

**Minutes  
Legal Committee  
South Carolina Education Lottery Commission  
September 27, 2005  
9:30 a.m.**

A meeting of the Legal Committee of the South Carolina Education Lottery was held on Tuesday, September 27, 2005, at 9:30 a.m. in the small 1st Floor Conference Room at 1333 Main Street, Columbia, South Carolina.

The following committee members were present:

Timothy Madden, Chair  
John C. B. Smith, Jr.  
Marvin Quattlebaum

Staff present included Ernie Passailaigue, Bethany Parler, Hogan Brown, and Carl Stent.

**Palmetto Cash 5 June 24 Draw**

After the completion of the Friday, June 24, 2005 Palmetto Cash 5 Drawing, one of the numbers drawn, "27", was entered into the central gaming system in error as "37" because the number "37" was incorrectly certified by the draw auditor. The other drawn numbers were correctly certified. Upon learning of the error, SCEL paid winning claims presented which contained either the number "27" or the number "37". After brief discussion, staff was directed to send a demand letter to Derrick, Stubbs & Stith, LLP, SCEL's draw auditor.

The Committee requested that, before sending the demand letter, the Executive Director contact both the managing partner at Derrick, Stubbs & Stith and the State Auditor's Office, as the services of Derrick, Stubbs & Stith were procured through that office, and notify both offices of SCEL's intention to pursue a claim for damages.

The Chair recognized Hogan Brown who briefly outlined the damage calculation which excluded staff time and retailer incentives that have been paid.

**Telecommunications Line Cut by City of Columbia Personnel**

SCEL is ready to file suit against the City of Columbia and Central Locating Service, Ltd. regarding the terminal outage caused by the City's cutting a fiber optic cable that connected SCEL and its retailers with the central gaming system in Blythewood. Service was interrupted for approximately four hours.

After brief discussion of how the claim should be pursued, it was the consensus of the Committee that staff would choose outside counsel as provided in the Commission bylaws. It was suggested that staff explore fee arrangements other than a straight hourly rate. Staff will report to Chairman Madden regarding efforts to retain counsel.

### **Intellectual Property**

SCEL has a two-fold need to secure outside counsel for assistance with intellectual property issues. First, staff would like advice regarding the upcoming round of instant game and online game procurements to ensure that SCEL's interests and rights are fully protected. The instant game Request for Proposals (RFP) is scheduled to be released in December and the online RFP is set for release in 2007. Second, staff would like advice on broader intellectual property issues that are affecting the lottery industry as a whole. Given the services that the McNair firm has provided SCEL regarding procurement issues, staff recommended that this assistance include intellectual property matters relating to procurement issues.

The Committee accepted this recommendation but deferred a decision on the best approach or specific counsel to address and protect SCEL regarding the issues facing lottery jurisdictions throughout the country. Staff was asked to research attorneys who specialize in intellectual property and report back to the Committee.

### **Fidelity Fund**

When a new application is received, SCEL collects a fee of \$210, of which \$75 is deposited into a fidelity fund, as provided by statute. The funds "may be used to cover losses the commission may experience due to nonfeasance, misfeasance, or malfeasance of a lottery retailer." (§59-150-170(A)). Such a transfer would be treated as "gross proceeds" and deposited in SCEL operating accounts. By contrast, upon reaching \$500,000, the balance above that amount is to be transferred to the Education Lottery Account as "net proceeds". To this point in time, no withdrawals have been made from the Fidelity Fund. It is anticipated that the Fidelity Fund will exceed \$500,000 during this fiscal year. Staff requests guidance as to the role the Commission may like to take regarding charging off delinquent accounts against funds in the Fidelity Fund.

It was the consensus of the Committee that the decision to use resources from the Fidelity Fund to offset delinquent retailer accounts falls within the purview and discretion of the Executive Director. These actions should be included in reports to the Commission. Staff will continue to make all reasonable efforts to collect the delinquent accounts.

### **Ticket Holder Complaint**

Under SCEL's enabling legislation, lottery players have the right to contest certain matters and appeal to the Commission after a hearing at the staff level has been completed. To provide a structure to this process, a Ticket Holder Complaint Procedure was adopted by the Commission in December 2004. The enabling legislation also allows the Commission to delegate its duties to a committee or a single commissioner. The responsibility for channeling appeals was delegated to the Legal Committee in the Ticket Holder Complaint Procedure. The Committee has the option of hearing the appeal from the staff level, delegating it to a member of the Committee or forwarding it to the entire Commission for consideration.

There is now a complaint that has been heard by the Executive Director's designee, Tom Marsh, and the ruling denied the player's request for payment of a lower tier prize. Staff is attempting to resolve the player's appeal. If that attempt is unsuccessful, staff requests that the Chair of the Legal Committee appoint a member of the Committee to consider the appeal as provided in the Ticket Holder Complaint Procedure. Commissioner Quattlebaum agreed to hear and act upon this appeal. Material submitted in support of the grievance will be reviewed at the appropriate time and the appeal may be conducted telephonically.

**Retailer Ticket Cashing Limitations**

Staff believes SCEL would benefit if a limited number of retailers in certain areas of the State were authorized to validate and pay prizes in excess of \$500. SCEL’s regulations authorize licensed lottery retailers to cash winning tickets only up to \$500. SCEL’s enabling legislation allows the Commission to designate a limited number of lottery retailers that are authorized to validate and pay claims in excess of \$500 but less than \$5,000. However, under Section 59-150-70, even if the \$500 cap were not in the regulations, the statutory authorization is not self-executing and requires the promulgation of a regulation. Staff would like to amend the regulations to allow the Commission to take action if, and when, it deems appropriate to allow certain retailers to cash tickets with prizes up to \$5,000. These retailers would designate the appropriate withholding for state and federal taxes and account for those funds as well as prize payout funds in their weekly lottery account settlements. By statute, debt set off (debts owed to other state agencies) for winnings begins with prizes of \$5,000 and would only be handled by SCEL claim centers.

To facilitate amending the regulations, a Notice of Drafting must be filed by the second Friday in October for publication in the *State Register* on the fourth Friday in October. The proposed regulations could then be submitted and published in the November edition of the *State Register*. A hearing is not required unless requested by twenty-five or more people or by a group representing more than 25 people. The hearing, if needed, would occur in late December or early January and the regulation would be available for submission to the General Assembly in January 2006.

**Motion Adopted**

Commissioner Smith moved to recommend to the Commission that staff take all necessary actions to draft and file regulations to allow the Commission, at a later date, to designate a limited number of retailers to redeem and pay claims up to \$5,000 by retailers authorized by SCEL. Commissioner Quattlebaum seconded the motion which was approved.

**Other Business**

With the expiration of some of SCEL’s major contracts (instant ticket vendor, 10/06; online games vendor, 11/08; advertising contract, 11/05) approaching, staff requested the Committee’s guidance to facilitate the Request for Proposal process. Staff was asked to advise the appropriate committee of the Commission as needed.

Approved:

\_\_\_\_\_/s/  
Timothy Madden, Chairman

\_\_\_\_\_  
Date

As required by Section 30-4-80, notification for this meeting was posted at the meeting location, the Education Lottery web site, and sent via facsimile transmission pursuant to requests made by media outlets and other organizations. The notification included the time, date, place and agenda of the meeting.