



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

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FILE NO. 97-022

ADMINISTRATIVE LAW:

Authority of the Department of the
Lottery to Pay Specified Operating
Expenses from Lottery Revenues Prior to
Deposit into the State Lottery Fund

Lori S. Montana
Director
Illinois Lottery
Post Office Box 19080
Springfield, Illinois 62794-9080

Dear Director Montana:

I have your letter wherein you inquire whether, under the provisions of the Illinois Lottery Law (20 ILCS 1605/1 et seq. (West 1996)), the Department of the Lottery has the authority to make payment for certain operating expenses from lottery ticket sales revenues prior to their deposit into the State Lottery Fund. Specifically, you ask whether the Department may make payments to " * * * (i) the Department's ticket distribution contractor; (ii) the Department's on-line computer maintenance contractor; and (iii) the lessor of the Department's instant ticket automated distribution machines" prior to deposit. For the reasons hereinafter stated, it is my opinion that the

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only payments that can be deducted from lottery ticket sales revenues prior to their deposit are agent's commissions, fees and reimbursements for prizes of less than \$600 paid at the agent level. The operating expenses you have described, therefore, may not properly be paid directly from sales revenues.

Based upon the information that you have provided, it appears that it has been the practice of the Department of the Lottery (hereinafter referred to as "the Department") not only to permit its sales agents to retain revenues for the commissions due the agents for ticket sales and for reimbursement for prizes of less than \$600 claimed at the agent level, but also to pay the enumerated operating expenses out of lottery ticket sales proceeds prior to their deposit into the State Lottery Fund. Recently, however, the Department was the subject of an audit by the Auditor General, who made a specific finding, with respect to such expenditures, that the Department "* * * 'made electronic funds transfers to pay for various operating expenses without statutory authority.' * * *"

It is well established that administrative agencies possess only those powers that are expressly granted to them by statute, together with those powers that may be necessarily implied therefrom to effectuate the powers that have been granted. (Lake County Board of Review v. Property Tax Appeal Board (1988), 119 Ill. 2d 419, 427; Illinois Bell Telephone Co. v. Illinois Commerce Comm'n (1990), 203 Ill. App. 3d 424, 438.)

Therefore, it is necessary to review the statutory provisions that address the collection and disposition of public monies generally, and of lottery revenues specifically, in order to determine the extent of the Department's powers and duties with respect to pre-deposit payments.

The payment and disposition of monies received for or on behalf of the State is ordinarily governed by the provisions of the State Officers and Employees Money Disposition Act (30 ILCS 230/1 et seq. (West 1996)). Section 2 of that Act (30 ILCS 230/2 (West 1996), as amended by Public Act 90-37, effective June 27, 1997) provides, in pertinent part:

"(a) Every officer, board, commission, commissioner, department, institution, arm or agency brought within the provisions of this Act by Section 1 hereof * * * shall pay into the State treasury the gross amount of money so received * * * without any deduction on account of salaries, fees, costs, charges, expenses or claims of any description whatever; * * * No money belonging to or left for the use of the State shall be expended or applied except in consequence of an appropriation made by law and upon the warrant of the State Comptroller. * * *

* * *

"

(Emphasis added.)

Section 1 of the State Officers and Employees Money Disposition Act (30 ILCS 230/1 (West 1996)) provides that the Act is applicable, inter alia, to "* * * the Departments of the State government created by the Civil Administrative Code of Illinois

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* * *", of which the Department of the Lottery is one. (See 20 ILCS 5/3 (West 1996).)

Under section 2 of the State Officers and Employees Money Disposition Act, State officers and agencies are generally required to deposit all State monies into the State treasury for expenditure only pursuant to an appropriation by the General Assembly. It is a fundamental principle of statutory construction, however, that where there exists a general statutory provision and a specific statutory provision, both of which relate to the same subject, the specific provision prevails over the general provision and should be applied. People v. Britz (1996), 174 Ill. 2d 163, 197.

Section 20 of the Illinois Lottery Law (hereinafter referred to as "the Law") (20 ILCS 1605/20 (West 1996)) specifically addresses the disposition of Illinois lottery revenues, providing:

"There is created in the State Treasury a special fund to be known as the 'State Lottery Fund'. Such fund shall consist of all revenues received from the sale of lottery tickets or shares, net of commissions, fees and prizes of less than \$600 which have been validly paid at the agent level, application fees, and all other sources including moneys credited or transferred thereto from any other fund or source pursuant to law. Interest earnings of the State Lottery Fund shall be credited to the Common School Fund." (Emphasis added.)

Under the plain and unambiguous language of section 20 of the Illinois Lottery Law, there are three categories of expenditures

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that may be deducted and paid from lottery ticket sales receipts prior to their deposit into the State Lottery Fund: commissions; fees; and prizes of less than \$600 paid by the agent.

The provisions of the Law pertaining to collections of ticket revenues from sales agents complement section 20. In this regard, section 10.3 of the Law (20 ILCS 1605/10.3 (West 1996)) provides:

"All proceeds from the sale of lottery tickets or shares received by a person in the capacity of a sales agent shall constitute a trust fund until paid to the Department either directly, or through the Department's authorized collection representative. Proceeds shall include unsold instant tickets received by a sales agent and cash proceeds of sale of any lottery products, net of allowable sales commissions and credit for lottery prizes paid to winners by sales agents. Sales proceeds and unsold instant tickets shall be delivered to the Department or its authorized collection representative upon demand. Sales agents shall be personally liable for all proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.
* * * (Emphasis added.)

Similarly, section 21 of the Law (20 ILCS 1605/21 (West 1996)), which addresses a lottery sales agent's liabilities, provides:

"All lottery sales agents or distributors shall be liable to the Lottery for any and all tickets accepted or generated by any employee or representative of that agent or distributor, and such tickets shall be deemed to have been purchased by the agent or distributor unless returned to the Lottery within the time and in the manner prescribed by the Director. All moneys received by such agents or distributors from the sale of

lottery tickets or shares, less the amount retained as compensation for the sale of the tickets or shares and the amount paid out as prizes, shall be paid over to a lottery representative or deposited in a bank or savings and loan association approved by the State Treasurer, as prescribed by the Director.

* * *

"

(Emphasis added.)

The language of section 10.3 and section 21 of the Law clearly permits lottery sales agents to deduct and retain from lottery ticket sale proceeds amounts equivalent to their sales commissions and "lottery prizes paid to winners by sales agents", and the language of section 20 of the Law plainly contemplates such deductions. Nothing in the language of these sections, however, purports to authorize the Department to deduct any amounts from ticket sales proceeds for the payment of general operating expenses.

You have suggested that the term "fee" in section 20 of the Law was intended by the General Assembly to include payments by the Department to vendors for the costs incurred in the operation and administration of the State lottery. The term "fee" is not defined in the Law. Under the principle noscitur a sociis, however, words of a statute must be read in context, and associated words should be considered in determining the meaning to be given to an ambiguous word. (See People v. Goldman (1972), 7 Ill. App. 3d 252, 255.) Thus, the general words of the statute take color from the specific words, and are restricted to a sense

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analogous to the less general. (Dunham v. State (1939), 192 So. 324, 325-6.) Application of this principle leads to the conclusion that the term "fees" in section 20 of the Law is to be given a relatively restrictive meaning, which does not extend to payments to vendors for general operating expenses.

The terms with which the word "fee" is associated in section 20, "commissions" and "prizes of less than \$600", are directly related to the sale of lottery tickets at retail, and the requirements imposed upon sales agents regarding the payment of lottery sales revenue to the Department or its collection agents. Permitting sales agents to withhold their commissions and the reimbursements to which they are entitled from sales revenues collected and in their possession greatly simplifies the procedures that would otherwise be applicable to such payments. If they were not permitted to withhold those amounts, then the sales agents would be required to forward the amounts representing their commissions and reimbursements for prizes paid to the State, only to have them paid back with a State warrant. On the other hand, the payment of other, general operating expenses by the Department without compliance with the applicable procedures, when the vendor is not in possession of any revenues collected from which the costs could be paid, would serve no similar purpose.

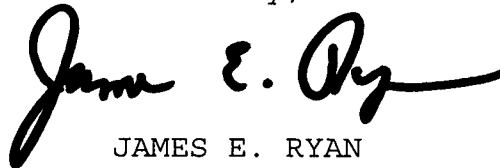
The authority to deduct "fees" from the amounts otherwise payable into the State Lottery Fund, in this context,

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must necessarily be restricted to payments similar in nature to the agents' commissions and prize reimbursements specifically referred to. Such fees might include, for example, bank fees for serving as a collection agent, which fees could be withheld from the revenues collected prior to payment to the State. Clearly, however, general operating costs payable to persons or entities which do not have possession of lottery sales revenues do not constitute "fees", for purposes of this statute, despite that term sometimes being used in the colloquial sense to refer to any charges for services rendered.

Therefore, for the reasons stated herein, it is my opinion that the Department does not possess the authority to make payment for the specified operating expenses from lottery ticket sales revenues prior to their deposit into the State Lottery Fund.

Sincerely,

A handwritten signature in black ink, reading "James E. Ryan". The signature is written in a cursive style with a long, sweeping tail on the "y".

JAMES E. RYAN
ATTORNEY GENERAL