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April 13, 1990

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

Dear Mr. Gleason:

We are writing to respond to your letter requesting the proper interpretation of certain provisions of W. Va. Code §§ 29-22-1 et seq. (1986 Repl. Vol. & Supp. 1989), the "State Lottery Act," as they relate to the definitions of gross sales, retailer agent commissions, and the allocation of the gross amount received from each lottery. In your letter, you set forth the following facts:

Both instant and on-line (computer games) lottery tickets are sold to the general public through 1,800 lottery sales agents. Each ticket is sold to the general public at a price of \$1.00. The on-line agents sell tickets through computerized terminals. Weekly, the aggregate amount of each agent's sales is summarized, reported to the Lottery and an amount equal to the total sales less the agent's five percent commission, is paid over to the Lottery by electronic funds transfer (EFT) from the lottery agent's bank account. The retail sales agent's commission is retained by the agent and is not paid-over to the Lottery.

Retail sales agents buy instant tickets from the Lottery in books of 500 tickets for a discounted amount equal to the retail value of the book, \$500 less the agent's five percent commission--\$25.00--and less the guaranteed low-end prized (GLEPS) normally, approximately \$200, which the agent is responsible by his contract to pay to players on behalf of the Lottery. Accordingly, weekly the retail sales agent makes payment to the Lottery by EFT or COD for the aggregate net amount of the books purchased at approximately \$275.00/each. The balance of the agent's payment is made by his payment of

the GLEPS to lottery players. Again, the agent retains the five percent or \$25.00 commission paid on each book.

You further note that when calculating the statutory allocations pursuant to W. Va. Code §§ 29-22-18(c), (d) & (e) (Supp. 1989), it had been the interpretation and practice of the Lottery to consider "gross amount received" to be the revenue received after the five percent agent commission has been deducted. You conclude by asking our opinion on whether this interpretation is appropriate.

The Code sections relevant to this opinion are W. Va. Code 29-22-10(a)(11) (1986), which provides that "[l]icensed lottery sales agents shall receive five percent of gross sales as commission for the performance of their duties," and W. Va. Code §§ 29-22-18(c), (d) and (e) (Supp. 1989) which read in pertinent part as follows:

(c) A minimum annual average of forty-five percent of the gross amount received from each lottery shall be allocated and disbursed as prizes.

(d) A minimum annual average of forty percent of the gross amount received from each lottery shall be allocated as net profit

(e) Not more than fifteen percent of the gross amount received from each lottery shall be allocated to and may be disbursed as necessary for fund operation and administration expenses

In West Virginia Education Association v. Preston County Board of Education, ___ W. Va. ___, 297 S.E.2d 444, 447 (1982), the West Virginia Supreme Court of Appeals held that "[o]ur rules of construction instruct us to attempt to give meaning to every word in a statute and to avoid interpreting a word in a way that makes it repetitious of another." (Citations omitted.) Because the Legislature used two different terms--"gross sales" and "gross amount received from each lottery"--they should be construed to have separate meanings. Given your present procedures regarding the sales of lottery tickets and distribution of commissions to ticket agents, we conclude that "gross sales," for the purpose of determining commissions to agents, should be interpreted to be applied to the entire \$1.00 face value of each ticket, while "gross amount received from each lottery" should be interpreted to be the balance received by the State after commissions are deducted. In other words, "gross sales" minus commissions equals "gross amount received."

The manner by which the Lottery currently pays commissions and receives monies is consistent with this conclusion. By statute, the Lottery is given the authority to determine "[t]he method and time of payment" for commissions paid to lottery sales agents. West Virginia Code § 29-22-10(a)(11) (1986). Under the plan of payment described in your letter, the commissions are either retained by the agent or are, in effect, paid for in advance by the use of a discounted ticket book. As such, the monies attributable to commissions are never received by the Lottery. Additionally, because the five percent commission is owed for services provided by licensed agents prior to the deposit of any money into the State Lottery Fund, the commissions are debts for statutory obligations other than expenses for "operation and administration expenses" as referenced in W. Va. Code 29-22-18(e) (Supp. 1989).

In conclusion, it is our opinion that "gross sales," as contained in W. Va. Code 29-22-10(a)(11) (1986), refers to the full face value of lottery tickets sold, and the "gross amount received from each lottery," as contained in W. Va. Code §§ 29-22-18(c), (d) and (e) (1989), refers to gross sales less the statutory five percent commission. Therefore, calculations of the statutory allocations under W. Va. Code § 29-22-18 should be based upon the amount actually received after the appropriate deduction for commissions.

Very truly yours,

ROGER W. TOMPKINS
ATTORNEY GENERAL

By:  DEPUTY
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