installment payments shall be made annually from the date of the event in accordance with the type of prize awarded.

4.12.10 The Director may, at any time, delay any payment in order to review a change in circumstance relative to the prize awarded, the payee, the claim, or any other matter that may have come to the Director's attention. All delayed payments shall be brought up to date immediately upon the Director's confirmation and continue to be paid on each originally scheduled payment date thereafter. If any prize is payable for the life of the claimant, only an individual may claim such prize and, if claiming on behalf of a group, a corporation, or the like, the life of the claim shall not exceed twenty years.

4.12.11 The Director's decisions and judgments in respect to the determination of a winning ticket or any dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery.

4.12.12 In the event a dispute between the Director and the claimant occurs as to whether the ticket is a winning ticket, and if the ticket prize is not paid, the Director may, solely at the Director's opinion, replace the disputed ticket with an unplayed ticket or tickets of equivalent sales price from that game. This shall be the sole and exclusive remedy of the claimant.

4.12.13 All prizes or portions thereof which remain unpaid at the time of a prize winner's death shall be payable to prize winner's estate.

4.12.14 The Director may rely wholly on the presentment of certified copies of a court's appointment of an administrator or executor, guardian, conservator or any other evidence of a person entitled to the payment of any prize winnings then due.

4.12.15 The payment to the estate of the deceased owner of any prize winnings by the Director shall absolve the Commission, Director and employees of the agency of any further liability for payment of said prize winnings. The Director need not look to pay the prize winnings beyond the estate or appointed representative.

4.12.16 The Commission or Director may petition any court of competent jurisdiction to request a determination of the payee for payment of any prize winnings which are or may become due the estate of a deceased winner or a winner under a disability because of, but not limited to, minority, mental deficiency, or physical or mental incapacity.

### 5.0 Miscellaneous Rules

#### 5.1 Licensing of Trademark.

The Commission has determined to permit the use, display, and promotion of the Lottery Logo, trademark, and other advertising materials without charge to the user or compensation to the Commission for its use.

5.1.1 Any use of the Lottery Logo or other trademarked or copyright materials, other intellectual property, or copy in advertising or production of consumer articles requires a prior written request and execution of the Lottery's License Agreement.

5.1.2 Any request for Licensing shall be made by submitting a ~~form provided by the Director. Such form shall require information of~~ sufficient quantity and detail to allow the determination of suitability for licensing of the applicant by the Director.

5.1.3 Any request for authorization properly submitted shall include a representative sample or samples of the materials for which authority is sought.

5.1.4 After review of the request and representative sample, the Director may issue a tentative authorization to proceed with production of proofs or samples of the merchandise.

5.1.5 The applicant may be required to submit the final proofs or samples representative of actual production items to the Director for his final approval before proceeding to produce such items for sale or distribution.

5.1.6 Upon receipt of notice of final approval, or upon execution of the license agreement by both parties, if no final approval is required, the licensee may initiate production of goods or materials over the specified duration of the Licensing agreement as set forth herein.

5.1.7 The Director may, over the period of the License agreement, exercise supervision over the quality of the materials produced under license, and may require as a condition to continuation of the license, changes in quality of the goods or material produced.

5.1.8 The Director and the Commission may at any time terminate an agreement to license in the event that the licensee fails to meet the requirement of the agreement, or in the event that the continuation of the license is not considered to be in the best interest of the Lottery or of the State of West Virginia.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

BARBARA STARCHER  
Deputy Secretary of State

RICHARD S. STEPHENSON  
Deputy Secretary of State

Telephone: (304) 345-4000  
Corporations: 342-8000



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WILLIAM H. HARRINGTON  
Chief of Staff

RICH O. HARTMAN  
Director, Administrative Law

DONALD R. WILKES  
Director, Corporations

VIRGINIA SKEEN  
Special Assistant

(Plus all the volunteer  
help we can get)

STATE OF WEST VIRGINIA  
DEPARTMENT OF STATE

SECRETARY OF STATE

Charleston 25305

March 20, 1987

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Lottery Commission

RULE: Series 1 State Lottery Rules and Regulations

DATE FILED AS AN EMERGENCY RULE: February 13, 1987

DECISION NO. 6-87

Following review under WY Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

A handwritten signature in cursive script that reads "Ken Hechler".

\_\_\_\_\_  
KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

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Telephone: (304) 345-4000  
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Special Assistant

(Plus all the volunteer  
help we can get)

DECISION

Emergency Rule Decision  
(ERD 6-87)

AGENCY: Lottery Commission  
RULE: Series 1, State Lottery Rules and Regulations  
DATE FILED AS AN EMERGENCY RULE: February 13, 1987

- par. 1 The Lottery Commission has filed its current Series 1 Rule as an Emergency Rule.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Lottery Commission has filed this emergency rule with supporting documents with the Secretary of State on February 13, 1987.

par. 7 It is the determination of the Secretary of State that the Lottery Commission has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §29-22-5(a) reads:

*§29-22-5. State Lottery commission; powers and duties; cooperation of other agencies.*

*(a) The commission shall have the authority to:*

*(1) Promulgate rules in accordance with chapter twenty-nine-a (§29A-1-1 et seq.) of this code: Provided, That those rules promulgated by the commission that are necessary to begin the lottery games selected shall be exempted from the provisions of chapter twenty-nine-a of this code in order that the selected games may commence as soon as possible;*

*(2) Establish rules for conducting lottery games, a manner of selecting the winning tickets and manner of payment of prizes to the holders of winning tickets.*

*WV Code §29-22-9 reads in part:*

*(b) The commission shall promulgate rules and regulations specifying the types of lottery games to be conducted by the lottery.*

*WV Code §29-22-10(a) reads in part:*

*(a) The commission shall promulgate rules and regulations for the licensing of lottery sales agents for the sale and dispensing of lottery tickets, materials and lottery games, and the operations of electronic computer terminals therefor, subject to the following.*

*WV Code §29-22-16 reads in part:*

*The commission shall promulgate rules for the rewarding of additional prizes.*

*WV Code §29-22-17(a) reads in part:*

*(a) The commission shall establish rules and regulations for accounting for sales of lottery tickets and materials and accounting for all funds from sales and dispensing of lottery tickets, materials and games.*

par. 9 The legislature can not provide the totality of law needed to establish and conduct a program of any complexity. The agency is thus given rule-making authority to fill in the details of legislative acts. The Lottery Commission has been given express authority to issue rules to carry out its program. This, along with the implied rule-making authority common to most agencies of the state, establishes the statutory authority for rule-making by the Lottery Commission.

Par. 10. WV Code §29A-3-15A requires review by the Secretary of State regarding an agency exceeding its authority in rule-making. Failure to fully develop rules expressed or implied by statute is not a matter for review by this office. Likewise the wisdom of the rules or lack of rules is not the subject of review.

par. 11 It is the determination of the Secretary of State that the Lottery Commission has not exceeded its statutory authority in the promulgation of these emergency rules.

par. 12 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 14 The facts and circumstances as presented by the Lottery Commission are as follows:

The West Virginia Lottery Commission has been advised by the counsel for the Legislative Rule-Making Review Committee that the Commission's grace period for the Commission's initial start-up and operation has lapsed. In the event that the Committee is correct, the Lottery finds it necessary that emergency rules be established to prevent the shutdown of the Lottery. Such shutdown of the Lottery would have an adverse affect on the economic and public welfare. Consequently, Code §29-22-1 et seq., are amended to preserve the public peace, economic stability and welfare.

par. 15. The above referenced "grace period" derives from a very convoluted reading of WV Code §29-22-5(a)(1). There is at present a wealth of opinions on this section, and part of the rules review here as well as the statutes are before the State Supreme Court of Appeals.

par. 16 The opinion of this office is but one of many, and is attached to this decision. In essence, it holds forth the validity of the initial filing of the rules of the Lottery Commission and therefore would hold that emergency rules are unnecessary. No court has ruled the initial filing as void. There is this fear

by the Lottery Commission that such actions may occur, thus prompting this "back-up" filing with minor amendments.

par. 17 There is no time limitations or immediate preservation standard met with this filing.

par. 18 WV Code §29-22-2 states:

*§29-22-2. Legislative findings and intent.*

*The Legislature finds and declares that the purpose of this article is to establish and implement a state-operated lottery under the supervision of the state lottery commission and the director of the state lottery office who shall be appointed by the governor and hold broad authority to administer the system in a manner which will provide the state with a highly efficient operation.*

par. 19 "High efficient operation" requires rules adopted to carry out the goals of the Lottery Commission as envisioned by the statutes establishing the Lottery.

par. 20 The emergency category most adaptable to this case is to "prevent substantial harm to the public interest."

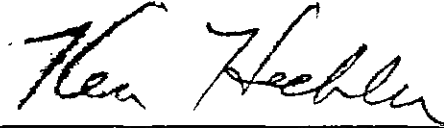
par. 21 The question is what represents "substantial harm" and what is expressed as "public interest."

par. 22 As stated in paragraph 19, rules are necessary to carry out the intent of the lottery statutes. The success of the lottery as an enterprise and as an agency drawing dollars into the general state treasury require lawful rules of operation. Without such rules, the functions of an agency are not only greatly hindered, but, in the case of the lottery, also foster distrust in the mind of the public about the viability of the operation. Since the lottery relies solely on the impulse buying tendencies of the public, any damage to public perception of the lottery as a viable operation would produce "substantial harm"

par. 23 As for public interest, it is clear the public has a great interest in the existence and functions of the Lottery Commission. This interest is shown by the initial approval of the Constitutional amendment allowing the formation of the lottery and perhaps more so by the ticket sales and revenue generated since its inception.

par. 24 It is the decision of the Secretary of State that this proposal by the Lottery Commission is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Lottery Commission; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 25 . This decision shall be cited as Emergency Rule Decision 6-87 or ERD 6-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Lottery Commission, the Attorney General and the Legislative Rule Making Review Committee.



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KEN HECHLER  
SECRETARY OF STATE

Entered \_\_\_\_\_

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Telephone: (304) 345-4000  
Corporations: 342-8000



STATE OF WEST VIRGINIA  
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Special Assistant

(Plus all the volunteer  
help we can get)

MEMO FROM: RICH HARTMAN, DIRECTOR  
ADMINISTRATIVE LAW DIVISION,  
SECRETARY OF STATE'S OFFICE

SUBJECT: LOTTERY COMMISSION RULES

The 1985 Legislature passed Com. Sub. for H. B. 1929 on April 13, 1985, establishing the West Virginia Lottery Commission. The bill became effective from passage.

In October, 1985, after the Lottery office was established and staffed, the Administrative Law Division sent them the rules for filing Regulations and the step procedures for rule-making. This material is sent to all agencies.

There was no contact between the Commission and the Secretary of State's office until February or March, 1986, when the Charleston papers began inquiring about the absence of any Commission rules filed with this office. In March, 1986, the Commission's newly appointed council, Steve Knopp, contacted the Secretary of State's office about rule-making procedures. During the next several months, there were several contacts by phone and in person between Mr. Knopp and myself.

Besides general rule-making procedures questions, the Commission inquired of our interpretation of West Virginia Code §29-22-5(a)(1) & (2); which reads in part:

(a) The commission shall have the authority to:

(1) Promulgate rules in accordance with chapter twenty-nine-a (§29A-1-1 et seq.) of this code; Provided, That those rules promulgated by the commission that are necessary to begin the lottery games selected shall be exempted from the provisions of chapter twenty-nine-a of this code in order that the selected games may commence as soon as possible;

(2) Establish rules for conducting lottery games, a manner of selecting the winning tickets and manner of payment of prizes to the holders of winning tickets.

After discussion, I stated that my interpretation was as follows:

There are essentially two types of rules needed. The first is the operational rules of the Commission, which included vendor licensing, fiscal administration, hearing procedures and other general rules of agency operation not related solely to internal management. These rules are continuing in effect for the life of the agency, subject to needed amendments.

The second is the rules of individual, particular games, such as "Win with West Virginia," "7-11-21," "Lotto," etc. These rules apply only to the conduct of the individual game and are in effect only for the life of that game -- usually three months.

This office interpreted §29-22-5 as allowing a one-time exemption from Chapter 29A requirements for the first type of rules and that we would accept the Commission's initial filing of those rules.

The second type of rules would be accepted with each and every filing since requiring compliance with §29A for these rules would produce a constant delay of up to one year for the start of all new games. This would only hurt the Commission's attempts to arouse public intent and participation. Even if emergency

rule-making provisions could be utilized, it would require every "game rule" to be filed as an emergency rule. By the time the proposed rule, made effective as an emergency rule, was filed with the Legislative Rule-Making Review Committee, the game would be over, since each game lasts only three months.

This was the interpretation under which we operated with respect to the Lottery Commission's rules. We were, of course, concerned that the first type of rules had not yet been filed since the Commission had already begun its games in December, 1985, but we have no authority to demand that an agency file its rules. That is the responsibility of the courts.

We did bring our concern to bear on the problem which culminated in the attached memo dated July 30, 1986. The result was draft rules being filed by the end of August, 1986, and final filing of rules on November 14, 1986. This last filing was accepted and is on file as the lawful rules of the Commission.

There was concern on the part of the LRMRC about the lateness of this filing, and following discussion between the staff of the LRMRC and the Commission, the Commission filed emergency rules on February 13, 1987. (This discussion did not include the Secretary of State's office, so I cannot comment on its content.) The Commission is currently operating under these emergency rules.



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help we can get)

STATE OF WEST VIRGINIA  
SECRETARY OF STATE

Charleston 25305

July 30, 1986

Mr. Ralph C. Peters, Commissioner  
Lottery Commission  
312 MacCorkle Avenue, S.E.  
Charleston, West Virginia 25314

Dear Ralph:

I wanted to send you a note confirming our phone conversation of yesterday. I understand you are working on your rules and will be sending us some rules by August 8, 1986 and the rest of your rules by the end of August.

If my Administrative Law Division can assist you in any way, please give them a call. They will gladly help you in any way.

Sincerely,

Ken Hechler  
Secretary of State

*P.S. I am obligated to enforce the law, and I'm sure you agree that the public attention by the media focused on this issue underlines the importance of meeting these deadlines*