



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1998

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

Letter Opinion No. 98-126

Re: Whether the Texas Lottery Commission may establish a priority of payments for monies deducted from lottery winnings (RQ-1069)

Dear Ms. Cloud:

You ask whether the Texas Lottery Commission (the "commission") may establish a priority of payments for monies deducted from a lottery winner's winnings. With the exception of child-support payments subject to a writ of withholding, none of the monies deducted from a lottery winner's winnings are entitled to priority. Moreover, the commission may not establish a priority of payments.

As a state agency, the commission may exercise only those powers that are "granted by statute, together with those necessarily implied from the statutory authority conferred or duties imposed."¹ We find no statute expressly authorizing the commission to establish its own priority of payments, nor do we find a statute implicitly authorizing the commission to do so. We examined, in particular, the statutes you mentioned: Government Code sections 466.407 and 466.4075.

Although, as you suggest, sections 466.407 and 466.4075 authorize the commission's executive director to deduct for numerous debts--perhaps totaling more than the amount of the winnings,² we find nothing in section 466.407 or 466.4075 that authorizes 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."³ Government Code section 466.407 requires the commission's executive director to deduct from a lottery winner's take the amount the winner has

¹*City of Sherman v. Public Util. Comm'n*, 643 S.W.2d 681, 686 (Tex. 1983); *accord Stauffer v. City of San Antonio*, 344 S.W.2d 158, 159 (Tex. 1961); Attorney General Opinions DM-101 (1992) at 4; JM-1102 (1989) at 1; MW-42 (1979) at 2; H-1199 (1978) at 1.

²*Cf.* 16 T.A.C. §§ 401.302(f)(4), .304(e)(5), (f)(6) (requiring commission to deduct certain amounts from prizes).

³Letter from Ms. Linda Cloud, Acting Executive Director, Texas Lottery Commission, to The Honorable Dan Morales, Attorney General of Texas (Dec. 30, 1997) (on file with Attorney General's Opinion Comm.).

been finally determined to be delinquent in certain taxes, child-support payments administered or collected by the attorney general, or reimbursements to particular public assistance programs; or in default of certain education loans. In its 1997 session, the legislature adopted section 466.4075, which adds to this list of deductions certain court-ordered child support payments.⁴ The legislature's apparent motivation for adding section 466.4075 was to ensure that the commission's executive director deducted all delinquent child-support payments, not just those administered or collected by the attorney general as section 466.407 requires.⁵

If the legislature desired to authorize the commission to prioritize payments, we believe it would have done so expressly. The legislature has, by contrast, adopted several other statutes explicitly requiring an agency, political subdivision, or private party to prioritize payments.⁶ Thus, when the legislature has intended to authorize an agency to prioritize payments, it has explicitly directed that it do so.

Of course, other statutes may themselves establish priority for certain payments. For instance, Family Code section 158.008 establishes a priority for delinquent child-support payments subject to an order or writ of withholding: "An order or writ of withholding has priority over any

⁴The 75th Legislature adopted two Government Code sections 406.4075: Act of May 7, 1997, 75th Leg., R.S., ch. 135, § 2, 1997 Tex. Gen. Laws 279, 280; and Act of May 26, 1997, 75th Leg., R.S., ch. 1104, § 1, 1997 Tex. Gen. Laws 4240, 4240-41. The former act, Act of May 7, 1997, requires the commission to deduct from a lottery prize "an amount a court has ordered [the winner] to pay as delinquent" child support if the executive director has received a copy of a court order and a notice of a child-support lien for delinquent child support created under Family Code chapter 157, subchapter G. The latter, Act of May 26, 1997, requires the commission to deduct from a lottery prize required to be paid in periodic installments "an amount a court has ordered [the winner] to pay as [delinquent] child support . . . if the executive director has been provided with" a copy of a court order or writ of withholding issued under Family Code chapter 158 or notice of a child-support lien created under Family Code chapter 157, subchapter G. We need not resolve, for the purpose of this opinion, the differences between the two sections: whether the directive applies to all lottery winnings or only to those required to be paid in periodic installments; and whether the directive applies to only delinquent child-support payments for which the executive director has received a copy of the notice of a child-support lien under Family Code chapter 157, subchapter G or to delinquent child-support payments for which the executive director has received a copy of a writ of withholding issued under Family Code chapter 158 as well. Rather, it is sufficient for our purposes to assume that the directive applies to all lottery winnings, regardless of whether they are paid out in a lump sum or in periodic installments. We likewise assume that the directive applies to delinquent child-support payments ordered under either Family Code chapter 157, subchapter G or chapter 158.

⁵See House Comm. on Juvenile Justice & Family Issues, Bill Analysis, H.B. 2424, 75th Leg., R.S. (1997); Senate Research Center, Bill Analysis, H.B. 2424, 75th Leg., R.S. (1997).

⁶See, e.g., Agric. Code § 142.013(b) ("The sheriff shall receive the proceeds of the sale and shall allocate those proceeds in the following order of priority []"); Educ. Code § 41.206(d) ("The commissioner shall annex the parcels or items of property [] in the descending order of the taxable value of each parcel or item according to the following priorities []"); Gov't Code § 501.014(e) ("The [director of the Texas Department of Criminal Justice] shall make withdrawals and payments from an inmate's trust fund under this subsection according to the following schedule of priorities []"); Labor Code § 408.203(a) ("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 []." (Emphases added.)

garnishment, attachment, execution, or other assignment or order affecting disposable earnings.”⁷ While we are not aware of other statutory priorities, we advise you to look carefully at the laws concerning each kind of deduction the commission’s executive director is required to make.

You ask, in the alternative, whether the commission must prorate the amount of money to be paid among the various state agencies and the person owed child support. With the exception of funds subject to Family Code section 158.008 or any other similar statute establishing a priority, we conclude that the commission must prorate the amount of monies among the various recipients. Government Code sections 466.407 and 466.4075 require the commission’s executive director to pay specified indebtedness of the winner. Where the lottery winnings will not pay all of the specified deductions in full, we believe the statutes’ requirements mandate that the same percentage of all of the listed deductions be paid from the winnings (except where a statute prioritizes a payment, *e.g.*, Family Code section 158.008). Any other treatment would prioritize the payments, which for the reasons we have discussed, the commission may not do.

S U M M A R Y

The Lottery Commission may not adopt a rule establishing a priority of payments for monies deducted from a lottery winner’s winnings. The Lottery Commission must comply with statutes establishing priority, however, such as Family Code section 158.008. Payments not subject to a statutory priority must be prorated among the various recipients.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

⁷See Fam. Code §§ 101.010, .011 (defining “disposable earnings” and “earnings,” respectively).