

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #3

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1993 AUG 19 11 24

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: State Lottery Commission TITLE NUMBER: 179

CITE AUTHORITY West Virginia Code §29-22-5(a)

AMENDMENT TO AN EXISTING RULE: YES ___ NO X

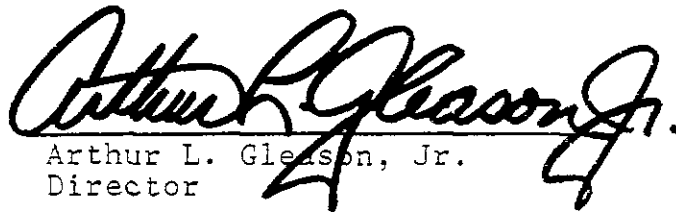
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 3

TITLE OF RULE BEING PROPOSED: Video Lottery Games

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.


Arthur L. Gleason, Jr.
Director

21.00



State of West Virginia
Department of Tax and Revenue

GASTON CAPERTON
GOVERNOR

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY
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AUG 16 PM 3:24
OFFICE OF WEST VIRGINIA
SECRETARY OF REVENUE

CONSENT TO FILE RULE

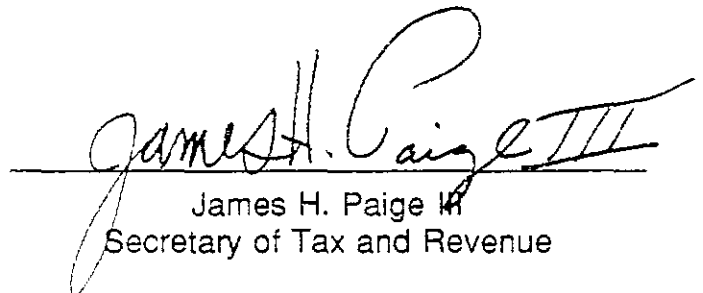
August 16, 1993

TO WHOM IT MAY CONCERN:

Title of Rule: Video Lottery Games
Title Number: 179
Series Number 3

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this sixteenth day of August, 1993.


James H. Paige III
Secretary of Tax and Revenue



Gaston Caperton
Governor

*Department of
Tax and Revenue
James H. Paige III*
Secretary

*West Virginia Lottery
Arthur L. Gleason, Jr.*
Director

*Lottery Commission
William Abraham
M. Eric Frankovitch
David H. Gardner
Anthony Giambrone
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*312 MacCorkle Ave., S. E.
P. O. Box 2067
Charleston
West Virginia 25327-2067*

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1-800-WVA-CASH
1-800-WVA-4WIN*

ORDER

The West Virginia State Lottery met in regular session on the thirteenth day of July, and after fair and full consideration, amended and approved a document styled West Virginia Legislative Regulations, Video Lottery Games, and ordered that the document be filed in the office of the Secretary of State of West Virginia for the statutorily required thirty day comment period.

Between the thirteenth day of July, 1993 and the twelfth day of August, the Commission has received and considered several written comments from interested citizens as well as information from the lottery staff concerning suggested changes the Commission considers to be of a technical clean-up nature.

The Commission met on the sixteenth day of August, 1993, in regular session, and amended and approved said proposed regulation.

It is, therefore, **ORDERED** that the proposed Video Lottery Games Regulation, as amended and adopted on the sixteenth day of August, 1993, be filed this day with appropriate and required documents in the office of the Secretary of State of West Virginia and in the office of the Legislative Rule Making Review Committee as **the agency approved proposed new Legislative Rule 179 CSR 3.**

Approved by the West Virginia State Lottery Commission and given by my hand this **sixteenth day of August, 1993.**


William Abraham
Acting Chairman

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Video Lottery Games

Type of Rule: Legislative Interpretive Procedural

Agency West Virginia Lottery Commission

Address 312 MacCorkle Avenue, S.E.
Charleston, WV 25314

1. Effect of Proposed Rule

	ANNUAL FISCAL YEAR				
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 250,000	\$ -0-	\$ 250,000	\$ 150,000	\$ 150,000
PERSONAL SERVICES	110,000	-0-	110,000	110,000	110,000
CURRENT EXPENSE	40,000	-0-	40,000	40,000	40,000
REPAIRS & ALTERNATIONS	-0-	-0-	-0-	-0-	-0-
EQUIPMENT	100,000	-0-	100,000	-0-	-0-
OTHER	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:

Personnel: 1 Computer Operator; 2 Security Persons; 1 Accountant
 Expense: Travel related expenses; software
 Equipment: Central computer to control terminals at race tracks.

3. Objectives of these rules:

To permit operation of video lottery type games at the State's four pari-mutuel race tracks.

Rule Title: Video Lottery Games

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

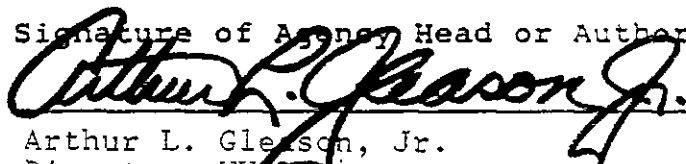
This rule is designed to provide revenue source for parimutuel tracks, all of which are significant employers.

C. Economic Impact on Citizens/Public at Large.

Most patrons of West Virginia's four tracks are residents of other states. Most employees of the tracks are West Virginia citizens. State revenues will also be enhanced by \$3 to \$5 million.

Date: August 16, 1993

Signature of Agency Head or Authorized Representative



Arthur L. Gleason, Jr.
Director, WV Lottery

DATE: August 16, 1993

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: West Virginia State Lottery Commission

LEGISLATIVE RULE TITLE: Video Lottery Games

1. Authorizing statute(s) citation WV Code §29-22-5

2. a. Date filed in State Register with Notice of Hearing:

July 13, 1993

b. What other notice, including advertising, did you give of the hearing?

Newspaper and TV News Coverage

c. Date of hearing(s): Written Comments Only

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received

e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

August 16, 1993

f. Name and phone number(s) of agency person(s) to contact for additional information:

Richard E. Boyle, Jr., Director (as of 9-1-93)

John Melton, Executive Assistant

558-0500

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

n/a

b. Date of hearing: n/a

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

n/a

d. Attach findings and determinations and reasons:

Attached _____

WEST VIRGINIA LEGISLATIVE REGULATION

TITLE 179

SERIES 3

BRIEF SUMMARY OF PROPOSED RULE

The West Virginia State Lottery Commission has voted to allow video lottery terminal games at race track facilities also licensed by the West Virginia Racing Commission as pari mutuel race tracks. The rule establishes licensing requirements for race track video lottery licenses as well as permits for terminal equipment manufacturers, security personnel and service technicians. This rule contemplates that terminals will be purchased or leased by each licensee race track. The net income after prizes is divided between the licensee and the Lottery Commission on a 60%-40% basis. This rule also contains due process procedural rules contemplated by W.Va. Code §§29A-5-1 et seq.

This is NOT an emergency rule.

WEST VIRGINIA LEGISLATIVE REGULATIONS

WEST VIRGINIA LOTTERY

TITLE 179

SERIES 3

1993

VIDEO LOTTERY GAMES

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Filed: _____

§ 179-3-1. General.

1.1 **Scope.** - These regulations govern the establishment and maintenance of video lottery games in West Virginia.

1.2 **Authority.** - W. Va. Code §§ 29-22 5 and 29A-3-1 et seq.

1.3 **Filing Date.** -

1.4 **Effective Date.** -

§ 179-3-2. **Definitions.** - As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular and in the plural:

2.1 "Applicant" means any person applying for any video lottery license or permit.

2.2 "Associated equipment" means any hardware connected to the video lottery system, other than the video lottery terminals or components of a regulated public utility, located on the licensee's premises to perform communication, validation, or other functions.

2.3 "Background investigation" means a security and credit investigation of a person who has applied for a video lottery license or permit, or who is so granted a license or permit, in the capacity of a manufacturer, retailer, service technician, or validation manager.

2.4 "Commission" or "State Lottery Commission" means the West Virginia Lottery Commission created by W. Va. Code article 29-22, or its delegates.

2.5 "Control" means the authority to direct the management and policies of an applicant or licensee.

2.6 "Costs" means reimbursable Commission expenses which are charged to and collected from applicants or licensees for the expenses incurred by the Commission in the testing and examination of video lottery terminals, conducting background investigations and the accomplishment of other relevant activities.

2.7 "Disable" or "Terminal Disable" means the process of executing a "shutdown" command from the central system which causes some or all video lottery terminals to cease functioning.

2.8 "Display" means the visual presentation of video lottery game features as shown on the screen of a video lottery terminal.

2.9 "License", or "video lottery license", or "licensed race track" means authorization granted by the Commission to a person, association or corporation which is first granted a license by the West Virginia Racing Commission to conduct thoroughbred or greyhound racing meetings pursuant to West Virginia Code §19-23-1 permitting the applicant to offer its racing customers the ability to make video lottery wagers on video lottery terminals authorized by the Lottery Commission and electronically connected to the Lottery Commission's controlling computer in defined video lottery activities.

2.10 "Lottery" means the public gaming systems or games established and operated by the State Lottery Commission.

2.11 "Net terminal income" means for each video lottery terminal the total amount of credits played less the total amount of credits won.

2.12 "Manufacturer" means any person holding a permit granted by the Commission to engage in the business of designing, building, constructing, assembling or manufacturing video lottery terminals (VLTs), the internal computer or the random selection generator thereof, or the cabinet in which the same is housed, and whose product as intended for sale, lease or other assignment to a video lottery licensee [pari mutuel track] licensed by the Commission.

2.13 "Own" means any beneficial or proprietary interest in any property or business of an applicant or licensee. "Own" shall also mean the exclusive constitutional and statutory control of lotteries and lottery-style wagering within the borders of the State of West Virginia by and through the West Virginia Lottery Commission authorized by Article 6, Section 36 of the West Virginia Constitution and established by §29-22-4 of the West Virginia Code.

2.14 "Permit" means authorization granted by the Commission to a person, association, or corporation to function as either a manufacturer, service technician, or validation manager.

2.15 "Person" means any natural person, corporation, association, partnership, limited partnership, or other entity, regardless of its form, structure or nature.

2.16 "Player" means a person who plays a video lottery game on a video lottery terminal at a pari mutuel racing facility licensed by the Commission to conduct video lottery wagering.

2.17 "Service technician" means a person who holds a permit issued by the Commission and who performs service, maintenance, and repair on licensed video lottery terminals in the State.

2.18 "Video lottery game" means a Commission approved, owned and controlled electronically simulated game of chance that is displayed and played on a licensed video lottery terminal.

2.19 "Validation Manager" means a person who holds a permit issued by the Commission and who performs video lottery ticket redemption services.

2.20 "Video lottery terminal" or "VLT" means a Commission approved machine or device, which is compatible with the Commission's computer system, and which is used for the purpose of playing Commission licensed video lottery games.

2.21 "Wager" means a sum of money or thing of value risked on an uncertain occurrence.

§ 179-3-3. License and permit qualifications.

3.1 Qualifications. - A video lottery license or permit shall not be granted until the Commission is assured that the applicant satisfies all of the following qualifications.

3.1.1 The applicant for a video lottery license, only, must hold a valid racing license granted by the West Virginia Racing Commission under provisions of §19-23-1 and §19-23-8 of the West Virginia Code.

3.1.2 The applicant must be a person of good character, honesty, and integrity.

3.1.3 The applicant must be a person whose background, including criminal record, reputation, and associations does not pose a threat to the public interest of the State or to the security and integrity of the Lottery. Any person who has been convicted of any violation of W. Va. Code article 29-22, or of any crime related to theft, bribery, gambling or involving moral turpitude, will not be licensed or permitted in any capacity. The Commission shall revoke the license or permit of any person who is convicted of any such crime after the Commission has granted a license or permit

3.1.4 The applicant must be a person who demonstrates the business ability

and experience necessary to establish, operate, and maintain the business for which a video lottery license or permit application is made.

3.1.5 The applicant must be a person who demonstrates adequate financing for the business for which a video lottery license or permit application is made. The Commission shall consider whether financing is from a source that meets the foregoing qualifications, and is in an amount sufficient to assure the likelihood of success in the performance of the licensee's or permit holder's duties and responsibilities.

3.1.5.1 The applicant for a video lottery license must disclose the financing arrangements for the purchase or refinancing of video lottery terminals, or the leasing arrangements in detail specified by the Lottery Commission.

3.1.5.2 A video lottery licensee must submit any change in financing or lease arrangement to the Commission at least thirty (30) days before that instrument's effective date.

3.1.6 A race track applying for a video lottery license or a license renewal must present an agreement between the applicant and either the Kennel Operators and Greyhound Owners Purse Committee or the Horsemen's Benevolent and Protective Association regarding the proceeds from video lottery terminals.

3.1.7 The applicant for a license must not be located in a zone where a local zoning ordinance has prohibited video lottery gaming. See W.Va. Code §29-22-25(b).

3.2 Individual qualifications must be established. - A video lottery license or permit shall not be granted to an applicant until the Commission is assured that each of the individuals listed satisfies the individual qualifications. Individuals required to qualify are further defined as:

3.2.1 Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant, other than a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who in the opinion of the Commission has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation.

3.2.2 Each person associated with a non-corporate applicant:

3.2.2.1 Who directly or indirectly holds any beneficial or proprietary interest in the applicant; or

3.2.2.2 Who, in the opinion of the Commission, has the ability to control the applicant.

3.2.3 Key personnel, including any executive, employee, or agent, having the power to exercise a significant influence over decisions concerning any part of the applicant's business operation.

3.3 **Applicant required to furnish information.** - Applicants must furnish all information, including financial data and documents, certifications, consents, waivers, individual history forms, and other materials required or requested by the Commission for purposes of determining qualifications for granting a license or permit. No video lottery license or permit may be granted to an applicant who fails to provide information and documentation required or requested by the Commission. The burden of proving qualification for any video lottery license or permit is on the applicant.

3.4 **Waiver of liability.** - Each applicant must accept all risks of adverse public notice, embarrassment, criticism, damages, or financial loss which may result from any disclosure or publication by a third party of any material or information requested by the Commission pursuant to action on an application. The applicant must expressly waive any and all claims against the Commission, the State of West Virginia and the employees of either for damages as a result of any background investigation, disclosure or publication relating to an application for a video lottery license or permit.

3.5 **Oath or affirmation and attorney certification.** - All application, registration, and disclosure forms and other documents submitted to the Commission by or on behalf of the applicant for purposes of determining qualification for a video lottery license or permit shall be sworn to or affirmed before a notary public. If any forms or documents are signed by an attorney for the applicant, the signing shall constitute a certification by the attorney that the attorney has read the forms or documents and that, to the best of his knowledge, information, and belief, the contents of the forms and documents so signed are true; however, if any of the information is subsequently found to be untrue, the license or permit applied for will not be granted or, if the license or permit was granted prior to discovery of the untrue information, the license will be revoked.

3.6 **Duty to provide accurate and material information.** - Any applicant who fails to reveal any fact material to qualification or who submits information that is untrue or misleading as to a material fact of qualification, shall result in the denial or revocation of a video lottery license or permit, depending upon when such information is found to be untrue or misleading.

§ 179-3-4. **Application process.**

4.1 **Form of application.** - All applicants required to be qualified and licensed or permitted as manufacturers, retailers, service technicians, and validation managers must provide all information requested or required, and complete and return all of the forms provided by the Commission.

4.2 Submission of application. - All applications shall be submitted to the following address:

West Virginia Lottery
Security and Licensing Division
P.O. Box 2067
Charleston, WV 25327

4.3 Consideration of applications by Commission. - The Commission shall only consider complete applications. Applications are complete when the applicant has submitted the following:

- 4.3.1 All information required or requested by the Commission;
- 4.3.2 Completed and executed all forms and documents required or requested by the Commission; and
- 4.3.3 Payment of the application fees and costs.

4.4 Issuance of license. - The Commission may not issue the license or permit applied for until the background investigations are concluded, all information has been reviewed and the Commission has formally consented to issuance. The Commission is required to make an affirmative determination that the applicant is qualified and the applicable license and/or permit fees are remitted prior to issuing the license. The Lottery Commission shall provide to the appropriate political subdivision(s) notice of any application the Commission receives for a video lottery license. The Lottery Commission shall notify the local political subdivision(s) of a termination of a license. The Lottery Commission in the licensing process shall consider any verbal or written input provided by the appropriate political subdivision(s) and shall provide a written statement to the same regarding final disposition of the license application.

4.5 Notice of incomplete application. - The Commission shall notify applicants if their application is incomplete and any such notification shall state the areas in which the application is deficient.

4.6 Notice of license or permit denial. - The Commission shall notify applicants in writing of denial for permit, licensure or machine approval and cite the reasons for its determination.

4.7 Procedure for review of license or permit denial. - Applicants may request a hearing before the Commission to review a license or permit denial. A request for hearing must be in writing, received by the Commission within ten days from the date of denial and otherwise in accordance with Section 179-3-13 of these regulations. The request for hearing must be signed by the applicant and state the applicant's reasons, including supporting

documentation, for license or permit approval.

4.8 Hearing on review of denial by Commission. - A hearing to review a license or permit denial shall be heard by the Commission and shall be conducted in accordance with W. Va. Code § 29-22-14 and Section 179-3-14 of these regulations.

4.9 Fees, renewal fees and dates. The following fees shall be paid annually by each licensed race track, or permitted manufacturer, service technician, or validation manager:

- 4.9.1 Manufacturer, \$ 1,000.
- 4.9.2 Service Technician, \$ 100.
- 4.9.3 Race Track, \$ 1,000.
- 4.9.4 Validation Manager, \$ 50.

The foregoing fees shall be paid at the time of license or permit application and when said license or permit is renewed on July 1 each year.

4.10 Bonding. - An applicant for a license will, prior to the issuance of the license, post a bond or irrevocable letter of credit in a manner and in an amount as established by the Commission. Any such bond shall be issued by a surety company authorized to transact business in West Virginia and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

4.11 Renewal of license and permits. - The Commission shall renew video lottery licenses and permits annually as of July 1. Provided, That each person seeking license or permit renewal submits the applicable renewal fee, completes the renewal forms provided by the Commission, and continues to meet the qualifications.

4.12 Notice of change affecting license or permit. - License and permit holders must immediately notify the Commission of any proposed change of ownership or any transaction relevant to license or permit qualification. Commission approval must be obtained prior to completion of the proposed ownership change or transaction in order for the license or permit to remain in effect.

4.13 License or permits not transferrable or assignable. - A license or permit in any capacity is a privilege personal to that person and is not a legal right. A license or permit granted or renewed pursuant to these regulations may not be transferred or assigned to another person, nor can a license or a permit be pledged as collateral. The purchaser or successor of any business which has heretofore received a license or permit pursuant to these regulations must apply and qualify for a license or permit. The sale of more than five (5%)

percent of a license or permit holder's voting stock, assets other than those bought and sold in the ordinary course of business, or any interest therein to any party other than its present owners must be approved in advance by the Commission. The transfer requirement set forth in the preceding sentence also applies to the sale of ownership in corporations and partnerships which in turn are the owners of a company which holds a video lottery license or permit.

§ 179-3-5. Enforcement.

5.1 Criteria for suspension, revocation, denial of license or permit renewal.

- The Commission shall either suspend, revoke, or deny renewal of a license or a permit for any violation of the State Lottery law [W. Va. Code §§29-22-1 et seq.]. The Commission may suspend, revoke, or deny renewal of a license or a permit for any violation of these regulations.

5.2 Hearing on suspension, revocation, denial of license or permit renewal. - A notice and hearing regarding suspension, revocation, or denial of license or permit renewal, shall be conducted by the Commission in accordance with W. Va. Code § 29-22-14 and Section 179-3-14 of these regulations.

5.3 Schedule of hearings. - Hearings by the Commission on suspension, revocation, or denial of license or permit renewal shall be conducted in accordance with W. Va. Code § 29-22-14 and Section 179-3-14 of these regulations.

§ 179-3-6. Duties of license and permit holders.

6.1 General duties of all video lottery license and permit holders. - The general duties required of all video lottery license and permit holders are as follows:

6.1.1 Promptly report to the Commission any violation or any facts or circumstances that may result in a violation of State or federal law and/or any rules or regulations as hereto adopted.

6.1.2 Conduct their respective video lottery operations in a manner that does not pose a threat to the public health, safety, or welfare of the citizens of West Virginia, or reflect adversely on the security or integrity of the Commission.

6.1.3 Hold the Commission, the Director, and the State of West Virginia harmless from any and all claims that may be made against a licensee, the Commission, the State of West Virginia, or the employees of either, arising from the licensee's participation in or the operation of a State video lottery game.

6.1.4 Defend and pay for the defense of all claims that may be made against the Commission, the State of West Virginia, or the employees of either, arising from the license or permit holder's participation in or operation of a State video lottery game.

6.1.5 Assist the Commission to maximize revenues to the State of West Virginia.

6.1.6 Maintain all records required by the Commission.

6.1.7 Provide at the request of the Commission immediate access to all records and the physical premises of the business or businesses where the licensee's video lottery game activities occur, all such access to be for the purpose inspecting the licensee's activities and video lottery games, video lottery terminals and associated equipment.

6.1.8 Keep current in all payments and obligations to the Commission.

6.2 Duties of permitted manufacturers. Following are the specific duties required of permitted manufacturers.

6.2.1 Manufacture terminals and associated equipment for placement in West Virginia in accordance with the specifications and procedures in Sections 179-3-8 and 179-3-9 of these regulations.

6.2.2 Manufacture terminals and associated equipment to ensure timely delivery to licensed West Virginia race tracks.

6.2.3 Maintain and provide an inventory of spare parts to assure the timely repair and continued, approved operation and play of licensed video lottery terminals purchased for placement in West Virginia.

6.2.4 Provide to licensed race tracks appropriate technical assistance and training in the service and repair of its video lottery terminals and associated equipment so as to assure the continued, approved operation and play of those video lottery terminals;

6.2.5 Obtain certification of compliance under the provisions of Part 15 of the FCC rules for all terminals placed in West Virginia.

6.2.6 Maintain all skills necessary for the timely repair and service of licensed video lottery terminals and associated equipment so as to ensure the continued, approved operation and placement of those terminals.

6.2.7 Attend all required meetings, seminars, and training sessions for the repair and maintenance of licensed video lottery terminals and associated equipment.

6.2.8 Notify the Commission of any recurring [two or more times] electronic or mechanical video lottery terminal malfunctions or other problems experienced in a particular approved video lottery terminal model.

6.2.9 Provide service under terms and conditions agreed upon by all parties for the maintenance and repair of video lottery terminals and associated equipment placed at a licensed race track.

6.3 Duties of licensed race tracks. - Following are the specific duties required of all owners, managers, and designated employees of licensed race tracks.

6.3.1 Provide a secure premise for the placement, operation, and play of all video lottery terminals located at the licensed race track.

6.3.2 Permit no person to tamper with or interfere with the approved operation of any video lottery terminal.

6.3.3 Assure that telephone lines from the Commission's central computer in Charleston, West Virginia to the video lottery terminals located at the licensed race track are at all times connected and prevent any person from tampering or interfering with the continuing operation of the lines.

6.3.4 Ensure that video lottery terminals are placed and remain as placed within the sight and control of the designated employee(s) of the race track.

6.3.5 Ensure that video lottery terminals are placed and remain as placed in specific areas of the licensed race track as approved by the Commission. Any relocation of a video lottery terminal or terminals at the track requires prior approval from the Commission.

6.3.6 Monitor video lottery terminals to prevent access to or play by persons who are under the age of 18 years or who are visibly intoxicated.

6.3.7 Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals.

6.3.8 Extend no credit for video lottery terminal play.

6.3.9 Pay all credits upon presentment of a valid winning video lottery ticket or within the time frame prescribed in these regulations.

6.3.10 Exercise caution and good judgment in providing cash for checks presented for video lottery terminal play.

6.3.11 Report promptly to the manufacturer and Commission all of video lottery terminal malfunctions and notify the Commission of a manufacturer's failure to provide service and repair of such terminals and associated equipment.

6.3.12 Conduct advertising and promotional activities which shall be approved

in advance in writing by the Director. Twenty-four (24) hours advanced notice is required and all advertising detail shall be in final proof stage.

6.3.13 Install, post, and display prominently at locations within or about the business premises signs, redemption information and other promotional material as may be required by the Commission.

6.3.14 Permit video lottery to be played only during those hours established and approved by the Commission.

6.3.15 Assume responsibility for the installation, operation, and payment of Commission approved telephone lines to provide direct communication between each licensed terminal and the Commission's central computer.

6.3.16 Maintain general liability insurance coverage for all video lottery terminals in an amount of at least two million (\$2,000,000) dollars per claim.

6.3.17 Promptly notify the Commission in writing of any breaks or tears to any logic unit seals.

6.3.18 Assume liability for lost or stolen money from the video lottery terminal.

§ 179-3-7. Accounting and reporting.

7.1 Commission to provide communications protocol data. - The Commission shall provide permit holding manufacturers, or manufacturers applying for permits, the protocol documentation data necessary to enable the respective manufacturer's video lottery terminals to communicate with the Commission's central computer when transmitting the auditing program information and controls approved by the Commission.

7.2 Remittance of State's percentage of net terminal income. - Licensed race tracks shall remit to the Commission and within the required time periods the State's established percentage of all net terminal income.

7.2.1 The Lottery Commission shall be entitled to forty (40%) percent of net terminal income.

7.2.2 The licensed racetrack shall be entitled to sixty (60%) percent of net terminal income; this percentage is inclusive of the licensed lottery retail agent's statutory commission and the incentive bonus found in W. Va. Code §29-22-10, as well as certain shared operating expenses.

7.3 Remittance through electronic transfer of funds. - The State's percentage

of net terminal income shall be remitted to the Commission through the electronic transfer of funds. Licensed race tracks shall furnish to the Commission all information and bank authorizations required to facilitate the timely transfer of moneys to the State Treasury. Licensed race tracks must provide the Commission 30 days advance notice of any proposed account changes in order to assure the uninterrupted electronic transfer of funds.

7.4 Charge for late payment of insufficient funds payment. - Each licensed race track shall maintain in its account a balance sufficient to cover the State's percentage of net terminal income, such amount to be electronically transferred by the Commission on the established dates. Failure to maintain such balance may result in license suspension or disabling of terminals until such time as full payment of all amounts due and owing is completed. The insufficient fund charge shall be one hundred (\$100.00) dollars, per occurrence, and interest on the unpaid balance at a rate consistent with the amount charged for state income tax delinquency under West Virginia Code, Chapter 11, which said interest shall begin to accrue immediately.

7.5 Duty to notify of accounting discrepancies. - Each licensed race track shall keep accurate records of all income generated at each video lottery terminal. The Commission shall prepare and mail to the licensed race track a statement reflecting the net terminal income and the State's percentage of that amount prior to the date payment is remitted through the electronic transfer of funds. Each licensed race track must report to the Commission any discrepancies in net terminal income between the Commission's statement and each terminal's mechanical and electronic meter readings. The Commission is not responsible for resolving net terminal income discrepancies which are differences between actual money collected and the amount shown on the accounting meters or billing statement.

7.6 Settlement of accounts. Until an accounting discrepancy is resolved in favor of the licensed race track, the Commission shall make no credit adjustments. For each video lottery terminal that reflects a discrepancy, the licensed race track shall submit to the Commission the maintenance log that includes current mechanical meter readings and the audit ticket that contains electronic meter readings generated by the terminal's software. If the meter readings and the Commission's records cannot be reconciled, final disposition of the matter shall be determined by the Commission. No electronic accounting meters may be cleared without a Commission employee present. Any accounting discrepancies that cannot be otherwise resolved shall be resolved in favor of the State.

7.7 Manual reporting and payment may be required. - Licensed race tracks shall mail and remit payment of the State's percentage of net terminal income if any of the following events occur:

7.7.1 The electronic transfer of funds is not operational;

7.7.2 The terminal is incapable of communicating with the Commission's central computer; or

7.7.3 Program modifications to the accounting software are necessitated due to recurring accounting discrepancies in the Commission's statement.

The Commission shall notify licensed race tracks when remittance by this method is required. The tracks shall report the amount of net terminal income per terminal and remit payment for the State's percentage of the total amount of net terminal income generated from its terminals during the reporting period. The remittance shall be sealed in a properly addressed and stamped envelope and deposited in the United States mail no later than 12:00 noon on the day when the payment would otherwise be completed through electronic funds transfer.

7.8 Request of reports. - Licensed race tracks may request additional reports on play transactions of their respective video lottery terminals and on other marketing information not considered confidential by the Commission. The Commission may charge a fee for the cost of producing and mailing any report other than the invoice statements.

7.9 Consent to examination of accounts and records. - Each licensee must consent in writing to the examination of all accounts, bank accounts, financial statements, and records in its possession, under its control or in which it has an interest, and it must authorize all third parties in possession or in control of the accounts or records to allow examination of any of those accounts or records, as determined necessary by the Commission when conducting audits.

§ 179-3-8. General video lottery terminal requirements.

8.1 Video games authorized. - Video lottery terminals registered and approved by the Commission may offer only the types of video lottery games authorized by the Commission pursuant to game rules separately filed from time to time with the Secretary of State. A video lottery terminal may simulate the play of one or more of the authorized video games. The manufacturer must supply two copies of each game terminal illustration for the screen and keyboard, if applicable, as well as each game play method for Commission approval.

8.2 Application for approval of a video lottery terminal. - A manufacturer shall not sell or lease a video lottery terminal for placement at a licensed race track in the State unless the terminal has been approved by the Commission. Only permitted manufacturers may apply for approval of a video lottery terminal or associated equipment. The manufacturer must submit two copies of terminal illustrations, schematics, block diagrams, circuit analysis, technical and operation manuals, program source codes and hexadecimal dumps (the compiled computer program represented in base 16 format), and any other information requested by the Commission for purposes of analyzing and testing the video lottery terminal or associated equipment.

8.3 Testing of video lottery terminals. - The Commission may require that two working models of a video lottery terminal be transported to the location designated by the Commission for testing, examination, and analysis.

8.3.1 The manufacturer shall pay all costs of testing, examination, analysis, and transportation of such video lottery terminal models. The testing, examination, and analysis of any video lottery terminal model may include entire dismantling of the terminal and some tests may result in damage or destruction to one or more electronic components of such terminal model. The Commission may require that the manufacturer provide specialized equipment or the services of an independent technical expert to test the terminal.

8.3.2 The manufacturer shall pay transportation costs of two video lottery terminals to Lottery Headquarters. The Commission shall conduct an acceptance test to ensure terminal functionality and central system compatibility. If the video lottery terminal fails the Commission conducted acceptance test, the manufacturer shall make all modifications required by the Commission.

8.4 **Report of test results.** - After each test has been completed, the Commission shall provide the terminal manufacturer with a report that contains findings, conclusions, and pass/fail results. The report may contain recommendations for video lottery terminal modification to bring the terminal into compliance with West Virginia Code article 29-22 or these regulations. Prior to approving a particular terminal model, the Commission may require a trial period not in excess of sixty (60) days for a licensed retailer to test the terminal. During the trial period, the manufacturer may not make any modifications to the terminal model unless such modifications are approved by the Commission. The Commission shall affix appropriate seals to each terminal during the test period.

8.5 **Modifications to previously approved models.** - The video lottery terminal manufacturer and retailer, together and individually, are responsible for the assembly and initial operation, in the manner approved and licensed by the Commission, of all video lottery terminals and associated equipment. The manufacturer and retailer shall not change the assembly or operational functions of a terminal licensed for placement in West Virginia unless a "Request for modification to an existing video terminal prototype" is made to the Commission. The Request must contain all appropriate information relating to the type of change, reason for change, and all documentation required, and the Commission must approve the request.

8.6 **Conformity to prototype.** - Each video lottery terminal approved for placement at a licensed race track must conform to the exact specifications of the video lottery terminal prototype tested and approved by the Commission. Any video lottery terminal which does not conform to the Commission approved prototype will be seized and destroyed by the Commission.

8.7 **Operation of video lottery terminals.** - Each video lottery terminal must at all times operate and play in accordance with the provisions of West Virginia Code article 29-22 or these regulations.

8.8 **Confiscation and seizure of terminals.** - Any video lottery terminal, or any video lottery terminal modifications not approved or not discovered by the Commission at the

time of testing and licensing, which is in violation of West Virginia Code article 29-22 or these regulations, shall constitute reasonable cause for the Commission to seize and destroy all of the manufacturer's video lottery terminals in use within West Virginia that are in noncompliance. If the Commission elects to seize any video lottery terminals, it shall determine the type and estimated number of lottery terminals not in compliance with West Virginia Code article 29-22 or these regulations. A notice and hearing regarding violations of said Article 29-22 or these regulations shall be conducted by the Commission in accordance with Section 179-3-14 of these regulations. If seizure is effected prior to a hearing, a hearing must be conducted not less than 20 days from the date of seizure.

§ 179-3-9. Video lottery terminal hardware and software requirements.

9.1 Hardware specifications. - Video lottery terminals licensed for placement in West Virginia must meet the following hardware specifications.

9.1.1 Electrical and mechanical parts and design principles may not subject a player to physical hazards or injury.

9.1.2 A surge protector must be installed on the line that feeds electrical power to the video lottery terminal. The battery backup, or an equivalent, for the electronic meters must be capable of maintaining accuracy of all information required for a period of 180 days after power is discontinued from the terminal. The backup device shall be kept within the locked logic board compartment in the video lottery terminal.

9.1.3 An on/off switch that controls the electrical current used in the operation of the terminal must be located in an accessible place within the interior of the video lottery terminal.

9.1.4 The operation of each video lottery terminal must not be adversely affected by any static discharge or other electromagnetic interference.

9.1.5 A minimum of one electronic or mechanical coin acceptor or other means to accurately and efficiently establish credit(s) as approved by the Commission must be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for one-dollar bills, five-dollar bills, ten-dollar bills, and twenty-dollar bills. The bill acceptors may be for any single bill or combination of bills in the denominations listed in this subsection. While approval letters and test reports of the coin and bill acceptors from other state or federal jurisdictions may be submitted, all coin and bill acceptors must be approved by the Commission prior to use on any video lottery terminal in this State.

9.1.6 All internal access to the device shall be controlled through a series of locks.

9.1.7 The main logic board(s) and software Eproms (computer chips that

store memory) must be in a separate, locked and sealed area within the video lottery terminal.

9.1.8 The cash compartment must be contained in a locked area within or attached to the video lottery terminal.

9.1.9 No hardware switches, jumpers, wire posts, or any other means of manipulation may be installed that alter the pay tables or payout percentages in the operation of a game. Hardware switches may be approved by the Commission and installed on a video lottery terminal to control the terminal's graphic routines, speed of play, sound and other approved cosmetics.

9.1.10 Each video lottery terminal must contain a single printing mechanism capable of printing an original ticket and retaining an exact, legible copy in the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the Commission. The following information must be recorded on the ticket when credits accrued on the video lottery terminal are redeemed for cash:

9.1.10.1 The number of credits accrued;

9.1.10.2 Value of the credits in dollars and cents displayed in both numeric and written form;

9.1.10.3 Time of day and date;

9.1.10.4 Validation number; and

9.1.10.5 Any other information required by the Commission.

9.1.11 A permanently installed and affixed identification plate must appear on the exterior of each video lottery terminal and the following information must be on said plate:

9.1.11.1 Manufacturer of the video lottery terminal;

9.1.11.2 Serial number of said terminal; and

9.1.11.3 Model number of said terminal.

9.1.12 The rules of play for each game must be displayed on the video lottery terminal face or screen. The Commission may reject any rules of play which are considered to be incomplete, confusing, or misleading. Based on the number of credits wagered, each video lottery game must display the credits wagered and the credits awarded for the occurrence of each possible win. A terminal may not allow more than \$2.00 to be wagered on a single game. All information required by this subsection must be kept under glass or another transparent substance and at no time without Commission approval may stickers or other removable devices

be placed on the video lottery terminal screen or face.

9.1.13 Equipment must be installed to enable the video lottery terminal to communicate with the Commission's central computer system, such communication to be accomplished by use of a communications protocol provided by the Commission to each permitted manufacturer and for the Commission approved information and control programs.

9.1.13.1 The Commission may elect to require each licensee to provide a central site computer to the Commission as a part of the licensing requirement at no cost to the Commission. The central site computer must meet all requirements and specifications established by the Commission.

9.1.14 Each video lottery terminal must have an electromechanical meter to indicate money inserted, credits paid, credits won, and credits played.

9.1.15 All video lottery terminals shall have an approved security system that will temporarily disable the gaming function of the terminal while opened.

9.2 Software requirements for randomness testing. - Each video lottery terminal must have a random number generator that will determine the occurrence of a specific card, number or stop. A selection process will be considered random if it meets the following requirements:

9.2.1 Chi square test. - This test is the sum of the squares of the difference between the expected result and the observed result. Each card, number or stop must satisfy the 99 percent confidence limit using the standard chi-squared analysis.

9.2.2 Runs test. - This is a mathematical statistic that determines the existence of recurring patterns within a set of data. Each card, number or stop must not produce a significant statistic with regard to producing patterns of occurrences. Each card, number or stop will be considered random if it meets the 99 percent confidence level with regard to the "runs test."

9.2.3 Correlation test. - Each card, number or stop position is independently chosen without regard to another card, number or stop within that game play. Each pair of card, number or stop positions is considered random if they meet the 99 percent confidence level using standard correlation analysis.

9.2.4 Serial correlation test. Each card, number or stop position is independently chosen without reference to the same card or number position in the previous game. Each card or number position is considered random if it meets the 99 percent confidence level using standard serial correlation analysis.

9.3 Software requirements for percentage payout. - Each video lottery

terminal must meet the following maximum and minimum theoretical percentage payout during the expected lifetime of said terminal:

9.3.1 Video lottery games shall pay out a minimum of 80 percent and no more than 95 percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory. For the video lottery game of Keno, the theoretical payout percentage requirements apply to each number of spots marked;

9.3.2 Manufacturers must file a request and receive approval by the Commission prior to manufacturing for placement in West Virginia video lottery terminals programmed for a payout greater than 92 percent of the amount wagered. Commission approval must be granted prior to applying for terminal testing. The Commission shall consider, but not be limited to the following factors when determining whether approval should be granted:

9.3.2.1 The number of video lottery terminals proposed for placement;

9.3.2.2 Market conditions;

9.3.2.3 Revenues in relation to net terminal income for both the State and private sector operations; and

9.3.3 Each terminal must have a probability greater than 1 in 17,000,000 of obtaining the maximum payout for each play.

9.4 Software requirements for continuation of video lottery game after malfunction. - Each video lottery terminal must be capable of continuing the current game with all current game features after a video lottery terminal malfunction is cleared. This rule does not apply if a video lottery terminal is rendered totally inoperable; however, the current wager and all credits appearing on the video lottery terminal screen prior to the malfunction must be returned to the player.

9.5 Software requirements for play transaction records. - Each video lottery terminal must at all times maintain electronic accounting, regardless of whether said terminal is being supplied with power. Each meter must be capable of maintaining a total of no less than eight digits in length for each type of information required to be recorded. The electronic meters must record the following information:

9.5.1 Total number of coins inserted. The meter must count the total number of coins that are inserted by the player or the coin equivalent if a bill acceptor is being used;

9.5.2 Number of credits wagered,

9.5.3 Number of credits won;

- 9.5.4 Credits paid out by a printed ticket voucher;
- 9.5.5 Number of times the logic area was accessed;
- 9.5.6 Number of times the cash door was accessed;
- 9.5.7 Number of coins or credits wagered in the current game;
- 9.5.8 Number of coins or credits won in the last complete, valid video lottery game, commonly referred to as the win meter; and
- 9.5.9 Number of cumulative credits representing money inserted by a player and credits for video lottery games won but not collected, commonly referred to as the credit meter.

No video lottery terminal shall have a mechanism by which an error will cause the electronic accounting meters to automatically clear. Clearing of the electronic accounting meters shall only be completed after notification of and approval by the Commission. All meter readings, both before and after the electronic accounting meter is cleared, must be recorded in the presence of a Commission employee.

§ 179-3-10. Transportation and registration of video lottery terminals. Trucking companies or common carriers shipping terminals shall be bonded and shall ship only in sealed trailers.

10.1 Transportation of video lottery terminals into West Virginia. -- A manufacturer transporting one or more video lottery terminals into West Virginia shall provide the Commission in writing prior to shipment the following information on forms required by the Commission:

- 10.1.1 The full name, address, and permit number of the person or entity shipping the video lottery terminals;
- 10.1.2 The method of shipment and the name of the carrier, if any;
- 10.1.3 The full name, address, and license number of the licensed race track to whom the video lottery terminals are being sent and the destination of said terminals, if different from the address;
- 10.1.4 The number of video lottery terminals in the shipment;
- 10.1.5 The serial number of each video lottery terminal in the shipment;
- 10.1.6 The model number and description of each video lottery terminal in the

shipment; and

10.1.7 The expected arrival date of the video lottery terminals at their respective destination within West Virginia.

10.2 Receipt of video lottery terminals in West Virginia. - A licensed race track which purchases or leases a video lottery terminal shall, upon receipt of said terminal, provide the Commission with the following information on forms required by the Commission:

10.2.1 The full name, address, and license number of the track receiving the video lottery terminal;

10.2.2 The full name, address, and permit number of the manufacturer from whom the video lottery terminal was received;

10.2.3 The serial number of each video lottery terminal received;

10.2.4 The model number and description of each video lottery terminal received;

10.2.5 The expected date and time of video lottery terminal arrival; and

10.2.6 The expected date and time of video lottery terminal installation.

If the video lottery terminal will not be placed in operation, the licensed race track must notify the Commission of the address where said terminal is warehoused. At the time such terminal is removed from inventory and transported to another location within the State, the track must comply with the foregoing requirement by providing the required information to the Commission.

10.3 Transportation of video lottery terminals between locations in the State. - Any person transporting a video lottery terminal from one location to another in the State, other than for repair or servicing purposes, shall notify the Commission in writing prior to the transportation of the said terminal and provide the following information on forms required by the Commission.

10.3.1 The full name, address, and license number of the person or entity transporting the video lottery terminal;

10.3.2 The reason for transporting the video lottery terminal;

10.3.3 The full name, address, and license number of the person or entity where the video lottery terminal is currently located;

10.3.4 The full name, address, and license number of the person or entity to whom the terminal is being sent and the destination of the video lottery terminal if it is different from the address;

10.3.5 The serial and model number of the video lottery terminal;

10.3.6 The video lottery terminal license number, if affixed;

10.3.7 The manufacturer of the video lottery terminal; and

10.3.8 The expected date and time of video lottery terminal installation or reinstallation.

Section 10.3 does not apply to the movement of video lottery terminals within the same location. Movements within the licensed race track are governed by sections 6.3.5 and 12.1.4 of this regulation.

10.4 Transportation of video lottery terminal out of West Virginia. - Any person shipping video lottery terminals out of the State shall notify the Commission in writing prior to the shipment and provide the following information on forms required by the Commission:

10.4.1 The full name, address, and license or permit number of the person or entity shipping the video lottery terminals;

10.4.2 The method of shipment and the name of the carrier, if any;

10.4.3 The full name and address of the person or entity to whom the video lottery terminals are being sent and the destination of the video lottery terminals if different from the address;

10.4.4 The serial number of each video lottery terminal being shipped;

10.4.5 The model number and description of the video lottery terminal being shipped;

10.4.6 The video lottery terminal license number, if affixed;

10.4.7 The manufacturer of the video lottery terminal being shipped; and

10.4.8 The expected date and time of the shipment.

10.5 West Virginia Lottery Commission Control Number is required on video lottery terminals. - Each video lottery terminal placed in operation in West Virginia must have

a Commission registration decal, with the video lottery terminal registration control number placed thereon, permanently affixed thereon prior to video lottery terminal becoming operational. No person other than authorized Commission personnel may affix or remove a registration control number. The placement of the Commission decal represents that the terminal has been registered, inspected, and approved for operation in West Virginia. Manufacturers and licensed race tracks must make video lottery terminals and associated equipment available for inspection by the Commission. No terminal may be transported out of the State until authorized Commission personnel have removed the Commission registration control number.

§ 179-3-11. Maintenance of video lottery terminal.

11.1 Training in terminal maintenance required prior to placement. - No video lottery terminal may be placed in operation in West Virginia until the manufacturer provides sufficient and appropriate training in the service and repair of each video lottery terminal model approved, and the service technicians complete such training.

11.2 Manufacturers required to provide training. - Each permitted manufacturer shall provide training in the service and maintenance of its video lottery terminals approved for placement in West Virginia. Manufacturers must submit to the Commission the following information on each training program conducted in West Virginia:

- 11.2.1 An outline of the training curriculum;
- 11.2.2 A list of the instructors and their qualifications;
- 11.2.3 Instructional materials; and
- 11.2.4 The time, dates, and location of the training programs.

11.3 Availability of training. - Manufacturers shall notify all licensed race tracks who have purchased or leased their video lottery terminals of all scheduled training programs. Training programs must be scheduled at convenient locations and times within West Virginia to assure attendance and direct participation. Manufacturers must provide appropriate subsequent training programs and inform licensed race tracks of new developments in the service and repair of its video lottery terminals.

11.4 Reports and certificates of training programs. - Manufacturers shall maintain a list of the names of all service technicians who attend and successfully complete each training program. The list must be retained for a period of two years and made available upon request by the Commission. The manufacturer shall issue a training certificate to each person upon successful completion of the testing program. The certificate must show the name of the person who completed the training program; the date and location of the training program, and the manufacturer may require a test to determine successful completion of the training program

requirements. Technicians who successfully complete this training are then eligible and may make application for a technician's permit from the Commission. A service technician cannot conduct maintenance/service on any video lottery terminal or associated equipment unless the Commission has issued a permit to the service technician.

11.5 Service technicians required to have training in the service and repair of video lottery terminals. - Each service technician(s) must demonstrate the possession of appropriate experience and knowledge in the service and repair of video lottery terminals and each must attend and complete the training provided by the manufacturer for each video lottery terminal. Each manufacturer must file with the Commission the following information within two weeks after the completion of a training program:

11.5.1 The name of each service agent and each employee who attended and completed the training program;

11.5.2 The name of the manufacturer offering the course;

11.5.3 The manufacturer's video lottery terminal models on which training for service and repair was provided;

11.5.4 The date and location of the training program; and

11.5.5 Copies of the certificates of completion.

11.6 Terminals to be maintained in the condition approved. - All video lottery terminals or associated equipment must be serviced and maintained in the manner and condition approved by the Commission.

11.7 Maintenance log forms required. - A written maintenance log shall be kept within the main cabinet access area in each video lottery terminal. Every person, including lottery personnel, who gains entry into any internal space of a video lottery terminal must sign the log, indicate the time and date of entry, indicate the mechanical meter readings, and list the areas inspected or repaired. The maintenance log forms must be retained by retailers for a period of three years from the date of the last entry. The maintenance logs must be available upon request for inspection by the Commission.

11.8 Licensed race tracks required to furnish keys to video lottery terminals for inspection purposes. - Licensed race tracks must provide the Commission with a master key for access into the main cabinet door of each video lottery terminal placed in operation. A logic box seal will be provided by the Commission. It will be appropriately affixed by the Commission to the seal the video lottery terminal logic unit. The Commission may, at any time, without advance notice, inspect any video lottery terminal or device.

11.9 Notification of repairs to the logic area. - Any repairs to the logic board,

or circuitry within the logic area, shall only occur when authorized Commission personnel are present and observe the accomplishment of such repairs. The logic box seal shall only be broken by authorized Commission personnel. Each service technician must also submit a written report within twenty-four hours after repairs are completed. If a logic board is replaced, only a Commission authorized logic board may be installed, the new logic box seal must be properly installed by Commission personnel, and the report must include the serial number of the replacement board and the new logic box seal number.

11.10 Notification of broken seals on logic board. - The software Eeproms on the logic board of each video lottery terminal shall be inspected by the Commission prior to sealing the logic box. Licensed race tracks or permit holders must inform the Commission in writing of any damage to the logic box seal noticed during routine maintenance checks. Any damage, tears or breaks in the logic box seal discovered by Commission personnel will result in the video lottery terminal immediately being disabled. Such disabling shall continue until a full investigation by the Commission is completed.

§ 179-3-12. Number and location of video lottery terminals; security.

12.1 Number of terminals. A video lottery license gives the holder the right to install and operate up to four hundred video lottery terminals.

12.1.1 A video lottery licensee who demonstrates a need to install and operate more than four hundred video lottery terminals must apply for permission of the Commission to do so. If the Commission determines that the installation of said additional machines is in the best interest of the licensee, the Lottery Commission and the State of West Virginia, then it may grant its permission to exceed the existing limit. It shall do so in increments of fifty machines.

12.1.2. Notwithstanding the provisions of section 12.1.1 of this regulation, no licensee may apply for permission to exceed the initial limitation of four hundred video lottery terminals within the initial six months of the license.

12.2 Location of terminals. All video lottery terminals in licensed race tracks must be physically located as follows:

12.2.1 The area(s) shall be continuously monitored through the use of a closed circuit television system (CCTV). The system must be capable of recording activity for a twenty-four (24) hour period and shall be approved by the Commission prior to installation. All video tapes must be retained for a period of at least thirty (30) days, or as directed by the Commission;

12.2.2 In an area that ensures public access to the video lottery terminals is restricted to persons legally entitled by age to play video lottery games;

12.2.3 Initial locations for video lottery terminals require prior approval from the Commission. The licensee shall submit a floor plan of the area or areas where video lottery terminals are to be operated showing machine locations, cabling and security camera mount locations; the scale shall be 1" = 1/4";

12.2.4 Any relocation of video lottery terminals requires prior approval from the Commission. Revised floor plan drawings as specified in section 12.1.3 must be submitted in advance; and

12.2.5 No operating video lottery terminals may be located in any building or structure which is not a site where pari mutuel wagering is permitted under provisions of W. Va. Code §§ 19-23-1 et seq.

12.3 Security.

12.3.1 Security personnel shall be assigned to each location where video lottery terminals are in operation. Security personnel may include designated representatives, managers, or other persons employed by the licensee, or independent licensed and bonded security guards.

12.3.2 Each license holder shall retain a sufficient number of security personnel to provide for safe and legal operation of the facility and the safety and well-being of the patrons of each facility. In the event the Commission determines that an unsafe situation exists for patrons, the Director may order that the license holder provide additional security necessary to correct the situation. A license holder who fails to comply with such an order may be subject to suspension of its license or may have its video lottery terminals disabled.

§ 179-3-13. Payment of credits; no State liability.

13.1 **Payment of credits.** - No payment for credits awarded on a video lottery terminal may be made unless the ticket meets the following requirements:

13.1.1 It is presented on a fully legible, valid printed ticket on paper approved by the Commission, that contains the information as required [this provision shall not apply to incompletely printed or partially legible tickets, provided that the ticket can be validated in some manner];

13.1.2 It must not be mutilated, altered, unreadable, or tampered with in any manner;

13.1.3 It must not be counterfeit in whole or in part; and,

13.1.4 It has been presented by a person authorized to play as indicated under W. Va. Code § 29-22-11 and these regulations.

13.2 Method of payment. - Each licensed race track shall designate employees authorized to redeem tickets during the business hours of operation. Credits shall be immediately paid in cash, or by check when a player presents a ticket for payment meeting the requirements of this Section 179-3-13. No credits may be paid in tokens, chips, or merchandise.

13.3 Restrictions on payment of credits. - Licensed race tracks may only redeem tickets for credits awarded on video lottery terminals located on its premises. A ticket must be presented for payment no later than one hundred eighty (180) days after the date the ticket was printed. The Commission, and the State of West Virginia, are not liable for the payment of any credits on any video lottery tickets.

13.4 Redeemed tickets required to be defaced. - All tickets redeemed by a licensed retailer must be marked or defaced in a manner that prevents any subsequent presentment and payment.

13.5 Liability for video lottery terminal malfunction. - The Commission, and the State of West Virginia, are not responsible for any video lottery terminal malfunction that causes credit to be wrongfully awarded or denied to players. The licensed race track is solely responsible for any wrongful award or denial of credits.

§ 179-3-14. Hearing and Appeal Procedure.

14.1 Order refusing license or permit; suspending or revoking same. - If the Commission refuses to issue a license or permit, or suspends or revokes a license or permit, it shall make and enter an order to that effect and mail by certified mail, return receipt requested, a copy of said order to the applicant, or the license or permit holder, or serve the same as provided for the service of legal process in accordance with the West Virginia Rules of Civil Procedure.

14.2 Petition for hearing. - Any applicant, or license or permit holder, as the case may be, adversely affected by such order, shall have the right to a hearing thereon before the Commission or a person designated as hearing examiner: Provided, That a petition in writing for such a hearing is served upon the Commission within ten (10) days following the receipt by such applicant, or license or permit holder of said copy of said order.

14.3 Petition requirements. - The petition for a hearing is to be in writing with an original and one (1) copy. It shall be complete in itself so as to fully state the issues. No telegram, telephone call, letter or similar communication will be regarded as a petition. The petition must contain the following:

14.3.1 A clear and concise assignment of each error which the petitioner alleges to have been committed by the Commission in the determination of its refusal to issue a

license or permit, or its suspension or revocation of a license or permit, with each assignment of error being shown in separately numbered paragraphs.

14.3.2 A clear and concise statement of fact upon which the petitioner relies as sustaining each assignment of error.

14.3.3 A prayer setting forth the relief sought.

14.3.4 The signature of the petitioner or its officers.

14.3.5 A verification by the petitioner.

14.4 Form for petition. - A petition for hearing shall be in the form set forth on the following page.

PETITION FOR HEARING

To: West Virginia
 Lottery Commission
 Charleston, WV

(For Commission Use Only)

Docket No. _____

Date of Refusal to License or Permit, or Order of Suspension or Revocation _____

Whether Refusal to License or Permit, or Suspension or Revocation _____

In the Matter of: Petitioner's Business Name _____

Petitioner's Lottery License or Permit No. _____

Address _____

The above named person against whom the State Lottery Commission has issued an order of (License or Permit Refusal, Revocation or Suspension), and in support of this petition for hearing, avers as follows:

First: Your petitioner admits as true and correct all of the determinations made by the Commission and set forth in the above order and basis thereof, except the following: (Specify here each error which the petitioner alleges to have been made by the Commission.)

Second: (Set forth clear and concise statements of fact upon which the petitioner relies as sustaining the assignment of error.)

Wherefore, your petitioner prays (insert relief sought, i.e., this order be set aside).

State of _____ Business Name _____

Signature of Affiant _____

Country of _____

Title _____ being duly

sworn according to law, deposes and says that the facts alleged in this petition, including all those attached hereto, are true and affiant is the petitioner or is duly authorized to represent the petitioner.

BY _____

Sworn to and subscribed before me this _____ day of _____ 19__ at _____

My commission expires _____

Notary Public

14.5 Hearings - cost deposit. - The person demanding a hearing shall give security for the cost of said hearing in the amount of three hundred dollars (\$300) and said cost deposit shall be advanced by certified check, cashier's check or money order and shall accompany the petition demanding a hearing.

14.6 Subpoenas and subpoenas duces tecum. - In all hearings held under W. Va. Code article 29-22 and these regulations, the evidence of witnesses and the production of documentary evidence may be required through the use of subpoenas and subpoenas duces tecum. Such subpoenas or subpoenas duces tecum may be issued at the request of the Lottery Commission, the same to be issued by either the Commission or its duly appointed hearing examiner.

14.6.1 Every such subpoena and/or subpoena duces tecum shall be served at least five (5) days before the return date thereof, either by personal service made by any person twenty-one (21) years of age or older or by registered mail, but a return acknowledgement

signed by the person to whom the subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail.

14.6.2 All subpoenas and subpoenas duces tecum will be issued in the name of the Lottery Commission, but any party requesting their issuance must see that they are properly served. Service of subpoenas and subpoenas duces tecum issued at the insistence of the Lottery Commission are to be the responsibility of such Commission. Any person who serves any such subpoena or subpoena duces tecum is entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this State, and fees for the attendance and travel of witnesses shall be the same as for witnesses before the circuit courts of West Virginia.

14.6.3 All such fees shall be paid by the Lottery Commission if the subpoena or subpoena duces tecum is issued, without the request of an interested party, at the insistence of the Commission.

14.6.4 All such fees related to any subpoenas or subpoena duces tecum issued at the insistence of a licensee shall be paid by the licensee who asks that such subpoena or subpoena duces tecum be issued, such payment to be made out of the hearing deposit.

14.6.5 All requests by the licensee or the Commission for subpoena and subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

14.6.6 Any person receiving a subpoena or subpoena duces tecum issued hereunder shall honor the same as though it were issued by a circuit court of the State, and shall appear as witness and/or produce such books, records or papers in response to such subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the judge thereof in vacation, upon application by the Commission, shall compel obedience by attachment proceeds for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court or a refusal to testify therein.

14.7 Stay of suspension or revocation order. - The service of a petition for hearing upon the Commission shall not operate to suspend the execution of any revocation or suspension of a video lottery license with respect to which a hearing is being demanded.

14.8 Hearing date. - The commission shall set a date for any hearing demanded and notify the person demanding such hearing of the date and time of said hearing, which said hearing shall be held within thirty (30) days after receipt of said demand.

14.9 Place of hearing. - Parties will be notified of the place of hearing not later than seven days before the hearing date.

14.10 Continuances. - Hearings will not be delayed by a motion for continuance, unless it is made no later than ten (10) days before the date set for the hearing and sets forth good and sufficient cause. Conflicting engagements of counsel or the employment of new counsel will never be regarded as good ground for a continuance, unless set forth in a motion filed promptly after the notice of hearing has been mailed, or unless extenuating circumstances are shown which the Commission deems adequate.

14.11 Absence of petitioner, counsel or his representative. - The absence of the petitioner, his legal counsel or his representative at a hearing, after service of notice of time, place and date, shall not be the occasion for delay or continuance. The hearing shall proceed and the case be regarded as having been submitted for decision on the part of the absent petitioner or petitioners.

14.12 Hearing. - The Lottery Commissioner may designate an examiner to conduct the hearing.

14.12.1 The petitioner may appear individually, or by legal counsel, or by duly authorized representative. In the absence of the petitioner, written evidence of a representatives' authority must be presented to the satisfaction of the Commission.

14.12.2 The petitioner, or his duly authorized representative, may, with the approval of the Commission, waive the right to a hearing and agree to submit the case for decision upon the petition and record, with or without a written brief. Such waivers and agreements are to be in writing or upon the record.

14.13 Argument and briefs. - Petitioners will be given an opportunity for argument within the time limits fixed by the Commission following submission of evidence. The Commission, upon request of the petitioner, will accept briefs in lieu of argument. Briefs must be filed within ten (10) days after the hearing date.

14.14 Evidence admissible at hearing. - The Commission may admit any relevant evidence, except that it shall observe the rules of privilege recognized by law relating to communications and topics. A finding is to be supported by the kind of evidence commonly relied upon by reasonably prudent men in the conduct of their affairs, whether or not the evidence would be admissible before a jury. The Commission may exclude any evidence which is irrelevant, unduly repetitious, or lacking in substantial probative effect.

14.15 Record of proceedings. - There shall be a record made at all hearings held pursuant to W. Va. Code article 29-22 and these regulations.

14.16 Commission's decision. - After the conclusion of the hearing and within ten (10) days of receipt of the transcript thereof, or after receipt of briefs submitted in lieu of argument, the person designated by the Commission as hearing examiner shall prepare a recommended decision supported by findings of fact and conclusions of law affirming, modifying or vacating

the earlier order of the Commission. Thereafter, the Commission, within ten (10) days of receipt of such recommended decision, shall either accept or reject such recommended decision, and if it shall accept such decision, it shall cause the Director to sign and acknowledge the same as its own after having reviewed the transcript and all exhibits attached and affixed thereto, and if it shall reject the same, it shall within ten (10) days of receipt of such recommended decision prepare a decision setting forth its own findings of fact and conclusions of law. In either event, the order signed by the Director shall be final unless vacated or modified upon judicial review thereof. A copy of said order shall be served upon each party to the hearing and their attorney of record, if any, in person or by registered or certified mail.

14.17 Appeal to circuit court. - An appeal by the applicant or license or permit holder may be taken to the Circuit Court of Kanawha County, West Virginia, or with the judge thereof in vacation, if filed no later than thirty (30) days after the date upon which the petitioner received notice of the final order of the Lottery Commission.

14.18 Supreme Court of Appeals. - An appeal may be taken by the applicant, or the license or permit holder, or by the Lottery Commission from the final judgment of the circuit court to which the applicant or licensee has appealed, the same to be taken in the manner and within the time provided by law for civil appeals generally.

§ 179-3-15. Severability.

The sections and subsection of these regulations shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these regulations and all other sections shall remain in full force and effect: Provided, That such remaining portions are not determined to be inseparable, and to this end these regulations are declared separable.

VIDEO LOTTERY GAMES REGULATIONS

CHANGES TO AGENCY APPROVED REGULATION

As a result of comments received during the 30-day comment period, the Lottery Commission has made the following amendments to the regulation:

2.2 "Associated equipment" means any hardware connected to the video lottery system, other than the video lottery terminals or components of a regulated public utility, located on the licensee's premises to perform communication, validation, or other functions.

3.1.5.1 The applicant for a video lottery license must disclose the financing arrangements for the purchase or refinancing of video lottery terminals, or the leasing arrangements in detail specified by the Lottery Commission.

3.1.5.2 A video lottery licensee must submit any change in financing or lease arrangement to the Commission at least thirty (30) days before that instrument's effective date.

3.1.6 A race track applying for a video lottery license or a license renewal must present an agreement between the applicant and either the Kennel Operators and Greyhound Owners Purse Committee or the Horsemen's Benevolent and Protective Association regarding the proceeds from video lottery terminals.

3.1.7 The applicant for a license must not be located in a zone where a local zoning ordinance has prohibited video lottery gaming. See W.Va. Code §29-22-25(b).

3.2 Individual qualifications must be established. - A video lottery license or permit shall not be granted to an applicant until the Commission is assured that each of the individuals listed satisfies the individual qualifications. Individuals required to qualify are further defined as:

4.4 Issuance of license. - The Commission may not issue the license or permit applied for until the background investigations are concluded, all information has been reviewed and the Commission has formally consented to issuance. The Commission is required to make an affirmative determination that the applicant is qualified and the applicable license and/or permit fees are remitted prior to issuing the license. The Lottery Commission shall provide to the appropriate political subdivision(s) notice of any application the Commission receives for a video lottery license. The Lottery Commission shall notify the local political subdivision(s) of a termination of a license. The Lottery Commission in the licensing process shall consider any verbal or written input provided by the appropriate political subdivision(s) and shall provide a written statement to the same regarding final disposition of the license application.

4.9 Fees, renewal fees and dates. - The following fees shall be paid annually

by each licensed race track, or permitted manufacturer, service technician, or validation manager:

4.13 License or permits not transferrable or assignable. - A license or permit in any capacity is a privilege personal to that person and is not a legal right. A license or permit granted or renewed pursuant to these regulations may not be transferred or assigned to another person, nor can a license or a permit be pledged as collateral. The purchaser or successor of any business which has heretofore received a license or permit pursuant to these regulations must apply and qualify for a license or permit. The sale of more than five (5%) percent of a license or permit holder's voting stock, assets other than those bought and sold in the ordinary course of business, or any interest therein to any party other than its present owners must be approved in advance by the Commission. The transfer requirement set forth in the preceding sentence also applies to the sale of ownership in corporations and partnerships which in turn are the owners of a company which holds a video lottery license or permit.

5.1 Criteria for suspension, revocation, denial of license or permit renewal. - The Commission ~~may~~ shall either suspend, revoke, or deny renewal of a license or a permit for any violation ~~of these regulations or~~ of the State Lottery law [W. Va. Code §§29-22-1 et seq.]. The Commission may suspend, revoke, or deny renewal of a license or a permit for any violation of these regulations.

6.2.3 Maintain and provide an inventory of associated equipment spare parts to assure the timely repair and continued, approved operation and play of licensed video lottery terminals purchased for placement in West Virginia.

6.2.8 Notify the Commission of any recurring [two or more times] electronic or mechanical video lottery terminal malfunctions or other problems experienced in a particular approved video lottery terminal model.

6.2.9 ~~Enter into~~ Provide service contracts under terms and conditions agreed upon by all parties; ~~such contracts to be~~ for the maintenance and repair of video lottery terminals and associated equipment placed at a licensed race track.

~~9.1.6.1-----Access to the internal functions of the device shall be gained from a working front panel of the device.~~

~~9.1.6.2-----Access from one locked area within the device to another shall not be allowed.~~

9.1.5 A minimum of one electronic or mechanical coin acceptor or other means to accurately and efficiently establish credit(s) as approved by the Commission must be installed on each video lottery terminal. Each video lottery terminal may also contain bill acceptors for one-dollar bills, five-dollar bills, ten-dollar bills, and twenty-dollar bills. The bill acceptors may be for any single bill or combination of bills in the denominations listed in this subsection. While approval letters and test reports of the coin and bill acceptors from other state or federal jurisdictions may be submitted, all coin and bill acceptors must be approved by the Commission prior to use on any video lottery terminal in this State.

9.1.10 Each video lottery terminal must contain a single printing mechanism capable of printing an original ticket and retaining an exact, legible copy in the video lottery terminal or other means of capturing and retaining an electronic copy of the ticket data as approved by the Commission. The following information must be recorded on the ticket when credits accrued on the video lottery terminal are redeemed for cash:

9.3.1 Video lottery games ~~that are not affected by player skill~~ shall pay out a minimum of 80 percent and no more than 95 percent of the amount wagered. The theoretical payout percentage will be determined using standard methods of probability theory. For the video lottery game of Keno, the theoretical payout percentage requirements apply to each number of spots marked;

§ 179-3-10. Transportation and registration of video lottery terminals. Trucking companies or common carriers shipping terminals shall be bonded and shall ship only in sealed trailers.

10.1 Transportation of video lottery terminals into West Virginia. - A manufacturer transporting one or more video lottery terminals into West Virginia shall provide the Commission in writing ~~at the time of~~ prior to shipment the following information on forms required by the Commission:

§ 179-3-12. Number and location of video lottery terminals; security.

12.1 Number of terminals. A video lottery license gives the holder the right to install and operate up to four hundred video lottery terminals.

12.1.1 A video lottery licensee who demonstrates a need to install and operate more than four hundred video lottery terminals must apply for permission of the Commission to do so. If the Commission determines that the installation of said additional machines is in the best interest of the licensee, the Lottery Commission and the State of West Virginia, then it may grant its permission to exceed the existing limit. It shall do so in increments of fifty machines.

12.1.2 Notwithstanding the provisions of section 12.1.1 of this regulation, no licensee may apply for permission to exceed the initial limitation of four hundred video lottery terminals within the initial six months of the license.

12.1.2 Location of terminals. All video lottery terminals in licensed race tracks must be physically located as follows:

12.2.1 The area(s) shall be continuously monitored through the use of a closed circuit television system (CCTV). The system must be capable of recording activity for a twenty-four (24) hour period and shall be approved by the Commission prior to installation. All video tapes must be retained for a period of at least thirty (30) days, or as directed by the Commission;

12.2.2 In an area that ensures public access to the video lottery terminals is restricted to persons legally entitled by age to play video lottery games;

12.2.3 Initial locations for video lottery terminals require prior approval from the Commission. The licensee shall submit a floor plan of the area or areas where video lottery terminals are to be operated showing machine locations, cabling and security camera mount locations; the scale shall be 1' = 1/4";

12.2.4 Any relocation of video lottery terminals requires prior approval from the Commission. Revised floor plan drawings as specified in section 12.1.3 must be submitted in advance; and

12.2.5 No operating video lottery terminals may be located in any building or structure which is not a site where pari mutuel wagering is permitted under provisions of W. Va. Code §§ 19-23-1 et seq.

12.23 Security.

12.3.1 Security personnel shall be assigned to each location where video lottery terminals are in operation. Security personnel may include designated representatives, managers, or other persons employed by the licensee, or independent licensed and bonded security guards.

12.3.2 Each license holder shall retain a sufficient number of security personnel to provide for safe and legal operation of the facility and the safety and well-being of the patrons of each facility. In the event the Commission determines that an unsafe situation exists for patrons, the Director may order that the license holder provide additional security necessary to correct the situation. A license holder who fails to comply with such an order may be subject to suspension of its license or may have its video lottery terminals disabled.

13.1.1 It is presented on a fully legible, valid printed ticket on paper approved by the Commission, that contains the information as required [this provision shall not apply to incompletely printed or partially legible tickets, provided that the ticket can be validated in some manner];

14.9 **Place of hearing.** ~~Hearings will be held in Charleston, West Virginia, unless the Commission determines otherwise.~~ Parties will be notified of the place of hearing not later than seven days before the hearing date.

WEST VIRGINIA LOTTERY COMMISSION
PUBLIC COMMENTS ON THE VIDEO LOTTERY GAMES
PROPOSED REGULATION

Set forth below are public comments received by the West Virginia State Lottery Commission pertaining to the proposed Video Lottery Games regulation. For purposes of responding to the issues presented, some of the comments have been condensed rather than repeated verbatim. Copies of the original correspondence containing the comments are attached for review.

COMMENTS CONCERNING THE SPLIT OF NET REVENUE:

[Reference: proposed §179-3-7.2]

1. According to the West Virginia Racing Association, licensed racetracks are "...entitled to up to 50% (6/12) of net terminal revenue without regard to reimbursement of expenses..."; a 60-40 split only gives a track 10% for mandated expenses including purchase or lease of equipment, security personnel, advertising and promotion, telephone and communications and construction of secure areas. Instead, according to the West Virginia Racing Association, the split for the tracks should be as follows:

Year one	=	75%
Year two	=	72.5%
Year three	=	70%
Thereafter	=	65%

2. The West Virginia State Racing Commission suggests that a 60% share is not nearly enough.

3. The West Virginia Union of Mutuel Clerks, AFL-CIO suggests the State share be no greater than 25%.

4. Raymond Funkhouser II, president of the Horsemen's Benevolent and Protective Association [HBPA] chapter at Charles Town Races, said the prize structure should be reduced to 80% so that the remaining 20% could be divided among the State, track and purse fund according to the same rate structure prescribed by the State Racing law.

RESPONSE: Currently at Mountaineer Park, video lottery terminals are programmed to pay prizes at the 88.6% level, leaving 11.4% of gross sales to split between the State and the licensee. W.Va. Code §29-22-10(a)(11) requires that a licensed lottery sales agent receive a commission of 5% of gross sales [in this case 43.8%]. The agent is also eligible to receive an optional "bonus-incentive" not to exceed 1% of gross sales. The

difference between 43.8% and 60% is 16.2% of net income [approximately 2% of gross sales] which would cover the direct video lottery costs reimbursement and all or part of the optional 1% bonus-incentive. The Commission has reviewed revenue projections using the 60% - 40% split of net revenue and finds that 60% is adequate compensation for the risks to be undertaken by the racetracks.

The Commission received a letter from the president of Gaming Laboratories International, Inc. (attached) stating that games structured to pay prizes at the 90+ percent level will produce the highest actual net revenues because players will win and replay more often. This is also supported by pari-mutuel racing studies conducted by the University of Louisville. For this reason, and also because of the relatively small percentage reserved for the State, the Commission does not adopt the plan proposed by Raymond Funkhouser. The 60-40 split of net revenue has not been changed.

COMMENT CONCERNING THE NUMBER OF TERMINALS:

[Reference: proposed §179-3-12]
The West Virginia Racing Association proposes that the basic video lottery license cover the installation of up to the first 400 terminals.

RESPONSE: Based on a need for more certainty, both for the tracks and for the general public, the Commission agrees that the initial license includes the right to install up to a specific number of terminals. Terminals in excess of 400 must receive prior approval of the Commission. Increases will be granted for good cause shown and in increments of 50 machines. See change to section 12.1.

COMMENTS CONCERNING SUBSIDIES TO PURSE FUNDS:

[Reference: proposed §179-3-3.1.6]

1. Harry L. Buch, attorney for the Horsemen's Benevolent and Protective Association chapters at Mountaineer Park and Charles Town Races and former chairman of the West Virginia Racing Commission, said the regulation should require as a condition of licensing that the applicant track submit "...a bona fide agreement from the organization representing the majority of the horsemen at any licensed racetrack within this jurisdiction, setting forth an agreement as to the division of profits or the establishment of a purse structure by contract."

2. The West Virginia Racing Association felt that a mandated subsidy contract with the Horsemen's Benevolent and Protective Association (HBPA) or with the Greyhound Breeders Association should not be a condition precedent to the issuance of a video lottery license to a thoroughbred or greyhound racetrack.

Instead, section 3.1.6 should say that the Commission may "consider" the existence or absence of such an agreement as one factor in judging "adequate financial stability" of the applicant-track.

3. The West Virginia Racing Commission adopted its Resolution 93-1 which recommended to the Lottery Commission that a mutual agreement between the racetrack management and either the Kennel Operators and Greyhound Owners Purse Committee or the Horsemen's Benevolent and Protective Association, Inc. concerning the proceeds from the video lottery terminals, should be a condition for issuance of a video lottery license.

RESPONSE: The Commission is choosing to offer video lottery game licenses only to pari-mutuel racetracks. A principal reason for this is the recent marked decline in racing attendance and revenues together with the large numbers of jobs directly and indirectly related to the racing industry in West Virginia. The Racing Commission comments that, "...We currently have on track almost 10,000 people with [permits] that depend on racing as their livelihood. It is fair to say another 7,000 people off-track also depend on racing for their livelihoods. Our state's economic impact is over \$100 million, annually...". Video lottery cannot help to preserve the live-racing industry in West Virginia without becoming a direct revenue source for the animal owners as well as the track owners. The Commission believes video lottery is an additional gaming entertainment form which can help West Virginia racetracks compete favorably with tracks in other states. Video lottery should complement and supplement live racing; it should not replace it.

The Commission proposes that an agreement between an organization representing a majority of the horse or dog owners operating at the applicant-track will be a condition precedent to the issuance of a video lottery license. See §179-3-3.1.6.

COMMENT CONCERNING THE LOCATION LIMITS ON OPERATING VIDEO LOTTERY TERMINALS:

[Reference: proposed §179-3-12.2.5]

The West Virginia Racing Association suggests a change to the definition of a racing facility where video lottery terminals can be operated. Section 12.1.5 [now 12.2.5], should be expanded to also be identified as "...the pari-mutuel racing facilities under W.Va. Code §19-23-12a(1)."

RESPONSE: The Lottery Commission has simplified §12.2.5 by prohibiting operation of video lottery terminals in buildings or structures where pari-mutuel wagering is not allowed by the state racing law, W.Va. Code §§19-23-1 et seq.

COMMENTS FROM TERMINAL MANUFACTURERS:

IGT-1. Section 3.2.3 on page 4 of the Proposed Regulations requires qualification of each employee or agent "having the power to exercise a significant influence over decisions concerning any part of the applicant's business operation." We request clarification regarding whether this would require qualification of an employee who has the power to exercise some influence over a division or subsidiary unrelated to manufacturing video lottery terminal for use in the State of West Virginia. Perhaps this issue could be addressed by adding a definition of "Business operation." One possible definition might be "the conduct of any activity requiring a license or permit pursuant to these regulations and any activity directly related thereto." This definition would require qualification of anyone with significant influence over video lottery activities without reaching those involved in unrelated divisions or subsidiaries.

RESPONSE: In light of the statutory and administrative restrictions found in W.Va. Code §§29-22-13(3) and 14(a)(3), and the disclosures found in W.Va. Code §§29-22-23 and 24, this requirement is deemed by the Lottery Commission to be a reasonable requirement and it has not been changed.

IGT-2. Section 4.12 requires immediate notification of "any transaction relevant to license or permit qualification." We would request that some time period, such as 30 days, be allowed regarding the types of transactions deemed relevant to license or permit qualification, either in the regulation itself or in an interpretive ruling. Many other states require notification of any material change in information requested by or provided in an application.

RESPONSE: The immediate notification provision allows the Lottery Commission to warn a license or permit holder if the pending transaction would lead to a suspension or revocation; this language has not be changed.

IGT-3. Section 6.1.1 require license and permit holders to promptly report to the Commission any violation or any facts and circumstances that may result in a violation of State or Federal law and/or any rules or regulations . . ." We would request that the words, "the holder reasonably believes" be inserted before "may result" in this section. It is not clear from the present wording whether the "may result" provision is an objective or a subjective standard.

RESPONSE: The proposed change would leave to the discretion of

the licensee or permit holder whether to report. The Commission's desire is that any such circumstances and facts be reported whether or not such facts and circumstances subsequently lead to a violation. Preventing violations is an important function of the Lottery Commission. The language has not be changed.

IGT-4. Sections 6.1.7 and 6.2.3 use the term "associated equipment." This term is not defined in the regulations. We would request that a definition be included for the sake of clarity.

RESPONSE: The Commission agrees that a definition is necessary. The following definition has been added: "Associated equipment" means any hardware connected to the video lottery system, other than the video lottery terminals or components of a regulated public utility, located on the licensee's premises to perform communication, validation, or other functions.

Since this definition does not apply to spare parts or components, the term "associated equipment" was removed from Section 6.2.3 and replaced by "spare parts".

IGT-5. Section 6.2.5 requires all terminals placed in West Virginia to comply with FCC rules. We would suggest that you also require Underwriters' Laboratories safety certification under UL-22, Amusement and Gaming Equipment.

RESPONSE: The Lottery Commission does not have sufficient time to research the effect of an Underwriters' Laboratories safety certification requirement on all video lottery terminal manufacturers. Although this may be an unbiased suggestion, it has not been added to the regulations since it may preclude certain manufacturers from complying with the terminal requirements.

IGT-6. Section 6.2.8 requires permitted manufacturers to notify the Commission of any "recurring . . . malfunctions or other problems." It would be helpful if you defined "recurring," either in the regulation or in an interpretive ruling.

RESPONSE: The parenthetical phrase "two or more times" has been added after the term "recurring" for clarification purposes.

IGT-7. Section 6.3.9 requires a licensee to pay all valid winning tickets. Will a specific validation process or the use of Clerk Validation Terminals be required?

RESPONSE: Validation units will not be required.

IGT-8. Section 7.1 states that the Commission will provide a

communications protocol to permitted manufacturers. Will this protocol be developed by the Commission or the central system supplier? We would suggest that it would be more prudent to use the protocol that has already been developed by the central system supplier. Since licensees may be required to supply a central system without cost to the Commission (Section 9.1.13.1), the supplier of the system should not be required to perform additional work (thereby increasing costs to the licensee) to conform its system to the Commission's protocol. Most of the central system suppliers have previously provided their protocols to other manufacturers under non-disclosure agreements.

RESPONSE: The Lottery Commission favors a single central site purchased by it. Likely, the central system supplier would recommend a protocol to the Commission for approval. It is the intention of the Commission to provide the approved protocol to permitted manufacturers to prevent the central system supplier from having an advantage.

IGT-9. Section 8.2 requires manufacturers applying for approval of video lottery terminals to provide certain information regarding the operation of those terminals to the Commission. Will this information be confidential? Will the Commission use an independent laboratory such as Gaming Laboratories International? If so, will the manufacturer be required to provide the information to the Commission, to the independent laboratory, or both?

RESPONSE: The West Virginia Freedom of Information Act [FOIA], W.Va. Code §29B-1-4(1) exempts "trade secrets" from disclosure to the public when such information is in the hands of a public agency. Information submitted under §179-3-8.2 should be accompanied by the manufacturer's claim that the information constitutes a trade secret as defined by FOIA. The decision of whether to use a specific independent laboratory is beyond the scope of this regulation.

IGT-10. Section 8.8 provides for the seizure and destruction of non-complying video lottery terminals. Will manufacturers have an opportunity to retrofit terminals prior to seizure or destruction, at least where the non-compliance is the result of an innocent mistake?

RESPONSE: This may be possible since seizure and destruction are not mandatory.

IGT-11. Section 9.1.3 states that a terminal must have an accessible on/off switch that controls the electrical current used in the operation of the terminal "and any associated equipment." While "associated equipment" is not defined (as discussed above), this section arguably means that an on/off

switch must be able to shut off the electrical current to the central computer system. This could be clarified by deleting "and any associated equipment."

RESPONSE: The reference to "associated equipment" has been deleted.

IGT-12. Section 9.1.5 requires an electronic or mechanical coin acceptor. We suggest that only electronic coin acceptors, which are far more secure than mechanical coin acceptors, be allowed.

RESPONSE: Although the suggestion may be unbiased, Section 9.1.5 has not been changed since it may preclude certain manufacturers from complying with the terminals requirements.

IGT-13. Section 9.1.6.2 provides that "access from one locked area within the device to another shall not be allowed." This section is somewhat ambiguous and arguably means that the lock for a second locked area may not be accessed from inside a first locked area. We do not believe this was the intended result and suggest that this provision be clarified.

RESPONSE: Sections 9.1.6.1 and 9.1.6.2 have been deleted.

IGT-14. Section 9.1.10.5 appears to contain a typographical error. We believe the word "required" should be inserted between the words, "information" and "by."

RESPONSE: This change has been made.

IGT-15. Pursuant to Section 9.1.13.1, is it the Commission's intent to require each licensed racetrack to have a separate central system?

RESPONSE: The Lottery Commission favors a single central site computer to be purchased by it. The language is permissive to allow for the possibility that terminals chosen by a licensee would somehow be incompatible with the Lottery's central site hardware and software.

IGT-16. Section 9.3.1 provides for minimum and maximum payout percentages for games "that are not affected by player skill." We recommend that minimum and maximum payout percentages utilizing optimum play strategy be set for games such as poker where there is some player skill involved. The maximum payout percentage referred to in Section 9.3.2 should utilize a similar calculation.

RESPONSE: The quoted phrase was mistakenly included in the regulation and has been deleted. W.Va. Code §29-22-9(b)(5) requires lottery games to be based totally on chance.

IGT-17. Finally, Section 13.5 states that the "licensed racetrack is solely responsible for any wrongful award or denial of credits." Does this provision limit a licensee's right to recover credits wrongfully awarded to a player as the result of fraud or cheating? If not, we suggest that the wording be clarified.

RESPONSE: The section is a denial of State liability. It does not pertain to the rights or causes of action a licensee may have against someone based on fraud or embezzlement.

WMS-REF: 2.17. The definition of "Video Lottery Game" references a game of chance, which could be interpreted as excluding the traditional video poker game. We recommend that the Commission clarify that video poker is permissible. Otherwise, it is our experience that the games will not enjoy strong revenue potential.

RESPONSE: The definition is statutory. See W.Va. Code §29-22-9(b)(5) and the response to IGT-16, above.

WMS-REF: 6.1.3, 6.1.4. These paragraphs appear to seek to hold harmless the Commission, the Director and the State from claims arising out of the Lottery Commission's operation of the central computer system. The regulations should be clarified so that these provisions do not apply to any claim arising solely from the actions of the Lottery Commission through the use of its central computer or by actions of the track operators. Further, there should be no obligation for licensees to defend and pay legal fees for the actions described above.

RESPONSE: The language contained in the regulation is clear. The comment does not correctly restate the provision.

WMS-REF: 6.2.9 This paragraph creates an obligation to enter into service contracts. In no other jurisdiction are such service contracts mandated by law. In other jurisdictions, service is a product that the terminal manufacturers provide which is either included in the price of the machine or for a fee. We suggest that market forces be allowed to create the environment under which service contracts are entered, as opposed to mandated by the state.

RESPONSE: Section 6.2.9 has been modified to generally require service arrangements.

WMS-REF: 8.2, 8.3, 8.3.1. These paragraphs suggests that the Commission may establish its own testing and certification laboratory. In most jurisdictions, this function is contracted to a third party. Because the Commission reserves the right to have the manufacturer supply specialized equipment and third

party services and have the manufacturer pay for all associated costs, this could create an enormous and unacceptable financial burden. We suggest that the Commission contract with Gaming Laboratories International (as do most jurisdictions) or some other reputable firm. The fees charged by such firms are reasonable and customary in the industry.

RESPONSE: The decision of whether to use a specific independent testing laboratory is beyond the scope of this regulation.

WMS-REF: 8.4. This paragraph requires a 60-day trial of all models submitted for approval. This is not required in any other jurisdiction for video lottery terminals. WMS believes it is not necessary for purposes of security or other legitimate concerns of the Commission and would likely be counter productive in terms of game design and competitiveness.

RESPONSE: The trial period is stated as "...not in excess of sixty (60) days..." The testing is for lottery terminals to be used as a part of the State's lottery system. The Lottery therefore has a vested interest in assuring that the terminals will perform properly and 60 days is not an unreasonable length of time under the circumstances. This language has not been changed.

WMS-REF: 9.1.6. WMS fully supports the intent of this paragraph, which is security of the machines. WMS is concerned, though, that this regulation is ambiguous and can be interpreted such that its current cabinet design may not conform to the access requirements as they are described. WMS suggests that the regulation be written so as to describe the Commission's objectives (i.e., electronic security, coin box security) and ensure that the manufacturers' design meets those objectives.

RESPONSE: Sections 9.1.6.1 and 9.1.6.2 have been deleted.

WMS-REF: 9.1.13.1. WMS has very strong reservations regarding this proposed regulation. This regulation could essentially create the same sole source requirement as existed under the above described RFP, as it could limit the eligible manufacturers to those few who also manufacture the central computers. WMS believes it preferable for the Commission to purchase, install, and operate one central computer system to which all manufacturers would interface.

RESPONSE: See the responses to IGT-8 and IGT-15.

WMS-REF. 9.3.1, 9.3.2. These regulations are confusing. While one provides for a maximum payout of 95 percent, the other discusses special permission would be required to exceed 92 percent. Pay table design, payout percentage and hit frequency

are the essence of game design. The Commission should allow maximization of payout percentage and set a specific amount, whether it is 92 percent or 95 percent.

RESPONSE: Although payout percentages may not exceed 95% as stated in Section 9.3.1, payout percentages greater than 92% must be reviewed and considered by the Commission. No change has been made to the regulation.

WMS-REF. 11.9. WMS believes that the requirement that authorized Commission personnel be present when any repairs are made is unnecessary and counter productive. The requirement would create the need for a large number of Commission approved personnel. If there are insufficient personnel, then the machines may not be functioning for an unnecessarily long period of time. Yet, inspecting or changing logic boards should not require a Commission authorized person. There are sufficient safeguards built into both the video lottery terminals and the central computer, to protect the security of the system.

RESPONSE: The question does not correctly restate the provision. Please note that Section 11.9 refers specifically to repairs to the logic area and not to "any repairs." The Lottery Commission is aware of technical verification procedures commonly used in the video lottery industry. Although many safeguards exist, the Lottery Commission strongly supports the requirement to have Commission personnel present when the logic area is accessed.

WMS-REF. 13.1.1, 13.1.2. The proposed rules regarding payment are very similar to the present rules in Oregon. WMS understands that Oregon has found that this particular rule has created a major operational problem. There are a variety of circumstances that may cause a fully legible printed ticket to be unavailable. The Oregon Lottery is now in the position of having to refuse payment to legitimate winners. The VLT is able to produce a visual record of a cash out transaction. A payment clerk can validate such a transaction and enter its control number into a validation terminal. The terminal would confirm that payment was not previously made, authorized payment, and then logged such payment as made. We highly recommend this section be changed accordingly.

RESPONSE: It is not the intention of the Lottery Commission to prevent redemption of legitimate claims due to a printer glitch or other technical problem, provided that the ticket can be validated in some manner. Therefore the language "this provision shall not apply to incompletely printed or partially legible tickets, provided that the ticket can be validated in some manner;" has been added to Section 13.1.1.

WMS-REF. 14.1.1. These regulations regarding restrictions on

continuances and presence of parties, when read together, could well constitute a denial of due process in certain circumstances. These provisions are unduly restrictive and not consistent with the Administrative Procedures Act (APA). We suggest that the provisions be rewritten so as to be consistent with the APA.

RESPONSE: Please note that the comment actually refers to Sections 14.10 and 14.11. These sections appear verbatim as §§175-2-6.10 and 6.11 in administrative regulations of ABCC already approved by the Legislature. The Lottery Commission believes they are reasonable for a highly regulated activity such as private club liquor sales and video lottery gaming.

AUTOTOTE.1. Within the pari-mutuel environment, it is not uncommon for self service pari-mutuel wagering terminals to accept cash vouchers instead of cash. By eliminating cash in the self service machine, the problem with theft from the machine is eliminated, and correspondingly the security safeguards and general complexity of the device have been significantly reduced. The cashless self service terminals are significantly less costly than terminals that accept and store cash and are less expensive to operate. Clerk operated pari-mutuel terminals are also equipped to accept cash vouchers. Therefore, within the racetrack environment, the player may engage in totally cashless wagering by employing cash vouchers.

Security for cashless wagering is provided through the on-line, real time totalisator system. Each voucher is logged on the tote system with a unique serial number. When a voucher is inserted into a pari-mutuel terminal to establish a balance prior to placing a wager, the voucher is "validated" (in much the same manner as a winning on-line lottery ticket is validated) and its value established by the tote system prior to the balance being established on the terminal. Through employing the tote system to "validate" cash vouchers, the chances of a counterfeit voucher being accepted are eliminated. This system has been employed at racetracks in West Virginia for approximately ten years.

Autotote would like to propose the following revision to the language in this paragraph:

"A minimum of one electronic or mechanical coin acceptor, or a cash voucher acceptor that will validate, on-line, the value of the voucher with the track totalisator system must be installed on each video lottery terminal."

RESPONSE: The Lottery Commission understands from an independent source that means other than coin or bill acceptors are being developed to establish credit on video lottery terminals. Therefore, the language "or other means to accurately and efficiently establish credit(s) as approved by the Commission" has been added to Section 9.1.5.

AUTOTOTE.2 - Autotote would like to propose the following revision to the language in this paragraph:

"The main logic board(s) and software EPROM'S (computer chips that store memory), or down-loadable EEPROM (flash memory) or other down-loadable memory must be in a separate, locked and sealed area within the video lottery terminal."

RESPONSE: The Lottery Commission is opposed to software and/or parameter changes without proper testing and physical replacement of the EPROMs. The regulations have not been changed.

AUTOTOTE.3- Autotote would like to propose the following revision to the language in this paragraph: "Each video lottery terminal must contain a single printing mechanism capable of printing an original ticket and retaining an exact, legible copy in the video lottery terminal or capturing and retaining an electronic copy of the ticket data on the racetrack's on-line, real time totalisator system."

RESPONSE: An independent source verified that Section 9.1.10 as proposed would prevent the use of audit technologies currently being developed. Therefore, the language "or other means of capturing and retaining an electronic copy of the ticket data as approved by the Commission" has been added.

AUTOTOTE. 4 - Autotote would like to propose the following revision to the language in this paragraph:
"Video lottery games that are not affected by player skill shall pay out a minimum of 80 percent ~~and no more than 95 percent~~ of the amount wagered."

RESPONSE: See the response to WMS-REF. 9.3.1, 9.3.2.

GTECH.1 - The proposed regulations address the security responsibilities of both licensee and manufacturer permittees in considerable detail. However, the regulations are quite ambiguous about the security contributions of the Commission via the "Commission's central computer in Charleston." In fact, one could make the argument that the proposed wording permits a "dial-up" central system function that does little more than collect after-the-fact data for subsequent handling, analysis and reporting. In other words, the regulations permit employment of a dial-up accounting system.

RESPONSE: The reference to "dial-up or on-line" is statutory. See W. Va. Code §29-22-9(b)(2).

GTECH.2 - GTECH submits that the Commission is far better served by an on-line approach where the video machines are continuously polled and the captured data is handled by the Commission's central computer in near real-time. In this approach the.

Commission's central computer constitutes a security monitoring system from which accounting information flows as a natural by-product. Admittedly, the regulations do not rule out employment of this approach; on the other hand, the regulations do not mandate its use.

Accordingly, it is GTECH's recommendation that the always-connected always-pollled security approach be explicitly written into the regulations.

RESPONSE: See the response to GTECH.1.

COMMENTS FROM LOCAL GOVERNMENTS:

JEFF CO. PLAN COMM.-1. A public hearing should be held on these proposed rules in each county that contains a racetrack;

RESPONSE: The last date to file legislative rules for the 1994 Regular Session of the Legislature is August 16, 1993. The Commission must give at least 30 days notice for a hearing to elicit comments concerning proposed regulations. No such notice was given because the Commission chose instead to receive written comment. Public hearings may take place in affected counties as part of the legislative review process.

JEFF CO. PLAN COMM.-2. Under §179-3-3 License and permit qualifications: a provision should be added that requires the applicant to be in compliance with the local Zoning Ordinance for the placement of these machines;

RESPONSE: The regulation has been modified by the addition of Section 3.1.7: The applicant for a license must not be located in a zone where a local zoning ordinance has prohibited video lottery gaming. See W. Va. Code §29-22-25(b).

JEFF CO. PLAN COMM.-3. Under §179-3-3.3 Applicant required to furnish information: the applicant should be required to submit a letter from the appropriate zoning administrator stating that the placement of the machines is an acceptable use in the proposed location;

RESPONSE: We agree. The Commission will include a zoning box in the form used for video lottery license applications.

JEFF CO. PLAN COMM.-4. Consideration of applications by Commission: a provision should be added that states without the Zoning Administrator's statement of acceptance, the application shall be considered incomplete; and,

RESPONSE: All other affected counties do not have county-wide zoning or a "zoning administrator". The Commission wishes to adopt a uniform rule and believes its response to JEFF CO. PLAN COMM.-3, above is adequate. W.Va. Code §29-22-25(b) provides that nothing in the Lottery Act shall invalidate any zoning law. A racetrack which was prevented by local zoning ordinance from conducting video lottery would have no reason to participate in the application process.

JEFF CO. PLAN COMM.-5. Issuance of license. the lack of the zoning Administrator's acceptance should be added as a reason for denial.

Numbers 2, 3, 4 and 5 above are predicated on the fact that the West Virginia State Code as amended (§29-22-25 subsection (b)) states,

"The provisions of this Article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict herewith. Provided, that nothing herein shall invalidate any zoning law, or Sunday closing law under Article Ten [§61-10-1 et.seq.] Chapter Sixty-one of this code." (emphasis added)

Please be advised that in comparison, although regulated by the State, beer, wine and liquor licensing requires the same statement by the Zoning Office. This is to ensure that the sales of these products are allowed by the local Zoning Ordinance prior to issuance of such licenses.

RESPONSE: See response to the previous comment.

JEFF CO. PLAN COMM.-6. Finally, although a Legislative function, the Commission strongly supports the requirement of local referendum for these types of questions.

RESPONSE: The Lottery Commission agrees that the Legislature could require local referenda before the application process takes place.

CO. COMM, JEFF CO.-1. A public hearing should be held in each County in which the machines will be placed.

Legislation should be initiated to require local referendum before placing the machines in a County.

RESPONSE: See response to JEFF CO. PLAN COMM.-1 and 6, above.

CO. COMM, JEFF. CO.-2. Page 1 - Appendix B - Item 3 - The stated objective of the proposed regulation is to permit operation of video lottery type games at the State's four pari-mutuel racetracks.

-Section 29-22-25(b) and (c), WV Code, as amended provided that the State Lottery Act shall not invalidate any local zoning

law to the contrary. Further the Article shall not be deemed to permit the operation of any lottery otherwise prohibited by the laws of this State and not owned and operated by this State and permitted by the State Lottery Act. This language should be added to the objective stated in Appendix B on page 1.

RESPONSE: With regard to adding language regarding local zoning laws, see the response to JEFF CO. PLAN COMM.-2. With regard to the actual ownership of video lottery equipment, please note that the issue is currently pending before the West Virginia Supreme Court of Appeals. These regulations adopt the Lottery Commission's position in that proceeding which differs with the latest opinion of the Attorney General.

CO. COMM, JEFF. CO.-3. Page 2 - Overall Economic Impact - subsection B and C - The economic impact on political subdivisions of the State is not addressed in the proposed regulations at all. The economic impact could be substantial. This will cause a substantial increase for the need for law enforcement, emergency services, and other social intervention programs in any area where gambling is expanded in this fashion.

The proposed rules and regulations provide for no funding whatsoever to be channeled to local governments to address any of these additional needs which would be caused by an expansion of gambling operations. The expansion of gambling in any other area in the United States has caused an increase in the need for police protection and emergency services responses. These matters must be addressed by the West Virginia Lottery Commission if they intend to implement video lottery games in all racetracks.

The Lottery Commission should be encouraged to provide a portion of the gross revenues to be paid to the County in which the track is located.

RESPONSE: This issue would require a modification to the current State Lottery Act and is beyond the scope of this regulation. The Lottery revenues are dedicated to three objectives which apply throughout the state: the elderly, education and state tourism. W.Va. Code §29-22-18. In order to facilitate this proposal, the Legislature must either amend the current State Lottery Act or enact a separate statute.

CO. COMM, JEFF. CO.-4. Section 179-3-2 - 2.12 Definition of "own" - The Attorney General has rendered an opinion indicating that the State Lottery Constitutional Amendment requires that video lottery games be owned, operated and controlled by the State of West Virginia pursuant to the Constitutional amendment. Any definition or other regulation in conflict therewith should be amended. The regulations should require that the machines are

owned by the State of West Virginia as required by the Constitutional amendment.

RESPONSE: See response to CO. COMM, JEFF CO.-2.

CO. COMM, JEFF. CO.-5. 2.17 Definition "Video Lottery Game"
Section 2.19 Definition "Video Lottery Terminal." - Both of these definitions are very broad and can be used to accommodate any kind of a game approved by the State Lottery Commission. These regulations can accommodate the expansion of gambling regulations to include the video lottery games and other types of gambling later approved by the Lottery Commission including casino games.

RESPONSE: The Commission has attempted to define these terms as succinctly as possible so as to restrict the nature of the electronic game and to allow flexibility in the procurement process. The machines are limited to games of chance pursuant to statute [W.Va. Code §29-22-9(b)(5)] and cannot include games of skill (commonly referred to as "casino games") absent a change in law.

CO. COMM, JEFF. CO.-6. Section 3.2 Individual Qualifications;
Section 3.3 Applicant Required to Furnish Information; Section 179-3-4 Application Process - All of these provisions are designed to provide procedures for governing the application for license required by the regulations. None of these procedures include any input from local government.

- Local Governments should be informed as to the nature of the applications presented. There should be notice requirements to give the County Commission notice of what applications are received and what procedures are available to the County for input on those applications. There should also be notice requirements for license granted for use in any particular County.

RESPONSE: The proposed regulation has been amended at Section 4.4 by adding the following language:

The Lottery Commission shall provide to the appropriate political subdivision(s) notice of any application the Commission receives for a video lottery license. The Lottery Commission shall notify the local political subdivision(s) of a termination of a license. The Lottery Commission in the licensing process shall consider any verbal or written input provided by the appropriate political subdivision(s) and shall provide a written statement to the same regarding final disposition of the license

application.

CO. COMM, JEFF. CO.-7. Section 179-3-5 Enforcement - All enforcement powers are reserved for the State Lottery Commission.

RESPONSE: Enforcement powers relative to Lottery Games is a shared responsibility between the Lottery Commission and State and local law enforcement authorities. The Lottery Commission will continue to embrace this cooperation with local governmental units and the Department of Public Safety.

CO. COMM, JEFF. CO.-8. Section 179-3-6 Duties of License and Permit Holders - Forms for reporting are directed to the State Lottery Commission. Again, there are no requirements that the County Commission of any county in which these machines are to be placed to receive any information or notice whatsoever from the holders of any permits or license operating in the County. The County should be kept informed and the County should also have the benefit of notice of any problems or any termination of operations as a result of an irregularity or illegal action.

RESPONSE: See response to CO. COMM, JEFF. CO. - 6.

CO. COMM, JEFF. CO.-9. Section 179-3-7 Accounting - All accounting procedures are supervised by the State Lottery Commission.

There should be some type of a notice mechanism which would require the Lottery Commission to notify the County Commission of the filing of various periodic reports and other requirements of the accounting provisions.

RESPONSE: See response to CO. COMM, JEFF. CO. - 6.

CO. COMM, JEFF. CO.-10. Section 179-3-8 General Video Lottery Terminal Requirements - These requirements appear to be general in nature and necessary to the administration of such system. In subsection 8.7 the regulations specifically state that the video lottery terminal must be operated and played in accordance with the provisions of the state enabling statutes (Section 29-22-1 et seq.).

RESPONSE: The comment correctly states the intention of the Lottery Commission.

CO. COMM, JEFF. CO.-11. Section 179-3-8 Transportation and Registration of Video Lottery Terminals - These regulations attempt to place some security on the transportation of the lottery terminals. It also requires the

registration of various serial numbers and model numbers of each machine.

There should be a requirement that the trucking companies or common carriers shipping these terminals be bonded and use sealed trailers to transport the machines to assure that tampering does not occur during shipment.

RESPONSE: It is the Commission's intention to provide security on the transportation of video lottery terminals, which includes maintaining documentation on the location of all terminals. Thus, the regulations have addressed the transportation of terminals into, within, and out of the State. Although terminal verification procedures are performed by Commission personnel prior to any terminal becoming operational, the Commission agrees that sealed trailers should be used during shipment, particularly because there is no permit or license requirement for the entity transporting the terminals. Therefore, this requirement has been added to Section 179-3-10.

CO. COMM, JEFF. CO.-12. Subsection 10.2 governs the receipt of video lottery terminals in West Virginia.

There should be a formal receipt process which would be supervised and overseen by Lottery Commission employees and not by racetrack employees.

RESPONSE: The regulations specifically address Lottery Commission security procedures including but not limited to background investigations, license and permit requirements, independent testing, technical verification, sealed logic units, rights to inspection without notice, and transportation notification. The Commission has a vested interest in maintaining the security and integrity of the video lottery terminals and games, but does not agree with the suggested requirement. Since the Commission will have information on the date and time of terminal arrival, it fully intends to have at the site security personnel from the Commission.

CO. COMM, JEFF. CO.-13. Subsection 10.3 pertains to transportation of video lottery terminals between locations inside the State of West Virginia. The same rigorous requirements for transporting video lottery machines from the factory to West Virginia should be imposed for shipment of machines anywhere.

It appears that transporting the machines within the State of West Virginia is not regulated the same as transporting them into the State. These requirements should be uniform no matter

where the machines have gone nor where they are going. There should be no opportunity to tamper with the machines while they are being shipped.

RESPONSE: Transportation of video lottery terminals into, within, and out of the State is discussed in Sections 10.1, 10.3, and 10.4, respectively. All three sections have similar requirements for information. Although the comment implies that there are different notification requirements for transportation, no examples were listed. The phrase "at the time of shipment" has been changed to "prior to shipment" in §179-3-10.1 to conform to the notice requirements in §10.3 and §10.4.

CO. COMM, JEFF. CO.-14. Section 179-3-11 Maintenance of Video Lottery Terminals - The maintenance requirements for these machines should be extremely specific. These regulations appear to address those problems.

All documentation with regard to certificate of training programs and certificate for licensed maintenance persons should be filed with the Lottery Commission in order that they are subject to public scrutiny. The manufacturer should not be the custodian of these types of important records.

RESPONSE: Pursuant to section 11.5, manufacturers are required to file documentation relating to training and licensed maintenance persons to the Lottery Commission.

CO. COMM, JEFF. CO.-15. Section 179-3-12 Location and Number of Video Lottery Terminals. - There should be a statement in this section which indicates that local zoning regulations may control the placement and location of video lottery terminals. There should at least be a reference to Section 29-22-25, W.Va. Code, as amended.

RESPONSE: See response to JEFF CO. PLAN COMM.-2.

CO. COMM, JEFF. CO.-16 Subsection 12.2 requires that security personnel will be assigned to each location where video lottery terminals are in operation. However, the license holder or racetrack would be the party who retained the security personnel. There should be a Lottery Commission employee in charge of each location.

RESPONSE: The Lottery Commission believes that this provision correctly places the day-to-day responsibility for ensuring the safety of the patrons with the license holder who holds a general legal duty to ensure the safety of any of its customers. Additionally, the Lottery Commission intermittently provides

security personnel who ensure compliance with statutory and regulatory provisions. Said personnel also verify that the license holder maintains a safe and secure environment for video lottery players.

CO. COMM, JEFF. CO.-17. Section 179-3-14 Hearing and Appeal Procedure - Any applicant for license or permit holder as the case may be adversely effected by such order shall have a right to a hearing. This indicates that no other person may ask for a hearing before the State Lottery Commission.

There should be a procedure which would allow other persons adversely affected by an order of the State Lottery Commission to request a hearing to give a forum to those persons who are other than an applicant or permit holder.

RESPONSE: This regulatory provision applies to someone whose license is suspended or revoked. West Virginia Code Section 29-22-14(b) also provides such a hearing process which would apply to "anyone aggrieved by an action of the Commission."

CO. COMM, JEFF. CO.-18. Subsection 14.9 This indicates that all hearings will be held in Charleston unless the Commission determines otherwise. It is clear that the hearings should be held where the person that requested the hearing is located or such other forum which is convenient for the witnesses of the parties involved. To require people to go to Charleston for hearings is an overly burdensome and unreasonable requirement.

RESPONSE: Hearings are normally held at such locations as determined by the Commission to be mutually convenient to the petitioner and the Commission members. The Lottery Commission may consider other factors when determining where to hold such hearings. However, in light of this comment the regulation has been modified to delete the reference to Charleston.

OTHER COMMENTS (ORIGINATING WITHIN THE LOTTERY COMMISSION AND THE DEPARTMENT OF TAX AND REVENUE:

OTHER COMMENTS-1. Comments received by the Lottery Commission at its meeting on July 12 and 13, 1993 (minutes attached) and Comments received from Richard Boyle, Assistant Secretary of the Department of Tax and Revenue (and designated successor Lottery Director effective September 1, 1993) raised issues relating to the sale of more than 5% of stock or ownership interest in the context of the transfer or assignment of a license or permit.

RESPONSE: The following section has been added to insure the same treatment where the license or permit is held by a corporation or partnership:

4.13 License or permits not transferrable or

assignable. - A license or permit in any capacity is a privilege personal to that person and is not a legal right. A license or permit granted or renewed pursuant to these regulations may not be transferred or assigned to another person, nor can a license or a permit be pledged as collateral. The purchaser or successor of any business which has heretofore received a license or permit pursuant to these regulations must apply and qualify for a license or permit. The sale of more than five (5%) percent of a license or permit holder's voting stock, assets other than those bought and sold in the ordinary course of business, or any interest therein to any party other than its present owners must be approved in advance by the Commission. The transfer requirement set forth in the preceeding sentence also applies to the sale of ownership in corporations and partnerships which in turn are the owners of a company which holds a video lottery license or permit.

OTHER COMMENTS-2. Comments received by the Lottery Commission at its meeting on July 12 and 13, 1993 (minutes attached) and Comments received from Richard Boyle, Assistant Secretary of the Department of Tax and Revenue (and designated successor Lottery Director effective September 1, 1993) raised issues in the context of disclosure of financial arrangements, e.g. the financier for a commercial enterprise is sometimes in a position to exert control over the operation of the commercial enterprise.

RESPONSE: Section 179-3-3.1.5 has been strengthened by the addition of two subsections:

3.1.5.1 The applicant for a video lottery license must disclose the financing arrangements for the purchase or refinancing of video lottery terminals, or the leasing arrangements in detail specified by the Lottery Commission.

3.1.5.2 A video lottery licensee or must submit any change in financing or lease arrangement to the Commission at least thirty (30) days before that instrument's effective date.

OTHER COMMENTS-3. Comments received by the Lottery Commission at its meeting on July 12 and 13, 1993 (minutes attached) related to the discretionary suspension of license or permit under regulation section 179-3-5.1.

RESPONSE: Section 5.1 was changed to read as follows:

5.1 Criteria for suspension, revocation, denial of

license or permit renewal. - The Commission shall either suspend, revoke, or deny renewal of a license or a permit for any violation of the State Lottery law [W. Va. Code §§29-22-1 et seq.]. The Commission may suspend, revoke, or deny renewal of a license or a permit for any violation of these regulations.



July 23, 1993

Mr. William Woodford
West Virginia Lottery
P.O. Box 2067
Charleston, West Virginia 25327

Dear Mr. Woodford:

This letter is in response to your telephone call Tuesday, July 20, regarding optimal payback percentages with regard to making the most money per machine. We have some experience in reviewing several markets worldwide and are able to give you advice in this area.

Currently, I believe, your payback percentage structure is set at approximately 90%. A maximum payback percentage of 90% when computed using an optimal play strategy will actually yield field results which return between 88 and 89 percent to the player. These payback percentages, when compared to Casino markets such as Atlantic City and the Mashentucket Pequot Tribe in Connecticut are relatively low for poker, blackjack, and other games of skill.

Enclosed, please find a list of the various jurisdictions which utilize video lottery and their maximum payback percentages. As you can see from these percentages, the normal payback for video lottery range between 92 and 95%. Clearly, in these markets, whenever regulators set down a maximum payback percentage, all the manufacturers attempt to produce a program which will pay back as close to the maximum payback as possible.

This response by the manufacturers can tell us at least one thing about the payback structure: The higher the percentage the more money the machine makes because the video lottery machine becomes an entertainment centerpiece and not some device that quickly depletes each player's money. In fact there have been studies that suggest that while a player may maintain his bankroll longer on a 94% machine, he is more apt to play the entire bankroll down to "0" than if he switches to an 80% machine and quickly loses several hands in a row.

G . L . I .

THE

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Other jurisdictions, such as Nevada, Colorado, and South Dakota (Gaming) generally have machines that pay back between 85 and 90% on reel spinning machines and very close to the maximum allowable payback percentage for blackjack and poker games. The reason for this is that slot machines of the spinning reel variety are very popular and players are expected to play them in large volume, and in fact, the supply of these machines may not be equal to the demand.

It is our opinion, here at the Laboratory, after reviewing many raw payback percentage results from a variety of jurisdictions across the United States that the best maximum payback percentage that should be set by law is somewhere between the 92 and 95% range. It is our opinion that while some machines which payback more than 95% do better than machines that payback less than 95%, this is generally not the rule. Machines which pay back less than 90% are often recognized by players as being "tight machines" and will in fact do poorly when compared to other gaming jurisdictions or other types of machines that are paying back 90 to 92%.

In fact, one common example of this is the situation at the Rhode Island Lottery where video lottery was enacted at both the Jai A'lai and the Lincoln Racetrack. About the same time period, slot machines were implemented by the Mashantucket Pequot Tribe under Compact agreement with the State of Connecticut. Quite literally, the Casino in Connecticut competes with the Tracks in Rhode Island where Video Lottery was implemented. The Pequot Tribe may implement any slot machine that pays up to "even money" (100%) and it is quite common knowledge that the machines at the Tribe are much more liberal than the video lottery machines that are played either at the Newport Jai A'lai or at the Lincoln Dog Track.

In closing, the belief that machines that pay less than 85% will make more than machines that pay between 90 and 92% is the ultimately fallacy. Quite frankly, players will play machines with low paybacks for a while, and then realize that the return is quite low and will become disinterested or not spend as much money playing the games due to the fact that there is relatively low entertainment value.

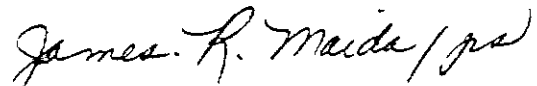
We renew our suggestion that the West Virginia Lottery should allow payback percentages up to the 94% range, and it will be up to each individual track to pick the machines, types, and machine percentages that will best cause a maximum total return

Mr. Woodford
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July 23, 1993

for the entire facility. Quite frankly, the West Virginia Lottery, the people of West Virginia, and the track owners all have the same goal -- maximize revenue. I see no reason why track owners would put in machine percentages which were too high and which would cause a lower than anticipated revenue stream if they knew a percentage program that was 85% was available. Lastly, I cannot remember the last time an 85% machine out-earned a machine that paid back between 92 and 94% over the long run.

I hope this memorandum has helped. If you should require further information, please do not hesitate to contact me as I will provide you any additional information immediately.

Sincerely,

A handwritten signature in cursive script that reads "James R. Maida / jrm".

James R. Maida
President

Enclosure

The following is a listing of the current maximum payout percentages for the various lottery systems. Please note: the percentages are identified as being optimized percentages or actual as field results.

Lottery System	Maximum Payback Percentage
Alberta Gaming System (Canada)	94% Optimum
Atlantic Lottery	95% Field
Atlantic Lottery (N.B.)	90% Field
Louisiana Gaming System	94% Optimum
Oregon Lottery	90.5% Optimum
Saskatchewan	92.% Optimum
South Dakota Lottery	94% Optimum
Western Canada Lottery	92-94% Optimum

*West Virginia
Racing Association, Inc.*

P.O. Box 551

Charles Town, West Virginia 25414

July 22, 1993

*Wheeling Downs
Greyhound
Wheeling, WV*

Mr. Arthur L. Gleason
Director, West Virginia
Lottery Commission
312 MacCorkle Avenue, SE
Charleston, WV 25314

*Charles Town
Races, Inc.
Charles Town, WV*

Re: Comments on the West Virginia Lottery
Commission's Proposed Legislative Rules
(Title 179, Series 3 - 1993) for Video
Lottery Games

Dear Mr. Gleason:

*Mountaineer Park
Chester, WV*

The four West Virginia licensed pari-mutual
racetracks provide the following comments upon, and
suggestions for modifications to, the draft video lottery
legislative rules which were proposed by the Commission
at its meeting on July 13, 1993:

*Tri-State
Greyhound Park
Cross Lanes, WV*

ISSUE 1: Distribution of Revenue.

Section 7.2 of the proposed regulations
provides as follows:

7.2 -- Remittance of State's
percentage of net terminal
income. -- Licensed racetracks shall
remit to the Commission and within
the required time periods the
State's established percentage of
all net terminal income.

7.2.1 -- The Lottery Commission shall be
entitled to forty (40%) percent of net
terminal income.

7.2.2 -- The licensed racetrack shall be entitled to sixty (60%) percent of net terminal income; this percentage is inclusive of licensed lottery retail agent's statutory commission and the incentive bonus found in W. Va. Code § 29-22-10, as well as certain shared operating expenses.

Based upon the actual experience over three years at Mountaineer Park, this proposed division of net revenues will not provide sufficient revenues to the racetracks to allow operation of video lottery. We have attached to this letter a copy of a letter dated July 6, 1993, signed by Richard Shelton of the West Virginia Racing Association, which sets out in detail the financial demands imposed upon a racetrack in connection with operation of video lottery.

Because a licensed racetrack is entitled to up to 50% (6/12) of net terminal income without regard to reimbursement of expenses, the 60/40 division of revenues provided in the proposed regulations allows only 10% of net terminal income to reimburse the racetrack for all of the extraordinary expenses incurred in connection with video lottery. Section 7.2.2 indicates that this amount includes "certain shared operating expenses" without defining clearly what those expenses are or how those expenses are to be "shared". Obviously, if the Lottery Commission were willing to accept responsibility for a larger proportion of the operating expenses, the 60/40 division might be supportable and might allow video lottery to be economically viable for the racetracks.

However, the regulations, as written, appear to contemplate that each racetrack will, as under the Mountaineer Park contract, be required to bear substantially all of the expenses of video lottery operations, including cost of purchase or lease of video lottery equipment (see Section 11.3), payment for special security personnel (see Section 6.3.6 and Section 12.2.1), advertising and promotional activities (see Section 6.3.12), telephone and communication charges (see Section 6.3.15), closed-circuit television surveillance systems (see Section 12.1.1), construction of secure areas (see Section 12.1.2) and purchase of central computer (see Section 9.1.13.1).

Accordingly, we request that Section 7.2 be changed to provide a division of revenue which will allow video lottery to be operated at the racetracks and which will contribute to preservation of the racing industry and the West Virginia jobs associated with that industry. In recognition of the fact that the majority of expenses to be borne by the racetrack must be expended in the early years of video lottery operation, the division of income should be graduated to reach no more than the 65/35 level in the fourth year of operation as follows:

7.2 -- Remittance of State's percentage of net terminal income -- Licensed racetracks shall remit to the Commission and within the required time periods the State's established percentage of all net terminal income.

7.2.1 -- The Lottery Commission shall be entitled to the following percentages of net terminal income during the following years of operation under any video lottery license issued hereunder:

Year 1 -- 25%
Year 2 -- 27.5%
Year 3 -- 30%
Year 4 and
thereafter -- 35%.

7.2.2 -- The licensed racetrack shall be entitled to the following percentages of net terminal income during each of the following years of operation under a license issued hereunder:

Year 1 -- 75%
Year 2 -- 72.5%
Year 3 -- 70%
Year 4 and
thereafter -- 65%

This percentage is inclusive of licensed lottery retail agents' statutory commission and the incentive bonus found in W. Va. Code § 29-22-10, as well as the video lottery operation expenses required to be paid by the licensee hereunder.

Issue 2: Number of Terminals.

Section 12.1.3 provides, "[I]nitial locations for and number of video lottery terminals require prior approval from the Commission."

The economic benefit to the licensed racetracks of operation of video lottery is directly related to the number of terminals which may be operated at any given racetrack. We believe that at least four hundred terminals will be required in order to provide sufficient economic benefit to preserve the jobs at the racetracks. Accordingly, we request that Section 12.1.3 be revised in its entirety to read as follows:

Initial locations for video lottery terminals require prior approval from the Commission. There shall be a presumption that each licensed racetrack shall be entitled to install four hundred video lottery terminals, or such smaller number as the applicant shall request. An applicant shall be entitled to install more than four hundred video lottery terminals by first filing with the Commission a request for such additional terminals, together with such information as shall be required by the Commission with respect to market conditions and the economic impact of the additional terminals, but no such additional terminals shall be installed without the prior approval of the Commission.

400

Issue 3: Contracts With Other Parties.

The proposed regulations in their current form do not contain any provisions which would require that any particular interest group give prior approval to installation of video lottery terminals at a racetrack. However, in the Lottery Director's verbal report to the Commission, you indicated that this issue will be considered during the thirty-day public comment period. It would be improper under the Lottery statute for the Lottery Commission to delegate to any private group or entity the Commission's exclusive statutory authority for determining the implementation of lottery games. However, it is also recognized that the financial stability of any particular racetrack is a relevant concern for the Lottery Commission to investigate prior to issuing a license, and we recognize that whether a racetrack's purse structure promotes competitive racing and a stable relationship with horse owners and kennel owners may affect the financial stability of an applicant. Therefore, we would suggest that a new Section 3.1.6 be added to the regulations as follows:

The applicant must be a person who demonstrates adequate financial stability for the business for which a video license or permit application is made. The Commission may consider the applicant's financial stability, including but not limited to the applicant's contractual relationships with the organizations representing the majority of horsemen or kennel owners relating to the establishment of a purse structure by contract, or the absence thereof.

Mr. Arthur L. Gleason
July 22, 1993
Page 5


Issue 4: Technical Definition Of Racing Facility.

Section 12.1.5 of the proposed regulations is intended to limit video lottery terminal operations to the pari-mutuel racing facilities of the racetracks. In order to properly describe those facilities, a technical correction is needed so that that section reads as follows:


12.1.5. No operating video lottery terminals may be located in any building or structure which is not identified in the licensee's horse or dog racetrack construction permit on file with the West Virginia Racing Commission under provisions of W. Va. Code § 19-23-18(b)(8) or identified as a part of the pari-mutuel racing facilities under W. Va. Code § 19-23-12(a)(1).

If you need any further information or clarification of any of the suggestions made above, please feel free to contact us.

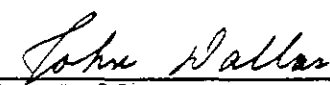
Sincerely,




Dan Adkins
Tri-State Greyhound Park



Edson R. Arneault
Mountaineer Park, Inc.



John Dallas
Wheeling Downs



Don Hudson
Charles Town Races

/sjm

ABB03B4A

RECEIVED
P.O. BOX 581 - CHARLES TOWN, WEST VIRGINIA 25414
code 304-725-7001 ext. 308
FAX 304-728-8117

JUL 12 1993

1st Vice President
Wayne Harrison

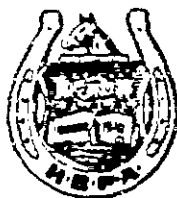
2nd Vice President
Ann Hilton

Secretary-Treasurer
Robin J. Simpson

Board Members

Owners

Wayne Harrison
Ann Hilton
Patricia Knoblauch
Ashby T. Simpson
William R. (Ronnie) Ward



Trainers

Jeanne Berger
N. Eddie Householder
Robert C. Lee
John D. McKee
Robert P. Rawlings

Alternates

1. Billy F. Owens

Alternates

1. C. A. (Buck) Woodson
2. James A. Johnson

July 1, 1993

Arthur L. Gleason, Jr., Director
West Virginia Lottery
P.O. Box 2067
Charleston, WV 25327

Dear Mr. Gleason,

Your letter dated June 25, 1993 and attached POLICY RESOLUTION were received yesterday.

Both Mr. Buch and myself welcomed the opportunity to appear before the WV Lottery Commission on June 14, 1993 to present the "horsemen's point of view" concerning video lottery implementation in WV. However, I am deeply disturbed that the WV Lottery Commission did not either :

1. comprehend our presentation, or
2. purposely chose not to respond to our problems as evidenced by their recent resolution.

I submitted factual documentation to the WV Lottery Commission (gleaned from information presented to me as co-chairman of the National H.B.P.A. Alternative Wagering Committee) concerning the demise of racing in both South Dakota and Montana due to the advent of and competition from video lottery machines in those states.

Mr. Buch documented the rapid decline in parimutuel handle at Mountaineer Park which has cost horsemen hundreds of thousands of dollars in purse money since video lottery machines were installed there. We both thought that actual documentation outlining the current history of video lottery machine performance throughout West Virginia and the entire United States would serve as indisputable evidence that whenever and wherever video lottery machines have been implemented in their current format, horsemen's purse monies have eroded drastically, threatening the continued existence of live horse racing.

As a solution to this whole problem, I want to suggest to the WV Lottery Commission that the takeout on VLT's at all race tracks in W.V. be changed upward to 20% (or more) in order to support all facets of the racing industry (management, horsemen, breeders, mutuels, state, county) at their current percentage - of - takeout levels. This will provide adequate revenues for all these different entities, and will theoretically mean that if a patron has \$100 to wager, it won't matter to any of these entities whether or not he/she bets it on a horse race or in a VLT machine for their corresponding percentage - of - takeout will be the same.

If this were done with the proper statutory or contractual safeguards, horse racing could not only survive in W.V., saving thousands of jobs, but maybe even become healthy again.

I hope that you and the W.V. Lottery Commission will give serious consideration to this matter.

Also, I urge you to not proceed with any expansion of video lottery in W.V. until the proper contractual and/or statutory safeguards are in place which will protect and preserve live racing.

Sincerely,

Raymond J. Funkhouser, II - President

Raymond J. Funkhouser, II, President
Charles Town H.B.P.A., Inc.

copies: files (1)

LAW OFFICES
GOMPERS, BUCH, MCCARTHY & McCLURE

SUITE 302-307 BOARD OF TRADE BUILDING
WHEELING, WEST VIRGINIA
26003

WILLIAM J. GOMPERS (1887-1957)
JOSEPH A. GOMPERS
HARRY L. BUCH
T. CARROLL MCCARTHY, JR.
JOHN E. GOMPERS
JAMES T. McCLURE

JOSEPH J. BUCH

DEBBY J. MILLER
LEGAL ASSISTANT

TELEPHONE
(304) 233-2450
FAX
(304) 233-3656

July 2, 1993

West Virginia Lottery Commission
312 MacCorkle Avenue, S.E.
P.O. Box 2067
Charleston, West Virginia 25327-2067

ATTENTION: Arthur L. Gleason, Jr., Director

Dear Mr. Gleason:

Your letter and attached POLICY RESOLUTION to the Mountaineer Park Horsemen's Benevolent and Protection Association and to the Charles Town Horsemen's Benevolent and Protection Association, has been referred to me for reply.

Apparently the Horsemen's presentation at your June 14, 1993 meeting was given very little consideration in the adoption of your POLICY RESOLUTION. In the fifth WHEREAS of the RESOLUTION, the statement is made that the Lottery has been beneficial to the overall racing industry in West Virginia. Again, the Horsemen respectfully submit that this is factually untrue. For the first five (5) months of 1990, prior to the installation of the video lottery machines, the average daily handle at Mountaineer Park was \$245,935.00 per day with average daily attendance of 2,072 people. Three years later, in 1993, after installation of video lottery machines, the average daily handle for the same period was only \$115,500.00 with an average daily attendance of 1,056 people. This clearly shows a decline in handle of approximately \$130,435.00 per day. Applying the normal racing take-out, as authorized by statute, the decline in handle has cost the Horsemen in purse money approximately \$10,800.00 per day which, when one considers the entire racing year, approximates a loss of \$2,375,000.00 in purses alone. I find it extremely difficult to justify a statement that a loss of this magnitude to an important facet of the racing industry is beneficial to that segment of racing.

If the same scenario is permitted to occur at Charles Town Race Track, the racing industry as we know it today at that facility will be destroyed, the economy of Jefferson County seriously affected, and the breeding industry ruined. All of the related businesses who derive substantial income from the racing industry will likewise suffer serious economic distress. I believe that it is time that West Virginia provides for its citizens and the people who make their livelihood out of the racing industry in the various communities of our State as opposed to the wealthy, non-resident individuals and corporations whose desire is to garner profits at the expense of our citizens.

As expressed at the meeting on June 14, 1993, the Horsemen's group did not oppose the video lottery machines, and it is not my intent and purpose at this time to do so. However, as expressed in the meeting on the 14th, it is imperative that proper safeguards be set forth in the rules and regulations to protect the Horsemen and those who make their living from the racing industry.

We again would request that the rules and regulations of the Lottery Commission contain a rule similar in nature to that set forth below:

"Prior to licensing the operation of video lottery games at any race track in the State of West Virginia, the owners and operators of said track must lodge with the Lottery Commission a bona fide agreement from the organization representing the majority of the Horsemen at any licensed race track within this jurisdiction, setting forth an agreement as to the division of profits or the establishment of a purse structure by contract."

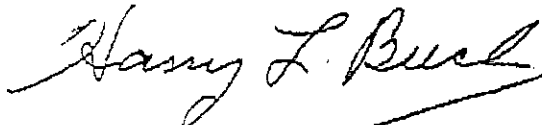
The Horsemen believe that the inclusion of the above rule, or one similar thereto, would guarantee the continued operation of racing facilities within this jurisdiction which is essential to the economies of those areas wherein said tracks are located.

As you will recall, statements were made that video lotteries are essential for the continuance of Charles Town Racing. I enclose herewith a letter from a former patron of Charles Town which was published in the *Thoroughbred Times*, July 2, 1993 issue. This letter clearly sets forth a major problem at Charles Town which is not being addressed. The *Thoroughbred Times* is a well-known national weekly publication which covers the racing industry throughout the world.

Very truly yours,

GOMPERS, BUCH, McCARTHY & McCLURE

By



HLE/mee
Enclosure



L E T T E R S

WAKE UP
track management

track (and with it, so many livelihoods) because track owners fail to realize what the problems are.

David Sims
Kearsville, Maryland

Dear Sir:

In your Business Briefs section in the issue of May 21, it was stated that Maryland's off-track wagering was taking its toll on the Charles Town, West Virginia, handle. It was reported that Charles Town President D. Keith Wagner said that the decline underscored the need for an alternative source of revenue (track video machines) in order to keep the track viable.

Perhaps Mr. Wagner should wonder why so many people, when given an alternative, did not choose his track for their gambling. Why is it a surprise to the Charles Town management that people chose not to go to a place with foul air, litter inside and out, with benches, chairs, and tables either missing or in need of repair? Perhaps Mr. Wagner should ask himself what his management team did to try and retain or attract fans to Charles Town. (Or, more accurately, what they did to drive the fans away—such as making fans go to the third floor to make a standard wager).

The fact is, Charles Town offers something the OTB doesn't—live racing. Charles Town has the competitive edge. The fact that Mr. Wagner doesn't focus on what is really wrong at his track underscores the problem—management.

If the situation was reversed, that is, the Charles Town management ran Maryland's OTB, and vice versa, Mr. Wagner would probably state that he needs live racing to compete. It's sad to see the slow demise of a

THOROUGHBRED TIMES/JULY 2, 1993 15

West Virginia Union Of Mutual Clerks
LOCAL 553
A.F.L. SEIU C.I.O.

RECEIVED
JUL 26 1993

P.O. Box 178, Ranson WV 25438

JULY 14, 1993

RECEIVED
JUL 20 1993

TO: MR. ARCH GLEASON, DIRECTOR
WEST VIRGINIA LOTTERY

Employees of the Charles Town Races, including the membership of this organization, have received no wage increases in four years due to the declining revenues at our race track.

By agreement with Management, part of the profits from the operation of Video Lottery Terminals are to be paid to our members in a revenue-sharing formula. It is in our selfish interest to help management develop a successful Video Lottery installation.

In the absence of an additional source of revenue, the race track losses will continue and probably accelerate. All of us are very concerned for our job security and future.

The proposed rules and regulations - section 7.2 - provide a net revenue split of 60% to the operator/retailer and 40% to the State. This compares to the earlier 80 - 20 split at Mountaineer Park, now revised to 75 - 25. It is our understanding that Montana's tax is only 15%, and Louisiana's tax is 22 1/2%.

To provide sufficient revenues to afford financial security to Charles Town Races, Inc., and to indirectly provide job security and additional income to its employees, we strongly recommend that the state tax be imposed at no more than

25% of the net video lottery income.

Thank you for your consideration.

Charles E Walker

Charles Walker, Chairman

Joseph Farris

Joe Farris, President



COMMISSIONERS
ROBERT J. BURKE
CHAIRMAN
ROGER RAMEY
MEMBER
ALBERT SCHWABE, II
MEMBER

STATE OF WEST VIRGINIA
Department of Tax and Revenue
WEST VIRGINIA RACING COMMISSION

GASTON CAPERTON
GOVERNOR

MAILING ADDRESS
P O BOX 3327
CHARLESTON, WV 25333 3327
PHONE (304) 348-2150
FAX (304) 348 6319
LOIS J. GRAHAM
EXECUTIVE SECRETARY

July 23, 1993

RECEIVED
JUL 26 1993

The Honorable Arch Gleason
West Virginia Lottery Commission
P.O. Box 2067
Charleston, West Virginia 26327

Dear Arch:

By way of this letter, I wish to, once again, express to you and the other members of your commission that our Racing Commission does continue to support the expansion of video lottery to our West Virginia Race Tracks.

Most of our West Virginia tracks are suffering with severe financial problems as well as keen competition from a number of our neighboring racing jurisdictions. Video lottery machines on-track will give us a vehicle to attract many, many more out-of-state visitors to our race tracks. This would be a real shot-in-the-arm to our racing and tourism industry.

In permitting expansion of video lottery to our race tracks it is also the wishes of our Racing Commission that Management have a cooperative and mutual working agreement with horsemen and others for a fair distribution of profits into on-track purse structure as well as continued on-track improvements into physical plant structures; thus, improving their live racing programs which is important to our purse structure.

I understand that present legal problems as to ownership of video lottery terminals have to clear the courts. As soon as this matter is resolved to the satisfaction of all, it is our Racing Commission's hopes that you will proceed with implementation of them.

We need your help to keep our tracks a step ahead of our neighboring racing states who are envious of our stealing their racing fans.

We currently have on-track almost 10,000 people with licenses that depend on racing as their livelihood. It is fair to say another 7,000 people off-track also depend on racing for their livelihoods. Our state's economic impact is over 100 million dollars annually. This is vital to our economy in West Virginia.

As Racing Chairman, I personally believe that your recent remarks to increase lottery proceed takeouts from 20% to 40% is far too excessive. Our racing industry is in a severe recession all across America as well as West Virginia. A 20% increase in takeout

312 MacCorkie Avenue, S.E.

The Honorable Arch Gleason
West Virginia Lottery Commission
P.O. Box 2067
Charleston, West Virginia 26327

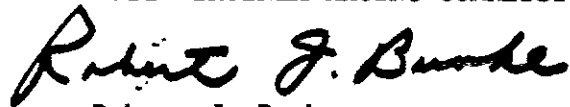
July 23, 1993

now is comparable to attempting to cure a recession by doubling the amount of taxation

Our Commission is writing this letter with the support of track owners, horsemen,
kernel owners and mutuel workers from the majority of our West Virginia tracks.

Yours very truly,

WEST VIRGINIA RACING COMMISSION



Robert J. Burke
Commissioner-Chairman



Roger Ramey
Commissioner

RJB/ah

RESOLUTION 93-1
OF THE
RACING COMMISSION
CHARLESTON, WEST VIRGINIA

WHEREAS, Under the provisions of Chapter nineteen, Article twenty three, Section six, of the code of West Virginia, one thousand nine hundred thirty-five, as amended, the Commission is authorized to have full jurisdiction over and shall supervise all horse race meetings, all dog race meetings and all persons involved in the holding or conducting of horse or dog race meetings, and, in this regard, it shall have plenary power and authority.

WHEREAS, the Racing Commission reviewed the proposed Lottery rules pertaining to Video Lottery Terminals, and

WHEREAS, it has been determined that there should be Video Lottery Terminals at all licensed racetracks, and

WHEREAS, it has been determined that there shall be a mutual agreement between racetrack Management, Kennel Operators and Greyhound Owners, Purse Committee, Horsemen's Benevolent and Protective Association regarding the proceeds from the Video Lottery Terminals.

NOW THEREFORE, be it resolved that there should be Video Lottery Terminals at all licensed racetracks with approval of the State Lottery Commission and with the proviso that there be mutual agreements existing between the parties heretofore mentioned prior to such installation concerning the proceeds from the Video Lottery Terminals.

Robert J. Burke
Chairman

Albert Schwabe II
Member

Roger R. Ramey
Member



Lois J. Graham
Secretary

Dated: August 11, 1993



RECEIVED

AUG 12 1993

State of West Virginia
Department of Tax and Revenue


GASTON CAPERTON
GOVERNOR

TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

JAMES H. PAIGE III
SECRETARY

M E M O R A N D U M

TO: Arthur L. Gleason, Jr.
Director

FROM: Richard E. Boyle, Jr. 
Assistant Secretary/Assistant Tax Commissioner

DATE: August 12, 1993

I am looking forward to working with you over the next two weeks in order to provide a smooth transition for the West Virginia Lottery.

I have taken your suggestion and have reviewed some of the various material which you have left for me pertaining to current issues relating to the Lottery.

With regard to the regulations recently promulgated entitled "Video Lottery Games" I have a couple of comments to offer:

First, with regard to Section 4.12 of the proposed regulation, although you have attempted to require notification to the Commission when license and permit holders are proposing a change of ownership, it appears that you might also want to deal with instances where ownership can be affected through means other than a complete change of ownership. In other words, the sale of part of a license or permit holder in terms of stock or assets may equally affect the reliability and integrity of said license or permit holder. You may also want to deal with an issue referenced in the minutes of the last commission meeting involving the sale of ownership in a corporation or partnership (or limited liability company) which may possess an ownership interest in a company which holds a video lottery license or permit.

Secondly, in Section 3.1.5 of the subject regulation you have dealt with the "financing" of an applicant (being from a source that meets the qualifications established for a license or permit holder. It appears that this section should be reinforced by requiring a financing questionnaire or similar type of instrument to be completed by the financing entity.

As I delve through the remaining stacks of information you have left me, I will continue to bring to your attention problem areas that appear to be of concern.

Thank you once again for bringing me up to speed.



THE COUNTY COMMISSION OF JEFFERSON COUNTY

P. O. Box 250
Charles Town, WV 25414

Phone 304/725-9761

August 9, 1993

CERTIFIED MAIL

RECEIVED
AUG 11 1993

Arch Gleason, Director
West Virginia Lottery Commission
P.O. Box 2067
Charleston, WV 25327

Re: Proposed Video Lottery Regulations -
Title Number 179 Series 3

Dear Mr. Gleason:

At a regular meeting of the Jefferson County Commission, Thursday, August 5, 1993 the Commission voted to make public written comment on the proposed legislative rules governing Video Lottery Games in West Virginia.

Following is a list of comments we would like entered into the record:

- A public hearing should be held in each County in which the machines will be placed;
- Legislation should be initiated to require local referendum before placing the machines in a County.

Page 1 - Appendix B - Item 2 - The stated objective of the proposed regulation is to permit operation of video lottery type games at the State's four pari-mutuel race tracks.

- Section 29-22-25(b) and (c), WV Code, as amended provided that the State Lottery Act shall not invalidate any local zoning law to the contrary. Further the Article shall not be deemed to permit the operation of any lottery otherwise prohibited by the laws of this State and not owned and operated by this State and permitted by the State Lottery Act. This language should be added to the objective stated in Appendix B on page 1.

Page 2 - Overall Economic Impact - subsection B and C

- The economic impact on political subdivisions of the State is not addressed in the proposed regulations at all. The economic impact could be substantial. This will cause a substantial increase for the need for law enforcement, emergency services, and other social intervention programs in any area where gambling is expanded in this fashion.

The proposed rules and regulations provide for no funding whatsoever to be channeled to local governments to address any of these additional needs which would be caused by an expansion of gambling operations. The expansion of gambling in any other area in the United States has caused an increase in the need for police protection and emergency services responses. These matters must be addressed by the West Virginia Lottery Commission if they intend to implement video lottery games in all race tracks.

The lottery Commission should be encouraged to provide a portion of the gross revenues to be paid to the County in which the track is located.

Section 179-3-2 - 2.12 Definition of "own"

- The Attorney General has rendered an opinion indicating that the State Lottery Constitutional Amendment requires that video lottery games be owned, operated and controlled by the State of West Virginia pursuant to the Constitutional amendment. Any definition or other regulation in conflict therewith should be amended. The regulations should require that the machines are owned by the State of West Virginia as required by the Constitutional amendment.

2.17 Definition "Video Lottery Game"

Section 2.19 Definition "Video Lottery Terminal"

- Both of these definitions are very broad and can be used to accommodate any kind of a game approved by the State Lottery Commission. These regulations can accommodate the expansion of gambling regulations to include the video lottery games and other types of gambling later approved by the Lottery Commission including casino games.

Section 3.2 Individual Qualifications:

Section 3.3 Applicant Required To Furnish Information

Section 179-3-4 Application Process

- All of these provisions are designed to provide procedures for governing the application for license required by the regulations. None of these procedures include any input from local government.

- Local governments should be informed as to the nature of the applications presented. There should be notice requirements to give the County Commission notice of what applications are received and what procedures are available to the County for input on those applications. There should also be notice requirements for license granted for use in any particular County.

Section 179-3-5 Enforcement - All enforcement powers are reserved for the State Lottery Commission.

Section 179-3-6 Duties of License and Permit Holders

- Forms for reporting are directed to the State Lottery Commission. Again, there are no requirements that the County Commission of any County in which these machines are to be placed to receive any information or notice whatsoever from the holders of any permits or license operating in the County. The County should be kept informed and the County should also have the benefit of notice of any problems or any termination of operations as a result of an irregularity or illegal action.

Section 179-3-7 Accounting - All accounting procedures are supervised by the State Lottery Commission.

- There should be some type of a notice mechanism which would require the Lottery Commission to notify the County Commission of the filing of various periodic reports and other requirements of the accounting provisions.

Section 179-3-8 General Video Lottery Terminal Requirements

- These requirements appear to be general in nature and necessary to the administration of such system. In subsection 8.7 the regulations specifically state that the video lottery terminal must be operated and played in accordance with the provisions of the state enabling statutes (Section 29-22-1 et seq.).

Section 179-3-10 Transportation and Registration of Video Lottery Terminals

- These regulations attempt to place some security on the transportation of the lottery terminals. It also requires the registration of various serial numbers and model numbers of each machine.

- There should be a requirement that the trucking companies or common carriers shipping these terminals be bonded and use sealed trailers to transport the machines to assure that tampering does not occur during shipment.

Subsection 10.2 governs the receipt of video lottery terminals in West Virginia.

- There should be a formal receipt process which would be supervised and overseen by Lottery Commission employees and not by race track employees.

Subsection 10.3 pertains to transportation of video lottery terminals between locations inside the State of West Virginia. The same rigorous requirements for transporting video lottery machines from the factory to West Virginia should be imposed for shipment of machines anywhere.

- It appears that transporting the machines within the State of West Virginia is not regulated the same as transporting them into the State. These requirements should be uniform no matter where the machines have gone nor where they are going. there should be no opportunity to tamper with the machines while they are being shipped.

Section 179-3-11 Maintenance of Video Lottery Terminals

- The maintenance requirements for these machines should be extremely specific. These regulations appear to address those problems.

- All documentation with regard to certificate of training programs and certificate for licensed maintenance persons should be filed with the Lottery Commission in order that they are subject to public scrutiny. The manufacturer should not be the custodian of these types of important records.

Section 179-3-12 Location and Number of Video Lottery Terminals

- There should be a statement in this section which indicates that local zoning regulations may control the placement and location of video lottery terminals. There should at least be a reference to Section 29-22-25, W. Va. Code, as amended.

Subsection 12.2 requires that security personnel will be assigned to each location where video lottery terminals are in operation. However, the license holder or race track would be the party who retained the security personnel. There should be a Lottery Commission employee in charge of each location.

Section 179-3-14 Hearing and Appeal Procedure

- Any applicant for license or permit holder as the case may be adversely effected by such order shall have a right to a hearing. This indicates that no other person may ask for a hearing before the State Lottery Commission.

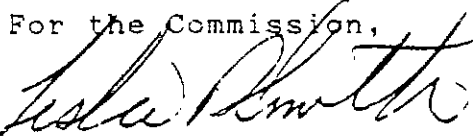
- There should be a procedure which would allow other persons adversely affected by an order of the State Lottery Commission to request a hearing to give a forum to those persons who are other than an applicant or permit holder.

page 5
August 9, 1993
Proposed Video Lottery Regulations

Subsection 14.9 This indicates that all hearings will be held in Charleston unless the Commission determines otherwise. It is clear that the hearings should be held where the person that requested the hearing is located or such other forum which is convenient for the witnesses of the parties involved. To require people to go to Charleston for hearings is an overly burdensome and unreasonable requirement.

If you need anything additional, please do not hesitate to contact me.

For the Commission,



Leslie D. Smith
County Administrator

LDS/sas

cc: Govenor Gaston Caperton
Senator Sandra Moore Lucht
Senator John Yoder
Delegate Vicki Douglas
Delegate Larry Faircloth
Delegate Dale Manuel
Delegate John Overington
Delegate John Doyle
Delegate Charles Trump

Jefferson County Planning Commission

Charles Town, West Virginia 25414

104 E. Washington Street
P.O. Box 338

TEL: (304) 725-9781



August 10, 1993

CERTIFIED MAIL - P 739 903 991

Director
West Virginia Lottery Commission
P. O. Box 2057
Charleston, West Virginia 25327

RE: Title Number 179 Series 3

Dear Director and Honorable Commissioners:

This letter is in response to your request for public comment on the proposed Legislative rules for Video Lottery Games. The Jefferson County Planning and Zoning Commission would like to enter the following comments into the official record:

1. A public hearing should be held on these proposed rules in each county that contains a race track;
2. Under §179-3-3 License and permit qualifications: a provision should be added that requires the applicant to be in compliance with the local Zoning Ordinance for the placement of these machines;
3. Under §179-3-3.3 Applicant required to furnish information: the applicant should be required to submit a letter from the appropriate zoning administrator stating that the placement of the machines is an acceptable use in the proposed location;
4. Under §179-3-4.3 Consideration of applications by Commission: a provision should be added that states without the Zoning Administrator's statement of acceptance, the application shall be considered incomplete; and,
5. Under §179-3-4.4 Issuance of license, the lack of the Zoning Administrator's acceptance should be added as a reason for denial.

Director and Honorable Commissioners

August 10, 1993

Page Two

Numbers 2, 3, 4 and 5 above are predicated on the fact that the West Virginia State Code as amended (§29-22-25 subsection (b)) states,

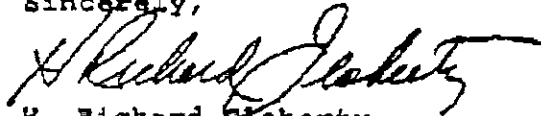
"The provisions of this Article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict herewith. Provided, that nothing herein shall invalidate any zoning law, or Sunday closing law under Article Ten [§61-10-1 et. seq.] Chapter Sixty-one of this code." (emphasis added)

Please be advised that in comparison, although regulated by the State, beer, wine and liquor licensing requires the same statement by the Zoning Office. This is to ensure that the sales of these products are allowed by the local Zoning Ordinance prior to issuance of such licenses.

Finally, although a Legislative function, the Commission strongly supports the requirement of local referendum for these types of questions.

If you have any questions, please give Paul J. Raco, Director of Planning and Zoning a call.

Sincerely,



H. Richard Flaherty
President

cc: Governor Gaston Caperton
U.S. Senator Robert C. Byrd
U.S. Senator John D. Rockefeller, IV
U.S. Congressman Robert E. Wise, Jr.
State Senator Sondra Moore Lucht
State Senator John Yoder
Delegate Vicki V. Douglas
Delegate Larry V. Faircloth
Delegate Dale Manuel
Delegate John Overington
Edgar R. Ridgeway, President
Jefferson County Commission

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JOSEPH J. BUCH

August 10, 1993

GERRY J. MILLER
LEGAL ASSISTANT

Mr. Arthur L. Gleason, Jr.
Director, West Virginia Lottery Commission
P.O. Box 2067
Charleston, West Virginia 25327

In Re: Rules and Regulations of Video Lottery Games

Dear Mr. Gleason:

As you will recall, the Horsemen at Mountaineer Park and Charles Town submitted a proposed Rule for inclusion in the Video Rules relative to the necessity of an Agreement between the Horsemen and Track Managements prior to the installation of video lottery terminals by the Lottery Commission. An Article appeared in the Charleston Gazette wherein you appeared to have subscribed to this principle. However, an examination of the Rules does not reveal such a requirement. On behalf of the Horsemen, we would, therefore, request that the following Rule be included:

"Prior to licensing the operation of video lottery games at any race track in the State of West Virginia, the owners and operators of said track must lodge with the Lottery Commission a bona fide agreement from the organization representing the majority of the Horsemen at any licensed race track in this jurisdiction, setting forth terms as to the division of profits for establishment of a purse structure."

Very truly yours,

GOMPERS, BUCH, McCARTHY & McCLURE

By

HLB/kbh



August 4, 1993

Arthur L. Gleason, Jr.
Director
West Virginia Lottery
312 MacCorkle Ave., S.E.
P.O. Box 2067
Charleston, WV 25327-2067

Re: Proposed West Virginia Lottery Regulations

Dear Director Gleason:

Thank you for the opportunity to comment on the proposed West Virginia Lottery Regulations (the "Proposed Regulations"). On behalf of IGT, I would ask that you consider the following points:

1. Section 3.2.3 on page 4 of the Proposed Regulations requires qualification of each employee or agent "having the power to exercise a significant influence over decisions concerning any part of the applicant's business operation." We request clarification regarding whether this would require qualification of an employee who has the power to exercise some influence over a division or subsidiary unrelated to manufacturing video lottery terminals for use in the State of West Virginia. Perhaps this issue could be addressed by adding a definition of "business operation." One possible definition might be "the conduct of any activity requiring a license or permit pursuant to these regulations and any activity directly related thereto." This definition would require qualification of anyone with significant influence over video lottery activities without reaching those involved in unrelated divisions or subsidiaries.

2. Section 4.12 requires immediate notification of "any transaction relevant to license or permit qualification." We would request that some time period, such as 30 days, be allowed for notification and that you provide greater specificity regarding the types of transactions deemed relevant to license or permit qualification, either in the regulation itself or in an interpretive ruling. Many other states require notification of any material change in information requested by or provided in an application.

3. Section 6.1.1 requires license and permit holders to "[p]romptly report to the Commission any violation or any facts and circumstances that may result in a violation of State or federal law and/or any rules or regulations" We would request that the words "the holder reasonably believes" be inserted before "may result" in this section. It is not clear from the present wording whether the "may result" provision is an objective or a subjective standard.

4. Sections 6.1.7 and 6.2.3 use the term "associated equipment." This term is not defined in the regulations. We would request that a definition be included for the sake of clarity.

5. Section 6.2.5 requires all terminals placed in West Virginia to comply with FCC rules. We would suggest that you also require Underwriters' Laboratories safety certification under UL-22, Amusement and Gaming Equipment.

6. Section 6.2.8 requires permitted manufacturers to notify the Commission of any "recurring ... malfunctions or other problems." It would be helpful if you defined "recurring," either in the regulation or in an interpretive ruling.

7. Section 6.3.9 requires a licensee to pay all valid winning tickets. Will a specific validation process or the use of Clerk Validation Terminals be required?

8. Section 7.1 states that the Commission will provide a communications protocol to permitted manufacturers. Will this protocol be developed by the Commission or the central system supplier? We would suggest that it would be more prudent to use the protocol that has already been developed by the central system supplier. Since licensees may be required to supply a central system without cost to the Commission (Section 9.1.13.1), the supplier of the system should not be required to perform additional work (thereby increasing costs to the licensee) to conform its system to the Commission's protocol. Most of the central system suppliers have previously provided their protocols to other manufacturers under non-disclosure agreements.

9. Section 8.2 requires manufacturers applying for approval of video lottery terminals to provide certain information regarding the operation of those terminals to the Commission. Will this information be confidential? Will the Commission use an independent laboratory such as Gaming Laboratories International? If so, will the manufacturer be required to provide the information to the Commission, to the independent laboratory, or both?

10. Section 8.8 provides for the seizure and destruction of non-complying video lottery terminals. Will manufacturers have an opportunity to retrofit terminals prior to seizure or destruction, at least where the non-compliance is the result of an innocent mistake?

11. Section 9.1.3 states that a terminal must have an accessible on/off switch that controls the electrical current used in the operation of the terminal "and any associated equipment." While "associated equipment is not defined (as discussed above), this section arguably means that an on/off switch must be able to shut off the electrical current to the central computer system. This could be clarified by deleting "and any associated equipment."

12. Section 9.1.5 requires an electronic or mechanical coin acceptor. We suggest that only electronic coin acceptors, which are far more secure than mechanical coin acceptors, be allowed.

13. Section 9.1.6.2 provides that "[a]ccess from one locked area within the device to another shall not be allowed." This section is somewhat ambiguous and arguably means that the lock for a second locked area may not be accessed from inside a first locked area. We do not believe this was the intended result and suggest that this provision be clarified.

14. Section 9.1.10.5 appears to contain a typographical error. We believe the word "required" should be inserted between the words "information" and "by."

15. Pursuant to Section 9.1.13.1, is it the Commission's intent to require each licensed race track to have a separate central system?

16. Section 9.3.1 provides for minimum and maximum payout percentages for games "that are not affected by player skill." We recommend that minimum and maximum payout percentages utilizing optimum play strategy be set for games such as poker where there is some player skill involved. The maximum payout percentage referred to in Section 9.3.2 should utilize a similar calculation.

17. Finally, Section 13.5 states that the "licensed race track is solely responsible for any wrongful award or denial of credits." Does this provision limit a licensee's right to recover credits wrongfully awarded to a player as the result of fraud or cheating? If not, we suggest that the wording be clarified.

Thank you once again for the opportunity to comment on the Proposed Regulations. We hope our comments are constructive. If you have any questions regarding these comments or any other issues, please do not hesitate to contact me.

Sincerely,


Scott Scherer
Corporate Counsel

GLASSER, CASEY & ROLLINS

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THOMAS C. CASTO
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RICHARD L. GOTTLIEB

August 6, 1993

OF COUNSEL
MARIO J. PALUMBO

Arthur L. Gleason, Director
West Virginia Lottery Commission
P.O. Box 2067
Charleston, WV 25327

RE: Video Lottery Regulations

Dear Director Gleason:

These comments are being made with respect to the NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE issued by the Secretary of State regarding the proposed rules regarding video lottery. These comments are being made on behalf of WMS Gaming, Inc. (WMS), which is a national leader in the video lottery terminal business and which is an authorized provider of video terminals in various states in the United States, provinces in Canada and in Australia.

WMS appreciates this opportunity to comment on the Lottery Commission's proposed limited expansion of video lottery to certain licensed race tracks in West Virginia. WMS has carefully reviewed the proposed rules and regulations and hope that our recommendations are favorably considered. Before addressing the specific proposed regulations, WMS believes it is necessary to set forth its general reservations regarding the implementation of video lottery as it pertains to the video lottery terminals.

WMS appreciates that the proposed regulations represent a change from the Commission's earlier position reflected in an RFP issued on December 2, 1992, which would have mandated that there be one source for purchase of all of the video terminals. As apparently was recognized, sole source is a concept replete with problems, not the least of which is that it ultimately fails in the market place and therefore fails to maximize revenues for the state. WMS believes that the regulations under consideration presents the very same problems as sole source.

The intent is to maximize revenue within this limited context for the State of West Virginia. It is our belief that the proposed implementation will not accomplish that objective. One or two previously positioned manufacturers could well capture all machine orders for the State. The net result would be very similar to the

LEWIS, FRIEDBERG,
GLASSER, CASEY & ROLLINS

August 6, 1993
Page two

result expected from a sole source implementation. There would be no incentive for continually improving game design and performance. Games would become stale and revenue would diminish.

WMS recommends an implementation based on the Rhode Island model. Rhode Island limits its locations to two pari-mutuel facilities. The Lottery selected a central system supplier. They also selected, through an RFP process, four terminal suppliers. Each supplier was given an equal order which filled the total machine requirement. Each terminal supplier participates as a partner with the State and the location. Each terminal supplier provided all equipment necessary to operate its share of the network. In return, each supplier participates in the net revenues generated by its terminals. There is a tremendous incentive for each supplier to field its best and most reliable terminals with its highest earning software. The incentive also exists to continually upgrade and maintain the freshness of its software. This produces the most revenues for the State, the locations and manufacturers. In that regard, WMS recommends that the percentage paid to the manufacturer be 20% of the net revenue earned by its terminals.

It appears that Rhode Island, of the states that have video lottery, is most similar to West Virginia. Rhode Island is a very successful model for West Virginia. WMS respectfully suggests that the model be followed with respect to the manufacturers of the video lottery terminals.

With regard to the specific regulations, WMS comments are as follows:

2.17

The definition of "Video Lottery Game" references a game of chance, which could be interpreted as excluding the traditional video poker game. We recommend that the Commission clarify that video poker is permissible. Otherwise, it is our experience that the games will not enjoy strong revenue potential.

6.1.3 and 6.1.4

These paragraphs appears to seek to hold harmless the Commission, the Director and the State from claims arising out of the Lottery Commission's operation of the central computer system. The regulations should be clarified so that these

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Page three

provisions do not apply to any claim arising solely from the actions of the Lottery Commission through the use of its central computer or by actions of the track operators. Further, there should be no obligation for licensees to defend and pay legal fees for the actions described above.

6.2.9

This paragraph creates an obligation to enter into service contracts. In no other jurisdiction are such service contracts mandated by law. In other jurisdictions, service is a product that the terminal manufacturers provide which is either included in the price of the machine or for a fee. We suggest that market forces be allowed to create the environment under which service contracts are entered, as opposed to mandated by the state.

8.2, 8.3, and 8.3.1

These paragraphs suggests that the Commission may establish its own testing and certification laboratory. In most jurisdictions, this function is contracted to a third party. Because the Commission reserves the right to have the manufacturer supply specialized equipment and third party services and have the manufacturer pay for all associated costs, this could create an enormous and unacceptable financial burden. We suggest that the Commission contract with Gaming laboratories International (as do most jurisdictions) or some other reputable firm. The fees charged by such firms are reasonable and customary in the industry.

8.4

This paragraph requires a 60-day trial of all models submitted for approval. This is not required in any other jurisdiction for video lottery terminals. WMS believes it is not necessary for purposes of security or other legitimate concerns of the Commission and would likely be counter productive in terms of game design and competitiveness.

9.1.6

WMS fully supports the intent of this paragraph, which is security of the machines. WMS is concerned, though, that this regulation is ambiguous and can be interpreted such that its current cabinet design may not conform to the access requirements as they are described. WMS suggests that the regulation be written so as to describe the Commission's objectives (i.e., electronic security, coin box security) and ensure that the manufacturers' design meets those objectives.

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Page four

9.1.13.1

WMS has very strong reservations regarding this proposed regulation. This regulation could essentially create the same sole source requirement as existed under the above described RFP, as it could limit the eligible manufacturers to those few who also manufacture the central computers. WMS believes it preferable for the Commission to purchase, install, and operate one central computer system to which all manufacturers would interface.

9.3.1 and 9.3.2

These regulations are confusing. While one provides for a maximum payout of 95 percent, the other discusses special permission would be required to exceed 92 percent. Pay table design, payout percentage and hit frequency are the essence of game design. The Commission should allow maximization of payout percentage and set a specific amount, whether it is 92 percent or 95 percent.

11.9

WMS believes that the requirement that authorized Commission personnel be present when any repairs are made is unnecessary and counter productive. The requirement would create the need for a large number of Commission approved personnel. If there are insufficient personnel, then the machines may not be functioning for an unnecessarily long period of time. Yet, inspecting or changing logic boards should not require a Commission authorized person. There are sufficient safeguards built into both the video lottery terminals and the central computer, to protect the security of the system.

13.1.1 and 13.1.2

The proposed rules regarding payment are very similar to the present rules in Oregon. WMS understands that Oregon has found that this particular rule has created a major operational problem. There are a variety of circumstances that may cause a fully legible printed ticket to be unavailable. The Oregon Lottery is now in the position of having to refuse payment to legitimate winners. The VLT is able to produce a visual record of a cash out transaction. A payment clerk can validate such a transaction and enter its control number into a validation terminal. The terminal would confirm that payment was not previously made, authorized payment, and then logged such payment as made. We highly recommend this section be changed accordingly.

LEWIS, FRIEDBERG,
GLASSER, CASEY & ROLLINS

August 6, 1993
Page five

14.1.1 and 14.1.1

These regulations regarding restrictions on continuances and presence of parties, when read together, could well constitute a denial of due process in certain circumstances. These provisions are unduly restrictive and not consistent with the Administrative Procedures Act (APA). We suggest that these provisions be rewritten so as to be consistent with the APA.

WMS

By Richard L. Gottlieb
Richard L. Gottlieb, Esquire
LEWIS, FRIEDBERG, GLASSER,
CASEY & ROLLINS
PO Box 1746
Charleston, WV 25326

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August 3, 1993

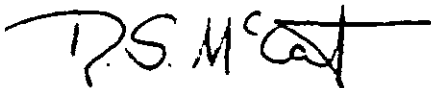
Arthur L. Gleason, Jr.
Director
West Virginia State Lottery
P. O. Box 2067
Charleston, WV 25327

Dear Director Gleason:

On behalf of Autotote I would like to express our appreciation for the opportunity to participate in the rule making process for the expansion of video lottery in West Virginia. We have carefully reviewed the rules and regulations proposed in Title 179, Series 3 and would like to offer the enclosed comments.

Autotote completely supports the direction the West Virginia Lottery is taking in expanding video lottery to the State's pari-mutuel wagering facilities. We hope that our recommendations for modifications to the proposed rules and regulations will be favorably considered by you and the Lottery Commission.

Best regards,



R. Steven McCarthy
Director of Product Marketing - Video Gaming

RSMtch
wvglm3201

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Telephone (302) 737-4300
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Recommendations for Modifications to West Virginia Lottery
Rules and Regulations for Video Lottery Games
Title 179, Series 3

1) Paragraph 9.1.5

Within the pari-mutuel environment, it is not uncommon for self service pari-mutuel wagering terminals to accept cash vouchers instead of cash. By eliminating cash in the self service machine, the problem with theft from the machine is eliminated, and correspondingly the security safeguards and general complexity of the device have been significantly reduced. The cashless self service terminals are significantly less costly than terminals that accept and store cash and are less expensive to operate. Clerk operated pari-mutuel terminals are also equipped to accept cash vouchers. Therefore, within the race track environment, the player may engage in totally cashless wagering by employing cash vouchers.

Security for cashless wagering is provided through the on-line, real time totalisator system. Each voucher is logged on the tote system with a unique serial number. When a voucher is inserted into a pari-mutuel terminal to establish a balance prior to placing a wager, the voucher is "validated" (in much the same manner as a winning on-line lottery ticket is validated) and its value established by the tote system prior to the balance being established on the terminal. Through employing the tote system to "validate" cash vouchers, the chances of a counterfeit voucher being accepted are eliminated. This system has been employed at racetracks in West Virginia for approximately ten years.

Autotote would like to propose the following revision to the language in this paragraph:

"A minimum of one electronic or mechanical coin acceptor, or a cash voucher acceptor that will validate, on-line, the value of the voucher with the track totalisator system must be installed on each video lottery terminal."

2) Paragraph 9.1.7

Autotote would like to propose the following revision to the language in this paragraph:

"The main logic board(s) and software EPROM'S (computer chips that store memory), or down-loadable EEPROM (flash memory) or other down-loadable memory must be in a separate, locked and sealed area within the video lottery terminal."

3) Paragraph 9.1.10

Autotote would like to propose the following revision to the language in this paragraph:

"Each video lottery terminal must contain a single printing mechanism capable of printing an original ticket and retaining an exact, legible copy in the video lottery terminal or

capturing and retaining an electronic copy of the ticket data on the race track's on-line, real time totalisator system."

4) Paragraph 9.3.1

Autotote would like to propose the following revision to the language in this paragraph:

"Video lottery games that are not affected by player skill shall pay out a minimum of 80 percent and ~~no more than 95 percent~~ of the amount wagered."



August 5, 1993

55 Technology Way
West Greenwich, Rhode Island
02817 USA
Telephone 401 892-1000
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RECEIVED
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Arch L. Gleason, Jr., Director
West Virginia Lottery
312 MacCorkle Ave., S.E.
Charleston, WV 25327

Dear Arch,

Per your request we reviewed the proposed West Virginia Legislative Regulations. Our comments and recommendations follow.

The proposed regulations address the security responsibilities of both licensee and manufacturer permittees in considerable detail. However, the regulations are quite ambiguous about the security contributions of the Commission via the "Commission's central computer in Charleston." In fact, one could make the argument that the proposed wording permits a "dial-up" central system function that does little more than collect after-the-fact data for subsequent handling, analysis and and reporting. In other words, the regulations permit employment of a dial-up *accounting* system.

GTECH submits that the Commission is far better served by an on-line approach where the video machines are continuously polled and the captured data is handled by the Commission's central computer in near real-time. In this approach the Commission's central computer constitutes a *security* monitoring system from which accounting information flows as a natural by-product. Admittedly, the regulations do not rule out employment of this approach; on the other hand, the regulations do not mandate its use.

Accordingly it is GTECH's recommendation that the always-connected always-polled security approach be explicitly written into the regulations.

Arch, I would like to follow-up this letter with a comprehensive explanation of GTECH's on-line approach. I'll call you later this week to see if this meets with your approval, and if so, select a date at your convenience for us to meet.

With Regards,

JACK EVANS

Jack Evans

cc: J. David Smith
Herb Delehanty
Michael Lightman
Jim Moran

MINUTES

July 12 and 13, 1993

West Virginia Lottery Commission

The monthly meeting of the West Virginia Lottery Commission was called to order at 2:00 p.m. on July 12, 1993. Commission Members present were: William Abraham, David Gardner, Anthony Giambrone, Steven Hyre, Larry Pack and L. J. Trupo.

Director Gleason stated the purpose of this afternoon's portion of the meeting was to address the proposed administrative rules and regulations governing the Lottery's general operation, the proposed video lottery rules and regulations that are drafted in contemplation of a potential extension of video lottery to a limited application within the racing environment of West Virginia and a proposed video lottery policy resolution that was introduced at the previous commission meeting.

Director Gleason stated there is a formal process dictated with regard to rule making by bodies like this Commission. The reason for addressing this issue is to commence a 30 day comment period by which comments are received with regard to proposed rules and regulations under the legislative review process. We would seek today or tomorrow to have the Commission's approval to submit these administrative rules and proposed rules governing a limited application of video lottery in the racing environment to the Secretary of State. Upon submission the rules and regulations will

be available to the public, citizens, other interested parties, the press or anyone wishing to comment to the Lottery Commission.

This 30 day comment period would commence with the filing of those rules and regulations with the Secretary of State's Office. This meeting is not intended to be a public hearing on these rules and regulations in which the Commission could or would attempt to receive formal comment with regard to the administrative rules and regulations. We do not have a court reporter present and these rules and regulations have not been published so it would be virtually impossible to accomplish that circumstance. We have chosen to receive written comments during the 30 day comment period. Under the formal procedure we are required to consider each comment, respond to the comment and if necessary modify our rules and regulations based on the comment. All this becomes part of the record when the final rules and regulations are adopted by this body and submitted to the Secretary of State and the Legislative Rule Making Review Committee for the formal legislative review process. We hope to be in that position approximately one month from today on August 16 when we consider what would be at that time final versions of those rules and regulations for submission to legislative review. We hope this clarifies our intentions. We suggest that in view of the interests regarding these issues that we could entertain informal verbal comments today from individuals who might be here wishing to express themselves with regard to the administrative rules and regulations. Those individuals who wish to address the Commission should register with Robin Atkins the secretary so we can recognize them. We ask that if such comment is made these individuals would limit that comment to

approximately five minutes. While we will consider each verbal comment, it is not part of the formal record. Any verbal comment made today while reflected in the minutes should be followed up by written comment to make it part of the formal record. John Melton will cover this in more detail when we come to the discussion of the rules and regulations.

At this time, Director Gleason asked Chairman Giambrone to move to the second point on the agenda and ask Bob Wilhelm to discuss with the Commission the proposed changes in the administrative operations rules and regulations.

Bob Wilhelm informed the Commission the regular administrative operation rules and regulations have been in effect for seven years and only amended one other time, basically changing words here and there. There are some new federal laws that required withholdings to change. The major changes are in section 4.7.2 dealing with retail bonding. The rules now are too narrow, meaning the statute grants more latitude allowing the Commission to accept bonds or letters of credit or some form or fashion of security for agents. The rules now read more like the law stating all agents must have to be bonded for a minimum of \$5,000 under the blanket bond procedure. If for some reason agents could not be bonded under that requirement, the Director could choose an alternate source, such as an irrevocable letter of credit from a bank and this would satisfy this requirement. This is the only major change made in these rules.

Commissioner Pack asked why the word "net" was added in Section 3.2.2.2. Mr. Wilhelm stated that term used on the financial statement was "net lottery revenue" meaning the gross amount received

term that shows up on the financial statement, which is what the 15 percent administrative cost allowance is actually calculated against. So this makes it consistent with the terms used on the financial statement each month.

With the Commission having no further questions, Director Gleason asked for a motion to authorize him to submit the administrative operations rules and regulations to the Secretary of State for review. Motion was made by Commissioner Pack, seconded by Commissioner Trupo and passed by unanimous voice vote.

Director Gleason moved on the next order of business, the proposed video lottery rules and regulations. Until these are approved by this body, they will not be able to distribute them to the public. If they are adopted today, we would make them immediately available to the public. At this time Director Gleason stated he would circulate a list among members of the audience to sign if they are interested in receiving a copy of both sets of rules and regulations.

Director Gleason asked John Melton and Bill Woodford to address the Commission regarding the proposed video lottery rules and regulations. Mr. Melton stated these rules are not to be filed as emergency rules. The earliest these rules could take affect would be next spring after the legislative rule bill is passed by the legislature and signed into law by the Governor. There are a lot of things that could change the text of the rules you have seen so far. There could be changes made as a result of today's meeting. The Commission or the general public could think of things that need to be changed during the 30 day comment period. The Commission will

have to look at the public comment and make a final determination of the final text that goes on August 16 to the Legislative Rule Making Review Commission. August 16 is the very last day that legislative rules can be filed to be considered by the 1994 regular session of the Legislature. The Legislative Rule Making Review Committee will have at least one meeting during the fall interims schedule to consider the two sets of rules and regulations we are talking about today. In the intervening period, the Legislature's staff lawyers will go through the rules to see if they comply with the statute or deviate from the statute. These rules will come up in rule making and one or more committees of the legislature for discussion before going on to the House and Senate chambers for a vote. At any point the Rule Making Committee can ask us to make changes or they can make changes for us. There is a lot of room for change.

Mr. Melton stated he will cover the legality of the rules and Mr. Woodford will cover the technical matters in the rules.

Mr. Melton stated the system says only a racing association which has received a license from the State Racing Commission under provisions of W.Va. Code §19-23-1 et seq. to operate at least 200 racing events per year is eligible to apply for a video lottery license. Also, there are provisions to review the products of and provide permits for certain other businesses or functions, primarily the manufacturers. A manufacturer could manufacture terminal hardware and/or software. The manufacturer is issued a permit and is charged a permit fee; it is not a license. Under the rule, the manufacturer's product must be compatible with the Lottery's hardware and software in communicating. The statute calls for any such system

to be connected electronically so the Lottery has the ability to monitor and shut down any type of electronic lottery operation. There is no provision discussing any such concept as distributor or supplier or any middle company.

Mr. Melton and Mr. Woodford next discussed the definition section (Section 2). Mr. Woodford explained the terms "Disable or Terminal Disable" and "Manufacturer".

Mr. Melton discussed the four types of permits contemplated noting they have been left blank for a decision by the Commission before filing. The law allows the Commission to set charges and fees. We may have a significant amount of cost needed to pass on to potential manufacturers. Commissioner Pack asked if Mr. Melton or Mr. Woodford had a recommendation on these fees? Mr. Woodford stated at this time, he had no recommendation but his concern was to cover the administrative costs, the time consumed and to cover the fee of the Department of Public Safety for the criminal history checks. Mr. Melton stated his opinion stated these rules and regulations could be filed with these fees to be determined and receive public comment as to what would be an adequate fee.

Next, Mr. Melton discussed the bonding section. In keeping with the statute, Mountaineer Park was set up under the regulations applied to all lottery licensees. That regulation required a bond even though the statute would require a bond or a letter of credit or other adequate security. This section says an applicant prior to issuance of license post a bond or irrevocable letter of credit in the amount established by the Commission. Any such bond shall be issued by a surety company authorized to transact business in West

Virginia and said company shall be approved by the State Insurance Commissioner as to solvency and responsibility.

Chairman Giambrone asked Mr. Melton to explain Section 3.1.5. Mr. Melton explained this states there is a right of the Commission to look behind the application at the financial viability of the applicant and how they propose to finance an operation of this magnitude. Commissioner Pack asked if there was any type of financing that this would preclude? Mr. Woodford stated this is intended to give the Commission some discretion but it is hard to contemplate all the different financing scenarios that could occur. Mr. Melton added this could be tightened and state specifically only certain situations will be involved.

Mr. Woodford discussed Section 4.12 which states license and permit holders must immediately notify the Commission of any proposed change of ownership or any transaction relevant to license or permit qualifications. Mr. Woodford stated that purchasing 300 video lottery terminals would be relevant to permit qualification.

Commissioner Pack stated he felt the extent of the financing arrangements could also determine ownership. Mr. Gleason stated the issue of ownership is something that is still unclear as it relates to the case before the West Virginia Supreme Court. These were drafted assuming the Court would agree with the position taken by the previous Attorney General and the long standing practice of the West Virginia Lottery. Mr. Melton added when the State was involved in selling its retail liquor business, its regulations ensured that someone who would finance a business would not encumber the value of the liquor inventory in such a way that if the business failed then

the financier would repossess liquor. What we have here is a little different because there is no way anyone other than a licensee under this rule would be able to operate these terminals. There are provisions that say we have to authorize moving these machines on premises or in or out of the state. There is no risk that someone will have a machine and operate it outside these particular rules.

Mr. Melton stated that a lottery license is not assignable or transferable; nor is a racing license. What we had as far as Mountaineer Park is concerned is a sale of stock where another company took over an existing racing license. Mountaineer Park continued as a corporation, therefore there was no re-licensing involved in their racing license. That is why the Lottery Commission and not the Racing Commission was so much involved in that sale. Here, does anyone see the need to say that not only is a license not assignable nor transferable but as in the contract where there is more than five percent ownership change of the corporation they have to be re-licensed?

Commissioner Pack stated he would like the regulations state that the financing be approved by the Commission. Director Gleason stated that at the granting of each license, this will be part of what has to be submitted to the Commission. We can certainly clarify this and add some language to meet the Commission's desires.

Mr. Woodford stated Commissioner Trupo had previously contacted him regarding concerns he had with these regulations. Section 5, dealing with enforcement is a limited sections as enforcement of the Lottery is very limited by statute. In Section 5.1 it states the Commission may suspend, revoke or deny renewal of the license or

permit for any violation of these regulations or State Lottery Law. What Commissioner Trupo was concerned about is the word "may" could possibly lead to a double standard. In one case you may not suspend or revoke a license in another case you may. On the other hand you could have a trivial violation or something that was not the licensee's fault and in those trivial cases you would not want to suspend the license. This is a matter I feel the Commission should discuss. Mr. Melton added that whenever you suspend or revoke a license you bring into play the due process requirements that the licensee has for a hearing on the revocation or suspension, and he thinks the term "may" in this regard was put in so things that were explainable would not necessary result in a revocation or suspension and therefore a person would not have to petition for a hearing for reinstatement of license. On the other hand, the question is how you draw the line from a licensee's point. In this instance, we are talking about no more than four licensees and probably only a handful of permit holders in this whole operation. This is why we were undecided on what to recommend to you.

Commissioner Trupo asked what if there was a licensee who continually violated a rule or regulation with the existing enforcement stating the Commission may revoke or suspend a license? He felt that down the line someone will play politics and it is either yes or no. Director Gleason stated there is a distinction between the statute and the regulations and he is much more comfortable with "shall" as it relates to the statute, but with the regulations if one of their fund transfers does not clear there may be reasons for that they do not control.

Mr. Woodford stated he wanted to bring this to the Commissioner's attention because of the magnitude of this issue. Director Gleason stated if there is a habitual offender most likely the Director would bring before the Commission a recommendation that the license be revoked. If it is changed to "shall" you are dictating this.

Mr. Melton added it could state "shall" for a violation of the law and "may" for violation of a regulation. Chairman Giambrone asked Members if they agreed to this and with no disagreement, he asked Mr. Melton to make this change.

Mr. Woodford stated Section 6 is an extensive list of duties of licensee and permit holders. Chairman Giambrone stated he felt Section 6.1.5 was pretty broad. Mr. Melton stated this is a statutory mandate. Mr. Woodford stated this could apply to a manufacturer if they have experiences in other jurisdictions increasing net revenue that they could pass on to the Commission.

Mr. Woodford stated the location of terminals requires approval and any relocation of the terminals also requires approval. Mr. Melton stated that license holders under the Racing Statute give control over the premises or dominion of the premises to the State Racing Commission. If there is a tie-in that only premises governed by the Racing Commission can be sites for these machines then it would allow a facility to buy adjacent property and expand their operation but not allowing them to buy a motel and place the machines there. Commissioner Pack asked Mr. Melton to look at that aspect.

Mr. Woodford stated Section 7 deals with the accounting on the video lottery system. We will have a central system to automate the

process of collecting the revenue figures and things of that nature and there are specs in here to notify of accounting discrepancies and various charges for insufficient funds and the Director will address this further dealing with the breakdown of net revenue.

Mr. Woodford stated there is a provision if the EFT system does not work correctly, the licensed racetrack may have to remit the State's percentage of net income by check or an alternative method.

Mr. Woodford continued with Section 8 dealing with general video lottery terminal requirements and the games. The terminals and the games have to be approved by the Commission and are tested independently and by the Lottery. If a terminal is not in conformance with the prototypes applied by the manufacturer, those terminals can be seized and any modification to the terminals requires Commission approval.

Mr. Woodford stated Section 9 deals with hardware specifications on the terminals. Certain requirements from our experience from Mountaineer Park and some provisions came from the Louisiana rules and regulations. To my knowledge this should not restrict any potential manufacturers from being permitted. The next section deals with randomness testing that will be performed, software requirements and percentage payouts. We are specifying a broad range of 80 - 95 percent payout at this time.

Mr. Woodford continued with Section 10 dealing with transportation of the terminals. The Commission needs a great deal of information regarding this matter. This is more in the lines of control. Commissioner Eyre asked if all enforcement would be the responsibility of the Lottery? Mr. Woodford stated the Lottery will

maintain all transportation records and monitor this. Commissioner Hyre asked if the State Police are involved in any way? Mr. Woodford stated State Police involvement in this is not contemplated. After each terminal is enrolled, it will be installed with a Lottery control decal stating this specific terminal was approved by the Commission and was tested.

Mr. Woodford moved on to Section 11 dealing with the maintenance of the terminals. There are several requirements for training of service technicians, certificates for training, notification to the Lottery for repairs, log forms inside the terminals and access keys are required to be provided to the Lottery Commission.

Mr. Melton stated Section 14 deals with hearing and appeals procedures. The State Administrative Procedures Act requires that the administrative hearing procedures are referred to but that law in turn states that each agency shall adopt procedural rules for conducting administrative hearings. And Section 14 these rules attempt to do this. Most of these rules are taken from rules of another agency. This is required by the West Virginia Code. The hearing officer hears the law and facts involved and comes to the Commission with a recommended solution. The Commission reviews the solution and if approved it is signed and it becomes appealable to the next stage, usually circuit court.

At this time, Chairman Giambrone called for a five minute break.

At the conclusion of the break, Director Gleason addressed the Commission regarding the distribution of revenue and the request received regarding a provision in the administrative rules and regulations dealing with the requirement that there be an agreement

between the horsemen and the racetracks.

First, Director Gleason stated that at the meeting on June 14, Harry Buch spoke to us at some length concerning his view of the horsemen's part in video lottery. Subsequent to that meeting Mr. Buch followed with a letter as did Raymond Funkhouser both expressing strong preference that the Commission consider including within the administrative rules and regulations a provision along the lines of that suggested in Mr. Buch's letter of July 2.

At this time, Director Gleason read the requests of Mr. Buch. Director Gleason continued that the administrative rules and regulations that have been presented to you as Commissioners for consideration have not included a provision of that type. That should not be construed to be a recommendation by the Director that such provision not be included. At this point in time, we do not feel we are in a position to make a recommendation on that point to the Commission as we wish to learn more about that request. We expect that such a provision will ultimately be recommended by the staff for inclusion in the rules and regulations. I have had the opportunity to discuss the inclusion of that type of provision with Secretary Paige on behalf of the entire Administration and I believe it is ultimately going to be our collective recommendation that a provision along that line be included. We need to learn more about specifically what might be included and I think from the standpoint of the Lottery Commission we wish to avoid of being in a position of mediating this issue. We are not charged with that responsibility nor do I believe we are equipped to mediate that responsibility. I do believe it to be in the best interest of the Commission, the

Department and the Administration that such an agreement be in place at each racing facility before video lottery be placed or licensed at those facilities. There may be requirements that would extend in that regard not only in the thoroughbred facilities but could potentially extend to the greyhound facilities. I would recommend to the Commission at the present time that we not include such provision as we do not have enough information to properly word the provision but I am encouraging comment from all interested parties in that regard and as I expect I will recommend to this Commission that such a provision or similar provision be included.

With regard to the distribution of revenue, Director Gleason stated the rules and regulation have not spoken to that issue. In that respect the staff has reviewed a substantial amount of information that has been available to us including information related to Mountaineer Park's experience over the last three years and our experience dealing with video lottery at Mountaineer Park and the actual distribution of revenues and what we know from that experience. In addition we have looked at the experiences of other states and what distributions are provided by other states in their application which differ from our own but there are similarities. For example, Rhode Island's video lottery application is in the dog track and jai alai environments. The state's share is 38 percent. They have a plan that contemplates private ownership of the devices. In the State of South Dakota on a statewide application, which again contemplates a private ownership of the devices, regulation and controlled by the state lottery commission, initially that distribution was 22.5 percent to the Lottery and 77.5 percent split

between the operators and establishments that had the devices. That percentage has been adjusted several times over the last three years and is presently adjusted to 35 percent to the State. Louisiana who has on premises liquor establishments and parimutuel wagering facilities takes 22.5 percent. Oregon owns and operates the devices. Their distribution allows for 45 percent for the State and 55 percent for the establishment.

Director Gleason continued that there have been discussions with other lottery directors regarding their experiences and the appropriate distribution. We have also had the opportunity to review information submitted by the Racing Association, a letter from Dick Shelton on behalf of the Racing Association who would be potential licensees, representatives of the H.B.P.A. and representatives of the tracks and other individuals. We have taken this information and tried to look at what is appropriate with regard to the State Lottery Act as it is configured and what is appropriately justified in a distribution based on an analysis and what we are able to distribute to the retailer/agent (racetracks) under conformance with the State Lottery Act. As the State Lottery Act is constructed, the Commission would have the ability to distribute revenue to our agents in payment of certain specific services or performance. We are able to distribute to them a five percent commission spoken to in the Lottery Act as a retailer agent. The operators of the video lottery would under the Act be akin to our present agents and entitled to five percent of sales as a commission. The Commission may also distribute to our agents, the racetracks providing video lottery up to one percent of sales as an incentive. The only other ability we would

have to distribute to our agents would be measured by actual cost for reimbursement. The State Lottery Act provides the operating expenses are to be limited to 15 percent and to be borne by the Lottery or shared with its vendors or agents. Anything else we would pay to our agents, operators, licensees the racetracks in this situation would be relative to cost reimbursement for providing those devices and system to us and those services they would render directly associated with the provision of the video lottery gaming system. There could be some debate about these issues but in large part the majority of the expenses submitted by the West Virginia Racing Association could be justified, whether they are fixed or variable expenses and whether they are fully or partially reimbursable. Nonetheless, I was able to conclude based on the various alternative contemplated revenue distributions we can take comfort that any distributed to the tracks in reimbursement for their share of expenses related to video lottery will be justified and will likely be less than their actual reimbursable expenses. Having considered all these factors and looked at potential distribution levels related thereto from the standpoint of the revenue that might be generated based on all information and having the opportunity to discuss this recommendation with Secretary Paige on behalf of the Department of Tax and Revenue, I recommend to the Commission that the distribution of revenue for the administrative rules and regulations and for this application of video lottery be established at 65 for the racing facilities and 35 percent for the State of West Virginia.

Commissioner Abraham asked what happens if the Supreme Court rules the Lottery has to own the machines? Director Gleason stated

much of our administrative rules and regulations would have to be revised. I would strongly suggest one of the provisions needing adjustment would be the distribution. If the Court decides the Lottery must own the devices we will have little choice to have a distribution of 50/50. All we could distribute to the agents would be measured by five percent and up to a maximum bonus incentive of one percent totalling six percent. Presently the games based on credits played/credits won are leaving a net revenue available for distribution of about 12 percent. If you read through the administrative rules and regulations, this distribution would include the five percent and possibly the optional one percent which they are entitled to earn and reimbursement of expenses associated with conducting video lottery. The 65 percent would be deemed to include those items and I think there is sufficient comfort level that we are not reimbursing them beyond that which we could.

Director Gleason stated there are a few minor changes to the regulations that could be made based on comments made by the Commissioners today and should include the net revenue distribution position. We also have recommendations that will be made in the morning with regard to the licensing fees and permitting fees which I think are generally reasonable. Of course the regulations and any revisions adopted by the Commission will not finally be determined until the results of the 30 day comment period is considered and all we do is subject to legislative review. Director Gleason suggested to the Commission not seek action at this time but hear the individuals who expressed interest in addressing the Commission, then consider an action regarding the proposed policy resolution and the

rules and regulations.

Commissioner Pack stated he had a question on the proposed policy resolution. Paragraph 2 states we will negotiate a longer term contract with Mountaineer Park and paragraph 3 seems to me to say that we will continue to evaluate and consider this. Director Gleason stated this contemplates a long and thoughtful process. One step we are attempting to take today and tomorrow; that is the submission of the administrative rules and regulations. We are going to deliberate this matter over the next several of months. Discussions with the Supreme Court's representatives, our counsel and members of the Administration, in all likelihood while the Court will hear this matter September 14, we will be very fortunate to get a decision before the calendar year. Earlier as stated by Mr. Melton, the contemplated use of the proposed video lottery rules or the method of their approval would be to submit them for legislative review and the Legislature may not act upon them until the last day of the 1994 session. I think it is fair to say we do not contemplate using these rules and regulations on an emergency basis, but circumstances may change over the next six months which may cause us to determine whether they could be used in some other fashion. A decision in the Court case is the most significant of those factors. Discussions that could be held between now and the end of the 1994 legislative session with leadership, members of the joint finance committee and other bodies may cause the Commission to have comfort that they be in a position to act more promptly. We need to monitor facts and circumstances as they unfold over the next six months and consider adjustment to our plan to be responsive to those changes in

circumstances. The wording was selected to provide all these options to us.

Commissioner Hyre asked if the Commission was taking the stand that their interpretation of the State Lottery Act does not allow us to go forth? Director Gleason replied that is not what is being said. He is saying it is a matter of policy that the Commission is indicating to the public and the legislature as a matter of policy we will not choose to do so. It is important we clarify our position to the public with all the misunderstanding over the last several months that we are still looking at statewide video lottery. My personal recommendation is that it is not in the best interest of this Commission or this Administration to go forward with statewide video lottery absent expressed approval by the West Virginia Legislature. That opinion is shared by the Department of Tax and Revenue after substantial discussion with Secretary Paige and on behalf of the Administration he shares that view that we should adopt it as a policy position.

Commissioner Gardner states this policy still suggests that it serve as a test market for broader statewide application. Director Gleason stated the WHEREAS sections are a historical account of what has transpired over the last three years and the NOW THEREFORE sections represent our policy position.

Director Gleason stated the resolution language was carefully selected. He believes if the Commission is going to get into statewide video lottery it is appropriate to have a change in the State Lottery Act that contemplates a distribution of net revenue as opposed to conforming to the distribution that is spoken to for more

traditional games. I can't speak for what the Legislature's understanding of what video lottery was in 1985 when this Act was adopted. Clearly, in reading the Act literally, video lottery was contemplated specifically as devices linked to a central computer system. Beyond that it is subject to great interpretation as to what might have been their legislative intent and I do not know of anything available to us to clarify it. Members of the present Legislature are not sure what it meant either when adopted. I think it is the best interest of all that we clarify it if we are going forward and more importantly in our best interest that we decide from a public policy perspective whether it is appropriate. I really think this resolution contemplates all potential eventualities and speaks as well as we can to circumstances that are yet to be determined.

At this point, Director Gleason asked for comments by members of the audience who wished to address the Commission.

Mr. Don Hudson representing the West Virginia Racing Association and the Charles Town Races stated he would like to thank the Commission, Mr. Gleason and the staff for expediting development of the rules and regulations so we can hopefully move forward with video lottery implementation. The racetracks in West Virginia are at best in precarious financial condition. In the case of Charles Town specifically, we are in a desperate financial situation. Two of the last issues taken up troubled me deeply. In one instance we are told there will probably be regulations developed which will require us to negotiate with the horsemen and perhaps others with those groups having the hammer and I think that could be construed to be

interference in the collective bargaining process. Secondly, we are told that the distribution will be changed from the one that had been given to Mountaineer Park for the last three years to one which will be significantly less favorable to the racetracks while at the same time we are told that we have to give part of this to other interests. I find that very disturbing as it may well put us in the position of getting the additional revenue we are looking for so desperately and finding that will be at a loss. This would put the jobs at our racetrack in serious jeopardy. I do not believe either of the states mentioned by Mr. Gleason have a situation where the revenues from video lottery are split with any horsemen groups. I do not know if the analogy is a true one. I would ask the Lottery Commission to examine the distribution carefully because it would be in all our interests to see the distribution is sufficient so the parties at interest can make a buck on it. I would appreciate your help.

At this time, Mr. Ted Arneault representing Mountaineer Park addressed the Commission. Mr. Arneault thanked the Commission and Director Gleason for their consideration. The original purpose in Mountaineer Park obtaining video lottery was to assist in stabilizing the economic viability of that facility so the 1,200 and more jobs ultimately throughout the trickle down effect could be maintained in the northern panhandle of West Virginia and as a test so that video lottery could ultimately move in to either just the other racetracks or potentially statewide. The way we look at it, we are an overall entertainment facility and in order to keep those jobs and to keep what we have started in a tremendous improvement mode viable, we

needed as much assistance as we could receive to keep our advertising campaign solid and to help generate additional revenues for the State. Other states have protected such industries in its state. We were asked to provide an analysis initially and then there was an additional analysis to contemplate what happened from a historical basis and try to project what kind of expenses would be reimbursed under the regs and we justified in that analysis, rather conservatively an 80/20 split. We had hoped for a 75/25 split which is what we have as of June 3. We had expected a 70/30 and I think everyone had tried to resign themselves to that and it would have made it tight but I think we could have made it through. We at Mountaineer Park lost money at 80/20 with 165 machines. While the split is being changed, there is no indication of how we move in other areas and it is a rate vs. volume analysis how we make up the lost grounds. That is a little bit disturbing because you do not know how to risk the money that you have to spend in order to progress and make the racing facilities which are in need if infrastructure repair. We have already spent in excess of \$2 million working on this repair and at this point in time with the unknowns given the change in the split it is hard to go through and make any additional expenditures. We will reserve our formal comment through the 30 day period, I feel everyone has worked hard to come up with a solid analysis and Director Gleason's analysis is solid. I hope the Commission can justify phasing into a split over a period of time so the racetracks have an ample opportunity to recover the initial risk dollars.

Jim Arnold representing Wheeling Downs addressed the Commission

at this time. Mr. Arnold stated that Wheeling Downs maintains the existing statutory framework and regulatory framework regulating the Lottery in West Virginia is more than ample authority to permit the Commission to expand video lottery to the existing racetracks. Wheeling Downs asserts that operating agreements are sufficient in the short term because even if the staff proposals are adopted by this Commission and ultimately approved by the Legislature, there will be a need for flexibility. The need for immediate implementation is two-fold; to maximize the revenues to the State and it would give the other tracks the opportunity to remain competitive. As the Commission has heard in previous presentations, neighboring states are doing quite a bit to lure the patrons presently using West Virginia racing facilities. With one exception, all proposals I have heard today are regulations for the control and operation of video lottery. My client is urging implementation now instead and employing those staff proposals or alterations thereon in an operating agreement.

Director Gleason stated he wanted to clarify a couple of matters. South Dakota and Oregon have no specific recommendations under their rules and regulations or statutes with regard to distribution in their racing environment. Louisiana's rules and regulations make a specific allocation of a portion of the handle to similar parties and one of the things I hope is clear is we are not sure what that provision should be. We think it is in the collective best interest to have some provision that encourages an agreement among all parties. We don't wish to be in a position to mediate that but we think we began this exercise and are contemplating continuing

this exercise of video lottery in the racing environment because as stated by owners of these facilities we are doing it to support the racing industry in West Virginia. I think we can arrive at a position along that line that will be appropriate. It is in our collective best interest that we implement video lottery with the assurance those agreements do exist among the parties.

With regard to Mr. Arneault's statement about net revenue distribution; at this point we are not in a position to contemplate whether a graduated distribution either at the outset or over time might be appropriate but that is certainly something we can consider over the next 30 days as whether some distribution might apply at the earlier years that is different than later years or whether some distribution might apply that takes levels revenue into account. I did not want to complicate the issue at this time, I wanted to get a recommendation before the Commission that we could consider at this point in time and receive more information and try to arrive at a distribution and modify if appropriate over the next 30 days.

Lastly, regarding the comments of Mr. Arnold, I as a Director and the Commission as a body are certainly sympathetic to the circumstances of each of the racing facilities. Unfortunately we find ourselves in a circumstance where I as a Director could not recommend to this Commission that we issue another license for all the reasons and factors we have discussed many times, the most significant of which is the issue of ownership, the pending Supreme Court decision and what that could mean to us in the event the Court orders the Lottery has to own all the devices. So I don't see a solution to this problem in the near term. I find myself unable to

make a recommendation to the Commission to issue another license.

Director Gleason stated there are two or three areas that we want to make some adjustments. We would expect to submit the recommendations tomorrow for adoption.

Director Gleason asked if a Member of the Commission is so disposed to adopt the policy resolution? Commissioner Abraham made a motion to adopt the proposed policy resolution, this motion was seconded by Commissioner Trupo and passed by unanimous voice vote.

Motion to recess until 9:30 a.m. on July 13 was made by Commissioner Trupo and seconded by Commissioner Abraham.

Meeting recessed at 4:45 p.m.

July 13, 1993

The recessed meeting of the West Virginia Lottery Commission was reconvened at the Lottery office on Tuesday, July 13, 1993 at 9:30 a.m.

Commission members present were: William Abraham, David Gardner, Anthony Giambrone, Steve Hyre, Larry Pack and L. J. Trupo.

Minutes of the June 14, 1993 and June 22, 1993 meetings which were previously circulated to the Members were approved upon by motion by Mr. Gardner, seconded by Mr. Pack and passed by voice vote.

The financial report for the month ending June 30, 1993, was presented by Mr. Wilhelm. Instant revenues (less returns) were \$3,749,600, on-line revenues were \$8,560,250 and video income was \$107,694 for total gross revenues of \$12,417,544. Sales commissions for the month totaled \$615,094 leaving net lottery revenue at \$11,802,450. After payment of prizes amounting to \$6,577,888 the Lottery was left with a gross profit of \$5,224,562. Operating expenses for the month amounted to \$1,188,844, and income before operating transfers amounted to \$4,151,418. Mr. Wilhelm stated there was a bill passed requiring the Lottery to transfer another \$1.5 million for the fiscal year just ended making a total of \$29,500,000 transferred to the State. Mr. Wilhelm stated the budget bill states the Lottery will be expected to transfer \$32.7 million this coming

year to the State.

The marketing report was presented by Tammy Gunnoe. Total sales for June were \$12,417,544 and statewide weekly per capita sales were \$1.73. Of the top ten counties ranked by total sales Kanawha County had the highest monthly sales among all counties, selling 1,509,761 lottery tickets and representing 13.84 percent of the lottery's sales market. Berkeley County had the best sales based on its total number of retailers, averaging \$2,383 weekly per store in June. Ms Gunnoe provided Members with the completed Marketing Plan and proceeds statement. Ms Gunnoe updated the Commissioners on the new instant game Sensational 60's and upcoming mall tours and promotions at fairs and festivals. Ms Gunnoe commented on the recent POWERBALL jackpot and the commercial from MUSL warning players not to spend their life savings on this jackpot. Ms Gunnoe stated the Lottery did not have the commercial in time to produce it for the recent jackpot. Ms Gunnoe showed the proposed commercial and stated if this arises again, it will be decided at that time if it is appropriate to run this commercial. Chairman Giambrone asked if there were any problems with advertising in the absence of Fahlgren Martin? Ms Gunnoe stated radio buys were bought for three games which would include the Sensational 60's.

The security report was presented by William Woodford. Mr. Woodford gave a detailed analysis of the report to the Members outlining investigations/incidents reported and background investigations. Chairman Giambrone asked Mr. Woodford if there had been any problems with the flooding in the Des Moines area affecting the MUSL offices? Mr. Woodford stated he had no knowledge of any

problems affecting the offices or studios which would inhibit the POWERBALL drawings.

The next item was a status report from Scientific Games. Mr. Scott informed the Members the instant system was running smoothly.

The report for GTECH was presented by Jim Moran. He informed Members the on-line system was performing well.

Under Director's Report Mr. Gleason thanked the Commissioners, all lottery employees, vendors, suppliers and Fahlgren Martin for their role in the accomplishments and records established regarding sales and profits. The employees have continued to produce in exemplary fashion, achieving great results during what would be described as anything but ideal circumstances over the last 12 months. Their efforts are truly appreciated and I know you as Commissioners share this appreciation for our employees and the results achieved.

Director Gleason stated he shared Ms Gunnoe's views regarding the POWERBALL commercial and desire to look at whether such an ad is appropriate and we certainly believe our players are responsible in their efforts to play the game.

Director Gleason asked Jim Alex for a brief report on the status of the litigation regarding Mountaineer Park and Fahlgren Martin.

Mr. Alex informed the Members oral argument is scheduled for September 14 on the Mountaineer Park matter. In the meantime the Supreme Court has asked for documents from the Lottery regarding different contracts we have and to document who owns different items of property. Bill Woodford has been working with Robin Welch on compiling these documents. He stated it usually takes an average of

two months to get a decision from the State Supreme Court so it will probably be November before we have a decision.

Mr. Alex stated we are not a party to the Fahlgren Martin case but certainly have interest and about a month ago Judge Zakaib ruled in a narrow fashion that the Attorney General statutory authority was simply to review contracts for form and essentially he should look at the contract and not other matters, perhaps related outside of the contract situation. Based on that, Judge Zakaib ordered the contract be performed and approved by various state agencies, the Attorney General's Office and the Department of Administration. That matter has been appealed by the Attorney General. Mr. Silas Taylor presented his petition argument for the Attorney General and he argued the Supreme Court should hear the case. They voted to hear the case and I have been informed by the Court oral arguments will be set for that action as well on September 22, so again, a decision will probably come in November or December.

Director Gleason stated that in the May meeting the Commission approved a contract extension/renewal with Scientific Games, Inc. exercising the option for three - one year renewal periods. That contract was executed, paperwork finalized and forwarded to the Department of Administration before the end of May for processing. The contract was ultimately approved by the Department of Administration and forwarded on to the Attorney General with a recommendation for approval. Last week I was notified by a Deputy in the Attorney General's Office that the Attorney General would not approve the contract. His opinion is the exercise of the three - one year renewal options was a significant enough change in the contract

that it should have been re-bid. That is an interpretation I do not agree with and is not consistent with practice in prior years by many divisions and department of state government with regard to the type of discretion exercised by a division or department. It does not give recognition to the good faith, arms length negotiations between the Commission and Scientific Games which achieved, as you will recall an investment by Scientific Games of approximately \$300,000 related to the contract within a few months after its renewal in the form of purchases of instant ticket vending machines and ticket dispensers would have achieved a savings of \$100,000 over the last two years of the renewal periods by a reduction in the vendor's compensation rate for services rendered and would ultimately result in a savings over the life of the contract of \$250,000. Given the Attorney General's position with regard to this contract and after having discussed it with members of the Administration, I am of the opinion I should recommend to this body that we forego the three year renewal period and we seek to have the Attorney General's Office allow us to grant a one year renewal of the contract. We have indications that will be an acceptable alternative and I believe it is imperative that we ensure the continued operations of the Lottery and take a course of action to ensure uninterrupted services from Scientific Games. Even though I have a hard time not achieving the savings we bargained for, it pales in comparison to the disruption that could occur if we fail to achieve a renewal of this contract. I recommend to the Commission that you authorize me to proceed to achieve an agreement towards that end with the Attorney General's Office and Scientific Games.

Commissioner Pack asked how the terms of the contract would change? Director Gleason stated outside of the fact three - one year renewals were granted, the rest were concessions Scientific Games was willing to make to us. I can't reach the same conclusion the Attorney General reaches, but it is not without basis. There is at least enough change that the Attorney General has a basis to say there is a change in form of the contract and from a legal standpoint he has an argument. Our practice was not inconsistent with practices by this Lottery on several previous contracts dating back to when the Lottery was reorganized and granted an extension of more than a year in 1989. The GTECH contract was extended for a two year period last year. Many agencies of state government have granted similar extensions over a long number of years, but this Attorney General has a different interpretation of the statutes of West Virginia.

Director Gleason stated we are going to lose the benefit of the savings we bargained for. Commissioner Pack asked exactly what are these benefits? Director Gleason replied they had negotiated for 3,000 instant ticket dispensers and an additional 50 instant ticket vending machines which would have cost Scientific Games approximately \$36,000 - \$45,000 and \$250,000 and \$275,000, respectively. They agreed to reduce the rate from 6.5 percent to 6.25 percent in years two and three of the contract renewal periods. If the Lottery sold 50 million instant tickets, this would represent a savings of \$50,000 annually. We also agreed in exchange for the instant ticket vendors that we would allow an additional 2 percent commission to Scientific Games for sales through those vendors only to help recover some of their cost. Our estimate based on historic sales through those

vendors of about \$1,000 a week, the increased rate will result in approximately \$156,000 net additional commissions earned by Scientific Games over a three year period. I am confident we would achieve a net savings of \$250,000 - \$300,000 over the next three years. Again, I believe we have no choice. I am asking the Commission to approve the completion of a one year renewal of the contract.

Motion to approve a one year renewal of the contract with Scientific Games, Inc. was made by Commissioner Pack seconded by Commissioner Abraham and passed by unanimous voice vote.

Under other business, Mr. Gleason asked John Melton and Bill Woodford to address the Commission regarding the changes made to the proposed video lottery rules and regulations. Mr. Melton and Mr. Woodford briefly summarized all changes made regarding the concerns expressed by the Commission the previous day.

Commissioner Gardner made a motion to accept the video lottery games regulations which was seconded by Mr. Abraham and passed by unanimous voice vote.

Commissioner Gardner made a motion to amend the motion changing the revenue split percentages to 60/40 versus the current 65/35. This motion was seconded by Commissioner Hyre and passed by unanimous voice vote.

Director Gleason asked for approval of the video lottery rules for filing as amended. Commissioner Gardner made a motion which was seconded by Commissioner Abraham and passed unanimous voice vote.

Commissioner Hyre stated he felt there should be a committee to handle the evaluation of the rules and regulations during the comment

period. Director Gleason suggested the same committee who has worked on the Mountaineer Park contract so there is a continuity. Chairman Giambrone also named Commissioner Abraham to join Commissioners Hyre, Pack and Gardner on this committee. After conferring with the members of the subcommittee, Director Gleason stated the subcommittee would meet July 26 at 3:00 p.m.

Director Gleason stated the Commission asked him to draft a resolution recognizing the contributions made by Commissioner Abraham to the West Virginia Lottery. At this time, Director Gleason read the proposed resolution (copy attached to these minutes). Motion to approve this resolution was made by Commissioner Pack, seconded by Commissioner Gardner and passed by unanimous voice vote. Director Gleason added his personal thanks to Commissioner Abraham for his services to the Commission.

At this time, Director Gleason stated in his five years of service in the Caperton Administration, he has had to make several difficult decisions; none of which has been more difficult more than the decision reached in the last week. I wish to announce I will accept a position with the Georgia Lottery Corporation as Senior Vice President of Finance and Administration in September. Basically, I was faced with an offer I could not afford to decline. The Georgia Lottery sold 13 million tickets it first day; 52 million tickets its first week and is expected to sell 600 million its first year. As the chief financial officer of this corporation I will have the responsibility for the financial operations of a billion dollar corporation. This is a significant challenge and a great opportunity for me and my family. Nonetheless, this was a difficult decision

because of my love for West Virginia, for my feelings for this group, for the Members of this Commission and its employees, for the Governor and his Administration, many friends and associates throughout this State. I have truly been blessed and lucky and I am truly grateful to Governor Caperton for the opportunity to have served in his Administration. I am proud of the accomplishments of his Administration. I am proud to have the opportunity to serve with this body and proud of the accomplishments at the West Virginia Lottery. I am proud of the accomplishments of the Department of Transportation in the small role I was able to play as its Secretary.

Director Gleason stated if he is for remembered anything he hopes to be remembered as a contributor, a caring and compassionate individual and one with passion for the initiatives and projects for which I have worked. Some of my personal philosophy is that life is complicated and is complex but is really quite simple. We are best served when we stick by our guiding principles. Principles that include simple terms like trust, integrity, loyalty and striving for excellency and improvement. I hope I have encouraged others to do that in my time. I thank you for your support, encouragement and friendship over the last five years.

Director Gleason assured Members of the Commission and lottery employees that the Georgia Lottery Corporation is sensitive to the circumstances in which we find ourselves and the need to provide for an orderly transition. They have assured me that whatever time is necessary to ensure this happens will be made available to me and if necessary, I will be available to this Lottery until October 1.

The next meeting was scheduled August 16, 1993 at 9:30 a.m.

There being no further business, motion to adjourn was made by Mr. Gardner and seconded by Mr. Abraham.

Anthony Giambrone

Robin Atkins

West Virginia State Lottery Commission
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Committee Action
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The Committee requested that the rule be withdrawn because in October, the Supreme Court of Appeals ruled that the statute authorizing the video lottery was unconstitutional since it did not have sufficiently specific standards by which the agency could promulgate the rule. Therefore, it would be improper to promulgate a rule pursuant to this statute.