



Linda Cloud,
Acting Executive
Director

Commissioners:
Harriet Miers,
Chair
Anthony Sadberry
John L. Hill, Jr.

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DEC 31 1997

Opinion Committee

Handwritten signature: RQ-1069

December 30, 1997

FILE # ML-39998-97
I.D. # 39998

The Honorable Dan Morales
Attorney General of Texas
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RE: Request for Attorney General Opinion

Dear Mr. Morales:

The Texas Lottery Commission ("Commission") respectfully requests your legal opinion regarding the ability of the Commission to establish a priority of payments, made to other state agencies and/or private parties, from monies deducted from a lottery winner's winnings.

Prior to the 75th Legislative Session, Section 466.407 of the State Lottery Act (Tex. Gov't Code) required the Commission to deduct from the lottery winnings of a person, any delinquent tax or other money collected by the Comptroller, the Texas Workforce Commission, the Texas Alcoholic Beverage Commission, child support payments administered or collected by the Attorney General, certain payments to the Texas Department of Human Services, and defaults on loans made or guaranteed under the Texas Education Code. In administering this mandate, the Commission adopted 16 TAC 401.302(f)(4), and 16 TAC 401.304(e)(5) and 401.304(f)(6), with copies of those administrative rules attached.

During the past legislative session, legislation broadened the scope of the deductions relating to child support payments. Two new bills, both enacting new section 466.4075 of the State Lottery Act, were adopted. Taken together, Section 466.4075 gives the Texas Lottery Commission additional statutory authority to deduct certain child support payments from some lottery winnings. A copy of both sections is attached.

In addition to the deductions from the winnings of a person who has been finally determined to be "delinquent in making child support payments administered or collected by the attorney general" as stated in Section 466.407 of the State Lottery Act, the Commission is required to deduct monies from lottery winnings if "the executive director has been provided with a certified copy of a court order and a notice of child support lien from delinquent child support created under Subchapter G, Chapter 157, Family Code" (HB 566) or "if the executive director has been provided with a certified copy of a court order or a writ of withholding issued under Chapter 158, Family Code, or notice of a child support lien created under Subchapter G, Chapter 157, Family Code." (HB2424).

The question presented is whether the Texas Lottery Commission is within its discretion to establish a priority of payments. In other words, is the Commission free to establish a priority payment list or must the Commission prorate the amount of money to be paid among the various state agencies and the person owed the child support?

In researching the issue, the Commission has located other statutes that specify a priority of payments. Examples of such statutes, with the pertinent language emphasized, are:

1. Section 408.203(a) of the Texas Labor Code:
An income or death benefit is subject only to the following lien or claim, to the extent the benefit is unpaid on the date the insurance carrier receives written notice of the lien or claim, *in the following order of priority . . .*
2. Section 501.014(e) of the Texas Government Code:
. . . The director shall make withdrawals and payments from an inmates' trust fund under this subsection *according to the following schedule of priorities . . .*
3. Section 41.206(d) of the Education Code:
. . . The commissioner shall annex the parcels or items of property . . . in descending order of the taxable value of each parcel or item *according to the following priorities. . .*
4. Section 142.013(b) of the Texas Agriculture Code:
The sheriff shall receive the proceeds of the sale and shall allocate those proceeds *in the following order of priority . . .*

However, the State Lottery Act, unlike the above-mentioned statutes, does not establish a priority schedule. Therefore, absent any language establishing a priority of payments made to the respective entities regarding the deductions to be made from lottery winnings, the Commission relies upon general statutory construction principles in implementing the statutory directives and will initiate rulemaking to that end.

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The Texas Lottery Commission respectfully requests your opinion regarding the Commission's implementation of the statutory mandates. Thank you for your consideration. Please contact me or Kimberly L. Kiplin at (512) 344-5113 should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Linda Cloud".

Linda Cloud
Executive Director

enclosures