



## **Minutes of the Commission Meeting**

Room 412 Capitol Building

**March 25, 2011**

Chairman Doug Sharp called the March 25, 2011 meeting of the South Dakota Lottery Commission to order at 9:30 a.m. (CT).

MEMBERS PRESENT: Doug Sharp, Virginia Nelson, Duane Schmautz, Susan Shay Brugger and Dick Werner. Kory Menken attended via teleconference.

MEMBERS ABSENT: Tom Leckey

SUPPORT STAFF PRESENT: Norm Lingle, Kelly Thompson, Joe Willingham, Deb Reese, Sherry Lauseng, Ron Leidholt, Andrew Fergel and Mary Jo Bibby

### **APPROVAL OF THE AGENDA AND MINUTES**

Commissioner Shay Brugger moved to approve today's agenda, with Item 9 having been removed by request, and the minutes of the Oct. 27, 2010 meeting. Commissioner Schmautz seconded the motion. The roll was called and the motion carried.

### **EXECUTIVE DIRECTOR'S COMMENTS**

Executive Director Norm Lingle reported on the following:

AUDIOCAST:

Lingle reported that this meeting is being audio-taped and will be posted on the Lottery's website.

DOCUMENTS:

Documents relating to today's meeting are available to the public.

LEGISLATION:

The focus of the 2011 session was the state budget deficit with no legislation affecting the Lottery having been proposed.

The Department of Revenue and Regulation's overall budget was reduced by 10 percent. There was a \$200,000 reduction in the instant/on-line budget, including \$45,000 in personal services; \$41,000 in contractual services; and \$113,000 in supplies and materials. There was a \$77,000 reduction in the video lottery budget including, \$5,000 for travel; \$64,000 in contractual services; and \$7,500 in supplies and materials.

### AGENCY REORGANIZATION:

By Executive Order, changes were made in the Departments of Revenue and Regulation, Department of Labor, Department of Environment and Natural Resources and Attorney General's Office. The Lottery will remain part of the Department of Revenue, which was renamed. Other former DRR divisions were assigned to the Labor, DENR and AG's offices.

### VIDEO LOTTERY REVENUES:

The Lottery has witnessed a 16.8 percent decrease in video lottery revenues as a result of the economic downturn and the smoking ban. The negative impact amounts to \$12.3 million in lost revenue.

*Chairman Sharp announced a brief recess at 9:40.*

*Chairman Sharp reconvened the meeting and opened the public hearing on rules regarding video lottery operations and administration at 9:45.*

## **RULES HEARING**

Director Lingle gave an overview of proposed amendments to §§ 48:02:03:11, 48:02:05:04, 48:02:05:05, 48:02:06:05, 48:02:06:06, 48:02:06:07, 48:02:07:02, 48:02:08:01, 48:02:08:02, 48:02:08:05, 48:02:08:09, 48:02:09:03, 48:02:09:04, 48:02:10:05.01 and 48:02:10:10. The amendments update the rules to align with new technology, streamline accounting and record-keeping practices and to allow options and flexibility in the types of games offered.

Lingle stated that if the proposed amendments are approved by the Commission, they will be reviewed by the Legislative Rules Review Committee at a meeting to be held May 10, 2010. Following the Rules Committee's approval, manufacturers may submit line-up games for testing and approval by the Lottery.

Lingle stated that two documents opposing the proposal have been received and are available to the public.

## **PUBLIC TESTIMONY**

**Bob Riter**, attorney for the Music and Vending Association appeared as a proponent, testified that members of the music and vending industry are reporting stagnant revenue beginning before the smoking ban went into effect. Decreased video lottery revenue will compound the effects of recent state budget cuts and will impact the Property Tax Reduction Fund. Decreased revenue from Deadwood gaming will also impact the state.

Riter stated that §§48:02:08:01 states which types of video lottery games are authorized. Those games are draw poker, keno, blackjack and line-up symbols and numbers. Riter stated that the amendment to the State Constitution in 1994 ratified the rules promulgated in July of 1989, which stated what types of games are allowable. Riter also stated the §§48:02:08:09 specifies the software requirements for line-up games.

Riter said that this is the time to use this authorization. He cited how raising the bet limit in Deadwood significantly increased revenue there. Deadwood would not be negatively impacted by the introduction of line-up games because it is a destination and it has a different clientele.

**Karen Assman**, representing the Video Lottery Establishments and Licensed Beverage Dealers appeared as a proponent, testified that the economic downturn and the smoking ban have had a significant impact on her association members' businesses.

**Rick Law**, video lottery operator and establishment owner appeared as a proponent, cited operators reporting losses of 20 to 50 percent since the smoking ban. Some businesses have closed and many are suffering.

**Bob Johnson**, a former distributor with American Games appeared as a proponent, endorsed the authorization of new games.

**Rich Ward**, video lottery operator since 2004 appeared as a proponent, testified that stand-alone casinos have seen greater drops. He's seen a 42 percent drop in cash-in since November in his establishments. The Lottery is charged by statute with maximizing revenues to the state, Ward stated.

**Tom Nelson**, president of the Deadwood Gaming Association appeared as an opponent, stated that when Deadwood gaming was balloted upon in 1988 the question was should Deadwood, and Deadwood alone, be allowed to have limited gaming in the form of card games and slot machines. Nelson said Deadwood gaming revenues have gone to historic preservation in Deadwood, Lawrence County communities and schools and state tourism projects. A state-wide ballot allowed for higher bet limits in Deadwood. An increase in Deadwood's gaming tax raised \$1 million to make up shortfalls in the state General Fund.

Nelson posed the question: "Was it the intent of the legislatures (sic) on several occasions, or the intent of the voters of South Dakota during their election opportunities, to have slot machines in any establishment in any town in our state?"

**Tom Harmon**, attorney for the Deadwood Gaming Association appeared as an opponent, said that allowing line-up games is a technical issue. He gave the history of the South Dakota Supreme Court's decision that determined that video lottery did not fit the state's legal definition of a lottery and declared the games unconstitutional. When the state Constitution was amended to change the definition it was ratifying the administrative rules governing video lottery as those rules stood, with the authorization of line-up game not yet in place.

Harmon stated that to allow for line-up games would be to invite legal battles over contracts between operators and establishments.

Harmon stated that it had not been determined how much revenue was expected to be gained if line-up games were to be allowed.

Harmon stated that the Commission is at risk of court challenges that may result from adopting the rule changes and that a Constitutional amendment would prevent possible lawsuits.

Bob Riter responded that the rules that were ratified when the Constitution was amended in 1994 were the rules authorizing line-up games. He also stated that video lottery machines cannot be considered slot machines because they do not dispense coins or tokens.

*Chairman Sharp closed the public hearing at 10:50 and opened the discussion to the Commission for comment. There was no further discussion.*

Commission Menken moved and Shay Brugger seconded the motion to adopt the proposed rule changes. The role was called and the motion carried.

## **SALES REPORT**

*Director of Sales Joe Willingham reported on the following:*

### INSTANT GAMES:

Willingham stated that instant game sales are up 7.9 percent from the same period last year and this is the best instant sales year since the Lottery's first year in operation. Weekly sales are averaging \$400,000. Recent games include Cash Stash, Cash Blast, Slingo and All in to Win.

The Failsafe barcode and keyless validation is now available on new games being released. Players can check tickets on the self-checkers and retailers can scan the ticket without entering the ticket's barcode.

Willingham showed samples of upcoming games and gave details of the Camaro Cash game to be launched April 3.

### INSTANT TICKET VENDING MACHINES:

Willingham explained the formula used for evaluating the effectiveness of the trial ITVMs. Research showed that the machines did not significantly improve the overall sales picture when service fees and increased labor for the retailer were considered. GTECH is in the process of removing the terminals.

### LOTTO GAMES:

Lotto sales are up 1.28 percent from the same period last year. The Mega Millions game has had two good jackpot runs, and the game is starting to take root.

Powerball sales are down 16.1 percent, Hot Lotto sales are up 6.5 percent, Mega Millions sales are \$2.29 million year to date, Dakota Cash sales are up 11.5 percent and Wild Card sales are down \$30.2 percent.

### REVENUE PROJECTIONS:

Video Lottery revenue projections for FY2011 are down 8.16 percent, instant projections are up 7.3 percent, and lotto projections are down 10.24 percent.

## **PUBLIC RELATIONS/ADVERTISING REPORT**

*Director of Public Relations and Advertising Kelly Thompson reported on the following:*

### BIG WINNERS:

Thompson reported on four recent jackpot winners and two recent large-prize lotto winners. Forty-six top instant prizes have been won recently. Troy Opdahl of Hazel won \$300,000 on a Cash Stash ticket, the largest scratch prize won to date.

### PRESS RELEASES:

The Lottery has released five jackpot alerts, 23 winner alerts, 40 press releases and 41 winner counts since November, 2010.

### FY2010 ANNUAL REPORT:

The annual report has been printed and will be distributed to interested parties.

#### ADVERTISING CAMPAIGNS:

Holiday advertisements ran in November and December. The Cash Stash game was featured on advertisements in December and January. Players were reminded to play the new Mega Millions game in a January campaign and the All in to Win scratch game was featured in the March campaign. A continuity campaign in January stressed that games are always available and a lotto campaign in February featured each game on website banners, radio ads and a new crashbar POS sticker.

#### POWERBALL “WATCH TO WIN” PROMOTION:

South Dakota participated in the MUSL promotion aimed at getting players to watch televised drawings. Because only one South Dakota station airs the live drawings, the “secret word” was emailed to Players Club members and announced on the Lottery’s website. Players then signed up to register for drawings. One South Dakota player won a GPS.

#### NATIONAL PROBLEM GAMBLING AWARENESS WEEK:

The annual awareness campaign featured radio and newspaper ads and website announcements.

#### UPCOMING EVENTS AND ACTIVITIES:

Camaro Cash will be promoted with TV ads and POS. The Black 2 scratch game will feature radio ads and POS. A “Summer of Scratch” promotion will promote new scratch games and Players Club sign-ups and will award 75 prizes.

#### **ADVERTISING CONTRACT EXTENSION**

Thompson requested that the Commission exercise the two remaining contract extensions for Advertising and Related Services with Robert Sharp and Associates. Schmautz move and Neson seconded the motion to exercise the two extensions to the advertising contract. Motion carried.

#### **VIDEO LOTTERY REPORT**

*Director of Security and Video Lottery Operations Deb Reese reported on the following:*

#### VIDEO LOTTERY REVENUE:

Net machine income is \$140.38 millions, which is down 8.63 percent from the same time last year. There are 1,505 establishments, up 3.79 percent. There are 9,204 terminal, up 2.31 percent from last year.

#### **NEXT COMMISSION MEETING**

The date of the next meeting will be discussed and announced when finalized.

#### **ADJOURNMENT**

Commissioner Menken moved and Shay Brugger seconded the motion to adjourn. The motion carried and at 11:50 a.m. the Commission adjourned.