



Committee Report, Vol. 14, No. 2

**The Nebraska Lottery's
Implementation of LB 1039**

Performance Audit Section

Legislative Audit and Research Office

February 2007

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PERFORMANCE AUDIT SECTION

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Committee Report – Vol. 14, No. 2

The Nebraska Lottery's Implementation of LB 1039

February 2007

Prepared by
André Mick
Lance Lambdin
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Editing
Martha Carter,
Legislative Auditor

Table of Contents

- I. Key Findings**

- II. Performance Audit Section Report**

- III. Committee Findings and Recommendations
and Fiscal Analyst's Opinion**

- IV. Background Materials**

Table of Contents



I. Key Findings

Key Findings & Recommendations

Legislative Performance Audit Committee Report

The Nebraska Lottery's Implementation of LB 1039

In 1993, the Legislature passed the State Lottery Act (Act) to establish lottery games that raise revenue for designated beneficiary funds. In 2006, the Legislature passed LB 1039, amending the Act to require the Lottery Division of the Department of Revenue (Lottery) to spend a minimum of five percent of its advertising budget on “problem gambling prevention, education and awareness messages.” Later that same year, at the direction of the Legislative Performance Audit Committee (Committee), the Legislative Performance Audit Section (Section) began work on a performance audit of the Lottery. In adopting the scope statement for that audit, the Committee elected to narrow its focus to the Lottery’s initial implementation of the provisions contained in LB 1039. Specifically, the Committee directed the Section to: (1) provide an overview of the Lottery’s management and personnel, office organization, and financial status; (2) determine whether the bill’s definition of the Lottery’s “advertising budget” is sufficiently clear or whether the Lottery must provide its own interpretation of any of the items identified in that definition. If an interpretation by the Lottery was required, the Committee wished to know whether that particular interpretation was consistent with legislative intent; and (3) determine whether the Lottery is adhering to its own rules and regulations, as well as applicable industry standards, governing advertising content.

IMPLEMENTATION OF LB 1039

Specifically, the Section found that:

- although the definition of “advertising budget” contained in Neb. Rev. Stat. sec. 9-831 may seem clear on its face, there are several potential difficulties with its language;
- the Lottery’s decision to calculate the required five percent of its advertising budget based on both direct and contractual advertising costs may go beyond a strict statutory interpretation but better reflects the introducer’s intent;
- the Lottery’s decision to calculate five percent of the contractual advertising expenses based only on the advertising-related provisions reflects the introducer’s intent;
- the Lottery has interpreted § 9-831 as permitting it to provide funds for problem gambling assistance messages but not develop those ads itself;
- the Lottery’s interpretation and implementation of § 9-831 is both reasonable and consistent with the introducer’s intent for LB 1039;

- the Lottery has established reasonable definitions of key terms that are not defined in statute. However, the Lottery may amend those terms unilaterally at a later date;
- the Lottery is in full compliance with NASPL standards, its own advertising standards, and applicable administrative regulations; and
- the Lottery management and the compulsive gamblers assistance providers are working well together to address advertising concerns; however, the Lottery has no written guidelines to ensure that such positive interactions continue.

Recommendations

Based on these findings, the Committee recommended that:

- although the language in § 9-831 is subject to interpretation, the Committee was satisfied with the Lottery's interpretation and does not plan to introduce clarifying legislation at this time;
- the Lottery place its definitions of key terms in its administrative regulations, which would provide for public consideration of any changes; and
- the Lottery place guidelines for responding to advertising concerns from the public in its internal policies.

**Legislative Performance Audit Committee
Legislative Audit and Research Office**

February 2007



II. Performance Audit Section Report

Performance Audit Section Report
The Nebraska Lottery's Implementation of LB 1039

February 2007

Prepared by
André Mick
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CONTENTS

INTRODUCTION.....	iii
SECTION I: The Nebraska Lottery and the Compulsive Gamblers Assistance Program	1
SECTION II: Interpreting LB 1039 (Neb. Rev. Stat. § 9-831).....	5
SECTION III: Advertising Standards.....	9

INTRODUCTION

In 1993, the Legislature passed the State Lottery Act (Act) to establish lottery games that raise revenue for designated beneficiary funds.¹ The Act also created the Lottery Division of the Department of Revenue to administer and regulate these games.² The Lottery Division's (Lottery) administrative and regulatory responsibilities include contracting with private companies for marketing and advertising services aimed at increasing ticket sales for lottery games.

In 2006, the Legislature passed LB 1039, amending the Act to require the Lottery to spend a minimum of five percent of its advertising budget on "problem gambling prevention, education and awareness messages."³ The bill requires the Lottery to coordinate these messages with similar messages developed by or in conjunction with the state's Compulsive Gamblers Assistance Program (GAP).⁴

In November 2005, the Legislative Performance Audit Committee (Committee) directed the Legislative Performance Audit Section (Section) to audit the Lottery, following the completion of two previously assigned audits. In July 2006, the Committee adopted the scope statement for the Lottery audit and narrowed the topic to the Lottery's initial implementation of the provisions contained in LB 1039. Specifically, the Committee directed the Section to:

- (1) provide an overview of the Lottery's management and personnel, office organization, and financial status;
- (2) determine whether the bill's definition of the Lottery's "advertising budget" is sufficiently clear or whether the Lottery must provide its own interpretation of any of the items identified in that definition. If an interpretation by the Lottery is required, the Committee wishes to know whether that particular interpretation is consistent with legislative intent; and
- (3) determine whether the Lottery is adhering to its own rules and regulations, as well as applicable industry standards, governing advertising content.

Section I of this report provides an overview of both the Lottery and GAP. Sections II and III answer the specific questions posed in the scope statement for this audit. Section IV contains our findings and recommendations.

This audit was conducted in accordance with generally-accepted government auditing standards for performance audits. The methodologies used are described briefly at the beginning of each section, with further detail included in the appendices.

We appreciate the cooperation and assistance of Lottery management during the audit.

Notes

¹ Neb Rev. Stat. § 9-802.

² Neb Rev. Stat. § 9-804.

³ Neb Rev. Stat. § 9-831.

⁴ Ibid.

SECTION I: The Nebraska Lottery and the Compulsive Gamblers Assistance Program

In this section, we provide an overview of the Lottery Division (Lottery) and the Compulsive Gamblers Assistance Program.

The Lottery

In 1992, Nebraska voters approved a constitutional amendment authorizing the Lottery's creation. The Legislature passed the subsequent enabling legislation in February 1993, creating the State Lottery Act (Act).¹ The Lottery began operations in September of that year.

The Lottery is a division of the Department of Revenue (Department), a code agency headed by the State Tax Commissioner, who appoints the Lottery Director. The current Lottery Director happens to serve also as Director of the Department's Charitable Gaming Division.²

The Lottery is staffed by 20 full-time and two part-time employees, who perform accounting, marketing, legal, and general administrative functions. With the exception of the Director, all Lottery employees are subject to Department of Administrative Services rules and regulations.

Financial Status

The Lottery differs from most other state agencies by being both self-sustaining and revenue-generating. According to the Auditor of Public Accounts, in FY2005-06, the Lottery generated \$113.1 million in revenue from game ticket sales through contracts with 1,200 retailers statewide.³ The Lottery's operating expenses were \$83.4 million, thus resulting in more than \$30.3 million in proceeds.⁴ Graph 1, on page 3, illustrates the total annual Lottery ticket sales and operating expenses from FY1992-93 to FY2005-06.

Lottery Beneficiary Funds

The Act requires Lottery proceeds to be distributed to five funds, including one for the Compulsive Gamblers Assistance Program, and establishes the percentage of the proceeds to be paid to each fund.⁵ Graph 2, on page 3, illustrates the designated beneficiary funds, the percentage of proceeds

due to each, and the actual amounts that they received in FY2005-06.

The Compulsive Gamblers Assistance Program (GAP)

GAP is a subprogram of the Division of Behavioral Health Services within the Nebraska Health and Human Services System. With the advice and recommendations of the State Advisory Committee on Problem Gambling and Addiction Services, GAP administers the funding of compulsive gambling assistance services in Nebraska by granting contracts to 18 compulsive gambling service providers throughout the state. GAP's staff is comprised of one full-time employee, who serves as Program Manager,⁶ and one part-time assistant.

GAP is funded primarily by Lottery proceeds. For FY2005-06, the Lottery transferred \$771,018 to GAP.⁷ In addition, the Charitable Gaming Division of the Department of Revenue also transfers \$50,000 to GAP annually, when available.⁸

Recent Problem Gambling Assistance Legislation

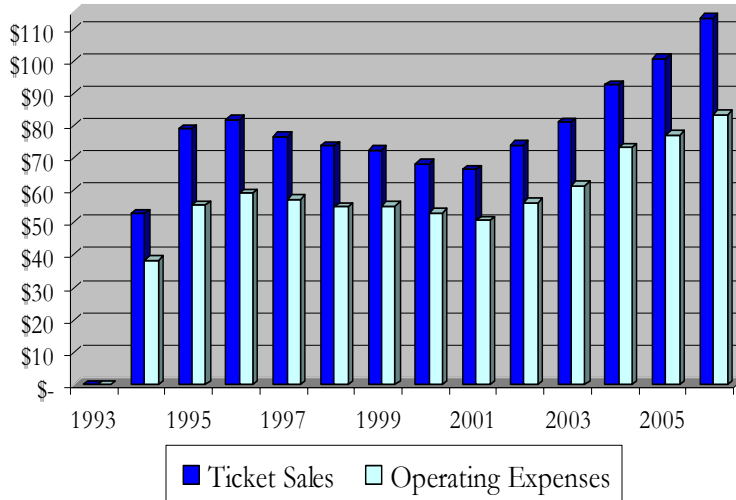
During the last biennium, the Legislature passed three measures intended to increase funding for problem gambling prevention and treatment. In 2005, the Legislature passed LB 332, which appropriated \$500,000 from the Nebraska Health Care Cash Fund for compulsive gamblers assistance programs during FY2005-06.

In 2006, the Legislature adopted LR 259CA, a constitutional amendment that would have increased GAP's annual allotment from \$500,000 to \$1 million; however, voters failed to approve that measure in the November 2006 election. Also in 2006, the Legislature passed LB 1039. As mentioned in the Introduction, this bill requires the Lottery to spend a percentage (5%) of its advertising budget on increasing awareness of problem gambling. LB 1039 is discussed in more detail in Section II.

Graph 1 - Lottery Ticket Sales and Expenses

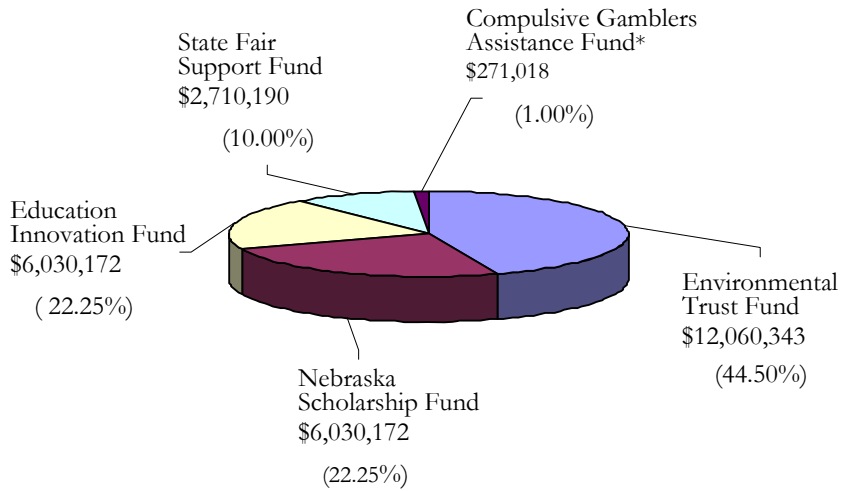
FY1992-93 to FY2005-06

Millions



Graph 2 - Lottery Distributions to Beneficiary Funds

FY 2005-06



* Plus the first \$500,000 in proceeds each fiscal year.

Note 1: Total transfers to beneficiary funds for FY 2005-06 amounted to \$27.6 million.

Note 2: Distribution percentages remain constant unless changed by the Legislature.

Actual dollar amounts vary according to the Lottery's annual sales.

Graphs created by the Legislative Performance Audit Section.

Notes

¹ Neb. Rev. Stat. §§ 9-801 to 9-841.

² Prior to being appointed permanently on 18 December 2006, the Lottery Director had served in an interim capacity for almost three years.

³ Neb. Rev. Stat. § 9-803(4)(a) authorizes instant win games, such as scratch tickets, and Neb. Rev. Stat. § 9-803(4)(b) authorizes online games, such as Powerball™.

⁴ Nebraska Auditor of Public Accounts, 2006 Audit of the Nebraska Lottery, p. 16.

⁵ Neb. Rev. Stat. § 9-812(1).

⁶ The current Program Manager began serving in an interim capacity in October 2006. He was appointed permanently on 27 December 2006.

⁷ The Compulsive Gamblers Assistance Fund receives the first \$500,000 of Lottery proceeds plus 1% of the remaining proceeds. Neb. Rev. Stat. § 9-812(1).

⁸ The annual transfer from the Charitable Gaming Operations Fund occurs only when that fund contains a minimum of \$50,000. Neb. Rev. Stat. § 9-1,101(3)(b).

SECTION II: Interpreting LB 1039 (Neb. Rev. Stat. § 9-831)

In this section, we address the audit questions relating to whether the definition provided in LB 1039 for the advertising budget of the Lottery Division (Lottery) is sufficiently clear. If it is not, and interpretation of some of the components contained in that definition is necessary, we address whether the interpretation provided by the Lottery is consistent with legislative intent.

To answer these questions, we interviewed Lottery staff, compulsive gamblers assistance providers, and the Program Manager of the Compulsive Gamblers Assistance Program (GAP). We also reviewed pertinent documents from the Lottery and GAP, including annual reports, financial statements, vendor invoices, and an implementation plan for LB 1039 developed by the Lottery during the course of the audit.¹

Definition of “Advertising Budget”

As explained in the Introduction, LB 1039 (2006) requires the Lottery to spend at least five percent of its advertising budget on “problem gambling prevention, education and awareness messages,”² which we will refer to collectively as “problem gambling assistance messages.” The bill, codified at Neb. Rev. Stat. § 9-831, creates a definition for the Lottery’s advertising budget that includes:

“amounts budgeted and spent for advertising, promotions, incentives, public relations, marketing, *or* contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing, but does not include in-kind contributions by media outlets.”³ (emphasis added)

Finding: Although this definition may seem clear on its face, we identified several potential difficulties with its language.

Although this definition may seem clear on its face, we identified several potential difficulties with its language. To start, the use of the word “or” before “contracts” may not accurately reflect the introducer’s intent. In addition, the definitional language is unclear in two respects. First, it is uncertain whether the Lottery’s advertising budget should include the entire value of contracts containing advertising provisions or merely the value of those provisions themselves. Second, the definition does not define key terms.

We also identified a lack of clarity in another provision of § 9-831, relating to whether the Lottery is responsible for developing the problem gambling assistance messages itself. A discussion of each of our concerns follows

Conformity with the Introducer’s Intent⁴

A strictly literal interpretation of the definition of “advertising budget” contained in § 9-831 could require the Lottery to obligate five percent of the amounts spent either on direct advertising *or* on contracts containing advertising provisions to compulsive gambling assistance messages. It is doubtful, however, that such an interpretation would accurately reflect the intent of the introducer of LB 1039.

The legislative history of LB 1039 contains no discussion of this issue; however, the transcript and other related documents from an interim study hearing prior to the bill’s introduction do. At that hearing, the senator who ultimately introduced LB 1039 discussed whether the Lottery defines its advertising budget to include *all* advertising-related expenditures – intimating that contractual expenses should be included in the advertising budget.⁵ A letter from the tax commissioner addressed this concern as well.⁶

Based upon this information, we discussed with Lottery management the likelihood that the intent of § 9-831 was to include five percent of *both* direct advertising and the value of advertising provisions contained in all contracts for goods or services. Such an interpretation would require a conjunctive, rather than a disjunctive, interpretation of the “or” in question – resulting in its being read to mean “and” in the context of that sentence. We believe this to be a reasonable interpretation of the statutory language.⁷

Subsequently, the Lottery amended the definition of its advertising budget to include five percent of both direct and contractual advertising expenses. We then confirmed with the introducer of LB 1039 that this interpretation better reflects her original intent than would an exacting and literal interpretation of the statutory language itself.⁸

Unclear Language: Value of Contracts

The first way in which the definition of the Lottery’s advertising budget in § 9-831 is unclear is that it includes expenditures on contracts containing advertising provisions but does not specify whether the Lottery’s calculations should be based

Finding: The Lottery’s decision to calculate the required five percent of its advertising budget based on both direct and contractual advertising costs may go beyond a strict statutory interpretation but better reflects the introducer’s intent.

on the entire value of such contracts or only on the value of the contracts' advertising provisions. Consequently, the Lottery must decide which of these values to include in its calculation.

Finding: The Lottery's decision to calculate five percent of the contractual advertising expenses based only on the advertising-related provisions reflects the introducer's intent.

The Lottery reported to us that it has elected to use the value of only the advertising-related provisions. For FY 2006-07, the Lottery estimates that five percent of these provisions, along with its other advertising expenditures, would total \$253,700.⁹ We confirmed with the introducer of LB 1039 that this interpretation reflects her intention to include only the value of the specific advertising provisions.¹⁰

Unclear Language: Terms Defined

The second way in which the definition of "advertising budget" is unclear is that it does not define the terms "advertising," "promotions," "incentives," "public relations," or "marketing." This is important because only the expenditures that the Lottery attributes to these categories are used in calculating the five percent that goes towards problem gambling assistance messages.

Finding: The Lottery has established reasonable definitions of key terms that are not defined in statute. However, the Lottery could amend those terms unilaterally at a later date.

The Lottery has established reasonable definitions for these terms, thereby eliminating potential confusion – not to mention lessening the possibility that they might be interpreted differently in relation to future budgets or contracts, which could alter dramatically the amounts made available for problem gambling messages under the five percent calculation.¹¹ Unless those definitions are formally codified, however, there is nothing to prevent the Lottery from amending them unilaterally at some later date.

Memorandum of Understanding

Section 9-831 requires the Lottery to "spend" a minimum of five percent of its advertising budget on problem gambling assistance messages, as well as to "coordinate" those messages with similar messages developed by or in conjunction with GAP. Together, these two provisions could be read as indicating that the Lottery should develop the problem gambling assistance messages itself, although § 9-831 does not directly require the Lottery to do so.

Finding: The Lottery has interpreted § 9-831 as permitting it to provide funds for problem gambling assistance messages but not develop those ads itself.

Lottery representatives told us that they believe that it would be more efficient to have GAP, rather than the Lottery, develop the problem gambling assistance messages.¹² Consequently, the Lottery has entered into a Memorandum of Un-

derstanding (MOU) with GAP, which defines both parties' responsibilities. Under this agreement, the Lottery will make quarterly transfers of the five percent calculation to GAP, which will then be responsible for developing and coordinating the messages. However, the MOU permits the Lottery to provide any "technical and informational assistance and support" necessary for the implementation of § 9-831.¹³

We find that the MOU between the Lottery and GAP meets the requirement of § 9-831.

Notes

¹ A copy of the plan is included in Appendix D. The plan provided answers to the scope statement questions as well as other issues relating to the implementation of the bill.

² Neb. Rev. Stat. § 9-831.

³ *Ibid.*

⁴ The term "introducer's intent" is narrower than the term "legislative intent." We use that term because we have sufficient evidence of the introducer's intent; however, the full Legislature's intent is uncertain because the issue is not raised in the legislative history of the bill.

⁵ Testimony of Senator Vickie McDonald, hearing on LR 209, General Affairs Committee, 5 December 2005, hearing transcript, pp. 4-6.

⁶ Letter from State Tax Commissioner Mary J. Egr Edson to Senators Ray Janssen and Vickie McDonald, 30 November 2005, p. 5.

⁷ According to the rule of statutory construction set out in § 49-802(5) of the Nebraska Revised Statutes, words are to be "construed and understood according to the common and approved usage of the language. . ." Applied to § 9-831, this could mean interpreting "or" as mandating an alternative. However, there have been circumstances in which the Nebraska Supreme Court has held that the word "or" is "not always used in the disjunctive . . ." Finigan v. Norfolk, 178 Neb. 87, 89, 132 N.W.2d 302, 304 (1964). The Court has explained: "The popular use of 'or' and 'and' is so loose and frequently inaccurate that it has infected statutory enactments. While they are not treated as interchangeable, and should be followed when their accurate reading does not render the sense dubious, their strict meaning is more readily departed from than that of other words, and one read in place of the other in deference to the meaning of the context." Richter v. Lincoln, 136 Neb. 289, 293, 285 N.W. 593, 598 (1939). The court has ruled, therefore, that the two words are "so frequently interchanged that in construing a civil statute, 'or' may be read as 'and' where a strict reading would lead to an absurd or unreasonable result and defeat the intent of the statute." Baker's Supermarkets, Inc. v. State of Nebraska, Department of Agriculture, 248 Neb 984, 993, 540 N.W.2d 572, 581(1995). While not asserting that a strict interpretation of the current statutory language would necessarily give rise to an "absurd" or "unreasonable" result, we believe that it is open to other reasonable interpretations.

⁸ Conversation with Senator Vickie McDonald, 5 January 2007.

⁹ See Lottery Implementation Plan in Appendix D.

¹⁰ Conversation with Senator Vickie McDonald, 5 January 2007.

¹¹ See Lottery Implementation Plan in Appendix D.

¹² Meeting with Mark Ludwig, Lottery Legal Counsel, and Dennis Nelson, Lottery Finance Manager, 15 November 2006.

¹³ Memorandum of Understanding between Lottery and Gamblers Assistance Program, 19 October 2006, Section III(D). See Appendix D.

SECTION III: Advertising Standards

In this section, we answer the last scope statement question: Has the Lottery followed both the North American Association of State and Provincial Lotteries (NASPL) advertising standards and the advertising standards set out in its own rules and regulations and internal policies, particularly as they pertain to content?

We also discuss the Lottery's relationship with compulsive gambling service providers and how the Lottery addresses advertising concerns when they arise. In the absence of enforceable standards—as explained below—we believed that it would be informative for us to speak with providers, who are most likely to have concerns about the Lottery's advertising practices.

To accomplish these two tasks, we examined recent Lottery advertisements, comparing them to the advertising standards promulgated by both NASPL and the Lottery itself. Further, we interviewed Lottery management, compulsive gambling service providers, and the Gamblers Assistance Program's (GAP) Program Manager. We also attended a meeting of the State Advisory Committee on Problem Gambling and Addiction Services and spoke with a NASPL representative.

The North American Association of State and Provincial Lotteries (NASPL)

NASPL is a non-profit professional association representing 52 lottery organizations, including the Nebraska Lottery.¹ In 1999, NASPL adopted a set of model advertising standards.² According to a NASPL representative, those standards serve as suggested guidelines upon which member lotteries may pattern their own advertising procedures.³ NASPL neither monitors nor enforces compliance with the model standards; thus, member lotteries are responsible for regulating their own advertising practices.

The Nebraska Lottery Advertising Standards

The State Lottery Act contains no provisions relating to advertising standards.⁴ However, the Lottery has promulgated administrative regulations and developed internal policies to govern its advertising practices.⁵

The administrative regulations broadly address prohibiting false and misleading advertising, preventing the use of undue influence to encourage the purchase of tickets, and requiring consistency in advertising among retailers with whom the Lottery contracts. We found the Lottery to be in compliance with the applicable regulations.⁶

The Lottery's internal policies are based upon, and consistent with, the NASPL advertising standards.⁷ Because there are no material differences between the two, the following discussion of the NASPL standards, and the extent to which the Lottery complies with them, should be understood as a collective analysis of both those standards and the advertising standards contained in the Lottery's internal policies.

NASPL Advertising Standards

NASPL's advertising standards consist of five categories:

1. ***Content*** ~ Advertising should be consistent with high standards of dignity and integrity. This includes promoting responsible gambling and supporting compulsive gambling assistance programs.
2. ***Tone*** ~ Advertising should emphasize the entertainment value of playing Lottery games, while not implying a promise of winning or that Lottery games are games of skill.
3. ***Minors*** ~ Advertising should not include, nor be marketed to, anyone younger than 19 years of age. Age restrictions should be posted at each Lottery retailer.
4. ***Game Information*** ~ The odds of winning should be readily available to the public and be clearly stated. Prizes paid in installments should be clearly labeled.
5. ***Beneficiaries*** ~ Advertising should denote the beneficiaries of Lottery proceeds.

The Lottery's Compliance with NASPL Standards

In order to evaluate the Lottery's voluntary compliance with NASPL advertising standards, we examined Lottery advertisements from 2005 and 2006. We reviewed the Lottery's radio, television, newspaper, and outdoor (billboard) advertisements, as well as the content of online and instant tickets.

Finding: The Lottery is in full compliance with NASPL standards, its own advertising standards, and applicable administrative regulations.

We found that the Lottery complies with NASPL advertising standards, with one minor exception. NASPL content standards suggest that advertising include, when appropriate, a statement encouraging Lottery participants to play responsibly. The Lottery's 2005 television advertisements did not include such a message; however, our review of current television advertisements revealed that the Lottery has remedied this omission.

Addressing Advertising Concerns

The Lottery has established an informal procedure to ensure continued compliance with advertising standards and respond to community concerns regarding advertising. The Lottery marketing director seeks input from other Lottery management and staff regarding new advertising concepts. In addition to final approval from the Lottery director, new advertising concepts may also be reviewed by the Tax Commissioner and, at the discretion of Lottery management, the Governor.

Finding: Lottery management and the compulsive gamblers assistance providers are working well together to address advertising concerns; however, the Lottery has no written guidelines to ensure that such positive interactions continue.

The GAP Program Manager and the compulsive gambling service providers whom we interviewed reported a positive working relationship with Lottery management. They commended the Lottery's marketing director specifically, expressing appreciation for his responsiveness to their concerns.

We found that the Lottery is working well with compulsive gamblers assistance providers to address advertising concerns. However, the Lottery has no written guidelines for either of these processes.

Notes

¹ NASPL website <http://www.naspl.org/>.

² NASPL website <http://www.naspl.org/index.cfm?fuseaction=content&PageID=39&PageCategory=69>.

³ Telephone conversation with NASPL representative, Tom Tulloch, 19 December 2006.

⁴ Neb. Rev. Stat. §§ 9-801 to 9-841.

⁵ Nebraska Administrative Code, Title 370, 408.01 to 408.01C.

⁶ Ibid.

⁷ Appendix B contains the complete NASPL and Lottery advertising standards.

***III. Committee Findings and Recommendations
and Fiscal Analyst's Opinion***



Performance Audit Committee Recommendations

On 15 February 2007, in accordance with Neb. Rev. Stat. § 50-1211(1) of the Legislative Performance Audit Act, the Legislative Performance Audit Committee convened to consider the findings and recommendations contained in the Performance Audit Section's draft report entitled *The Nebraska Lottery's Implementation of LB 1039* and the Nebraska Lottery's response to that report.

The Committee is required by statute to adopt, reject or amend each recommendation and indicate whether it can be implemented within the agency's current appropriation. The Legislative Fiscal Office determined that each of the Section's proposed recommendations could be implemented within the agency's current appropriation. The Committee made no substantive changes to those recommendations.

The Committee adopted the following recommendations:

Finding 1: Although the definition of "advertising budget" contained in Neb. Rev. Stat. § 9-831 may seem clear on its face, we identified several potential difficulties with its language (p. 5).

Recommendation: None.

Finding 2: The Lottery's decision to calculate the required five percent of its advertising budget based on both direct and contractual advertising costs may go beyond a strict statutory interpretation but better reflects the introducer's intent (p. 6).

Finding 3: The Lottery's decision to calculate five percent of the contractual advertising expenses based only on the advertising-related provisions reflects the introducer's intent (p. 7).

Finding 4: The Lottery has interpreted § 9-831 as permitting it to provide funds for problem gambling assistance messages but not develop those ads itself (p. 7).

Discussion: We consider the Lottery's interpretation and implementation of § 9-831 to be both reasonable and consistent with the introducer's intent for LB 1039.

Recommendation: Although the language in § 9-831 is subject to interpretation, the Committee is satisfied with the Lot-

tery's interpretation and does not plan to introduce clarifying legislation at this time.

Finding 5: The Lottery has established reasonable definitions of key terms that are not defined in statute. However, the Lottery could amend those terms unilaterally at a later date (p. 7).

Discussion: Defining these terms is important because the language contained in the vendor contracts is subject to change whenever those contracts are amended or renewed. Should the contractual language change in the future, the advertising provisions may or may not remain within the vendor contracts. This could significantly alter the dollar amount that GAP would receive from the Lottery for problem gambling assistance messages.

Recommendation: The Committee recommends that the Lottery place its definitions of key terms in its administrative regulations, which would provide for public consideration of any changes.

Finding 6: The Lottery is in full compliance with NASPL standards, its own advertising standards, and applicable administrative regulations (p. 11).

Recommendation: None.

Finding 7: Lottery management and the compulsive gamblers assistance providers are working well together to address advertising concerns; however, the Lottery has no written guidelines to ensure that such positive interactions continue (p. 11).

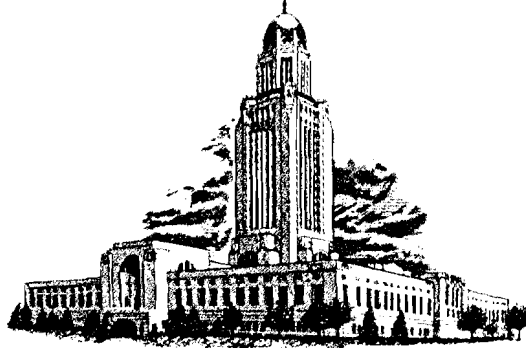
Discussion: The acting GAP program manager and the compulsive gambling service providers have commended the Lottery's marketing director specifically, expressing appreciation for his responsiveness to their concerns. It should be noted, however, that neither the Lottery's rules and regulations nor its internal policies provide any guidelines for this interaction. While the present marketing director has proven most adept and conscientious, his successor may prove less so.

Recommendation: The Committee recommends that the Lottery place guidelines for responding to advertising concerns from the public in its internal policies.

State of Nebraska

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7 February 2007

Martha Carter
Performance Audit Section
Nebraska Legislature
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RECEIVED

FEB 8 2007

LEGISLATIVE RESEARCH

Dear Martha:

It is the opinion of the Legislative Fiscal Office that any costs associated with the implementation of the Legislative Performance Audit Committee's recommendations for the Nebraska Lottery can be absorbed within the existing budget of the agency.

If you have any further questions, please feel free to contact me (1-0051).

Sincerely,

A handwritten signature in black ink, appearing to read "Dave Rippe".

Dave Rippe, Fiscal Analyst
Legislative Fiscal Office



IV. Background Materials

BACKGROUND MATERIALS

The “background materials” provided here are materials (in addition to the Section’s report) that were available to the Committee when it issued the findings and recommendations contained in Part III of this report. They include:

- the Section’s draft findings and recommendations (provided for context);
- the agency’s response to a draft of the Section’s report;
- the Legislative Auditor’s Summary of agency’s response;
- Appendix A: Audit Methodology;
- Appendix B: Advertising Standards;
- Appendix C: Examples of Lottery Advertisements; and
- Appendix D: Lottery Implementation Plan.

Performance Audit Section Draft Findings and Recommendations (January 2007)

In this section, we present our findings and recommendations based on the analyses presented in Sections II and III.

Finding 1: Although the definition of “advertising budget” contained in Neb. Rev. Stat. § 9-831 may seem clear on its face, we identified several potential difficulties with its language (p. 5).

Recommendation: None.

Finding 2: The Lottery’s decision to calculate the required five percent of its advertising budget based on both direct and contractual advertising costs may go beyond a strict statutory interpretation but better reflects the introducer’s intent (p. 6).

Finding 3: The Lottery’s decision to calculate five percent of the contractual advertising expenses based only on the advertising-related provisions reflects the introducer’s intent (p. 7).

Finding 4: The Lottery has interpreted § 9-831 as permitting it to provide funds for problem gambling assistance messages but not develop those ads itself (p. 7).

Discussion: We consider the Lottery’s interpretation and implementation of § 9-831 to be both reasonable and consistent with the introducer’s intent for LB 1039.

Recommendation: Because language in § 9-831 is subject to interpretation, the Committee should consider introducing legislation to ensure that the statute accurately reflects legislative intent.

Finding 5: The Lottery has established reasonable definitions of key terms that are not defined in statute. However, the Lottery could amend those terms unilaterally at a later date (p. 7).

Discussion: Defining these terms is important because the language contained in the vendor contracts is subject to change whenever those contracts are amended or renewed. Should the contractual language change in the future, the advertising provisions may or may not remain within the vendor contracts. This could significantly alter the dollar amount that

GAP would receive from the Lottery for problem gambling assistance messages.

Recommendation: The Committee should consider recommending that the Lottery place its definitions of key terms in its administrative regulations, which would provide for public consideration of any changes.

Finding 6: The Lottery is in full compliance with NASPL standards, its own advertising standards, and applicable administrative regulations (p. 11).

Recommendation: None.

Finding 7: Lottery management and the compulsive gamblers assistance providers are working well together to address advertising concerns; however, the Lottery has no written guidelines to ensure that such positive interactions continue (p. 11).

Discussion: The acting GAP program manager and the compulsive gambling service providers have commended the Lottery's marketing director specifically, expressing appreciation for his responsiveness to their concerns. It should be noted, however, that neither the Lottery's rules and regulations nor its internal policies provide any guidelines for this interaction. While the present marketing director has proven most adept and conscientious, his successor may prove less so.

Recommendation: The Committee should consider recommending that the Lottery place guidelines for responding to advertising concerns from the public in its internal policies.

STATE OF NEBRASKA

DEPARTMENT OF REVENUE

Douglas A. Ewald
Tax Commissioner

Catherine D. Lang
Acting Deputy Tax Commissioner



Dave Heineman
Governor

January 30, 2007

HAND DELIVERED

RECEIVED

Senator DiAnna Schimek
Chairperson
Legislative Performance Audit Committee
1201 State Capitol Building
P.O. Box 98945
Lincoln, NE 68509-4945

JAN 30 2007

LEGISLATIVE RESEARCH

RE: Agency Response to Draft Audit Report

Dear Senator Schimek:

This is in response to the Performance Audit Section - Draft Report entitled *The Nebraska Lottery's Implementation of LB 1039* dated January 2007 and received by the Nebraska Department of Revenue and its Lottery Division on January 12, 2007. This agency response to the draft audit report is made pursuant to and in compliance with Neb. Rev. Stat. Section 50-1210. Enclosed with this response is a completed Agency Response Worksheet.

I am pleased to inform you and the other members of the Performance Audit Committee that the Department of Revenue and its Lottery Division have no significant disagreements with the findings or recommendations contained in the Performance Audit Section's report.

The Audit Section's interpretation of LB 1039 (Neb. Rev. Stat. Section 9-831) as based on statutory construction, legislative history, and the introducer's intent is sound, reasonable, and in conformance with our own interpretation. The Lottery Division in concert with the HHSS Division of Behavioral Health Services has diligently endeavored to ensure proper effect is given to both the letter and the spirit of this new law.

For purposes of this response, there are two points of clarification I would like to make regarding the draft report with respect to Findings 4 and 5. These are as follows:

Finding 4 states "The Lottery has interpreted section 9-831 as permitting it to provide funds for problem gambling assistance messages but not develop those ads itself." Although subject to interpretation, the Audit Section found this interpretation and implementation of section 9-831 to be both reasonable and consistent with the introducer's intent for LB 1039.

Clarification: I would like to note that the Memorandum of Understanding (MOU) by and between the Lottery and the Division of Behavioral Health Services provides that funds will be provided by the Lottery pursuant to LB 1039 for activities *either* coordinated by both parties *or* developed by the Gamblers Assistance Program (GAP). Therefore, under the MOU a dual interpretation of the relevant provision of section 9-831 could operate. Either the GAP could develop its own messages, or the Lottery could develop messages in conjunction with the GAP. The payment by the Lottery for any advertising messages developed by the Lottery in coordination with the GAP in furtherance of LB 1039 would be included in meeting the required 5% annual disbursement.

Finding 5 states "The Lottery has established reasonable definitions of key terms that are not defined in statute. However, the Lottery could amend those terms unilaterally at a later date." The Audit Section believes defining these terms is important because the language contained in the vendor contracts is subject to change whenever those contracts are amended or renewed. The Audit Section reasoned that if contractual language changes, the advertising provisions may or may not remain within the vendor contracts which would significantly alter the dollar amount that the GAP would receive for LB 1039 purposes. It was recommended that the Lottery formally place its definitions of key terms in its administrative regulations as a means of safeguarding inclusion of these terms within the 5% calculation when interpreting future budgets or contracts.

Clarification: Although the Lottery has no objection to adding the definition of the identified key terms within its administrative regulations, it should be pointed out that any marketing support provided contractually by vendors in future agreements is subject to change from what is currently provided. Because of the way "advertising budget" is defined in section 9-831 for purposes of calculating the 5% expenditure, the dollar amount spent for problem gambling assistance messages could fluctuate depending on what the Lottery receives in marketing support in future vendor proposals and resulting contracts. The Lottery can neither predict nor guarantee what amount of any vendor-supplied marketing

Senator DiAnna Schimek
January 30, 2007
Page 3

support will be proposed and agreed to in future contracts. Likewise, any adjustments in future Lottery advertising budgets will correspondingly impact the 5% calculation. Also, if the advertising and promotions budgets remain at 3% and 1% of sales, respectively, any fluctuation in annual sales from present levels will impact the amount of advertising actually spent, including the corresponding 5% of the advertising budget required to be spent on problem gambling messages pursuant to LB 1039.

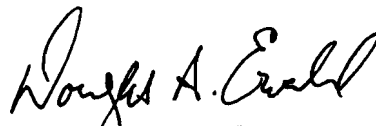
Finally, I would like to confirm that I will instruct the Lottery Director to develop and adopt an internal Lottery policy setting guidelines for the Lottery to follow in responding to advertising concerns raised by the GAP, the public, or any other interested entity. This should address the Audit Section's concerns raised in Finding 7 and ensure a formal policy of continuing cooperation and responsiveness between the Lottery Division and the GAP.

I appreciate this opportunity to respond to the draft report prepared by your Performance Audit Section. I want to acknowledge the courteous and professional manner of your Audit Section staff in their interaction with my Lottery staff, and I commend their thorough research and reasoned analysis in the conduct of this legislative performance audit.

Please do not hesitate to contact me or my Lottery staff if you have any further questions or need additional information.

Thank you.

Sincerely,



Douglas A. Ewald
State Tax Commissioner

Enclosure: Agency Response Worksheet

cc: Governor Dave Heineman

**PERFORMANCE AUDIT SECTION
DRAFT RECOMMENDATIONS
AGENCY RESPONSE WORKSHEET**

RECEIVED

JAN 30 2007

The Nebraska Lottery's Implementation of LB 1039 (Neb. Rev. Stat. §9-831) **LEGISLATIVE RESEARCH**

Please fill out the "Agency Response" portion of the worksheet and return it with the Agency's written response. The worksheet will be published with the Agency's written response in the Committee's final report.

Findings	Recommendations	Agency Response
1	Although the definition of "advertising budget" contained in Neb. Rev. Stat. sec. 9-831 may seem clear on its face, we identified several potential difficulties with its language (pg. 5). No recommendation.	Not Applicable.
2	Applicable to Findings 2, 3, and 4: Discussion: We consider the Lottery's interpretation and implementation of § 9-831 to be both reasonable and consistent with the introducer's intent for LB 1039. Recommendation: Because language in § 9-831 is subject to interpretation, the Committee should consider introducing legislation to ensure that the statute accurately reflects legislative intent.	Agrees and will implement. [See clarification in written response.]

Findings	Recommendations	Agency Response
3 The Lottery's decision to calculate five percent of the contractual advertising expenses based only on the advertising-related provisions reflects the introducer's intent (pg. 7).		
4 The Lottery has interpreted section 9-831 as permitting it to provide funds for problem gambling assistance messages but not develop those ads itself (pg. 7).		
5 The Lottery has established reasonable definitions of key terms that are not defined in statute. However, the Lottery may amend those terms unilaterally at a later date (pg. 7).	<p>Discussion: Defining these terms is important because the language contained in the vendor contracts is subject to change whenever those contracts are amended or renewed. Should the contractual language change in the future, the advertising provisions may or may not remain within the vendor contracts. This could significantly alter the dollar amount that GAP would receive from the Lottery for problem gambling assistance messages.</p> <p>Recommendation: The Committee should consider recommending that the Lottery place its definitions of key terms in its administrative regulations, which would provide for public consideration of any changes.</p>	Agrees and will implement. [See clarification in written response.]

	Findings	Recommendations	Agency Response
6	We find the Lottery in full compliance with NASPL standards, its own advertising standards, and applicable administrative regulations (pg. 11).	None.	Not Applicable.
7	We find that Lottery management and the compulsive gamblers assistance providers are working well together to address advertising concerns; however, the Lottery has no written guidelines to ensure that such positive interactions continue (pg. 11).	<p>Discussion: The acting GAP program manager and the compulsive gambling service providers have commended the Lottery's marketing director specifically, expressing appreciation for his responsiveness to their concerns. It should be noted, however, that neither the Lottery's rules and regulations nor its internal policies provide any guidelines for this interaction. While the present marketing director has proven most adept and conscientious, his successor may prove less so.</p> <p>Recommendation: The Committee should consider recommending that the Lottery place guidelines for responding to advertising concerns from the public in its internal policies.</p>	Agrees and will implement.

LEGISLATIVE AUDITOR'S SUMMARY OF AGENCY RESPONSE

On 30 January 2007, the Lottery Division of the Department of Revenue (Lottery) submitted a response to a draft of the Performance Audit Section's report prepared in conjunction with this audit. Neb. Rev. Stat. § 50-1210 requires the Legislative Auditor to "prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the section's report or recommendations." The Legislative Auditor's summary of the response follows.

The Lottery agreed with the Section's findings and recommendations. There are no areas of disagreement.

Appendix A: Audit Methodology

This audit was conducted in accordance with generally accepted government auditing standards for performance audits. The methodologies that we used to answer each of the scope statement questions are described briefly at the beginning of each section. This appendix provides additional details.

Over the course of this audit, we conducted multiple interviews with Lottery management, including the Lottery Director, Lottery Finance Director, Lottery Legal Counsel, and the Lottery Marketing and Communications Director.

We also interviewed:

- the Program Manager of the Compulsive Gamblers Assistance Program (GAP), who provided us with documents pertaining to GAP, including its organization, purpose, strategic mission plans, and drafts of the memo of understanding (MOU) with the Lottery;
- the Director of Choices Treatment Center and two of her staff members; and
- the Executive Director of the Nebraska Council on Compulsive Gambling.

On 17 November 2006, we attended a meeting of the State Advisory Committee on Problem Gambling and Addiction Services and spoke informally with the committee's members. In addition, we spoke via telephone with a National Association of State and Provincial Lotteries (NASPL) representative regarding advertising standards.

We examined recent proposed legislation dealing with the Lottery, as well as legislation that was passed and signed into law. We reviewed all available legislative history relevant to the Lottery and records of Interim Study resolution hearings pertaining to the Lottery.

We reviewed Lottery-related documents, including rules and regulations, as well as internal policies and procedures; annual reports since the Lottery's inception in 1993; recent Lottery financial statements; the current Lottery marketing plan; and vendor invoices from Ayres Kahler, GTECH Corporation, and INTRALOT, Inc.

Appendix B: Advertising Standards

NASPL ADVERTISING STANDARDS ¹

Approved March 19, 1999

Introduction

The producers and marketers of lottery products encourage responsible decision-making regarding lottery play by adults, and discourage abusive use of their products. The lottery industry urges that adults who choose to play the lottery, do so responsibly. Signatory NASPL members will conduct their advertising and marketing practices in accordance with the provisions of these Standards.

Content

1. Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
 - Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions.
 - Advertising should not portray product abuse, excessive play nor a preoccupation with gambling.
 - Advertising should not imply nor portray any illegal activity
2. Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.
3. Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.
4. Advertising should not encourage people to play excessively nor beyond their means.
 - Advertising and marketing materials should include a responsible play message when appropriate.
 - Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods.
 - Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising.
 - Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person's financial or personal difficulties.
 - Advertising should not exhort play as a means of recovering past gambling nor other financial losses.
 - Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.

Tone

1. The Lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment nor a way to achieve financial security.
2. Lottery advertisements should not be designed so as to imply urgency, should not make false promises and should not present winning as the probable outcome.
3. Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
4. Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
5. Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
6. Advertising should not imply that lottery games are games of skill.

Minors

1. Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
2. Age restrictions should, at a minimum, be posted at the point of sale.
3. Advertising should not appear in media directed primarily to those under the legal age.
4. Lotteries should not be advertised nor marketed at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
5. Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age.
 - The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs.
 - Celebrity or other testimonials should not be used which would primarily appeal to persons under the legal purchase age.

Game Information

1. Odds of winning must be readily available to the public and be clearly stated.
2. Advertising should state alternative cash and annuity values where reasonable and appropriate.

Beneficiaries

1. Lotteries should provide information regarding the use of lottery proceeds.
2. Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.

The Nebraska Lottery's Compliance with NASPL Advertising Standards:

CONTENT		
Y <u>√</u> <u>√</u> <u>√</u>	N — — —	<p>Advertising should be consistent with principles of dignity, integrity, mission, and values of the industry and jurisdictions.</p> <ul style="list-style-type: none"> • Advertising should be consistent with principles of dignity, integrity, mission and values of the industry and jurisdictions. • Advertising should not portray product abuse, excessive play nor a preoccupation with gambling. • Advertising should not imply nor portray any illegal activity
Y <u>√</u>	N —	<p>Advertising should not degrade the image or status of persons of any ethnic, minority, religious group nor protected class.</p>
Y <u>√</u>	N —	<p>Advertising by lotteries should appropriately recognize diversity in both audience and media, consistent with these standards.</p>
Y <u>√</u> <u>√</u> <u>√</u> <u>√</u> <u>√</u> <u>√</u>	N — — — — — —	<p>Advertising should not encourage people to play excessively nor beyond their means.</p> <ul style="list-style-type: none"> • Advertising and marketing materials should include a responsible play message when appropriate. • Responsible play public service or purchased media messages are appropriate, especially during large jackpot periods. • Support for compulsive gambling programs, including publications, referrals and employee training is a necessary adjunct to lottery advertising. • Advertising should not present, directly nor indirectly, any lottery game as a potential means of relieving any person's financial or personal difficulties. • Advertising should not exhort play as a means of recovering past gambling nor other financial losses. • Advertising should not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate use of the product.
TONE		
Y <u>√</u>	N —	<p>The Lottery should not be promoted in derogation of nor as an alternative to employment, nor as a financial investment nor a way to achieve financial security.</p>

Y <u>√</u>	N —	Lottery advertisements should not be designed so as to imply urgency, should not make false promises and should not present winning as the probable outcome.
Y <u>√</u>	N —	Advertising should not denigrate a person who does not buy a lottery ticket nor unduly praise a person who does buy a ticket.
Y <u>√</u>	N —	Advertising should emphasize the fun and entertainment aspect of playing lottery games and not imply a promise of winning.
Y <u>√</u>	N —	Advertising should not exhort the public to wager by directly or indirectly misrepresenting a person's chance of winning a prize.
Y <u>√</u>	N —	Advertising should not imply that lottery games are games of skill.
MINORS		
Y <u>√</u>	N —	Persons depicted as lottery players in lottery advertising should not be, nor appear to be, under the legal purchase age.
Y <u>√</u>	N —	Age restrictions should, at a minimum, be posted at the point of sale.
Y <u>√</u>	N —	Advertising should not appear in media directed primarily to those under the legal age.
Y <u>√</u>	N —	Lotteries should not be advertised nor marketed at venues where the audience is reasonably and primarily expected to be below the legal purchase age.
Y <u>√</u> <u>√</u>	N — —	Advertising should not contain symbols nor language that are primarily intended to appeal to minors or those under the legal purchase age. <ul style="list-style-type: none"> • The use of animation should be monitored to ensure that characters are not associated with animated characters on children's programs. • Celebrity or other testimonials should not be used which would primarily appeal to persons under the legal purchase age

GAME INFORMATION		
Y <u>√</u>	N —	Odds of winning must be readily available to the public and be clearly stated.
Y <u>√</u>	N —	Advertising should state alternative cash and annuity values where reasonable and appropriate.
BENEFICIARIES		
Y <u>√</u>	N —	Lotteries should provide information regarding the use of lottery proceeds.
Y <u>√</u>	N —	Advertising should clearly denote where lottery proceeds go, avoiding statements that could be confusing or misinterpreted.

Worksheet Prepared by the Legislative Performance Audit Section

Nebraska Lottery Regulations

REG-408 ADVERTISING

408.01 Advertisements and promotion activities are a very important part of the public image of the Nebraska Lottery. The participation in advertising and promotional activities by Lottery Game Retailers is essential in a successful Nebraska Lottery. Control of advertising and promotion to prevent false, misleading, or deceptive advertising or promotions is necessary to protect the public perception of honesty, fairness, and integrity of the Nebraska Lottery.

408.01A Advertising or promotions shall not be of a nature to unduly influence any person to purchase a lottery ticket. Advertising may promote the opportunity available to win, but will not promise nor imply that any person will win, or that any person who chooses not to participate has lost anything other than a chance to win.

408.01B Advertising or promotions shall not indicate that a person has a better chance of winning by purchasing a ticket at any specific location.

408.01C Advertising or promotions shall not include false, misleading or deceptive information about the Division or lottery games offered by the Division.

Notes

¹ NASPL website <http://www.naspl.org/index.cfm?fuseaction=content&PageID=39>.



NEBRASKA LOTTERY ADVERTISING STANDARDS

Policy Statement

The Nebraska Lottery must operate with the highest levels of integrity to maintain the public's trust and confidence in its games and operations. In its efforts to effectively and efficiently market scratch games, lotto games and lottery promotions to Nebraska adults, Nebraska Lottery advertising must be truthful, accurate and conducted in good taste consistent with the dignity of the State of Nebraska.

Policy

Nebraska Lottery advertising will be conducted in the following manner.

Advertising will be truthful and accurate.

Advertising will not intentionally deceive players about their opportunities to win or the prizes they may be awarded.

Advertising will be consistent with high standards of decency, dignity, and integrity consistent with the mission of the Nebraska Lottery and the values of the State of Nebraska.

Advertising will not contain nor imply lewd or indecent language, images or actions.

Advertising will not portray product abuse, excessive play or a preoccupation with gambling.

Advertising will not imply or portray any illegal activity as defined in Nebraska law.

Advertising will not degrade the image or status of persons, including their ethnic, minority or religious status.

Advertising will appropriately recognize the diversity of Nebraska's citizens and media.

This Policy supercedes Lottery Policy No. L-008 dated April 7, 1999.

Advertising will not encourage people to play excessively or beyond their means.

Advertising and marketing materials, where appropriate, will encourage responsible play. Responsible play messages are especially appropriate during large jackpot periods. Advertising and marketing materials, where appropriate, will include support for compulsive gambling programs, including publication of the 1-800 number and encourage responsible play by players.

Advertising will not describe any lottery game as a means of relieving any person's financial difficulties.

Advertising will not encourage lottery play as a means of recovering past gambling or other financial losses.

Advertising will not knowingly be placed in or adjacent to other media that dramatize or glamorize inappropriate play of lottery tickets.

Advertising will not promote the lottery as an alternative to employment, nor as a financial investment.

Advertisements will not make false promises of winning and will not present winning as the probable outcome.

Advertising will not intentionally denigrate persons who do not purchase lottery tickets nor unduly praise persons who do purchase lottery tickets.

Advertising will emphasize the fun and entertainment aspects of playing lottery games. Beneficiary advertising will emphasize the educational, environmental or other uses of lottery revenues.

Advertising will not misrepresent a person's chance of winning a prize.

Advertising will not imply that lottery games are games of skill.

Promotional advertising will not include pictures or images of persons who appear to be under 19 years of age. Where appropriate, lottery benefit messages may include pictures or images of students or persons under 19 years of age who benefit from educational or environmental funds raised through lottery ticket sales.

Age restrictions will be posted at each Nebraska Lottery retailer.

Advertising will not appear in media primarily directed to those under 19 years of age.

Advertising will not appear at venues or events where the audience is reasonably anticipated to predominantly be under 19 years of age.

Advertising will not contain symbols or language that are primarily intended to appeal to those under 19 years of age.

Advertising will not contain animation that is associated with animated characters on children's television programs.

Advertising will not contain celebrity or other testimonials which would primarily appeal to those persons under 19 years of age.

Odds of winning information will be readily available to the public and be clearly stated.

Advertisements of prizes, which are paid by installments, will be clearly labeled as such.

Advertising will contain, where appropriate, a description of the uses of lottery proceeds.

References

NEB. REV. STAT. §9-823. The Tax Commissioner shall adopt and promulgate rules and regulations necessary to carry out the State Lottery Act. The rules and regulations shall include provisions relating to the following:

(8) The method to be used in selling tickets;

(10) The form and type of marketing of informational and educational material; ...
and

(12) All other matters necessary or desirable for the efficient and economical operation and administration of lottery games and for the convenience of the purchasers of tickets and the holders of winning tickets.

NEB. REV. STAT. §9-827. A lottery game retailer shall cooperate with the director by using point-of-purchase materials, posters, and other educational, informational, and marketing materials when requested to do so by the director. Lack of cooperation shall be sufficient cause for termination of a contract.

NEB. REV. STAT. §9-841. It is the intent of the State Lottery Act that all matters related to the operation of the lottery games conducted pursuant to the act shall be governed solely by the act and shall be free from regulation or legislation by all local governments. No other state or local law or regulation providing any penalty, restriction, regulation, or prohibition on the manufacture, transportation, storage, distribution, advertisement, possession, or sale of any tickets or for the operation of any lottery game shall apply to the tickets or lottery games conducted pursuant to the act.

REG-408 ADVERTISING

408.01 Advertisements and promotion activities are a very important part of the public image of the Nebraska Lottery. The participation in advertising and promotional activities by Lottery Game Retailers is essential in a successful Nebraska Lottery. Control of advertising and promotion to prevent false, misleading, or deceptive advertising or promotions is necessary to protect the public perception of honesty, fairness, and integrity of the Nebraska Lottery.

408.01A Advertising or promotions shall not be of a nature to unduly influence any person to purchase a lottery ticket. Advertising may promote the opportunity available to win, but will not promise nor imply that any person will win, or that any person who chooses not to participate has lost anything other than a chance to win.

408.01B Advertising or promotions shall not indicate that a person has a better chance of winning by purchasing a ticket at any specific location.

408.01C Advertising or promotions shall not include false, misleading or deceptive information about the Division or lottery games offered by the Division.

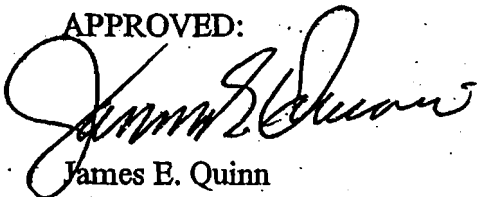
408.02 The Division will provide advertising and promotional materials at no cost to the Lottery Game Retailer.

408.03 The Division may provide logos, game-specific advertising slicks or camera ready copy to be incorporated into other advertising of the Lottery Game Retailer.

408.04 No person, business or entity, including a Lottery Game Retailer shall advertise or include in any advertisement or other promotion the name of the Nebraska Lottery, the name of specific games of the Nebraska Lottery, or the logos of the Nebraska Lottery, except as specifically permitted or required by the Division.

408.04A The logo shall not be modified in any way, including a change in color, without the ~~express written approval from the Division prior to the advertisement being used.~~
(Sections 9-827, R.R.S. 1997. December 16, 1998.)

APPROVED:



James E. Quinn
Director

Appendix C: Examples of Lottery Advertisements

Nebraska Lottery Advertising Examples (Beneficiary newspaper campaign)

In the spring of 2006, the Lottery ran a series of four beneficiary awareness advertisements. Each advertisement focused on one of the Lottery beneficiaries. According to the Lottery, each advertisement ran for about two weeks.

**We're raising
funds to raise
knowledge.**

More than 25,000 students at 42 different Nebraska institutions of higher education have received tuition grants funded in part by Nebraska Lottery proceeds. The Nebraska Scholarship fund, administered by the Coordinating Commission for Postsecondary Education, is one of the programs to share in \$119 million in Nebraska Lottery proceeds directed toward education.

Since 1993, the Nebraska Lottery has raised more than a quarter-billion dollars for statewide beneficiaries to enhance education and the environment, the Nebraska State Fair, and to provide compulsive gamblers assistance. To learn how all 93 counties have benefited, log on to nelottery.com and click on beneficiaries.



HELPING TO BUILD A BETTER NEBRASKA.

nelottery.com

Proceeds from the Nebraska Lottery help fund the Gamblers Assistance Program.

More than \$5 million in Nebraska Lottery proceeds has helped the Gamblers Assistance Program with its work to establish a statewide network of service providers. In addition to contracting for service delivery through a number of local counseling resources, the Program contracts with the Nebraska Council on Compulsive Gambling for statewide counselor training and operation of a Compulsive Gambling Help Line.

Since 1993, the Nebraska Lottery has raised more than a quarter-billion dollars for statewide beneficiaries to enhance education and the environment, the Nebraska State Fair, and to provide compulsive gamblers assistance. To learn how all 93 counties have benefited, log on to nelottery.com and click on beneficiaries.

If you or someone you know has a gambling problem, assistance is available at 800-522-4700.



HELPING TO BUILD A BETTER NEBRASKA.

nelottery.com

Money goes on trees.

Through the Nebraska Environmental Trust, the Nebraska Lottery has contributed over \$100 million to conserve, restore and improve Nebraska's wildlife habitat, water quality, lakes and waste management efforts.

Since 1993, the Nebraska Lottery has raised more than a quarter-billion dollars for statewide beneficiaries to enhance education and the environment, the Nebraska State Fair, and to provide compulsive gamblers assistance. To learn how all 93 counties have benefited, log on to nelottery.com and click on beneficiaries.



HELPING TO BUILD A BETTER NEBRASKA

nelottery.com

Thinking how to give back to Nebraska, we have a Fair idea.

Amendment 4 passed by Nebraska voters in November 2004 included the Nebraska State Fair among Nebraska Lottery beneficiaries.

Since then, a variety of improvements at Nebraska State Fair Park have been funded in part by more than \$3 million in proceeds from the Nebraska Lottery. These proceeds have helped fund building and grounds improvements for year-round use by State Fair Park visitors.

Since 1993, the Nebraska Lottery has raised more than a quarter-billion dollars for statewide beneficiaries to enhance education and the environment, the Nebraska State Fair, and to provide compulsive gamblers assistance. To learn how all 93 counties have benefited, log on to nelottery.com and click on beneficiaries.



HELPING TO BUILD A BETTER NEBRASKA.

nelottery.com

Nebraska Lottery Advertising Examples (Retailer contributions newspaper campaign)

In September of 2006, the Lottery ran the following two advertisements. According to Lottery representatives, each advertisement ran twice and sought to reinforce awareness of the contributions of Lottery retailers.



READING. WRITING. ARITHMETIC. RETAILERS.

**\$125
MILLION**

Nebraska Lottery retailers help make Nebraska a better place to live. A portion of the sale of every Nebraska Lottery ticket goes to educational projects—totaling \$125 million so far. Thanks to you and your Nebraska Lottery retailers, nearly \$265 million has been raised altogether for education, the environment, the Nebraska State Fair and compulsive gamblers assistance. Every county in Nebraska has benefited from projects funded by proceeds from the Nebraska Lottery.

**NEBRASKA LOTTERY RETAILERS.
HELPING TO BUILD A BETTER NEBRASKA.**

Visit nelottery.com for more information.



THE SIGN OF A HEALTHIER ENVIRONMENT.

**\$125
MILLION**

Nebraska Lottery retailers help make Nebraska a better place to live. A portion of the sale of every Nebraska Lottery ticket goes to environmental projects—totaling \$125 million so far. Thanks to you and your Nebraska Lottery retailers, nearly \$265 million has been raised altogether for education, the environment, the Nebraska State Fair and compulsive gamblers assistance. Every county in Nebraska has benefited from projects funded by proceeds from the Nebraska Lottery.

**NEBRASKA LOTTERY RETAILERS.
HELPING TO BUILD A BETTER NEBRASKA.**

Visit nelottery.com for more information.

Nebraska Lottery Advertising Examples (Newspaper insert)

In January 2006, the Lottery used coupon inserts in newspapers to encourage purchase of both instant win (Scratch) and online (Powerball) lottery tickets.



(two-sided insert)



Coupon must be filled out completely before redemption.

(Circle one: Mr., Mrs., Ms.)

Name _____

Mailing Address _____

City _____ State _____ Zip Code _____

Date of Birth _____ Email _____

Which Scratch Games do you play?

\$1 \$2 \$3 \$5 \$10 \$3 Bingo \$3 Crossword

Which Nebraska Lottery Games do you play?

Powerball® Nebraska Pick 5® 2by2® Nebraska Pick 3®

How often do you play Scratch and Lotto games?

Scratch	Lotto	
<input type="checkbox"/>	<input type="checkbox"/>	Every week
<input type="checkbox"/>	<input type="checkbox"/>	1-3 times a month
<input type="checkbox"/>	<input type="checkbox"/>	1-3 times every three months
<input type="checkbox"/>	<input type="checkbox"/>	Once every 6-12 months
<input type="checkbox"/>	<input type="checkbox"/>	Have never played

Please play responsibly. Compulsive Gambling Help Line 1-800-622-6700

Steps To Redeem Coupon

- 1 Scan the barcode below using the Lotto terminal. The terminal will generate the free quick pick play. Do not accept photocopies, reproductions, or other facsimiles of Nebraska Lottery coupons.
- 2 Fill in date redeemed and retailer number below.
- 3 Balance coupons daily to the Coupon Report available on your Lotto terminal.
- 4 If barcode will not scan, touch COUPON on main menu.
- 5 Enter barcode number, touch SEND.
- 6 After reconciliation, hold for your LSR.

Questions? Call 1-800-587-5200

Date Redeemed

Retailer Number

coupon

Expiration date: 2/25/06

See back for instructions.

Retailer Use the Coupon to produce free label for scanning. See side or back of coupon.

**Buy \$2
In Scratch
Tickets,**

**Get \$1
In Powerball
FREE**

Buy two \$1 Scratch tickets or one \$2 Scratch ticket and get a \$1 Powerball Quick Pick Free.

Redeemable at all participating Nebraska Lottery retailers. Expiration date February 25, 2006. Coupons not redeemed by 2:00 a.m. (CT), Sunday, February 26, 2006, are void.



Nebraska Lottery Advertising Examples (Powerball jackpot billboard, 48th & Highway 2)

The Nebraska Lottery has a series of permanent outdoor billboards that feature the current Powerball jackpot.



Appendix D: Lottery Implementation Plan



301 Centennial Mall South
P.O. Box 98901 • Lincoln, Nebraska 68509-8901
Phone (402) 471-6100 • Fax (402) 471-6108
www.nelottery.com

November 29, 2006

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BY HAND DELIVERY

LEGISLATIVE RESEARCH

Senator Chris Beutler, Chairperson
Legislative Performance Audit Committee
1201 State Capitol Building
P.O. Box 94945
Lincoln, NE 68509-4945

RE: LB 1039 Implementation Plan

Dear Senator Beutler:

As part of the legislative performance audit of the Nebraska Lottery, your section staff has requested an implementation plan from the Lottery describing how we interpret and propose to implement LB 1039 (2006) now codified in Neb. Rev. Stat. section 9-831 with regard to computation of the 5% advertising budget formula created under this new law. This letter constitutes our plan for said implementation of LB 1039.

For your added information, we have attached a draft Memorandum of Understanding (MOU) which was initiated by the Compulsive Gamblers Assistance Program within the Division of Behavioral Health Services (Division) at HHSS and cooperatively negotiated by both parties. This MOU outlines the mechanics by which the Lottery will transfer funds to the Division for purposes of implementing the advertising requirements of LB 1039.

In determining how to calculate 5% of the advertising budget of the Lottery for spending on problem gambling prevention, education, and awareness messages we first look to the definitional language contained in LB 1039. The pertinent language states: "For purposes of this section, the advertising budget for the state lottery includes amounts budgeted and spent for advertising, promotions, incentives, public relations, marketing, or contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing, but does not include in-kind contributions by media outlets."

The Lottery has an advertising budget which is calculated as 3% of ticket sales and a promotions budget calculated at 1% of ticket sales. The total Lottery advertising and promotions budget is therefore based on 4% of annual lottery

ticket sales in a fiscal year period. This budget is set internally and is subject to some fluctuation from year to year. The cost of the advertising vendor (Ayres) contract is factored into the total advertising budget, and therefore the annual compensation paid to the advertising contractor is included within this 4% amount. For purposes of implementing LB 1039, we would include 5% of the combined advertising and promotions budgets expended.

Beyond this 4% figure (which equates to approximately \$4 million annually) the Lottery receives marketing support which is built in to the instant-win (scratch) ticket and on-line vendor contracts. Specifically, the Lottery is provided up to \$200,000 in annual research and focus group research from the scratch contractor, and up to \$350,000 in annual marketing support from the on-line contractor. The Lottery would consider these amounts, up to a total of \$550,000 annually, as amounts budgeted and spent for marketing purposes within the advertising budget definition of LB 1039. (We would not include \$30,000 provided by the scratch contractor for ticket display units, as this would be deemed an operations expense for vendor-furnished inventory, the only functional purpose for which is the containment and distribution of lottery tickets.)

During discussions had with your staff a question was raised about including the costs of other Lottery contracts besides the advertising contract in the 5% calculation since these contracts may include provisions relating to advertising, promotions, incentives, public relations or marketing. Under such interpretation 5% of the annual compensation paid by the Lottery to GTECH and Intralot would be included in the LB 1039 calculation, and would theoretically extend to include 5% of the compensation paid to all lottery game retailers for public relations services tendered under their contracts to sell lottery tickets. For the reasons explained below, we do not believe the cost of these contracts should be included under the definition of "advertising budget" for purposes of implementing LB 1039.

First, the GTECH and Intralot contracts are for the purchase of goods and services relating to scratch ticket products, equipment and services and on-line gaming systems and services, respectively, and are not directed for the purchase of goods or services specifically for advertising and marketing as is the Ayres contract. Any service provided under either the scratch or on-line contract which may touch on advertising, promotions, incentives, public relations or marketing is merely a subset of the overall contract. For example, the amount of research support provided under the scratch contract equates to less than 5% of the entire contract's value. Although the marketing support provided under the on-line

contract is more substantial as a percentage of the overall contract value (approximately 25%), this is a small component of the contract in relation to the primary services provided. The same rationale applies to any auxiliary services provided under the approximately 1,200 lottery game retailer contracts executed for the primary purpose of selling lottery tickets.

We believe the language of LB 1039 which references "contracts for the purchase or lease of goods or services that include advertising, promotions, incentives, public relations, or marketing" pertains to contracts for advertising and marketing and related services such as our contract with Ayres which is included in the advertising budget and also in the LB 1039 calculation.

Second, we believe such an interpretation would work to effect an impractical and unintended application of the law, since including the cost of these contracts (GTECH, Intralot, retailers) would increase the amount spent on advertising for problem gambling prevention, education, and awareness messages fourfold, amounting in real dollars to 20% of the Lottery's total advertising and promotions budget. The Lottery would have to react by either spending 20% less each year on actual advertising to sell lottery tickets, or proportionately increase our advertising budget to offset this difference which would increase operating costs and potentially result in less proceeds for ultimate distribution to the beneficiary funds. We do not believe this was the intent of the Legislature in adopting LB 1039, nor would it be in keeping with the purpose of the State Lottery Act, namely, to establish lottery games to raise revenue for those beneficiaries as specified in section 9-812 of the Act.

Therefore, it is the interpretation and proposal of the Nebraska Lottery to factor the total of the combined Lottery advertising and promotions budgets expended, plus the \$550,000 of contractor-supplied marketing support, into the 5% calculation for purposes of determining the annual advertising dollars to be spent on problem gambling prevention, education, and awareness messages under LB 1039. Based on current fiscal year estimates, this would equate to a total distribution of approximately \$253,700 for FY 06/07 to be spent on LB 1039 messages.

In looking to the plain meaning of the new statute, and in examining the legislative history of LB 1039, we believe this interpretation for purposes of calculating the 5% of the advertising budget comports with both legislative intent and the statutory language.

Senator Chris Beutler
November 29, 2006
Page 4

Attached are two sets of schedules to assist you in reviewing our calculations. Schedule "A" is four spreadsheets showing what we have estimated and spent thus far on problem gambling messages along with a computation showing the potential payments to be made to the Compulsive Gamblers Assistance Program (GAP) under the proposed MOU for the remainder of 2007. Schedule "B" is a tracking spreadsheet which we plan to use throughout the year to compute the funds earmarked for problem gambling messages and to insure that those funds are provided to GAP.

Please let me know if you have any questions or if you require additional information.

Thank you.

FOR THE STATE TAX COMMISSIONER

Sincerely,

A handwritten signature in black ink, appearing to read "James M. Haynes". The signature is fluid and cursive, with a large initial "J" and "M".

James M. Haynes
Acting Lottery Director

Attachments

NOV 29 2006

November 29, 2006

LEGISLATIVE RESEARCH

TO: Legislative Performance Audit Committee
FROM: Nebraska Lottery:
Jim Haynes, Dennis Nelson, Mark Ludwig, Brian Rockey

RE: Performance Audit Definitions and Examples

The Nebraska Lottery communicates with its various audiences (players, retailers, beneficiaries, and the general public) through a wide array of mechanisms that fall under the general heading of Marketing and Communications. Those mechanisms (enumerated in the definitional language of LB 1039) include Advertising, Promotions, Incentives, Public Relations, Marketing, and In-Kind Media.

In the following definitions of those six mechanisms and their attendant examples, it should be noted that their costs are sometimes considered advertising as well as promotion. It should also be noted that the work of one mechanism can complement the work of another mechanism. Finally, it should be noted that these mechanism definitions have particular relevance for the Nebraska Lottery, and may be applied differently by other organizations.

Advertising

Advertising is the budgeted process by which specific messages are placed with commercial media organizations. Those messages may be geared to audiences interested in individual products (games or promotions), or may have a more broad appeal (beneficiary awareness or general brand awareness). Three examples follow.

- 1) Powerball jackpot billboards (about two dozen) across the state keep the playing public updated on the most relevant attribute of the most widely recognized game.
- 2) Television and radio spots during the Spring and Summer highlight the attributes of featured games such as the annual Truck\$ & Buck\$ \$2 Scratch game and its attendant second chance contest.
- 3) Television spots remind players of the utility of Nebraska Lottery tickets as holiday gifts, and build brand awareness. Research has found that as high as one-third of the eligible population has given or received Nebraska Lottery tickets as a gift in the past year.

Promotions (and Promotional Contests)

Promotions have utility as means of rewarding existing players or inviting trial of new or existing games by offering something of additional value (or the chance to win something of additional value) in return for making a qualifying purchase. They also have value as means of calling attention to a given product or its attributes (as an extension of advertising). Two examples follow.

1) Free-standing Newspaper Inserts (FSI) offer product information and trial coupons for players and prospective players. Typically offered once early in the year, FSI coupons invite players and prospective players to sample designated games or price points (2by2 or \$1 or \$2 Scratch games, for example) in return for making a qualifying purchase. Such coupons reward loyal players with, and give interested prospective players, the opportunity to experience a cross-section of the diverse products offered by the Nebraska Lottery. They also help drive customer traffic to Nebraska Lottery retailers during the post-holidays period that is sometimes a slower sales cycle.

2) The Nebraska Pick 5 Doubler promotion and Powerball Power Play 10x promotion give players the opportunity to win enhanced prizes in those games, and call attention to particular attributes of those games. In the case of the Nebraska Pick 5 Doubler promotion, the jackpot is doubled each time it is won during the designated month; March of 2007, for example. As the Nebraska Pick 5 jackpot grows from drawing to drawing during the promotional period, the anticipation of when it might be won (and doubled) is increased, and awareness of the fact that the jackpot does grow when it is not won is enhanced. With the Powerball Power Play 10x promotion, one of the four Power Play 5x multiplier numbers is replaced with a 10x multiplier. If the 10x Power Play multiplier is drawn during the promotional period (April 2007, for example) Powerball tickets with the Power Play feature added have whatever non-jackpot prizes they might win in that drawing multiplied by 10, rather than the normal 2,3,4 or 5 times. This promotion increases awareness of the value of the Power Play feature, and enhances overall awareness of Powerball.

Incentives (Player and Retailer)

Incentives are a mechanism to reward or reinforce participation by players or retailers in certain efforts or programs. Two examples follow.

1) Nebraska Lottery merchandise (premium items such as caps, cups, shirts, pens, lunch bags and tote bags) are offered as prizes at promotional events featuring promotional games such as the Spin & Win wheel. In return for making a qualifying Lottery purchase (\$5 or \$10) players have the opportunity to spin the wheel to win free premiums. These events are conducted in conjunction with county fairs, community festivals, retailer celebrations and the State Fair. In addition to rewarding loyal players who make the qualifying purchase, it is estimated that such events can attract as much as 15 percent new players by rewarding them with premium items for their trial purchase of Lotto or Scratch games.

2) Nebraska Lottery merchandise (premiums) are used as door prizes for retailers who attend periodic Retailer Rally meetings around the state. Drawings are held from among those retailers registered/attending the events. The prizes not only reward retailers for their participation in the event, but help reinforce their interest in the Nebraska Lottery when they return to work.

Public Relations (and Sponsorships)

Public Relations is the process of identifying various and complementary publics (audiences) and providing them with information of interest to them. The process also affords a valuable feedback process by which the Nebraska Lottery can respond to demand for additional products and information to meet public expectations. Three examples follow.

1) The Summer Tour, which consists of a series of promotional appearances (Spin & Win events) across the state at fairs, festivals and retailer events, allows the Nebraska Lottery to have one-on-one contact with players and interested members of the public. In addition to promoting trial of products, the events give the public direct access to Lottery representatives to ask questions about Nebraska Lottery beneficiary programs and products.

2) The Nebraska Lottery exhibits at or sponsors a variety of events and sports teams across the state. From exhibiting at A Taste of Omaha to sponsoring the Tri-City Storm Hockey team in Kearney and from appearances at Nebraskaland Days in North Platte to sponsoring Lincoln Saltdogs Baseball, such sponsorships give the Nebraska Lottery an opportunity to have contact with the playing and non-playing public for the purposes of providing information on products and beneficiaries.

3) The Nebraska Lottery provides information about its beneficiary programs throughout the year. At least twice a year, newspaper ads cite the amount raised by the Lottery for a particular program (a series of ads give each program unique exposure), and note the nature of the work undertaken by the program. Beneficiary information is also made available through Point-of-Sale materials at retail locations. Both mechanisms inform players and non-players alike of the work of Nebraska Lottery beneficiary funds.

Marketing (and Communication)

Marketing and Communication is the process of integrating the various messages and efforts associated with Nebraska Lottery products and beneficiaries. Two examples follow.

1) Information about products (games) and promotions is blended with information about beneficiaries (including the Gamblers Assistance Program) in news releases, all printed material and broadcast media, via nelottery.com, and at all events.

2) Information about products, promotions and beneficiaries is provided to players and retailers through a periodic player magazine, a monthly newsletter, game closing post cards, winners posters (individual and monthly aggregates), prizes remaining and unclaimed prizes information, and in game and promotion information sheets (sell sheets). This material is delivered by mail and directly to retailers and players by sales representatives.

In-kind Contributions by Media Outlets

These would be value-added opportunities for exposure for the Nebraska Lottery and its beneficiaries. Such contributions would include air time for pre-recorded announcements provided by the Lottery and aired by stations, announcements made by on-air staff, and event tickets provided by media for use as retailer incentives or contest prizes for players. Three examples follow.

- 1) Television PSAs aired in conjunction with Problem Gambling Awareness week. The spots were produced by the Lottery for the Gamblers Assistance Program (prior to LB 1039) and their airing is negotiated by Ayres Kahler with stations and cable systems on which the Nebraska Lottery is advertising during the same time period.
- 2) Responsible play messages on radio stations during periods when the Powerball jackpot reaches \$100 million. Ayres Kahler provides brief copy points to stations for use by on-air talent in mentioning the size of the Powerball jackpot and reminding listeners to Please Play Responsibly.
- 3) Event (concert or game) tickets are occasionally provided by media outlets with which the Nebraska Lottery advertises. The tickets are either forwarded to retailers with an interest in the event, or used as promotional contest prizes for players. In June of 2006, the Nebraska Lottery conducted a second chance contest on nelottery.com for 2by2 players. The prize was a pair of tickets and airfare to the Nebraska-USC football game in September--courtesy of Pinnacle Sports Network.

NOV 29 2006

LEGISLATIVE RESEARCH

Nebraska Lottery
2007 Implementation Plan for LB1039
Sales as of week ending 10/28/06

ESTIMATE

Estimated sales for 2007	\$115,558,664
Sales amount below goal to date	<u>\$2,458,857</u>
Difference (new estimated sales for 2007)	<u>\$113,099,807</u>
Marketing budgets based on sales:	
Advertising 3%	\$3,392,994
Promotions 1%	\$1,130,998
Subtotal	<u>\$4,523,992 (A)</u>
Marketing support from:	
GTECH	\$200,000
Intralot	\$350,000
Subtotal	<u>\$550,000 (B)</u>
Total Marketing subject to 5% rate	\$5,073,992 (A)+(B)
Projected \$ for Comp. Gamb advertising	<u>\$253,700</u>

Nebraska Lottery
 2007 Implementation Plan for LB1039
 Prepared as of 10/31/06

ACTUAL

Amounts spent to date by Nebraska Lottery for Comp. Gamb. advertising (breakdown on page 3)

Jul-06	\$0	
Aug-06	\$5,910	
Sep-06	\$22,126	
Oct-06	\$59,565	
	<u>Subtotal</u>	<u>\$87,601</u>

Actual marketing incurred/spent (as of 10/31/06)	\$1,090,935	(A)
Marketing support from:		
GTECH	\$200,000	
Intralot	\$350,000	
	<u>Subtotal</u>	<u>\$550,000</u> (B)
Total Marketing subject to 5% rate	\$1,640,935	(A)+(B)
Computed funds for Comp. Gamb. advertising	\$82,047	
Actual expenses incurred for Comp. Gamb. adv.	<u>\$87,601</u>	
Difference	<u>(\$5,554)</u>	

Note: The marketing budget of 4% of sales, as of 10/31/06, is \$1,446,527. The marketing amount spent as of this date is currently about 3% of sales.

Nebraska Lottery
 2007 Implementation Plan for LB1039
 Prepared as of 10/31/06

BREAKDOWN OF AMOUNTS SPENT

Expense account

54282 · Advertising- Compulsive Gamb.

	<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Memo</u>	<u>Split</u>	<u>Amount</u>	<u>Running Balance</u>
	08/31/2006	13488-00	Ayres Advertising	LOG-TV PSA Campaign	21300 · Advertising Vendor	5,000.00	5,000.00
	08/31/2006	13489-00	Ayres Advertising	LOG-PR Planning FY07	21300 · Advertising Vendor	910.00	5,910.00
	09/30/2006	13635-00	Ayres Advertising	Newspaper	21300 · Advertising Vendor	4,191.05	10,101.05
	09/30/2006	13783-00	Ayres Advertising	LOG-TV PSA FY07	21300 · Advertising Vendor	5,987.60	16,088.65
	09/30/2006	13784-00	Ayres Advertising	LOG-Newsprint PSA Campaign	21300 · Advertising Vendor	226.00	16,294.65
	09/30/2006	13785-00	Ayres Advertising	LOG-PR Planning FY07	21300 · Advertising Vendor	2,930.78	19,225.43
	09/30/2006	13786-00	Ayres Advertising	LOG-FY07 Outdoor Campaign	21300 · Advertising Vendor	8,811.00	28,036.43
	10/31/2006	13951-00	Ayres Advertising	Newspaper	21300 · Advertising Vendor	7,491.05	35,527.48
	10/31/2006	13975-00	Ayres Advertising	Television	21300 · Advertising Vendor	37,363.45	72,890.93
	10/31/2006	13976-00	Ayres Advertising	Television	21300 · Advertising Vendor	14,621.70	87,512.63
	10/31/2006	14132-00	Ayres Advertising	LOG-FY07 Outdoor Campaign	21300 · Advertising Vendor	89.00	87,601.63
Total 54282 · Advertising- Compulsive Gamb.						<u>87,601.63</u>	<u>87,601.63</u>
TOTAL						<u>87,601.63</u>	<u>87,601.63</u>

Nebraska Lottery
2007 Implementation Plan for LB1039
Prepared as of 10/31/06

IMPLEMENTATION PLAN FOR PAYMENTS

Projected funds for Comp. Gamb advertising	\$253,700
Actual expenses incurred for Comp. Gamb. advertising	<u>\$87,601</u>
Projected funds available for remainder of 2007	<u>\$166,099</u>
Projected quarterly payments for the rest of 2007 (Dec 2006, March 2007, June 2007)	<u>\$55,366</u>

Note: Each quarterly payment may actually be more or less than projected depending on advertising expenses incurred each month.

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NOV 29 2006

LEGISLATIVE RESEARCH

Prepared by: DN
Updated as of: 10/31/2006

Nebraska Lottery
Advertising & Promotion Breakdown
Reconciliation of Lottery Payments
(to GAP and for GAP advertising)

	7/31/2006	8/31/2006	9/30/2006	10/31/2006	To date	11/30/2006	12/31/2006	Quarterly difference	1/31/2007	2/28/2007	3/31/2007
BUDGET ANALYSIS											
Monthly sales per Sales07 file:	\$9,103,770	\$8,995,228	\$9,527,287	\$8,536,909							
Calculated advertising budget (3%)	\$273,113	\$269,857	\$285,818	\$256,107		\$0	\$0		\$0	\$0	\$0
Advertising expenses incurred (1)	\$142,628	\$137,800	\$191,529	\$213,694			\$55,368				\$55,368
Advertising under <over> budget	\$130,487	\$132,057	\$94,289	\$42,413	\$389,248	\$0	(\$55,368)		\$0	\$0	(\$55,368)
Calculated promotions budget (1%)	\$91,038	\$89,952	\$95,273	\$85,369		\$0	\$0		\$0	\$0	\$0
Promotional expenses incurred	\$117,331	\$91,017	\$121,401	\$75,537							
Promotions under <over> budget	(\$26,293)	(\$1,065)	(\$26,128)	\$9,832	(\$43,654)	\$0	\$0		\$0	\$0	\$0
Marketing under <over> budget	\$104,194	\$130,992	\$68,161	\$52,245	\$355,592	\$0	(\$55,368)		\$0	\$0	(\$55,368)
PAYMENT ANALYSIS											
Advertising expenses incurred (1)	\$142,628	\$137,800	\$191,529	\$213,694		\$0	\$55,368		\$0	\$0	\$55,368
Promotional expenses incurred	\$117,331	\$91,017	\$121,401	\$75,537		\$0	\$0		\$0	\$0	\$0
GTECH support	\$200,000	\$0	\$0	\$0		\$0	\$0		\$0	\$0	\$0
Intralot support	\$350,000	\$0	\$0	\$0		\$0	\$0		\$0	\$0	\$0
Marketing expenses incurred	\$809,957	\$228,817	\$312,930	\$289,231		\$0	\$55,368		\$0	\$0	\$55,368
Comp. Gamb. advert. calculated (5%) (based on expenses incurred)	\$40,498	\$11,441	\$15,647	\$14,482		\$0	\$2,768		\$0	\$0	\$2,768
Comp. Gamb. advert. expenses incurred	\$0	\$5,910	\$22,126	\$59,565		\$0	\$0		\$0	\$0	\$0
Comp. Gamb. advert. payments	\$0	\$0	\$0	\$0		\$0	\$55,368		\$0	\$0	\$55,368
Comp. Gamb. advert. under <over>	\$40,498	\$5,531	(\$6,479)	(\$45,103)	(\$5,553)	\$0	(\$52,598)	(\$58,151)	\$0	\$0	(\$52,598)

(1) This amount includes the funds spent for Compulsive Gambling advertising and payments made to GAP for Compulsive Gambling advertising.

Nebraska Lottery
 Advertising & Promotion Breakdown
 Reconciliation of Lottery Payments
 (to GAP and for GAP advertising)

Prepared by: DN
 Updated as of: 10/31/2006

	Quarterly difference	4/30/2007	5/31/2007	6/30/2007	Quarterly difference
BUDGET ANALYSIS					
Monthly sales per Sales07 file:					
Calculated advertising budget (3%)		\$0	\$0	\$0	
Advertising expenses incurred (1)				\$55,366	
Advertising under <over> budget		\$0	\$0	(\$55,366)	
Calculated promotions budget (1%)		\$0	\$0	\$0	
Promotional expenses incurred					
Promotions under <over> budget		\$0	\$0	\$0	
Marketing under <over> budget		\$0	\$0	(\$55,366)	
PAYMENT ANALYSIS					
Advertising expenses incurred (1)		\$0	\$0	\$55,366	
Promotional expenses incurred		\$0	\$0	\$0	
GTECH support		\$0	\$0	\$0	
Intralot support		\$0	\$0	\$0	
Marketing expenses incurred		\$0	\$0	\$55,366	
Comp. Gamb. advert. calculated (5%) (based on expenses incurred)		\$0	\$0	\$2,768	
Comp. Gamb. advert. expenses incurred		\$0	\$0	\$0	
Comp. Gamb. advert. payments		\$0	\$0	\$55,366	
Comp. Gamb. advert. under <over>	(\$110,749)	\$0	\$0	(\$52,588)	(\$183,347)

***Memorandum of Understanding to Provide Advertising for Problem Gambling
Prevention, Education and Awareness Messages***

OVERVIEW

The Nebraska Lottery (herein referred to as *Lottery*) and the Nebraska Department of Health and Human Services, Division of Behavioral Health Services (herein referred to as *Division*) set forth the following understanding as such relates to the implementation of Legislative Bill 1039 (2006) effective July 14, 2006 allocating not less than five (5) percent of the advertising budget for the state lottery on problem gambling prevention, education, and awareness messages.

The parties understand as follows:

I. FUNDING CYCLE

The term of annual funding shall be cyclical beginning July 14, 2006 and continuing on a fiscal year basis commencing every July 1 through June 30 of each successive year. This funding shall continue unless and until such time as the provisions of Neb. Rev. Stat. section 9-831 may be amended or repealed.

II. TERMS

- A. Prevention, Education, and Awareness Messages. Defined as prevention, education, and awareness message information promoting responsible gambling through advertising, public relations, information dissemination, and other related means.
- B. Planned Operational Expenditures (POE). A formal plan defining forecasting and proposed costs of prevention, education, and awareness messages based on the current fiscal year's allocation amount. Costs will reflect those direct expenses and indirect costs that have a direct relationship to providing prevention, education, and awareness messages.
- C. Scope of work. Defines goals, measurable objectives, activities, and evaluation operations being implemented to support LB 1039 (2006) during the fiscal year.

III. LOTTERY DUTIES AND RESPONSIBILITIES

- A. The Lottery will provide funds as stated in LB 1039 (codified in Neb. Rev. Stat. section 9-831) for activities coordinated by both parties or developed by the Division. Payments will be made to the Division for actual expenses to implement the messages coordinated by both parties or developed by the Division.
- B. The Lottery may make electronic payments to the Division for funding the prevention, education, and awareness messages.
- C. The Lottery will provide the Division with copies of financial records of all direct and indirect and payments expended for prevention, education, and awareness messages. The Lottery will make quarterly disbursements of the annual funding to the Division based on the POE and Division needs.

DRAFT as of 19 October 2006

- D. The Lottery may provide technical and informational assistance and support to the State Advisory Committee on Problem Gambling and Addiction Services (herein referred to as *Advisory Committee*) necessary and appropriate for implementation of section 9-831.

IV. DIVISION DUTIES AND RESPONSIBILITIES

- A. The Division will provide the Lottery a POE by March prior to each fiscal year. Current year POE will be developed and submitted for record.
- B. The Division will develop a scope of work annually for the Committee to consider in supporting the requirements of section 9-831. Scopes of work developed by the Division will support long-term goals developed by the Advisory Committee.
- C. The Division will provide consultation and technical assistance to meet the obligations specified under section 9-831. Individualized and collective training and technical assistance (T/TA) to contractors will be provided on an ongoing, quarterly and annual basis, through on-site, regionally and centrally located T/TA events. The Division will maintain administrative and operational control over contracts developed by the Division.

V. NOTICES

Any notice given pursuant to this memorandum shall be made in writing and sent to the party appearing below either by electronic or interagency mail. Notice to the parties shall be made to:

- A. For the Division

Gamblers Assistance Program Manager
Division of Behavioral Health Services
Department of Health and Human Services
PO Box 98925
Lincoln, NE 68509

- B. For the Lottery

Director
Nebraska Lottery
PO Box 98901
Centennial Mall South, Second Floor
Lincoln, NE 68509

Unless amended in writing by mutual agreement, the foregoing constitutes the understanding of the parties.

FOR THE NEBRASKA LOTTERY

Lottery Director

Date

State Tax Commissioner

Date

DRAFT as of 19 October 2006

FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administrator
Division of Behavioral Health Services

Date

Director
Department of Health and Human Services

Date

Performance Audit Committee Reports: 1994 to 2007

Performance Audit Reports

The State Department of Education's School-based Teacher-led Assessment and Reporting System (February 2007)
The Lincoln Regional Center's Sex Offender Services Program (August 2006)
The Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems: An Examination of Compliance, PIONEER, and Management (August 2006)
The Nebraska Medicaid Program's Collection of Improper Payments (May 2005)
The Lincoln Regional Center's Billing Process (December 2004)
Nebraska Board of Parole (September 2003)
Nebraska Department of Environmental Quality: Administering the Livestock Waste Management Act (May 2003)
HHSS Personal-Services Contracts (January 2003)
Nebraska Habitat Fund (January 2002)
State Board of Agriculture (State Fair Board) (December 2001)
Nebraska Environmental Trust Board (October 2001)
Nebraska Department of Roads: Use of Consultants for Preconstruction Engineering (June 2001)
Department of Correctional Services, Inmate Welfare Fund (November 2000)
Bureau of Animal Industry: An Evaluation of the State Veterinarian's Office (March 2000)
Nebraska Ethanol Board (December 1999)
State Foster Care Review Board: Compliance with Federal Case-Review Requirements (January 1999)
Programs Designed to Increase the Number of Providers in Medically Underserved Areas of Nebraska (July 1998)
Nebraska Department of Agriculture (June 1997)
Board of Educational Lands and Funds (February 1997)
Public Service Commission: History of Structure, Workload and Budget (April 1996)
Public Employees Retirement Board and Nebraska Public Employees Retirement Systems: Review of Compliance-Control Procedures (March 1996)
Leaking Underground Storage Tank Program (December 1995)
School Weatherization Fund (September 1995)
The Training Academy of the Nebraska State Patrol and the Nebraska Law Enforcement Training Center (September 1995)
Nebraska Equal Opportunity Commission (January 1995)
The Interstate Agricultural Grain Marketing Commission (February 1994)

Preaudit Inquiries

Implementation of the Nebraska Information System (NIS) (November 2005)
The Lincoln Regional Center Psychiatrists' Work Commitments (September 2005)
The Nebraska State Patrol's Record of its Investigation of State Treasurer Lorelee Byrd (November 2004)
HHSS Public Assistance Subprograms' Collection of Overpayments (August 2004)
NDEQ Recycling Grant Programs (October 2003)
HHSS Reimbursement and Overpayment Collection (August 2003)
Grain Warehouse Licensing in Nebraska (May 2003)
HHSS Personal-Services Contracts (July 2002)
Livestock Waste Management Act (May 2002)
Nebraska Telecommunications Universal Service Fund (April 2001)
State Board of Health (November 2001)
State Board of Agriculture (State Fair Board) (August 2001)
Game and Parks Commission Cash Funds (August 1999)
Education Technology (January 1998)
Nebraska Research and Development Authority (April 1997)
Nebraska's Department of Agriculture (June 1996)
Nebraska's Department of Correctional Services Cornhusker State Industries Program (April 1996)
DAS Duplication of NU Financial Record-Keeping (February 1995)