



INTEROFFICE MEMO

Gary Grief, Executive Director

Michael P. Farrell, Charitable Bingo Operations Director

To: J. Winston Krause, Chairman
Carmen Arrieta-Candelaria, Commissioner
Doug Lowe, Commissioner
Robert Rivera, Commissioner

From: Bob Biard, General Counsel 

Date: December 13, 2018

Re: Consideration of the Status and Possible Approval of Orders in Enforcement Cases

The Legal Services Division staff recommends that the Commission approve each of the proposed orders presented under this item.

Date: DECEMBER 13, 2018

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
	§	OF
THE REVOCATION OF CERTAIN	§	
LOTTERY RETAILER LICENSES	§	ADMINISTRATIVE HEARINGS

ORDER OF THE COMMISSION

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the license revocation cases listed on Attachment A hereto, in which the Texas Lottery Ticket Sales Agent (Respondent) in each referenced case did not appear at the scheduled hearing before the State Office of Administrative Hearings (SOAH) to respond to the allegations set forth in the Commission's notice of hearing.

I. Findings of Fact

1. Timely and adequate notice of the hearings in the referenced cases before SOAH was provided to each Respondent, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052, and 1 TEX. ADMIN. CODE §§ 155.401 and 155.501(b). Each notice of hearing included a disclosure in at least 12-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

2. After timely and adequate notice was given in each case, each case was heard by a SOAH Administrative Law Judge (ALJ). In each case, the Respondent did not appear at the hearing.

3. The Commission, by and through its attorney of record, filed a motion to dismiss each of the referenced cases from the SOAH docket and to remand each case to

Commission Order No. 19-0009

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the Commission for informal disposition, in accordance with TEX. GOV'T CODE ANN. § 2001.058(d-1) and 1 TEX. ADMIN. CODE § 155.501(d).

4. The ALJ conditionally dismissed the referenced cases from the SOAH docket and remanded these cases to the Commission for informal disposition under TEX. GOV'T CODE ANN. § 2001.056, provided the Respondent in each case did not file a motion to set aside the default within 15 days from the date of the ALJ's Order Remanding Case to Commission.

5. In each case, Respondent did not file a motion to set aside the default within 15 days from the date of the ALJ's Order.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. GOV'T CODE ANN. § 466.155; and 16 TEX. ADMIN. CODE, Chapter 401.

2. The Respondent in each of the cases listed on Attachment A violated the State Lottery Act and the Commission's Rules as set forth in the Commission's notice of hearing applicable to such Respondent. Specifically, each Respondent failed to deposit money due to the State received from lottery ticket sales under the State Lottery Act, in violation of TEX. GOV'T CODE ANN. § 466.351; and 16 TEX. ADMIN. CODE §§ 401.351 and 401.352.

3. The relief sought by the Commission Staff is fair, reasonable, and adequately protects the public.

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III. Order

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration of the administrative record, each of the cases listed on Attachment A hereto, which is incorporated into this Order for all purposes, is hereby disposed by default, and:

1. All allegations set forth in each notice of hearing in the cases listed on Attachment A are deemed admitted; and
2. The Texas Lottery Ticket Sales Agent License for each Respondent in the cases listed on Attachment A is hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 13TH day of DECEMBER 2018.

Entered this 13TH day of DECEMBER 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Date: DECEMBER 13, 2018

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-18-5016	Benton C. Lewis d/b/a First Shot Liquor	730 Seydler Street Gonzales, TX 78629	181288
B.	362-19-0128	JDN LLC d/b/a Keenan Grocery	18563 Michaels Run Montgomery, TX 77316	184759
C.	362-19-0416	Swadeshi Plaza of Plano Inc. d/b/a Swadeshi Plaza of Plano Inc.	8201 Ohio Dr. #102 Plano, TX 75024	181174
D.	362-19-0417	DJMS Enterprises Inc. d/b/a Shop Smoke N Beverage	2011 W. Spring Creek Pkwy., Ste. 50 Plano, TX 75023	185429

The first part of the paper discusses the importance of the research and the objectives of the study. It then proceeds to a literature review, followed by a description of the methodology used. The results of the study are presented in the next section, followed by a discussion of the findings and their implications. The paper concludes with a summary of the main points and a list of references.

The research was conducted in a laboratory setting, using a series of experiments to measure the effects of the treatment. The results show that the treatment had a significant effect on the outcome, with the treated group performing better than the control group. This finding is consistent with the hypothesis that the treatment would improve the outcome.

The implications of the study are that the treatment can be used to improve the outcome in a clinical setting. This would be a significant advance in the treatment of the condition, as it would provide a more effective and safer option for patients. The study also highlights the need for further research to confirm the findings and to explore the underlying mechanisms of the treatment.

In conclusion, the study has shown that the treatment has a significant effect on the outcome, with the treated group performing better than the control group. This finding is consistent with the hypothesis that the treatment would improve the outcome. The implications of the study are that the treatment can be used to improve the outcome in a clinical setting. This would be a significant advance in the treatment of the condition, as it would provide a more effective and safer option for patients. The study also highlights the need for further research to confirm the findings and to explore the underlying mechanisms of the treatment.

DOCKET NO.: SEE ATTACHMENT A

IN THE MATTER	§	BEFORE THE STATE OFFICE
	§	
OF THE REVOCATION OF	§	OF
CERTAIN LOTTERY RETAILER	§	
LICENSES	§	ADMINISTRATIVE HEARINGS


**CONDITIONAL ORDER DISMISSING CASE FROM SOAH
AND REMANDING CASE TO COMMISSION**

On September 13, 2018, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

The Commission's staff (Staff) appeared at the hearing. None of the referenced retailers appeared. Based on a retailer's failure to appear, Staff filed a motion to dismiss the case from SOAH's docket and to remand the case to the Commission for informal disposition in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss and remand each case listed on Attachment A is conditionally granted, and the case is conditionally dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056. Each retailer may have the dismissal and remand set aside by filing an adequate motion with SOAH no later than 15 days after the issuance of this order, pursuant to 1 Texas Administrative Code § 155.501(e).

Signed: September 17, 2018.



STEVEN H. NEINAST
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[illegible]

SOAH DOCKET NO. 362-19-0128.B

TEXAS LOTTERY COMMISSION,
Petitioner

v.

KEENAN GROCERY,
Respondent

§
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§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 3
GRANTING MOTION TO DISMISS WITHOUT PREJUDICE
AND REMAND TO THE COMMISSION

On October 26, 2018, Staff for Petitioner, Texas Lottery Commission (the Commission), filed a Motion to Dismiss, Without Prejudice, in the above-referenced matter. In the motion, Staff requested this matter be remanded to the Commission for informal disposition. The undersigned Administrative Law Judge finds the motion has merit and should be granted.

Accordingly, it is ordered the Commission's Motion to Dismiss, Without Prejudice, is **granted**, and this matter is **dismissed** from the SOAH docket and remanded to the Commission for informal disposition.

SIGNED November 16, 2018.



STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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GENERAL COUNSEL

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the 'information' and 'communication' fields. The 'information' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 11)

The 'communication' field is defined as:

...the study of the processes of communication production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 11)

The 'information' field is defined as:

...the study of the processes of information production, distribution, access, use and evaluation, and the study of the social, cultural, economic and political contexts in which these processes take place. (p. 11)

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DOCKET NO.: SEE ATTACHMENT A

IN THE MATTER OF § **BEFORE THE STATE OFFICE**
§
THE REVOCATION OF §
CERTAIN LOTTERY RETAILER § **OF**
LICENSES § **ADMINISTRATIVE HEARINGS**


**CONDITIONAL ORDER DISMISSING CASE(S) FROM SOAH
AND REMANDING CASE(S) TO COMMISSION**

On November 8, 2018, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

The Commission's staff (Staff) appeared at the hearing. None of the referenced retailers appeared. Based on a retailer's failure to appear, Staff filed a motion to dismiss the case(s) from SOAH's docket and to remand the case to the Commission for informal disposition in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss and remand each case listed on Attachment A is conditionally granted, and the case(s) are conditionally dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056. Each retailer may have the dismissal and remand set aside by filing an adequate motion with SOAH no later than 15 days after the issuance of this order, pursuant to 1 Texas Administrative Code § 155.501(e).

Signed November 9, 2018


METTRA FARHADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION
REVOCATION HEARING
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ATTACHMENT A

HEARING HELD: November 8, 2018

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-0416	Swadeshi Plaza of Plano Inc., Agent DBA Swadeshi Plaza of Plano Inc.	8201 Ohio Dr. #102 Plano, Texas 75024	181174
362-19-0417	DJMS Enterprises Inc., Agent DBA Shop Smoke N Beverage	2011 W. Spring Creek Pkwy, Suite 50 Plano, Texas 75023	185429

**ANNA PLAZA, INC.
D/B/A COYOTE DEN
Respondent**

LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Anna Plaza Inc.
d/b/a Coyote Den
601 S. Powell Pkwy.
Anna, TX 75409
*via certified mail and
via email to asad690@gmail.com*

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) finds that, after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge (ALJ) who made and filed a Proposal for Decision (PFD) containing the ALJ's Findings of Fact and Conclusions of Law. The PFD was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein. Commission staff filed exceptions to the PFD. Respondent did not file exceptions or a reply to the Commission staff exceptions.

After review and due consideration of the PFD and exceptions filed, the Commission has determined that the ALJ did not properly apply or interpret applicable Texas law regarding (i) an employer's liability for the acts of its employees committed in the course and scope of their employment, and (ii) the Commission's implied authority to

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attribute employee violations committed within the course and scope of their employment to their licensee employer. Accordingly, pursuant to Tex. Gov't Code §2001.058(e)(1), the Commission adopts the ALJ's proposed Findings of Fact and Conclusions of Law as if fully set out and separately stated herein with the exception of Conclusions of Law Nos. 9 and 10, and adopts the six (6) additional Conclusions of Law set forth below.

First, the Commission adopts the following three (3) Conclusions of Law (to be inserted after Conclusion of Law No. 1) and the subsequent Conclusions of Law shall be renumbered accordingly:

2. The Texas Legislature has mandated that the Commission "exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery." Tex. Gov't Code §466.014(a).
3. Under Texas law, an employer is liable, vicariously, for the acts of its servants committed in the course and scope of their employment. *GTE Southwest, Inc. v. Bruce*, 998 S.W.2d 605, 617–18 (Tex. 1999). An employee is acting within the scope of their employment if they are performing duties generally assigned to them, regardless of whether the employee acted intentionally and unlawfully. *Fink v. Anderson*, 477 S.W.3d 460, 468 (Tex. App.— Houston [1st Dist.] 2015, no pet.).
4. The State Lottery Act recognizes that a sales agent's unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and the revenue generated from ticket sales. Tex. Gov't Code §§466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a). Thus, the Commission's ability to attribute employee violations committed within the course and scope of their employment to their licensee employer is reasonably necessary to fulfill the Commission's express duty to exercise strict control and supervision over the lottery and is within the Commission's implied authority.

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The Commission declines to adopt proposed Conclusions of Law Nos. 9 and 10 in the PFD, which state:

9. The preponderant evidence shows that Respondent did not violate Texas Government Code § 466.308 or 16 Texas Administrative Code § 401.158(b)(7), (31), or (33), as alleged.
10. Staff's alleged violations should be dismissed with prejudice to refiling them.

In place of proposed Conclusion of Law No. 9, the Commission hereby substitutes and adopts the two (2) following Conclusions of Law, which have been renumbered to reflect the additional Conclusions of Law adopted above:

12. Based on Findings of Fact Nos. 4 through 10, Respondent's employee, Hassan Babu, while performing duties within the course and scope of his employment with Respondent, violated Texas Government Code §§ 466.308(a) and 466.310(a) and 16 Texas Administrative Code § 401.158(b)(7), (31), and (33).
13. Under Texas law, the Commission may attribute violations of the State Lottery Act and Commission rules committed by Respondent's employee while performing duties within the course and scope of his employment to the Respondent, and hold Respondent liable for such violations.

In place of proposed Conclusion of Law No. 10 in the PFD, the Commission hereby substitutes and adopts the following Conclusion of Law, which has been renumbered to reflect the additional Conclusions of Law adopted above:

14. The Commission's request for a thirty-day suspension of Respondent's Texas Lottery sales agent license is reasonable.

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REASONS AND LEGAL BASIS FOR CHANGES TO THE PFD

This case involves a single Texas Lottery licensed sales agent, Anna Plaza Inc. d/b/a Coyote Den (Respondent), a corporation, and whether violations committed by its employee while performing lottery-related duties assigned to him (validating lottery tickets and paying lottery prize claims) are attributable to the Respondent. But in a broader context, this case is about the continued viability of the Commission's enforcement program as an effective tool to deter violations of the State Lottery Act (Tex. Gov't Code ch. 466) (SLA) and Commission rules, and thereby to ensure integrity, security, honesty, and fairness in the operation of the lottery. Tex. Gov't Code §466.014(a). This is a control function the Texas Legislature expressly intended for the Commission, and the analysis in the PFD would substantially impair or possibly eliminate that function.

Without citing any legal authority, the PFD erroneously concludes the employee's violations in this case are not attributable to the corporate Respondent:

While Mr. Babu committed his violations while working for Respondent in the course of his employment by Respondent, Mr. Babu did not commit the violations in the scope of his employment by Respondent. There is no evidence that Respondent hired Mr. Babu to fraudulently claim winning tickets or to pay lottery tickets in an amount of \$600 or more. That had nothing to do with his duties. Mr. Babu did that on his own and for his own profit. Accordingly, the ALJ does not find that Mr. Babu's misconduct, knowledge, and intent are attributable to the Respondent.

The ALJ finds Staff failed to demonstrate Respondent committed the alleged violations.

PFD at 7. (Emphasis added.) The ALJ recommends that the Commission's allegations against Respondent should be dismissed with prejudice. Conclusion of Law No. 10.

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The Commission has determined the incorrect legal standard was applied. By applying the correct legal standard, the PFD should have concluded that the employee committed the violations of the SLA and Commission rules within the scope of his employment while performing lottery-related duties generally assigned to him, and therefore violations committed by the employee are attributable to the Respondent.

Furthermore, sound public policy requires that a licensed sales agent be held responsible for the SLA violations committed by its employees. Most sales agents, like Respondent, are legal entities. Sales agents that are legal entities can only act through their employees. Therefore, when a legal entity that is licensed as a sales agent employs a person that commits a violation of the SLA, the violation must be attributable to the sales agent. To find otherwise means that sales agents can only be held liable for their personal actions. And if that is the case, almost no sales agents can be held accountable for violations of the SLA because a legal entity only acts through its agents and employees. If sales agents cannot be held responsible for the actions of their employees, then the SLA would be powerless and ineffective. The Legislature that mandated “strict control and close supervision over all lottery games” could not have intended such a broken result. *See* Tex. Gov’t Code §466.014(a).

Lottery licensees act through their employees.

No employer ever hires an employee for the purpose of breaking the rules of their employment. Neither does a licensed Texas Lottery sales agent hire a sales clerk to violate the SLA or Commission rules when performing assigned lottery-related duties. Yet, the ALJ’s determination that violations committed by Respondent’s employee during the

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course of his employment were not within the *scope* of his employment (because Respondent did not hire the employee to commit violations) and, thus, are not attributable to Respondent, means the Commission could rarely, if ever, deter violations through the enforcement process. A corporate licensee would be shielded from most, if not all, responsibility for violations.

This would be the result because over ninety-four percent (94%) of the Commission's licensed sales agents (16,952 out of a total of 17,969 licensees as of October 2018) are legal entities; that is, they are not individual human beings. These legal entities, mostly corporations, can only take action through the acts of their employees (and agents), who are not required to be licensed by the Commission. A corporation cannot sell or redeem lottery tickets, or commit violations, except through the acts of an employee who has been assigned lottery-related duties. In addition, many of the approximately six percent (6%) of sole proprietor licensed sales agents also have employees who are assigned to perform lottery-related duties without being licensed themselves. Indeed, the SLA provisions provided in Attachment A (attached hereto) show the Legislature expressly recognized that a sales agent's unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and the revenue generated from ticket sales. Tex. Gov't Code §§466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a). Thus, if the legal analysis defines any violation not to be within an employee's scope of employment, then only in an exceptional case could the Commission find a violation by a licensed sales agent. And that cannot be the result the Legislature intended.

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By impairing the Commission's ability to deter violations through the enforcement process, the approach in the PFD would set the stage for a devastating blow to integrity, security, honesty, and fairness in the operation and administration of the lottery. *See* SLA §466.014(a). Fortunately, Texas law does not lead to this result.

An employer is liable for acts of its employees committed in the course and scope of their employment, and an employee acts within the scope of their employment when they perform duties generally assigned to them.

An employer is liable, vicariously, for the acts of its servants committed in the course and scope of their employment. *GTE Southwest, Inc. v. Bruce*, 998 S.W.2d 605, 617-18 (Tex. 1999). This is true even when the act, although not specifically authorized by the employer, is closely connected with the servant's authorized duties. *Id.*

Here, the PFD contains the incorrect legal standard for determining violations of an employee of Respondent. Although the violations were committed while engaged in the act of validating lottery tickets and paying lottery prize claims (duties generally assigned to him), the PFD incorrectly concludes that the violations were not committed within the employee's scope of employment and thus cannot be attributed to Respondent. But the PFD's analysis (p. 7) does correctly acknowledge that, if the violations were committed while the employee was acting within the scope of his employment, the violations would be attributable to Respondent (consistent with the holding in the *GTE* case cited above). And, as detailed below, that was the case, the employee was acting within the scope of his employment and Respondent is liable for his violations.

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- **Texas law supports the Commission's position.**

The correct legal standard, as articulated by Texas case law, is that an employee's actions are within the scope of their employment if the employee is "performing duties generally assigned to them" when they commit a violation of law, regardless of whether the employee acted intentionally and unlawfully. *Fink v. Anderson*, 477 S.W.3d 460, 468 (Tex. App.— Houston [1st Dist.] 2015, no pet.), citing *Lopez v. Serna*, 414 S.W.3d 890, 894-95 (Tex. App.— San Antonio 2013, no pet.).

Further, conduct that serves any purpose of the employer is within the scope of employment, even if the conduct escalates beyond that assigned or permitted. *Fink* at 466, citing Restatement (Third) of Agency §7.07(2), cmt. B. In the *Lopez* case, the issue was whether prison employees were acting within the scope of their employment when they committed theft of an inmate's property. The court found they were. "Whether they intentionally and unlawfully appropriated the property did not change the conclusion that the general nature of their duties included confiscating inmate property." *Fink* at 468 (discussing the *Lopez* case).

The following further illustrate the correct legal standard:

The scope-of-employment analysis . . . remains fundamentally objective: Is there a connection between the employee's job duties and the alleged . . . conduct? The answer may be yes even if the employee performs negligently or is motivated by ulterior motives or personal animus so long as the conduct itself was pursuant to her job responsibilities.

Laverie v. Wetherbe, 517 S.W.3d 748, 753 (Tex. 2017).

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So long as it falls within the duties assigned, an employee's conduct is "within the scope of employment," even if done in part to serve the purposes of the employee or a third person. *Dictaphone Corp. v. Torrealba*, 520 S.W.2d 869, 872 (Tex. Civ. App.—Houston [14th Dist.] 1975, writ ref'd n.r.e.) (employee's performance of duties to serve himself or a third person did not take him outside the scope of employment); *Best Steel Bldgs., Inc. v. Hardin*, 553 S.W.2d 122, 128 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.) ("The fact that the preponderate motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment.")

Anderson v. Bessman, 365 S.W.3d 119, 125–26 (Tex. App.—Houston [1st Dist.] 2011, no pet.)

Texas appellate courts have consistently held that acts may still be within the scope of the employee's duties even if the specific conduct that forms the basis of the suit was wrongly or negligently performed or driven by personal animus. *See, e.g., Hopkins v. Strickland* . . . (allegedly slanderous statement made within general scope of mayor's duties because made while mayor was acting within scope of his authority and performing his general duties); *Anderson*, 365 S.W.3d at 126 (fact that conduct may be driven by personal motives does not prevent act from being within scope of employment). *The relevant inquiry is not into the reasons motivating the conduct complained of but whether that conduct fell within the general scope of that employee's employment.*

Melton v. Farrow, No. 03-13-00542-CV, 2015 WL 681491, at *3 (Tex. App.—Austin Feb. 10, 2015, pet. denied.) (emphasis added).

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- **Employer knowledge of, or participation in, the violations is not a factor in determining liability.**

Significantly, under the correct legal standard, the employer's knowledge of, or participation in, the violations is not a factor in determining whether the Respondent is responsible for the violations.

The employee was performing duties generally assigned to him, and thus was acting within the scope of his employment, when he committed the violations.

The record in this case establishes that the employee was performing duties generally assigned to him when he committed the violations. The facts are undisputed and succinctly summarized in the PFD (p. 6):

Mr. Babu is not a respondent in this case, but the evidence shows that he violated Texas Government Code § 466.308 and 16 Texas Administrative Code § 401.158(b)(7), (31), and (33). He claimed winning ticket prizes in an amount of \$600 or more for a store customer and then kept a portion for himself, and he paid lottery prizes in an amount of \$600 or more out the Store till, which by law may be paid only by the Commission's Lottery Director.

The statute and rules cited in the above paragraph correspond to the following violations:

- Claiming a lottery prize by means of fraud, deceit, or misrepresentation. SLA §466.308(a)(1).
- Aiding another person to claim a lottery prize by means of fraud, deceit, or misrepresentation. SLA §466.308(a)(2).
- Endangering the security and integrity of the Commission's lottery games. 16 Tex. Admin. Code §401.158(b)(7).
- Intentionally or knowingly claiming a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aiding or agreeing to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation. 16 Tex. Admin. Code §401.158(b)(31).

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- Inducing another person to assign or transfer a right to claim a prize, initiating or accepting an offer to sell the right to claim a prize, initiating or accepting an offer of compensation from another person to claim a lottery prize, and purchasing a lottery ticket from a person who is not a licensed lottery retailer. 16 Tex. Admin. Code §401.158(b)(33).

In addition, the employee also violated SLA §466.310(a) by (i) inducing a customer at the store to assign or transfer a right to claim a prize, and (ii) offering, for compensation, to claim the prize of another person. These statutory violations, although not discussed in detail in the PFD, correspond to the violation of 16 Tex. Admin. Code §401.158(b)(33) cited in the above PFD excerpt.

The Respondent's testimony establishes the employee's scope of employment included duties the employee was performing while committing the violations.

Respondent's President, Mr. Asad Ahmed, stated the following on the record:

- Validating lottery tickets and paying lottery prize claims was a duty generally assigned to the employee. Transcript (Tr.) at 69. This duty includes referring a claimant of a prize of \$600 or more to a Commission claim center. Tr. at 45–46, 68.
- Respondent trained their employees on lottery ticket transactions and paying lottery prizes. Tr. at 9.
- Selling lottery tickets was a duty generally assigned to the employee. Tr. at 69.

While the Commission alleged multiple violations, the employee's actions reflect a singular intent to violate the SLA and Commission rules, and thereby defraud the Commission. In other words, the employee would not have committed the violation of inducing a customer at the store to assign or transfer a right to claim a prize without also committing the violation of claiming a lottery prize by means of fraud, deceit, or misrepresentation. Because the violations are interrelated and spring from the general

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duties assigned to the employee (which presented the opportunity for him to commit them), it is most appropriate to view all the violations as one continuous violative act committed by the employee within the scope of his employment, and thereby all attributable to the Respondent.

But, even if a particular violation was determined not to be within the employee's scope of employment (for example, claiming a lottery prize by means of fraud), the remaining violations - in particular, inducing a customer at the store to assign or transfer a right to claim a prize, and aiding another person to claim a lottery prize by means of fraud, deceit, or misrepresentation - were clearly committed by the employee while he was working at the store and performing lottery-related duties generally assigned to him (*i.e.*, validating lottery tickets and paying lottery prize claims). Consequently, those remaining violations, committed by the employee performing his job duties at the Respondent's store, are attributable to the Respondent. *See Laverie*, 517 S.W.3d at 753.

The Commission's historic policy on holding licensees responsible for their employee's violations is consistent with Texas law.

The Commission's historic policy of holding a Texas Lottery licensee responsible for their employee's violations is consistent with Texas law. At least since 2011, the Commission has maintained that a corporate licensee may be held liable for acts of its employees committed within the scope of their employment that violate the terms of the license, even though the acts are against the instructions of the licensee. *See Texas Lottery Commission v. Sunco Marketplace No. 1, L.L.C.*, SOAH Docket No. 362-10-3281 (Order issued Jan. 20, 2011); *Cameron Mini Mart*, SOAH Docket No. 362-11-7487 (Agreed Order issued Oct. 19, 2011).

Date: DECEMBER 13, 2018

The Commission also has implied authority to hold licensees responsible for the violations of their employees committed within the scope of their employment.

An additional reason and legal basis supporting the Commission's changes to the PFD is that the Commission has implied authority under the SLA to hold licensees responsible for violations an employee commits within the course and scope of their employment. *See* Tr. at 33–36.

When the Texas Legislature expressly confers a power on an agency, it also impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express functions or duties; however, an agency has no authority to exercise what is effectively a new power, or a power contradictory to the statute, on the theory such a power is expedient for administrative purposes. *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 494 (Tex. 2013). Here, the Legislature has expressly mandated that the Commission “exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery.” Tex. Gov’t Code §466.014(a). Exercising strict control and close supervision requires that the Commission ensure that Texas Lottery licensees operate in a manner consistent with the SLA, Commission rules, and the terms and conditions of their license. *See* 16 Tex. Admin. Code §401.366.

The SLA provisions provided in Attachment A show that the Legislature also expressly recognized that a sales agent’s unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and the revenue generated from ticket sales. Tex. Gov’t Code §§466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a); Tr. at 35. Since the Legislature

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intended for employees to be able to sell tickets under the authority of a licensed Texas Lottery sales agent without being separately licensed, it would be absurd to think the Legislature did not also intend for the Commission to have authority to suspend or revoke a sales agent license based on an employee's violation of the SLA or Commission rules. Otherwise, the Commission would only have such authority if the licensed entity personally committed the violation, which, in the case of a corporation or partnership, is impossible. If the Commission did not have authority to hold a licensee responsible for its employee's violations, corporate or partnership licensees (*i.e.*, over 94% of all licensees) could avoid suspension or revocation of their license in almost every instance because a corporation or partnership cannot operate a lottery terminal or cash register, or redeem a ticket and pay a prize, except through an employee. And, any other retailer could simply avoid responsibility by never personally handling lottery tickets or paying prizes. Such an interpretation ignores the commercial reality of how Texas Lottery licensed locations operate.

The Legislature could not have intended such a dysfunctional result. Accordingly, the Commission's ability to attribute employee violations committed within the scope of their employment to their licensee employer is reasonably necessary to fulfill the Commission's express duty to exercise strict control and supervision over the lottery, and thus is within the Commission's implied authority. To hold otherwise would impair, if not destroy, the Commission's ability to deter violations through the enforcement process, with a resulting diminution of integrity, security, honesty, and fairness in the operation and administration of the Texas Lottery.

Date: DECEMBER 13, 2018

* * * * *

NOW, THEREFORE, IT IS ORDERED by the Commission that Texas Lottery ticket sales agent license no. 455301 issued to Anna Plaza Inc. d/b/a Coyote Den is hereby suspended for a period of thirty (30) consecutive days, beginning on a date determined by the Lottery Operations Director within seven (7) days after the date this Order is signed by the Commission.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 13TH day of DECEMBER 2018.

Entered this 13TH day of DECEMBER 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Date: DECEMBER 13, 2018

ATTACHMENT A

**STATE LOTTERY ACT PROVISIONS RECOGNIZING THAT
A LICENSED SALES AGENT'S EMPLOYEES MAY LAWFULLY
PERFORM LOTTERY-RELATED DUTIES OF THEIR EMPLOYER**

(Emphasis added)

Sec. 466.201. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION.

(a) The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of: . . .

(7) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license

Sec. 466.303. SALE OF TICKET BY UNAUTHORIZED PERSON. (a) Except as provided by Subsection (b), a person who is not a sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells a ticket

Sec. 466.305. SALE OF TICKET ON CREDIT. (a) A sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells a ticket to another person by extending credit or lending money to the person to enable the person to purchase the ticket.

Sec. 466.3051. SALE OF TICKET TO OR PURCHASE OF TICKET BY PERSON YOUNGER THAN 18 YEARS OF AGE. (a) A sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells or offers to sell a ticket to an individual that the person knows is younger than 18 years of age

Sec. 466.353. LIABILITY OF SALES AGENT. (a) A sales agent is liable to the division for all tickets accepted or generated by the sales agent or any employee or agent of the sales agent, and tickets shall be deemed to have been purchased by the sales agent unless returned to the division within the time and manner prescribed by the division.

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

July 23, 2018

Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th Street
Austin, Texas 78701

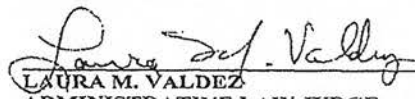
VIA INTERAGENCY

RE: Docket No. 362-18-3432; Texas Lottery Commission v. Anna Plaza, Inc., d/b/a Coyote Den

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <www.soah.state.tx.us>.



LAURA M. VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

LMV/lmc
Enclosures

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701
(with 1 hearing CD; Certified Evidentiary Record)- **VIA E-INTERAGENCY MAIL**
Anna Plaza, Inc. D/B/A Coyote Den, 601 S. Powell Pkwy, Anna, TX 75409 -**VIA REGULAR MAIL**

300 W. 15th Street, Suite 504, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)
www.soah.texas.gov

441659

SOAH DOCKET NO. 362-18-3432

TEXAS LOTTERY COMMISSION,
Petitioner

v.

ANNA PLAZA, INC., D/B/A
COYOTE DEN,
Respondent

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

I. INTRODUCTION

The staff (Staff) of the Texas Lottery Commission (Commission) alleges that Anna Plaza Inc., d/b/a Coyote Den (Respondent) violated Texas Government Code § 466.308 and 16 Texas Administrative Code § 401.158(b)(7), (31), and (33). Staff contends that on multiple occasions one of Respondent's employees paid out lottery prizes in an amount of \$600 or more, which by law may only be paid by the Commission; and for compensation, fraudulently claimed several winning ticket prizes in an amount of \$600 or more for a store customer. For these alleged violations, Staff suggests a suspension of Respondent's license for 30 days.

Respondent denies committing the violations and opposes suspension of its license. It agrees that one of its employees committed the violations. However, Respondent argues that there is no legal basis for attributing the misconduct of the employee to Respondent. Respondent had no knowledge of its employee's violations until after the employee had committed them, and it fired the employee after confirming his misconduct.

The Administrative Law Judge (ALJ) concludes that Respondent did not commit the alleged violations. She concludes that the Commission should dismiss the alleged violations with prejudice to refiling them.

II. JURISDICTION, NOTICE & PROCEDURAL HISTORY

There are no disputes concerning notice and jurisdiction. The findings of fact and conclusions of law address those matters.

On June 26, 2018, State Office of Administrative Hearings (SOAH) ALJ Laura M. Valdez convened the hearing on the merits at SOAH in Austin, Texas. Kristen Guthrie, attorney, appeared and represented Staff. Respondent's president, Ahmed Asad, appeared on behalf of Respondent. The hearing concluded and the record closed the same day.

III. APPLICABLE LAW

Texas Government Code § 466.155(a) states:

- (a) After a hearing, . . . the commission shall suspend or revoke a license if the . . . commission . . . finds that the . . . sales agent:

. . .

- (5) has violated this chapter or a rule adopted under this chapter.

. . .

- (c) At a hearing, [a] . . . sales agent must show by a preponderance of the evidence why the . . . the license [should not be] suspended or revoked.

Texas Government Code § 466.308(a) states:

- (a) A person commits an offense if the person intentionally or knowingly:
 - (1) claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or
 - (2) aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.

- (b) In this section, "claim" includes an attempt to claim, without regard to whether the attempt is successful.

In pertinent part, Texas Government Code § 466.310(a) states:

A person commits an offense if the person:

- (1) induces another person to assign or transfer a right to claim a prize;
- (2) offers for sale the right to claim a prize; or
- (3) offers, for compensation to claim the prize of another person.

And Texas Government Code §466.403(b) states:

The payment of a prize in an amount of \$600 or more may be made only by the director.

Additionally, 16 Texas Administrative Code § 401.158(b) provides:

[T]he commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

...

- (7) licensee endangers the security and integrity of the lottery games operated by the commission;

...

- (31) licensee intentionally or knowingly influences or attempts to influence the selection of the winner of a lottery game;

...

(33) licensee:

- (A) induces another person to assign or transfer a right to claim a prize;
- (B) initiates or accepts an offer to sell the right to claim a prize;
- (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or

- (D) purchases a lottery ticket from a person who is not a licensed lottery retailer.

Further, 16 Texas Administrative Code: § 401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, and applicable federal laws, Texas laws, local ordinances, with all terms and conditions related to the retailer's license, with all requirements set forth in the most recent Retailer Manual, the rules and regulation promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

The Commission imposes penalties, including suspensions, in accordance with 16 Texas Administrative Code § 401.160, which specifies factors to be considered and penalty ranges for various violations. At hearing an applicant or sales agent must show by a preponderance of the evidence why the application should not be denied or the license suspended or revoked.¹

IV. EVIDENCE

At the hearing Staff admitted four exhibits and presented the testimony of Mr. Carlos Salinas, an investigator with the Commission, and Ms. Nancy Guerra, a Commission Retailer Services Specialist. Mr. Asad testified on behalf of Respondent.

The facts of this case are undisputed. Respondent is licensed by the Commission as ticket sales agent number 453301 to sell Texas lottery tickets at its store (Store) located at 601 S. Powell Parkway, Anna, Texas.² It was originally licensed on February 19, 1999.³ Mr. Asad is president of Respondent.⁴ Mr. Asad testified that Respondent has never been previously cited by the Commission for any violation.

¹ Texas Gov't Code §466.155(c).

² Staff Ex. 4.

³ Staff Ex. 4.

⁴ Staff Ex. 4.

On December 18, 2017, the Commission initiated an investigation. A Commission investigator, Carlos Salinas (Investigator), conducted the investigation, after a security review uncovered an unusual frequency of a person claiming winning prize tickets. Specifically, the investigation found that over a 2-year period, 11 claims were paid to Hassan Babu.⁵ The Investigator testified that the Commission's database also indicated that the majority of the winning tickets redeemed by Mr. Babu were issued by Anna Express and Respondent.

On January 9, 2018, the Investigator conducted an undercover investigation at the Anna Express store and presented a \$1,000 winning lottery ticket to the store clerk. The Anna Express clerk did not pay the \$1,000 lottery ticket. When asked by the Investigator who might be able to pay the ticket, the clerk indicated that Respondent might cash out the ticket. Later that day, the Investigator contacted and met with Mr. Babu, an employee of the Respondent, who was working as the Store clerk that day. Mr. Babu admitted to the Investigator that on multiple occasions he paid lottery prizes in an amount of \$600 or more out of the Store till; and, for compensation, he claimed several winning ticket prizes in an amount of \$600 or more for a Store customer. Mr. Babu said when the customer presented a \$1,000 winning ticket, he paid the customer \$900 from the Store till if he had that amount available, and later claimed the ticket as his own at the Dallas Claim Center. Mr. Babu said he kept \$100 compensation for his "troubles" of going to the Claim Center, including reimbursement for gas. After Mr. Babu claimed the prize, he returned \$900 to the Store till. During instances when Mr. Babu did not have enough cash available in the till to pay the prize, he took the ticket to the Claim Center to claim the winnings as his own and, after he received the payout, paid \$900 to the customer and kept \$100 for himself.

On January 11, 2018, the Investigator spoke with Mr. Asad, who stated that he was unaware of Mr. Babu's misconduct.

Mr. Asad testified on behalf of Respondent and stated that the Store has been a licensed lottery ticket agent in good standing since 1999. Mr. Asad denied previously seeing or hearing

⁵ Staff Ex. 3.

anything to indicate Mr. Babu was paying out lottery tickets above \$600 value, or that he was charging a fee for redeeming winning lottery tickets for a store customer. He also stated that he had no knowledge of Mr. Babu's misconduct until the Investigator contacted them after Mr. Babu committed the violations. Mr. Asad testified that he has since fired Mr. Babu.

V. ANALYSIS

The ALJ finds that Respondent did not commit the alleged violations. She concludes that the Commission should dismiss the alleged violations with prejudice to Staff's refiling them.

Mr. Babu is not a respondent in this case, but the evidence shows that he violated Texas Government Code § 466.308 and 16 Texas Administrative Code § 401.158(b)(7), (31), and (33). He claimed winning ticket prizes in an amount of \$600 or more for a store customer and then kept a portion for himself, and he paid lottery prizes in an amount of \$600 or more out the Store till, which by law may be paid only by the Commission's Lottery Director.

There is no evidence, however, that Respondent committed any of the alleged violations of Texas Government Code § 466.308 and 16 Texas Administrative Code § 401.158(b)(33). Mr. Babu claimed the prizes, not Respondent. Nor is there any evidence that Respondent aided or agreed to aid Mr. Babu in claiming a prize by means of fraud, deceit, or misrepresentation in violation of Texas Government Code § 466.308 and 16 Texas Administrative Code § 401.158(b)(7), (31). Mr. Asad testified that he had no knowledge of Mr. Babu's misconduct until after he committed the violations and the Investigator contacted Mr. Asad. The ALJ found Mr. Asad credible when he testified. There is no evidence that he personally participated in the violations or had prior knowledge of Mr. Babu's intent to commit the violations. Nonetheless, Staff contends that Respondent committed the violations because Mr. Babu, one of Respondent's employees, committed them. The Respondent does not agree with Staff on that point. Neither does the ALJ.

While Mr. Babu committed his violations while working for Respondent in the *course* of his employment by Respondent, Mr. Babu did not commit the violations in the *scope* of his employment by Respondent. There is no evidence that Respondent hired Mr. Babu to fraudulently claim winning tickets or to pay lottery tickets in an amount of \$600 or more. That had nothing to do with his duties. Mr. Babu did that on his own and for his own profit. Accordingly, the ALJ does not find that Mr. Babu's misconduct, knowledge, and intent are attributable to the Respondent.

The ALJ finds Staff failed to demonstrate Respondent committed the alleged violations.

VI. FINDINGS OF FACT

1. Anna Plaza Inc., d/b/a Coyote Den (Respondent) is licensed by the Texas Lottery Commission (Commission) as ticket sales agent number 453301 to sell Texas lottery tickets at its store (Store) located at 601 S. Powell Parkway, Anna, Texas.
2. Respondent was originally licensed by the Commission on February 19, 1999.
3. Asad Ahmed is president of Respondent.
4. In late 2017, the Commission conducted a review of a Retailer Claimant report and determined that Hassan Babu presented 11 winning lottery claims for redemption in 2016 and 2017.
5. On December 18, 2017, a Commission investigator, Carlos Salinas (Investigator), conducted the investigation into the unusual number of winning claims filed by Mr. Babu.
6. The Investigator determined that five of Mr. Babu's most recent claims had been issued by Anna Express and Respondent.
7. On January 9, 2018, the Investigator conducted an undercover investigation at the Anna Express store and presented a \$1,000 winning lottery ticket to the store clerk.
8. The Anna Express clerk did not pay the \$1000 lottery ticket, but when asked the clerk indicated that he had heard that Respondent might cash out the ticket.

9. On January 9, 2018, the Investigator contacted and met with Mr. Babu, an employee of the Respondent, who was working as the Store clerk that day.
 10. Mr. Babu stated to the Investigator that on multiple occasions, he had paid lottery prizes in an amount of \$600 or more; and, for compensation, fraudulently claimed several scratch ticket prizes in an amount of \$600 or more for a store customer.
 11. On January 11, 2018, the Investigator spoke with Mr. Asad, who stated that he was unaware of Mr. Babu's misconduct.
 12. Until January 11, 2018, Mr. Asad had not seen or heard anything to indicate Mr. Babu had cashed out winning tickets of more than \$600 or had, for compensation, fraudulently claimed several scratch ticket prizes in an amount of \$600 or more for a store customer.
 13. There is no evidence that Mr. Asad participated in any of the alleged violations committed by Mr. Babu.
 14. Mr. Babu was fired by Respondent.
 15. Respondent's employees are instructed on compliance with the state's lottery requirements.
 16. On March 8, 2018, Staff mailed a letter to Respondent, by first class and certified mail to its address of record, informing Respondent that it had concluded that Respondent had violated Texas Government Code § 466.308 and provisions of 16 Texas Administrative Code § 401.158(b) and informing Respondent that it had a right to an informal conference with Staff to review the allegations.
 17. Respondent timely filed a letter with the Commission requesting an informal conference.
 18. This matter was not resolved at the informal conference.
 19. On May 8, 2018, Staff mailed a notice of hearing to Respondent, by first class and certified mail to its address of record.
 20. The notice of hearing stated the date, time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain, statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
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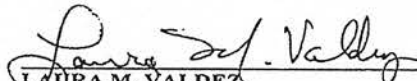
21. On June 26, 2018, State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) Laura M. Valdez convened the hearing on the merits at SOAH in Austin, Texas. Kristen Guthrie, attorney, appeared and represented Staff. Respondent's president, Ahmed Asad, appeared on behalf of Respondent. The hearing concluded and the record closed the same day.

VII. CONCLUSIONS OF LAW

1. The Commission is responsible for the Texas state lottery, including the licensing and regulation of ticket sales agents. Tex. Gov't Code ch. 466.
 2. After a hearing, the Commission shall suspend or revoke a license if the Commission finds that a sales agent has violated chapter 466 of the Texas Government Code or a rule adopted under the chapter. Tex. Gov't Code § 466.155(a)(5).
 3. SOAH has jurisdiction over all matters relating to the conduct of this proceeding, including the authority to issue a Proposal for Decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
 4. Respondent received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.
 5. Respondent had the burden of proof by a preponderance of the evidence. Tex. Gov't Code § 466.155(c).
 6. A person commits an offense if the person intentionally or knowingly influences or attempts to influence the selection of the winner of a lottery game. Tex. Gov't Code § 466.307(a).
 7. A person commits an offense if the person intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation. Tex. Gov't Code § 466.308(a).
 8. Pursuant to 16 Texas Administrative Code § 401.158(b)(7), (31), (33), the Commission may suspend or revoke a license if the licensee:
 - a. endangers the security and integrity of the lottery games operated by the commission;
 - b. intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or
-

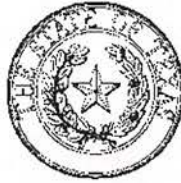
- c. initiates or accepts an offer of compensation from another person to claim a lottery prize.
9. The preponderant evidence shows that Respondent did not violate Texas Government Code § 466.308 or 16 Texas Administrative Code § 401.158(b)(7), (31), or (33), as alleged.
10. Staff's alleged violations should be dismissed with prejudice to refiling them.

SIGNED July 23, 2018



LAURA M. VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

September 10, 2018

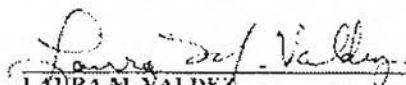
Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th Street
Austin, Texas 78701

VIA FACSIMILE NO. (512) 478-3682

RE: Docket No. 362-18-3432; Texas Lottery Commission v. Anna Plaza, Inc., d/b/a Coyote Den

Dear Mr. Grief:

I have reviewed the exceptions to the Proposal for Decision (PFD) filed by the Commission Staff. The evidence and the law presented in the case were considered and weighed carefully before the PFD was issued. The exceptions do not raise any evidence or legal analysis that I did not previously consider or that change my mind about the issues I have addressed in the PFD. Therefore, it is my recommendation that the PFD be adopted without change.


LAURA M. VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

LMV/lmc
Enclosures

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701
- VIA E-INTERAGENCY MAIL
Anna Plaza, Inc. D/B/A Coyote Den, 601 S. Powell Pkwy, Anna, TX 75409 -VIA REGULAR MAIL

The first part of the paper discusses the importance of understanding the cultural context of the research. It highlights the need for researchers to be sensitive to the values and beliefs of the communities they are studying. This is particularly important in the field of education, where cultural differences can significantly impact learning outcomes. The paper then moves on to discuss the challenges of conducting research in diverse cultural settings. It notes that researchers often face difficulties in establishing rapport with participants and in interpreting their responses. To address these challenges, the paper suggests several strategies, including the use of local researchers and the development of culturally appropriate research instruments. The final part of the paper discusses the importance of ethical considerations in cross-cultural research. It emphasizes the need for researchers to obtain informed consent from participants and to ensure that their research does not cause harm or exploitation. The paper concludes by noting that while cross-cultural research presents many challenges, it is also a valuable way to gain a deeper understanding of the world and to promote cultural understanding and respect.

SOAH DOCKET NO. 362-18-3432

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
ANNA PLAZA, INC. D/B/A COYOTE DEN Respondent		

**THE TEXAS LOTTERY COMMISSION'S EXCEPTIONS
TO THE PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE LAURA VALDEZ:

The Texas Lottery Commission, Lottery Operations Division (Commission), files these Exceptions to the Administrative Law Judge's (ALJ) Proposal for Decision (PFD), and in support thereof would show the ALJ as follows:

I. INTRODUCTION

This case involves a single Texas Lottery licensed sales agent, Anna Plaza Inc. d/b/a Coyote Den (Respondent), a corporation, and whether violations committed by its employee while performing lottery-related duties assigned to him (validating lottery tickets and paying lottery prize claims), are attributable to the Respondent. But in a broader context, this case is about the continued viability of the Commission's enforcement program as an effective tool to deter violations of the State Lottery Act (Tex. Gov't Code ch. 466) (SLA) and Commission rules, and thereby to ensure integrity, security, honesty, and fairness in the operation of the lottery. Tex. Gov't Code §466.014(a). This is a control function the Texas Legislature expressly intended

for the Commission, and the analysis in the PFD would substantially impair or possibly eliminate that function.

Without citing any legal authority, the PFD erroneously concludes the employee's violations in this case are not attributable to the corporate Respondent:

While Mr. Babu committed his violations while working for Respondent in the course of his employment by Respondent, Mr. Babu did not commit the violations in the scope of his employment by Respondent. There is no evidence that Respondent hired Mr. Babu to fraudulently claim winning tickets or to pay lottery tickets in an amount of \$600 or more. That had nothing to do with his duties. Mr. Babu did that on his own and for his own profit. Accordingly, the ALJ does not find that Mr. Babu's misconduct, knowledge, and intent are attributable to the Respondent.

The ALJ finds Staff failed to demonstrate Respondent committed the alleged violations.

PFD at 7. (Emphasis added.) The ALJ recommends that the Commission's allegations against Respondent should be dismissed with prejudice. Conclusion of Law No. 10.

As discussed in Sections IV. and V. below, the Commission submits the incorrect legal standard was applied, and therefore asks the ALJ to reconsider her determination. By applying the correct legal standard, the PFD should conclude that the employee committed the violations of the SLA and Commission rules within the scope of his employment while performing lottery-related duties generally assigned to him, and therefore violations committed by the employee are attributable to the Respondent.

Also, as discussed in Section VI., the ALJ also should apply the Commission's policy of holding licensees responsible for employee violations committed within the scope of their employment, because it is consistent with Texas law.

Additionally, as discussed in Section VII., the ALJ should also adopt the Commission's Exceptions and make the requested changes to the PFD because the Commission has implied

authority under the SLA to hold licensees responsible for violations an employee commits within the course and scope of their employment.

Furthermore, sound public policy requires that a licensed sales agent be held responsible for the SLA violations committed by its employees. Most sales agents, like Respondent, are legal entities. Sales agents that are legal entities can only act through their employees. Therefore, when a legal entity that is licensed as a sales agent employs a person that commits a violation of the SLA, it must be attributable to the sales agent. To find otherwise means that sales agents can only be held liable for their personal actions. And if that is the case, almost no sales agents can be held accountable for violations of the SLA because a legal entity only acts through its agents and employees. If sales agents cannot be held responsible for the actions of their employees, then the SLA would be powerless and ineffective. The Legislature that mandated "strict control and close supervision over all lottery games" could not have intended such a broken result. *See* Tex. Gov't Code § 466.014(a).

II. REQUESTED CHANGES TO THE PROPOSAL FOR DECISION.

The Commission requests the following specific changes to the PFD:

A. DELETE FINDINGS OF FACT NOS. 11, 12, AND 13.

Findings of Fact Nos. 11, 12, and 13 address the Respondent's lack of knowledge of, and participation in, its employee's violations:

11. On January 11, 2018, the Investigator spoke with Mr. Asad, who stated that he was unaware of Mr. Babu's misconduct.
12. Until January 11, 2018, Mr. Asad had not seen or heard anything to indicate Mr. Babu had cashed out winning tickets of more than \$600 or had, for compensation, fraudulently claimed several scratch ticket prizes in an amount of \$600 or more for a store customer.
13. There is no evidence that Mr. Asad participated in any of the alleged violations committed by Mr. Babu.

As discussed below (Section IV.B), in determining whether violations committed by an employee performing duties within the course and scope of their employment are attributable to the sales agent/employer, an employer's knowledge or participation are not factors in that determination. Therefore, these Findings of Fact should be deleted and the subsequent Findings renumbered accordingly.

B. ADD THREE CONCLUSIONS OF LAW ON THE COMMISSION'S AUTHORITY AND TEXAS LAW ON EMPLOYER LIABILITY.

The Commission also requests three new Conclusions of Law to support a determination that the violations of the employee are attributable to the Respondent, to be inserted after Conclusion of Law No. 1, and to read as follows:

2. The Texas Legislature has mandated that the Commission "exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery." Tex. Gov't Code §466.014(a).
3. Under Texas law, an employer is liable, vicariously, for the acts of its servants committed in the course and scope of their employment. *GTE Southwest, Inc. v. Bruce*, 998 S.W.2d 605, 617-18 (Tex. 1999). An employee is acting within the scope of their employment if they are performing duties generally assigned to them, regardless of whether the employee acted intentionally and unlawfully. *Fink v. Anderson*, 477 S.W.3d 460, 468 (Tex. App.—Houston [1st Dist.] 2015, no pet.).
4. The State Lottery Act recognizes that a sales agent's unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and the revenue generated from ticket sales. Tex. Gov't Code §§466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a). Thus, the Commission's ability to attribute employee violations committed within the course and scope of their employment to their licensee employer is reasonably necessary to fulfill the Commission's express duty to exercise strict control and supervision over the lottery, and is within the Commission's implied authority.

The subsequent Conclusions of Law should be renumbered accordingly.

C. REPLACE AND RENUMBER CONCLUSION OF LAW NO. 9 WITH TWO CONCLUSIONS OF LAW ON ATTRIBUTING THE EMPLOYEE'S VIOLATIONS TO THE RESPONDENT.

The ALJ's Conclusion of Law No. 9 reads as follows:

9. The preponderant evidence shows that Respondent did not violate Texas Government Code §466.308 or 16 Texas Administrative Code §401.158(b)(7), (31), or (33), as alleged.

The Commission asks the ALJ to substitute two new Conclusions of Law for Conclusion of Law No. 9, that are renumbered to reflect the three new Conclusions of Law requested above (Section II.B):

12. Based on Findings of Facts Nos. 4 through 10, Respondent's employee, Hassan Babu, while performing duties within the course and scope of his employment with Respondent, violated Texas Government Code §§466.308(a) and 466.310(a) and 16 Texas Administrative Code §401.158(b)(7), (31), and (33).
13. Under Texas law, the Commission may attribute violations of the State Lottery Act and Commission rules committed by Respondent's employee while performing duties within the course and scope of his employment to the Respondent, and hold Respondent liable for such violations.

D. AMEND AND RENUMBER CONCLUSION OF LAW NO. 10 TO FIND THAT A THIRTY-DAY SUSPENSION OF RESPONDENT'S SALES AGENT LICENSE IS REASONABLE.

Finally, the Commission requests the ALJ to amend and renumber Conclusion of Law No. 10 ("Staff's alleged violations should be dismissed with prejudice to refiling them") to conclude that a thirty-day suspension of Respondent's Texas Lottery sales agent license, as requested by the Commission, is reasonable:

14. The Commission's request for a thirty-day suspension of Respondent's Texas Lottery sales agent license is reasonable.

III. LOTTERY LICENSEES ACT THROUGH THEIR EMPLOYEES.

No employer ever hires an employee for the purpose of breaking the rules of their employment. Neither does a licensed Texas Lottery sales agent hire a sales clerk to violate the SLA or Commission rules when performing assigned lottery-related duties. Yet, the ALJ's determination that violations committed by Respondent's employee during the *course* of his employment were not within the *scope* of his employment (because Respondent did not hire the employee to commit violations) and, thus, are not attributable to Respondent, means the Commission could rarely, if ever, deter violations through the enforcement process. A corporate licensee would be shielded from most, if not all, responsibility for violations.

This would be the result because over ninety-four percent (94%) of the Commission's licensed sales agents (16,902 out of a total of 17,954 licensees as of August 2018) are legal entities; that is, they are not individual human beings. These legal entities, mostly corporations, can only take action through the acts of their employees (and agents), who are not required to be licensed by the Commission. A corporation cannot sell or redeem lottery tickets, or commit violations, except through the acts of an employee who has been assigned lottery-related duties. In addition, many of the approximately six percent (6%) of sole proprietor licensed sales agents also have employees who are assigned to perform lottery-related duties without being licensed themselves. Indeed, the SLA provisions provided in Attachment A (attached hereto) show the Legislature expressly recognized that a sales agent's unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and the revenue generated from ticket sales. Tex. Gov't Code §§466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a). Thus, if the legal analysis defines any violation not to be within an employee's scope of employment, then only in an exceptional case

could the Commission find a violation by a licensed sales agent. And that cannot be the result the Legislature intended.

By impairing the Commission's ability to deter violations through the enforcement process, the approach in the PFD would set the stage for a devastating blow to integrity, security, honesty, and fairness in the operation and administration of the lottery. *See* SLA §466.014(a). Fortunately, Texas law does not lead to this result and the analysis in the PFD is incorrect.

IV. AN EMPLOYER IS LIABLE FOR ACTS ITS EMPLOYEES COMMITTED IN THE COURSE AND SCOPE OF THEIR EMPLOYMENT, AND AN EMPLOYEE ACTS WITHIN THE SCOPE OF THEIR EMPLOYMENT WHEN THEY PERFORM DUTIES GENERALLY ASSIGNED TO THEM.

An employer is liable, vicariously, for the acts of its servants committed in the course and scope of their employment. *GTE Southwest, Inc. v. Bruce*, 998 S.W.2d 605, 617-18 (Tex. 1999). This is true even when the act, although not specifically authorized by the employer, is closely connected with the servant's authorized duties. *Id.*

Here, the PFD contains the incorrect legal standard for determining violations of an employee of Respondent. Although the violations were committed while engaged in the act of validating lottery tickets and paying lottery prize claims (duties generally assigned to him) the PFD incorrectly concludes that the violations were not committed within the employee's scope of employment and thus cannot be attributed to Respondent. But the PFD's analysis (p. 7) does correctly acknowledge that, if the violations were committed while the employee was acting within the scope of his employment, the violations would be attributable to Respondent (consistent with the holding in the *GTE* case cited above). And, as detailed below (Section V.), that was the case, the employee was acting within the scope of his employment and Respondent is liable for his violations.

A. TEXAS LAW SUPPORTS THE COMMISSION'S POSITION.

The correct legal standard, as articulated by Texas case law, is that an employee's actions are within the scope of their employment if the employee is "performing duties generally assigned to them" when they commit a violation of law, regardless of whether the employee acted intentionally and unlawfully. *Fink v. Anderson*, 477 S.W.3d 460, 468 (Tex. App.—Houston [1st Dist.] 2015, no pet.), citing *Lopez v. Serna*, 414 S.W.3d 890, 894-95 (Tex. App.—San Antonio 2013, no pet.).

Further, conduct that serves any purpose of the employer is within the scope of employment, even if the conduct escalates beyond that assigned or permitted. *Fink* at 466, citing Restatement (Third) of Agency §7.07(2), cmt. B. In the *Lopez* case, the issue was whether prison employees were acting within the scope of their employment when they committed theft of an inmate's property. The court found they were. "Whether they intentionally and unlawfully appropriated the property did not change the conclusion that the general nature of their duties included confiscating inmate property." *Fink* at 468 (discussing the *Lopez* case).

The following further illustrate the legal standard:

The scope-of-employment analysis . . . remains fundamentally objective: Is there a connection between the employee's job duties and the alleged . . . conduct? The answer may be yes even if the employee performs negligently or is motivated by ulterior motives or personal animus so long as the conduct itself was pursuant to her job responsibilities.

Laverie v. Wetherbe, 517 S.W.3d 748, 753 (Tex. 2017).

So long as it falls within the duties assigned, an employee's conduct is "within the scope of employment," even if done in part to serve the purposes of the employee or a third person. *Dictaphone Corp. v. Torrealba*, 520 S.W.2d 869, 872 (Tex. Civ. App.—Houston [14th Dist.] 1975, writ ref'd n.r.e.) (employee's performance of duties to serve himself or a third person did not take him outside the scope of employment); *Best Steel Bldgs., Inc. v. Hardin*, 553 S.W.2d 122,

128 (Tex. Civ. App.—Tyler 1977, writ ref'd n.r.e.) (“The fact that the preponderate motive of the servant is to benefit himself or a third person does not prevent the act from being within the scope of employment.”)

Anderson v. Bessman, 365 S.W.3d 119, 125–26 (Tex. App.—Houston [1st Dist.] 2011, no pet.)

Texas appellate courts have consistently held that acts may still be within the scope of the employee’s duties even if the specific conduct that forms the basis of the suit was wrongly or negligently performed or driven by personal animus. *See, e.g., Hopkins v. Strickland* . . . (allegedly slanderous statement made within general scope of mayor’s duties because made while mayor was acting within scope of his authority and performing his general duties); *Anderson*, 365 S.W.3d at 126 (fact that conduct may be driven by personal motives does not prevent act from being within scope of employment). *The relevant inquiry is not into the reasons motivating the conduct complained of but whether that conduct fell within the general scope of that employee’s employment.*

Melton v. Farrow, No. 03-13-00542-CV, 2015 WL 681491, at *3 (Tex. App.—Austin Feb. 10, 2015, pet. denied.) (emphasis added).

B. EMPLOYER KNOWLEDGE OF, OR PARTICIPATION IN, THE VIOLATIONS IS NOT A FACTOR IN DETERMINING LIABILITY.

Significantly, under the correct legal standard outlined above, the employer’s knowledge of, or participation in, the violations is not a factor in determining whether the Respondent is responsible for the violations. Therefore, the Commission is requesting the ALJ to delete Findings of Fact Nos. 11, 12, and 13.

V. THE EMPLOYEE WAS PERFORMING DUTIES GENERALLY ASSIGNED TO HIM, AND THUS WAS ACTING WITHIN THE SCOPE OF HIS EMPLOYMENT, WHEN HE COMMITTED THE VIOLATIONS.

The record in this case establishes that the employee was performing duties generally assigned to him when he committed the violations. The facts are undisputed and succinctly summarized in the PFD (p.6):

Mr. Babu is not a respondent in this case, but the evidence shows that he violated Texas Government Code § 466.308 and 16 Texas Administrative Code § 401.158(b)(7), (31), and (33). He claimed winning ticket prizes in an amount of \$600 or more for a store customer and then kept a portion for himself, and he paid lottery prizes in an amount of \$600 or more out the Store till, which by law may be paid only by the Commission's Lottery Director.

The statute and rules cited in the above paragraph correspond to the following violations:

- Claiming a lottery prize by means of fraud, deceit, or misrepresentation. SLA §466.308(a)(1).
- Aiding another person to claim a lottery prize by means of fraud, deceit, or misrepresentation. SLA §466.308(a)(2).
- Endangering the security and integrity of the Commission's lottery games. 16 Tex. Admin. Code §401.158(b)(7).
- Intentionally or knowingly claiming a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aiding or agreeing to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation. 16 Tex. Admin. Code §401.158(b)(31).
- Inducing another person to assign or transfer a right to claim a prize, initiating or accepting an offer to sell the right to claim a prize, initiating or accepting an offer of compensation from another person to claim a lottery prize, and purchasing a lottery ticket from a person who is not a licensed lottery retailer. 16 Tex. Admin. Code §401.158(b)(33).

In addition, as pled by the Commission and argued at the hearing, the employee also violated SLA §466.310(a) by (i) inducing a customer at the store to assign or transfer a right to claim a prize, and (ii) offering, for compensation, to claim the prize of another person. These statutory violations, although not discussed in detail in the PFD, correspond to the violation of 16 Tex. Admin. Code §401.158(b)(33) cited in the above PFD excerpt.

The Respondent's testimony establishes the employee's scope of employment included duties the employee was performing while committing the violations. Respondent's President, Mr. Asad Ahmed, stated the following on the record:

- Validating lottery tickets and paying lottery prize claims was a duty generally assigned to the employee. Transcript (Tr.) at 69. This duty includes referring a claimant of a prize of \$600 or more to a Commission claim center. Tr. at 45–46, 68.
- Respondent trained their employees on lottery ticket transactions and paying lottery prizes. Tr. at 9.
- Selling lottery tickets was a duty generally assigned to the employee. Tr. at 69.

While the Commission has alleged multiple violations, the employee's actions reflect a singular intent to violate the SLA and Commission rules, and thereby defraud the Commission. In other words, the employee would not have committed the violation of inducing a customer at the store to assign or transfer a right to claim a prize without also committing the violation of claiming a lottery prize by means of fraud, deceit, or misrepresentation. Because the violations are interrelated and spring from the general duties assigned to the employee (which presented the opportunity for the him to commit them), it is most appropriate to view all the violations as one continuous violative act committed by the employee within the scope of his employment, and thereby all attributable to the Respondent.

But, even if a particular violation was determined not to be within the employee's scope of employment (for example, claiming a lottery prize by means of fraud), the remaining violations - in particular inducing a customer at the store to assign or transfer a right to claim a prize, and aiding another person to claim a lottery prize by means of fraud, deceit, or misrepresentation - were clearly committed by the employee while he was working at the store and performing lottery-related duties generally assigned to him (*i.e.*, validating lottery tickets and paying lottery prize claims). Consequently, those remaining violations, committed by the employee performing his job duties at the Respondent's store, are attributable to the Respondent. *See Laverie*, 517 S.W.3d at 753.

VI. THE PFD SHOULD APPLY THE COMMISSION'S POLICY ON HOLDING LICENSEES RESPONSIBLE FOR THEIR EMPLOYEE'S VIOLATIONS IN THIS CASE BECAUSE IT IS CONSISTENT WITH TEXAS LAW.

The State Office of Administrative Hearings rules provide that, in resolving contested cases, the judge shall consider any applicable agency policy not in the agency's rules that is supported by the evidence. 1 Tex. Admin. Code §155.419(b).

The Commission's historic policy of holding a Texas Lottery licensee responsible for their employee's violations is consistent with Texas law. At least since 2011, the Commission has maintained that a corporate licensee may be held liable for acts of its employees committed within the scope of their employment that violate the terms of the license, even though the acts are against the instructions of the licensee. *See Texas Lottery Commission v. Sunco Marketplace No. 1, L.L.C.*, SOAH Docket No. 362-10-3281 (Order issued Jan. 20, 2011); *Cameron Mini Mart*, SOAH Docket No. 362-11-7487 (Agreed Order issued Oct. 19, 2011).

Accordingly, in addition to applying the correct legal standard because it is the law, the Commission also requests that the ALJ apply the Commission's historic policy to the instant case because it is consistent with that law, and find the Respondent is responsible for the violations committed by its employee.

VII. THE COMMISSION ALSO HAS IMPLIED AUTHORITY TO HOLD LICENSEES RESPONSIBLE FOR THE VIOLATIONS OF THEIR EMPLOYEES COMMITTED WITHIN THE SCOPE OF THEIR EMPLOYMENT.

As detailed above (Sections IV. and V.), Texas law regarding an employer's liability for its employee's violations supports the Commission's position and is sufficient to dispose of this case. However, an additional reason the ALJ should adopt the Commission's Exceptions and make the requested changes to the PFD is that the Commission has implied authority under the

SLA to hold licensees responsible for violations an employee commits within the course and scope of their employment. *See* Tr. at 33–36.

When the Texas Legislature expressly confers a power on an agency, it also impliedly intends that the agency have whatever powers are reasonably necessary to fulfill its express functions or duties; however, an agency has no authority to exercise what is effectively a new power, or a power contradictory to the statute, on the theory such a power is expedient for administrative purposes. *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 494 (Tex. 2013). Here, the Legislature has expressly mandated that the Commission “exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery.” Tex. Gov’t Code § 466.014(a). Exercising strict control and close supervision requires that the Commission ensure that Texas Lottery licensees operate in a manner consistent with the SLA, Commission rules, and the terms and conditions of their license. *See* 16 Tex. Admin. Code §401.366.

The SLA provisions provided in Attachment A (attached hereto) show that the Legislature also expressly recognized that a sales agent’s unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and the revenue generated from ticket sales. Tex. Gov’t Code §§466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a); Tr. at 35. Since the Legislature intended for employees to be able to sell tickets under the authority of a licensed Texas Lottery sales agent without being separately licensed, it would be absurd to think the Legislature did not also intend for the Commission to have authority to suspend or revoke a sales agent license based on an employee’s violation of the SLA or Commission rules. Otherwise, the Commission would only have such authority if the licensed entity personally committed the violation, which, in the case

of a corporation or partnership, is impossible. If the Commission did not have authority to hold a licensee responsible for its employee's violations, corporate or partnership licensees (*i.e.*, over 94% of all licensees) could avoid suspension or revocation of their license in almost every instance because a corporation or partnership cannot operate a lottery terminal or cash register, or redeem a ticket and pay a prize, except through an employee. And, any other retailer could simply avoid responsibility by never personally handling lottery tickets or paying prizes. Such an interpretation ignores the commercial reality of how Texas Lottery licensed locations operate.

The Legislature could not have intended such a dysfunctional result. Accordingly, the Commission's ability to attribute employee violations committed within the scope of their employment to their licensee employer is reasonably necessary to fulfill the Commission's express duty to exercise strict control and supervision over the lottery, and thus is within the Commission's implied authority. To hold otherwise would impair, if not destroy, the Commission's ability to deter violations through the enforcement process, with a resulting diminution of integrity, security, honesty, and fairness in the operation and administration of the Texas Lottery.

VIII. CONCLUSION

For the reasons stated herein, the Commission respectfully requests the ALJ to adopt the requested changes to the PFD set forth Above (Section II), including adding a conclusion that the Commission's request for a thirty-day suspension of Respondent's Texas Lottery sales agent license is reasonable.

Respectfully submitted,

for Bobbiard
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(with permission)

CERTIFICATE OF SERVICE

I certify that on the 14 day of August 2018, a true and correct copy of the *Texas Lottery Commission's Exceptions* has been served on the following individual at the location and manner indicated below pursuant to TEX. R. CIV. P. Rule 21a and 1 Tex. Admin. Code §155.105.

Via Email at asad690@gmail.com and Regular Mail

Anna Plaza Inc.
d/b/a Coyote Den
601 S. Powell Pkwy.
Anna, TX 75409

for Bobbiard
Kristen Guthrie, Assistant General Counsel

ATTACHMENT A

STATE LOTTERY ACT PROVISIONS RECOGNIZING THAT A LICENSED SALES AGENT'S EMPLOYEES MAY LAWFULLY PERFORM LOTTERY-RELATED DUTIES OF THEIR EMPLOYER

(Emphasis added)

Sec. 466.201. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION. (a) The commission is entitled to conduct an investigation of and is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or another law enforcement agency to assist in the investigation of: ...

(7) an employee or other person who works for or will work for a sales agent or an applicant for a sales agent license

Sec. 466.303. SALE OF TICKET BY UNAUTHORIZED PERSON. (a) Except as provided by Subsection (b), a person who is not a sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells a ticket....

Sec. 466.305. SALE OF TICKET ON CREDIT. (a) A sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells a ticket to another person by extending credit or lending money to the person to enable the person to purchase the ticket.

Sec. 466.3051. SALE OF TICKET TO OR PURCHASE OF TICKET BY PERSON YOUNGER THAN 18 YEARS OF AGE. (a) A sales agent or an employee of a sales agent commits an offense if the person intentionally or knowingly sells or offers to sell a ticket to an individual that the person knows is younger than 18 years of age....

Sec. 466.353. LIABILITY OF SALES AGENT. (a) A sales agent is liable to the division for all tickets accepted or generated by the sales agent or any employee or agent of the sales agent, and tickets shall be deemed to have been purchased by the sales agent unless returned to the division within the time and manner prescribed by the division.

