

Lottery, appropriation for game television program

Number: INFORMAL

Date: June 24, 1998

Ms. Marcia Mann
Secretary, Florida Lottery
250 Marriott Drive
Capitol Complex
Tallahassee, Florida 32301

Dear Ms. Mann:

You ask whether the Florida Lottery may expend funds appropriated for the 1998-1999 fiscal year for the lottery's game show from categories other than item 1952 of the 1998-1999 General Appropriations Act.

You state that the Florida Lottery has produced a weekly television game show entitled "The Florida Lottery's Flamingo Fortune" since the fall of 1995. The show is produced at Universal Studios in Orlando under a contract between the Florida Lottery and Earham Productions, Inc., an affiliate of Sony Corporation of America, Inc. The game shows are aired weekly by television stations pursuant to contracts between the Florida Lottery and the television stations.

Contestant participation in the game show is gained through the purchase of tickets in various Florida Lottery games.[1] Eligible tickets are entered into periodic drawings in which contestants are selected. If selected as a contestant, the ticket purchaser can compete for additional prizes. According to your letter, as of May 1, 1998, there were approximately 2.5 million eligible tickets remaining in the hands of players.[2]

You state that since its inception, the game show has been funded from the Advertising and Promotion category of the annual appropriation to the Florida Lottery. Proviso language in item 1952 of the General Appropriations Act for fiscal year 1998-1999, entitled Paid Advertising and Promotion, states:

Funds in Specific Appropriation 1952 are provided for lottery promotions and advertising, including radio, print, and television. No funds in this appropriation shall be utilized for production and airing of a television game show during Fiscal Year 1998-1999.

In light of the large number of tickets remaining in the hands of players that may qualify for entry into drawings for contestant selection and game show participation, the Florida Lottery would prefer to phase out the television program rather than terminate production and airing of the program immediately.[3] You therefore inquire whether the Florida Lottery may expend funds appropriated for the 1998-1999 fiscal year for the lottery's game show from categories other than item 1952 of the 1998-1999 General Appropriations Act during this phase-out period.

The language contained in item 1952 of the 1998-1999 General Appropriations Act clearly

prohibits funds from that specific appropriation from being used to fund the Lottery's television game show. The prohibition, however, relates only to that specific appropriation. Such a specific prohibition, limited by its terms to a particular appropriation, would not extend to any other appropriation item. I am not aware of, nor have you drawn my attention to, any other prohibition regarding the television game show.

An examination of the several appropriations, other than item 1952, to the Florida Lottery contained in the 1998-1999 General Appropriations Act (Act) indicates that most of the Lottery's appropriation categories are inappropriate for use to fund the department's television show.[4] The Department of the Lottery, however, has received funds in excess of \$15 million for expenses.[5]

The term "Expense" has been defined for purposes of the fiscal affairs of the state, appropriations acts, legislative budgets, and approved budgets to mean

"the usual, ordinary, and incidental expenditures by an agency or the judicial branch, including, but not limited to, such items as contractual services, commodities, and supplies of a consumable nature, current obligations, and fixed charges, and excluding expenditures classified as operating capital outlay. Payment to other funds or local, state, or federal agencies are included in this budget classification of expenditures." [6]

Expenditures for the television program may well fall within the ambit of this appropriation. The program has been in existence for several years and thus may be classified as a usual expenditure by the department. The television program is provided through contracts and thus may qualify as the payment of contractual services or current obligations. Moreover, as you note in your letter, there are currently 2.5 million eligible tickets remaining in the hands of players that may qualify for entry into drawings for contestant selection and game show participation.

Accordingly, I am of the view that while the Florida Lottery is precluded from using funds appropriated pursuant to item 1952 of the 1998-1999 General Appropriation Act for the television program "The Florida Lottery's Flamingo Fortune," such prohibition extends only to that appropriation item. Thus, the Florida Lottery is not precluded from using funds from another appropriation item, such as expenses, if deemed appropriate.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] See Rule 53ER96-36, Florida Administrative Code.

[2] The holders of on-line tickets have 180 days to redeem their prize and instant ticket holders have 60 days. See s. 24.115(1)(f), Fla. Stat.

[3] See Letter to the Honorable Toni Jennings, President of the Florida Senate, from Marcia Mann, Secretary of the Florida Lottery, dated June 9, 1998.

[4] See item 1944 of the Act (salaries and benefits); item 1945 (other personal services); item 1947 (operating capital outlay); item 1949 (acquisition of motor vehicles); item 1950 (transfer to Division of Administrative Hearings); item 1951 (instant ticket purchase); item 1953 (online games contract); item 1954 (instant ticket vending machines); item 1955 (retailer incentives); item 1956 (risk management insurance); item 1957 (salary incentive payments); item 1958 (transfer to educational enhancement trust fund); and item 1959 (data processing services, technology resource center-Department of Management Services). *And see* s. 216.011(1)(v), Fla. Stat., defining "operating capital outlay" and s. 216.011(1)(x), Fla. Stat., defining "other personal services."

[5] See item 1946 of the Act appropriating \$15,355,208 from the Administrative Trust Fund for expenses.

[6] Section 216.011(1)(l), Fla. Stat.