





# INTEROFFICE MEMO

*Gary Grief, Executive Director*

*Michael P. Farrell, Charitable Bingo Operations Director*

**To:** J. Winston Krause, Chairman  
Mark A. Franz, Commissioner  
Robert Rivera, Commissioner  
Erik C. Saenz, Commissioner

**From:** Bob Biard, General Counsel

A handwritten signature in black ink, appearing to be "RB", with a long horizontal line extending to the right.

**Date:** December 12, 2019

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

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



**Date: DECEMBER 12, 2019**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
	<b>§</b>	<b>OF</b>
<b>THE REVOCATION OF CERTAIN</b>	<b>§</b>	
<b>LOTTERY RETAILER LICENSES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**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 §§ 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 the Commission for informal disposition, in accordance with Tex. Gov't Code §2001.058(d-1) and 1 Tex. Admin. Code §155.501(d).



**Date: DECEMBER 12, 2019**

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 §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 §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 §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.

## **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

**Commission Order No. 20-0018**

**Date: DECEMBER 12, 2019**

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 12<sup>TH</sup> day of DECEMBER 2019.

Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

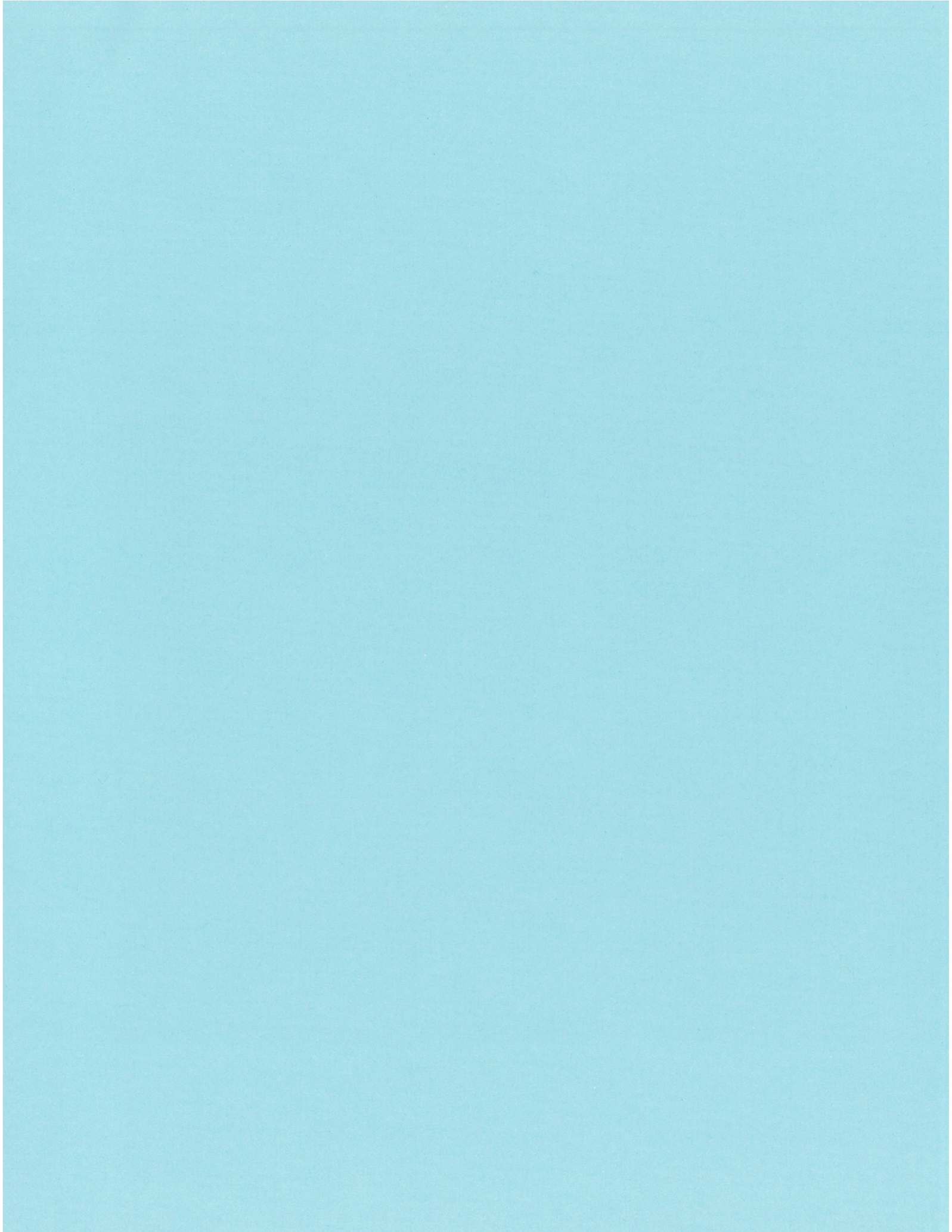
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ERIK C. SAENZ, COMMISSIONER

Date: DECEMBER 12, 2019

**ATTACHMENT A**

<b>TAB NO.</b>	<b>SOAH DOCKET NO.</b>	<b>TICKET SALES AGENT NAME</b>	<b>TICKET SALES AGENT ADDRESS</b>	<b>LOTTERY LICENSE NO.</b>
A.	362-19-6662	KMS Texas Discount Inc. d/b/a Clayton General Store	1623 W. Kirby Pl. Shreveport, LA 71103	175359
B.	362-19-6663	V and L Gas LLC d/b/a Valley Super	5520 N. 23 <sup>rd</sup> St. McAllen, TX 78504	178862
C.	362-19-6665	T D Convenience Inc. d/b/a Shady Oak Store	7352 FM 753 Athens, TX 75751	182065
D.	362-19-6666	Aashna Trading LLC d/b/a Raceway	3518 Lexington Common Missouri City, TX 77459	185620
E.	362-19-6877	Cimarron Produce Corporation d/b/a Chikita Express Store	100 N. Bicentennial Blvd. McAllen, TX 78501	177443
F.	362-19-6878	1475 Corner Store Inc. d/b/a Albert's Food Mart	1475 Martinez Losoya Rd. San Antonio, TX 78221	178801
G.	362-19-6879	Naveen Bains and Rozy Bains d/b/a Lucky Stop & Go	830 S. Crockett Ave. Denison, TX 75020	184539
H.	362-19-6991	BMD Capital Investmets LLC d/b/a Blanco Ice House	1429 Bradbury Ln. Austin, TX 78753	185654



**DOCKET NO.: SEE ATTACHMENT A**

<b>IN THE MATTER</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
<b>OF THE REVOCATION OF</b>	<b>§</b>	<b>OF</b>
<b>CERTAIN LOTTERY RETAILER</b>	<b>§</b>	
<b>LICENSES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

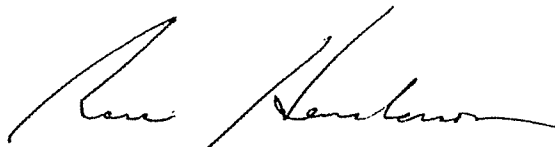
**CONDITIONAL ORDER DISMISSING CASE(S) FROM SOAH  
AND REMANDING CASE(S) TO COMMISSION**

On September 18, 2019, 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 September 19, 2019.**



**ROSS HENDERSON**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

TEXAS LOTTERY COMMISSION

REVOCATION HEARINGS

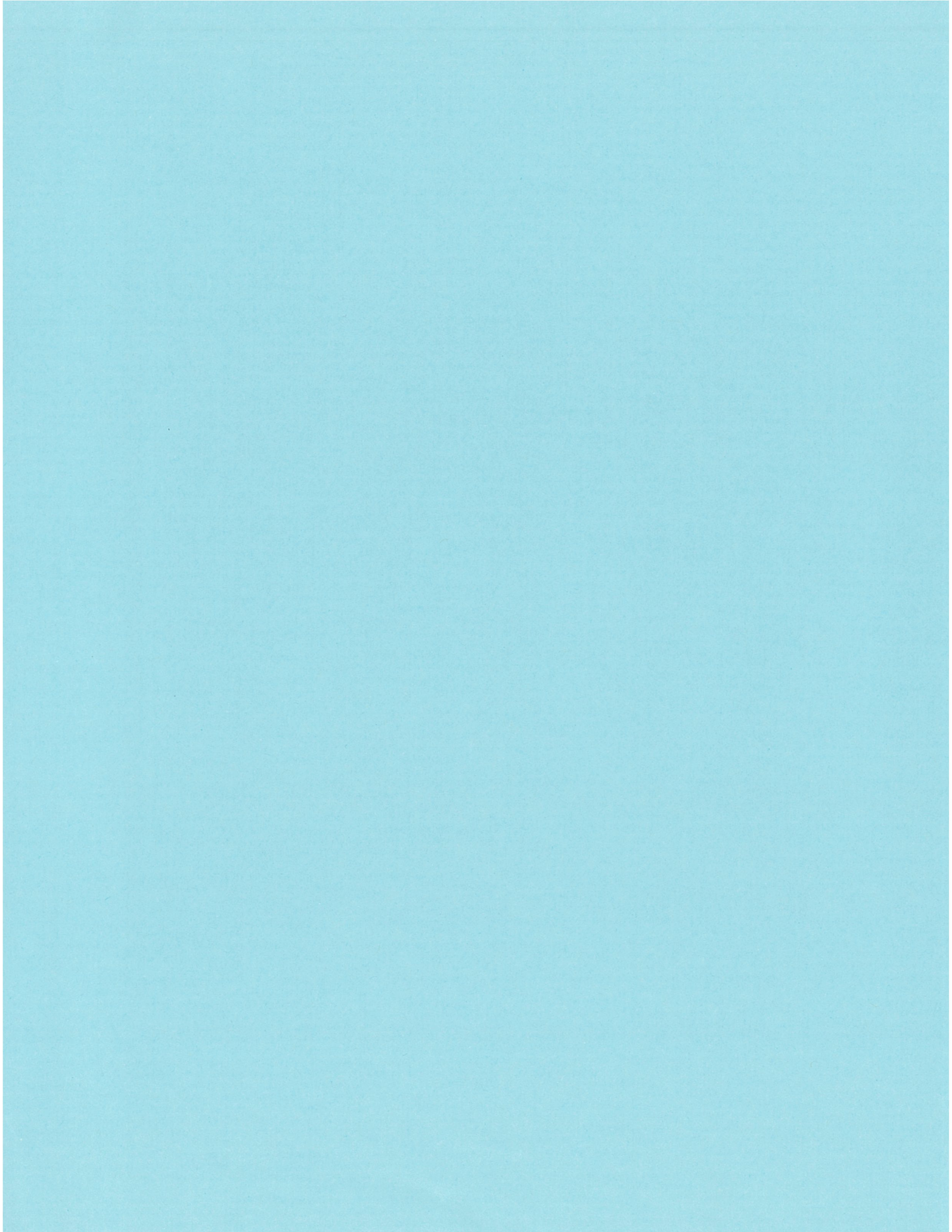
STATE OFFICE OF ADMINISTRATIVE HEARINGS

ATTACHMENT A

HEARING HELD: September 18, 2019

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-6662	KMS Texas Discount Inc. d/b/a Clayton General Store	1623 W. Kirby Pl Shreveport, LA 71103	175359
362-19-6663	V and L Gas LLC d/b/a Valley Super	5520 N. 23 <sup>rd</sup> Street McAllen, TX 78504	178862
362-19-6665	T D Convenience Inc. d/b/a Shady Oak Store	7352 FM 753 Athens, TX 75751	182065
362-19-6666	Aashna Trading LLC d/b/a Raceway	3518 Lexington Common Missouri City, TX 77459	185620





**DOCKET NO.: SEE ATTACHMENT A**

<b>IN THE MATTER</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
<b>OF THE REVOCATION OF</b>	<b>§</b>	<b>OF</b>
<b>CERTAIN LOTTERY RETAILER</b>	<b>§</b>	
<b>LICENSES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

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

On October 3, 2019, 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 October 7, 2019.**

  
HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



**TEXAS LOTTERY COMMISSION**

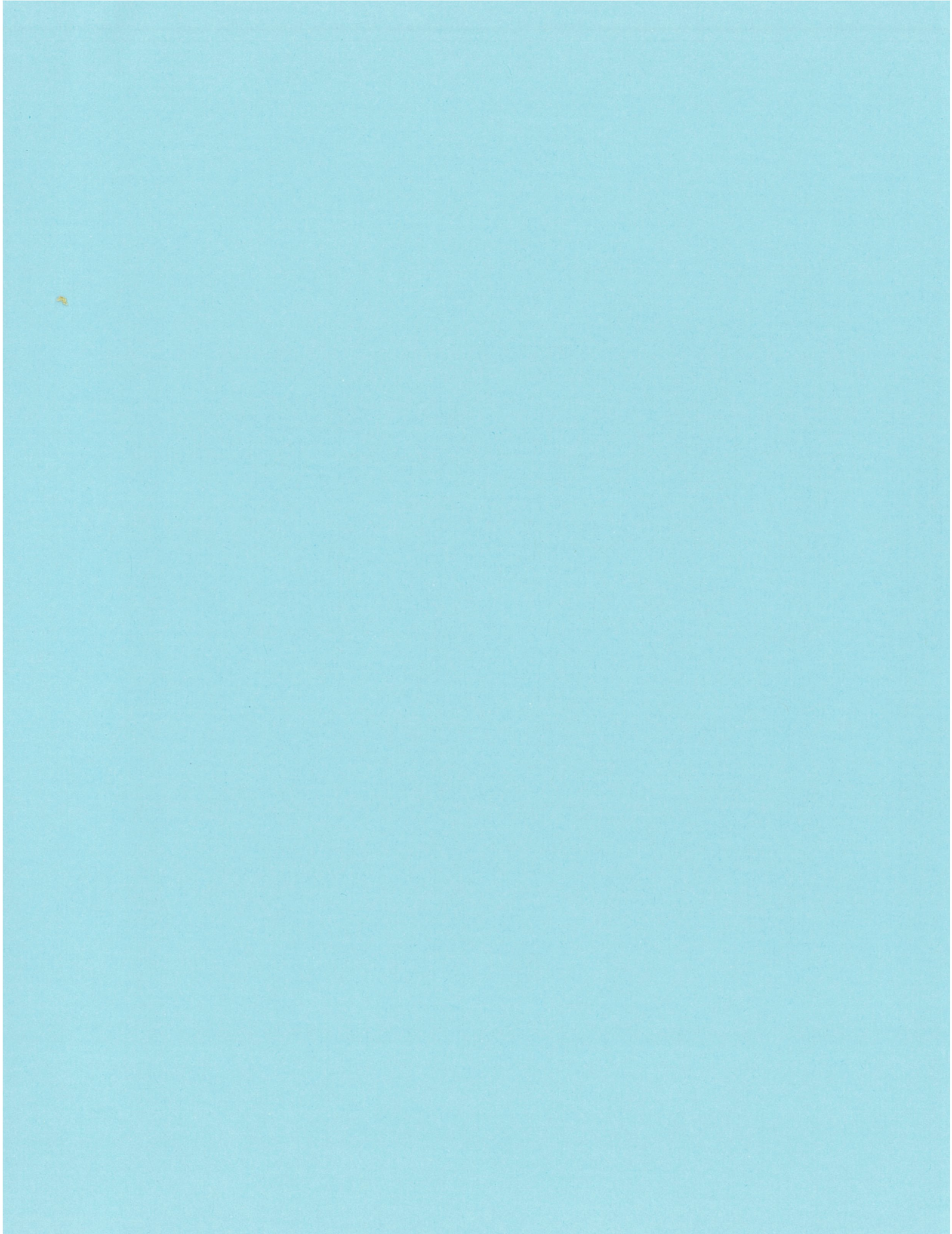
**REVOCATION HEARINGS**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**ATTACHMENT A**

**HEARING HELD: October 3, 2019**

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-6877	Cimarron Produce Corporation d/b/a Chikita Express Store	100 N. Bicentennial Blvd McAllen, TX 78501	177443
362-19-6878	1475 Corner Store Inc. d/b/a Albert's Food Mart	1475 Martinez Losoya Rd San Antonio, TX 78221	178801
362-19-6879	Naveen Bains and Rozy Bains d/b/a Lucky Stop & Go	830 Crockett Ave Denison, TX 75020	184539



**DOCKET NO.: SEE ATTACHMENT A**

<b>IN THE MATTER</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
<b>OF THE REVOCATION OF</b>	<b>§</b>	<b>OF</b>
<b>CERTAIN LOTTERY RETAILER</b>	<b>§</b>	
<b>LICENSES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

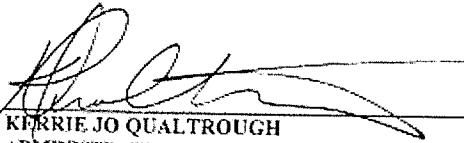
**ORDER REMANDING CASE(S) TO COMMISSION**

On October 10, 2019, 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 the 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 each case listed on Attachment A is granted, and the case(s) are dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056.

**Signed October 10, 2019.**

  
**KERRIE JO QUALTROUGH**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**TEXAS LOTTERY COMMISSION**  
**SUMMARY SUSPENSION HEARINGS**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**ATTACHMENT A**

**HEARING HELD: October 10, 2019**

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-6991	BMD CAPITAL INVESTMENTS, LLC d/b/aBLANCO ICE HOUSE	1429 BRADBURY LN AUSTIN, TX 78753	185654



**Commission Order No. 20-0019**

**Date: DECEMBER 12, 2019**

**Case No. 2019-910**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>NANAK GROCERIES INC.</b>	<b>§</b>	
<b>D/B/A KUNTRY KORNER</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 175485</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Texas Lottery Commission (Commission) and Nanak Groceries Inc. d/b/a Kuntry Korner (Kuntry Korner) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into this Consent Order.

**AGREED FINDINGS OF FACT**

1. Kuntry Korner holds Texas Lottery Ticket Sales Agent License No. 175485.
2. Hardip Singh is the president of Kuntry Korner, which is located at 2725 Commerce Street, Campbellton, TX 78008.
3. On May 3, 2019, the Commission received a complaint that Kuntry Korner sold Texas Lottery scratch tickets that had been partially scratched in the bonus play area and sold out of numerical sequence. Based on that complaint, a Commission investigator inspected tickets for sale at Kuntry Korner and found three (3) scratch tickets that had been partially scratched in the bonus play area. The Commission investigator discussed her findings with Mr. Singh. It was not determined which Kuntry Corner employee partially scratched the tickets.

**AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to the State Lottery Act (Tex. Gov't Code, Chapter 466) and the Commission rules (16 Tex. Admin. Code, Chapter 401).

2. Kuntry Korner is obligated to follow the provisions of the State Lottery Act and the Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Tex. Gov't Code §466.307(a) states:

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.

4. 16 Tex. Admin. Code §401.158(b) states, in pertinent part:

(b) Without limiting the commission's ability to consider factors listed in § 401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

...

(30) licensee intentionally or knowingly influences or attempts to influence the selection of the winner of a lottery game.

5. 16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, 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 regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

6. 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).

7. 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.).



8. 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 handling 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.

9. The Texas Lottery Ticket Sales Agent License of Kuntry Korner is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Kuntry Korner's violation of Tex. Gov't Code §466.307(a) and 16 Tex. Admin. Code §§ 401.158(b)(30) and 401.366.

### **MEMORANDUM OF AGREEMENT**

1. By signing this Memorandum of Agreement, Kuntry Korner agrees to these terms, acknowledges understanding them, and waives all rights to procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Kuntry Korner agrees that, as a result of its violation of Tex. Gov't Code §466.307(a) and 16 Tex. Admin. Code §§ 401.158(b)(30) and 401.366, its Ticket Sales Agent License will be suspended for a period of thirty (30) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of Agreement and Consent Order is



signed by the Commission. During the period of suspension, Kuntry Korner agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, Kuntry Korner is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Kuntry Korner's Ticket Sales Agent License is posted.

5. Kuntry Korner agrees this Memorandum of Agreement and Consent Order applies only to the facts and circumstances stated herein. The Commission reserves the right to take additional disciplinary action, up to and including suspension or revocation of Kuntry Korner's Ticket Sales Agent License, for any further violations of the State Lottery Act and/or Commission rules.

6. Kuntry Korner acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and the Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against it by the Commission.

7. Kuntry Korner agrees that if, after a formal hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Kuntry Korner has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Kuntry Korner, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

8. Kuntry Korner agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and Kuntry Korner will be charged for tickets sold on or before that date. Kuntry Korner will be credited for any tickets that have been

paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

AGREED AS TO FORM AND SUBSTANCE:

Nanak Groceries Inc.  
d/b/a Kuntry Korner

Texas Lottery Commission  
Lottery Operations Division

By:

Hardip Singh

Hardip Singh  
President

09/29/2019

DATE

By:

Ryan S. Mindell

Ryan S. Mindell  
Director

10-2-19

DATE

**Commission Order No. 20-0019**

**Date: DECEMBER 12, 2019**

**Case No. 2019-910**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>NANAK GROCERIES INC.</b>	<b>§</b>	
<b>D/B/A KUNTRY KORNER</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 175485</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Nanak Groceries Inc. d/b/a Kuntry Korner's (Kuntry Korner) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of thirty (30) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, Kuntry Korner shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, Kuntry Korner shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Kuntry Korner's Texas Lottery Ticket Sales Agent License is posted.

**Commission Order No. 20-0019**

**Date: DECEMBER 12, 2019**

(3) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that Kuntry Korner has failed to comply with the terms of this Order, disciplinary action shall be taken against Kuntry Korner, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(4) IT IS FURTHER ORDERED by the Commission that Kuntry Korner shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and Kuntry Korner will be charged for the tickets sold on or before that date. Kuntry Korner will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER, 2019.

Entered this 12<sup>TH</sup> day of DECEMBER, 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER



**Date: DECEMBER 12, 2019**

**Case No. 2019-920**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>KIM'S CONVENIENCE STORES INC.</b>	<b>§</b>	
<b>D/B/A KIM'S 6</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 432708</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Texas Lottery Commission (Commission) and Kim's Convenience Stores Inc. d/b/a Kim's 6 (Kim's 6) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into this Consent Order.

**AGREED FINDINGS OF FACT**

1. Kim's 6 holds Texas Lottery Ticket Sales Agent License No. 432708.
2. Kim Cole is the president of Kim's 6, which is located at 209 Hwy. 287, Elkhart, TX 75839.
3. On April 12, 2019, the Commission received a complaint that Kim's 6 allowed the purchase of Texas Lottery tickets by credit card. A Commission investigator traveled to Kim's 6 to investigate the complaint and purchased a lottery ticket with a credit card.
4. Kim's 6 later determined there was a problem with the store's point-of-sale system, which failed to automatically deny certain credit card transactions for lottery tickets.
5. Kim's 6 has fixed its point-of-sale system to prevent any credit card purchases of lottery tickets.

## **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to the State Lottery Act (Tex. Gov't Code, Chapter 466) and the Commission rules (16 Tex. Admin. Code, Chapter 401).

2. Kim's 6 is obligated to follow the provisions of the State Lottery Act and the Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Tex. Gov't Code §466.3052 states:

A person commits an offense if the person intentionally or knowingly sells a ticket and the person accepts anything other than the following as payment for the ticket:

- (1) United States currency;
- (2) a negotiable instrument in the form of a check that meets the requirements of Section 3.104, Business & Commerce Code;
- (3) a debit made through a financial institution debit card;
- (4) a coupon or voucher issued by the commission for purposes of purchasing a lottery ticket; or
- (5) a mail order subscription on a mail order subscription form authorized by the commission.

4. 16 Tex. Admin. Code §401.158(b) states, in pertinent part:

Without limiting the commission's ability to consider factors listed in § 401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

- ...  
(27) licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act;

5. 16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, 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 regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

6. The Texas Lottery Ticket Sales Agent License of Kim's 6 is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Kim's 6' violation of Tex. Gov't Code §466.3052 and 16 Tex. Admin. Code §§ 401.158(b)(27) and 401.366.

## **MEMORANDUM OF AGREEMENT**

1. By signing this Memorandum of Agreement, Kim's 6 agrees to these terms, acknowledges understanding them, and waives all rights to procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Kim's 6 agrees that, as a result of its violation of Tex. Gov't Code §466.3052 and 16 Tex. Admin. Code §§ 401.158(b)(27) and 401.366, its Ticket Sales Agent License will be suspended for a period of thirty (30) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of Agreement and Consent Order is signed by the Commission. During the period of suspension, Kim's 6 agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, Kim's 6 is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Kim's 6' Ticket Sales Agent License is posted.

5. Kim's 6 agrees this Memorandum of Agreement and Consent Order applies only to the facts and circumstances stated herein. The Commission reserves the right to take additional disciplinary action, up to and including suspension or revocation of Kim's 6' Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.



6. Kim's 6 acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and the Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against it by the Commission.

7. Kim's 6 agrees that if, after a formal hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Kim's 6 has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Kim's 6, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

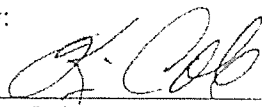
8. Kim's 6 agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and Kim's 6 will be charged for tickets sold on or before that date. Kim's 6 will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

AGREED AS TO FORM AND SUBSTANCE:

Kim's Convenience Stores Inc.  
d/b/a Kim's 6

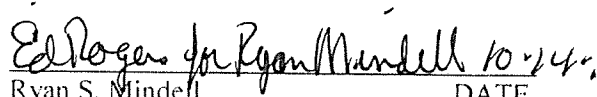
Texas Lottery Commission  
Lottery Operations Division

By:

  
\_\_\_\_\_  
Kim Cole  
President

10-9-19  
\_\_\_\_\_  
DATE

By:

  
\_\_\_\_\_  
Ryan S. Mindell  
Director

10-14-19  
\_\_\_\_\_  
DATE

**Commission Order No. 20-0020**

**Date: DECEMBER 12, 2019**

**Case No. 2019-920**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>KIM'S CONVENIENCE STORES INC.</b>	<b>§</b>	
<b>D/B/A KIM'S 6</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 432708</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Conclusions of Law and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Kim's Convenience Stores Inc. d/b/a Kim's 6' (Kim's 6) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of thirty (30) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, Kim's 6 shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, Kim's 6 shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Kim's 6' Texas Lottery Ticket Sales Agent License is posted.

**Commission Order No. 20-0020**

**Date: DECEMBER 12, 2019**

(3) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that Kim's 6 has failed to comply with the terms of this Order, disciplinary action shall be taken against Kim's 6, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(4) IT IS FURTHER ORDERED by the Commission that Kim's 6 shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and Kim's 6 will be charged for the tickets sold on or before that date. Kim's 6 will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER, 2019.

Entered this 12<sup>TH</sup> day of DECEMBER, 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

---

ERIK C. SAENZ, COMMISSIONER



**Date: DECEMBER 12, 2019**

**Case No. 2019-1013**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>SAMS STOP LLC</b>	<b>§</b>	
<b>D/B/A SAMS STOP</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 175317</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Texas Lottery Commission (Commission) and Sams Stop LLC d/b/a Sams Stop (Sams Stop) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into this Consent Order.

**AGREED FINDINGS OF FACT**

1. Sams Stop holds Texas Lottery Ticket Sales Agent License No. 175317.
2. Arif Jiwani is a managing member of Sams Stop, which is located at 2748 Main Street, Ingleside, TX 78362.
3. Based on an internal review, the Commission initiated an investigation of Sams Stop. On July 11, 2019, a Commission investigator traveled to Sams Stop and presented a Texas Lottery scratch ticket with a prize value of \$1,000 to Arif Jiwani for validation. Mr. Jiwani offered to purchase the ticket from the investigator for \$900.

**AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to the State Lottery Act, (Tex. Gov't Code, Chapter 466) and the Commission rules (16 Tex. Admin. Code, Chapter 401).
2. Sams Stop is obligated to follow the provisions of the State Lottery Act and the Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Tex. Gov't 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.

4. 16 Tex. Admin. Code §401.158(b) states, in pertinent part:

Without limiting the commission's ability to consider factors listed in § 401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

...

(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.

5. 16 Tex. Admin. Code §401.360 states:

Retailers may pay any lottery prize of less than \$600, after complying with established validation procedures. However, if a retailer validates a ticket of up to \$600, that retailer shall pay the prize amount on the ticket. Prizes of \$600 or more shall be paid by the Texas Lottery by mail or at a designated lottery claim center.

6. 16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, 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 regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

7. The Texas Lottery Ticket Sales Agent License of Sams Stop is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Sams Stop's violation of Tex. Gov't Code §466.310(a) and 16 Tex. Admin. Code §§ 401.158(b)((33) and 401.360 and 401.366.

## **MEMORANDUM OF AGREEMENT**

1. By signing this Memorandum of Agreement, Sams Stop agrees to these terms, acknowledges understanding them, and waives all rights to procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Sams Stop agrees that, as a result of its violation of Tex. Gov't Code §466.310(a) and 16 Tex. Admin. Code §§ 401.158(b)(33) and 401.360 and 401.366, its Ticket Sales Agent License will be suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of Agreement and Consent Order is signed by the Commission. During the period of suspension, Sams Stop agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, Sams Stop is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Sams Stop's Ticket Sales Agent License is posted.

5. Sams Stop agrees this Memorandum of Agreement and Consent Order applies only to the facts and circumstances stated herein. The Commission reserves the right to take additional disciplinary action, up to and including suspension or revocation of Sams Stop's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

6. Sams Stop acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and the Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against it by the Commission.

7. Sams Stop agrees that if, after a formal hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Sams Stop has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Sams Stop, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

8. Sams Stop agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and Sams Stop will be charged for tickets sold on or before that date. Sams Stop will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

AGREED AS TO FORM AND SUBSTANCE:

Sams Stop LLC  
d/b/a Sams Stop

By:

Arif Jiwani  
Arif Jiwani  
Managing Member

10/09/19  
DATE

Texas Lottery Commission  
Lottery Operations Division

By:

ElRogay for Ryan Mindell  
Ryan S. Mindell  
Director

10.14.19  
DATE



**Commission Order No. 20-0021**

**Date: DECEMBER 12, 2019**

**Case No. 2019-1013**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>SAMS STOP LLC</b>	<b>§</b>	
<b>D/B/A SAMS STOP</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 175317</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Sams Stop LLC d/b/a Sams Stop's (Sams Stop) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, Sams Stop shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, Sams Stop shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Sams Stop's Texas Lottery Ticket Sales Agent License is posted.

**Commission Order No. 20-0021**

**Date: DECEMBER 12, 2019**

(3) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that Sams Stop has failed to comply with the terms of this Order, disciplinary action shall be taken against Sams Stop, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(4) IT IS FURTHER ORDERED by the Commission that Sams Stop shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and Sams Stop will be charged for the tickets sold on or before that date. Sams Stop will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER, 2019.

Entered this 12<sup>TH</sup> day of DECEMBER, 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER



Date: DECEMBER 12, 2019

SOAH DOCKET NO. 362-19-4567

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
v.	§	
	§	
GUL ENTERPRISES LLC	§	
D/B/A TEXACO CORNER	§	
RETAILER NO. 179429	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Gul Enterprises LLC  
d/b/a Texaco Corner  
1411 Crockett Dr.  
Tyler, TX 75701  
*via email at aslam.tejani@yahoo.com*

During 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. The Commission Staff filed exceptions to the PFD. The Respondent did not file exceptions or replies to the Staff's exceptions.

The Commission, after review and due consideration of the PFD and exceptions filed, 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 Conclusion of Law No. 11. The Commission's reasons for not adopting proposed Conclusion of Law No. 11 are set forth below.

Proposed Conclusion of Law No. 11 states, "Based on the Findings of Fact and Conclusions of Law set out above, Respondent's Lottery Retail Sales Agent's license should be

**Commission Order No. 20-0022**

**Date: DECEMBER 12, 2019**

suspended for 30 days.” Pursuant to Tex. Gov’t Code §2001.058(e)(1), the Commission declines to adopt proposed Conclusion of Law No. 11 because it is a recommendation of a sanction, which is a matter within the Commission’s authority to determine, and because the Commission believes the recommended sanction is too lenient and will not effectively deter further violations of the type demonstrated in the record.

A recommended sanction is not a Conclusion of Law.<sup>1</sup> A state agency has broad discretion in determining which sanctions best serve statutory policies committed to the agency’s oversight.<sup>2</sup> Since the Commission has not adopted a rule authorizing the ALJ to render a final decision in a contested case,<sup>3</sup> the responsibility and authority to decide what sanctions are to be administered in a particular case lies with the Commission.

The State Lottery Act requires the Commission’s executive director to deduct delinquent tax amounts, monies owed to state agencies and delinquent child support from a prize winner’s lottery winnings.<sup>4</sup> Accordingly, sound fiscal policy as well as public welfare considerations support a 90-day suspension as the appropriate penalty to deter the unlawful behavior in this case; behavior that allows prize winners who are indebted to the state to go undetected.

In fiscal year 2019, over 800 million lottery scratch tickets were sold by over 18,000 licensed Texas Lottery sales agents. With this high volume of transactions, the Commission lacks the resources to monitor the specific facts of each individual prize claim at a retail location. Not only is this a resource issue, but the fact situation where a lone player approaches a store clerk, or

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<sup>1</sup> See F. Scott McCown & Monica Leo, *When Can an Agency Change the Findings or Conclusions of an ALJ?*; Part Two, 51 BAYLOR L. REV. 63 (1999). Neither the Administrative Procedure Act (Chapter 2001, Tex. Gov’t Code) nor Chapter 2003, Tex. Gov’t Code, expressly authorize an ALJ to include sanction recommendations in a PFD.

<sup>2</sup> *Allen-Burch, Inc. v. Tex. Alcoholic Beverage Com’n*, 104 S.W.3d 345, 352 (Tex.App.—Dallas 2003, no writ); *Fay-Ray Corp. v. Tex. Alcoholic Beverage Com’n*, 959 S.W.2d 362, 368 (Tex.App.—Austin, 1998, no writ).

<sup>3</sup> Such a rule is authorized by Tex. Gov’t Code §2001.058(f). See also Tex. Gov’t Code §2003.042(a)(7).

<sup>4</sup> Tex. Gov’t Code §466.407.

**Commission Order No. 20-0022**

**Date: DECEMBER 12, 2019**

as in this case, the licensed retailer owner, to claim a prize (a scenario repeated millions of times each year) is particularly susceptible to allowing the type of violations presented in this case to occur without detection. It is challenging for the Commission to discover such violations, and even when they are found it is often difficult for the Commission to prove whether the retailer profited from the purchase. Indeed, because the public interest goal is to deter retailer behavior that deprives the state of money owed, including delinquent child support payments, it is the Commission's position that it is irrelevant whether the retailer benefited from the unlawful transaction.<sup>5</sup> By unlawfully purchasing another person's ticket, Respondent also prevented the proper federal taxation of the prize. The Commission is required by the Internal Revenue Service (IRS) to file a W-2G form for lottery prizes of \$600 or more, and Respondent prevented the IRS reporting of the money he paid to the prizewinner.<sup>6</sup>

The Commission has the statutory duty to exercise strict control and close supervision over all lottery games to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery; and, accordingly, has determined the most effective and appropriate way to deter the retailer owner behavior in this case is to impose a 90-day license suspension as recommended by Commission staff. A 90-day suspension will send a message to the licensed retailer community that the Commission will not tolerate a retailer owner's unlawful purchase of a prize-winning ticket from a person who is not also a licensed retailer regardless of whether the retailer profits from the transaction.

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<sup>5</sup> Under the State Lottery Act and Commission rules, it does not matter if a sales agent profits from an unlawful purchase. *See* Tex. Gov't Code §§ 466.308, .310(a); 16 Tex. Admin. Code §401.158(b)(31), (33), (40). The lottery prize must be paid to the lawful owner. *See* Tex. Gov't Code §466.256.

<sup>6</sup> *See 2019 Instructions for Forms W-2G and 5754*, DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, <https://www.irs.gov/pub/irs-prior/iw2g--2019.pdf> (last visited Sept. 27, 2019).

**Commission Order No. 20-0022**

**Date: DECEMBER 12, 2019**

A 90-day suspension conforms to the State Lottery Act and the standard penalty chart set forth at 16 Tex. Admin. Code §401.160(g). And, in similar contested cases, where a retailer owner has purchased a prize-winning ticket of another person, the Commission has suspended the retailer's license for 90 days.

NOW, THEREFORE, IT IS ORDERED that the ALJ's recommendation to suspend the license for 30 days as set forth in proposed Conclusion of Law No. 11 is not adopted and instead the Texas Lottery Ticket Sales Agent License of Gul Enterprises LLC d/b/a Texaco Corner is hereby suspended for ninety (90) days.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

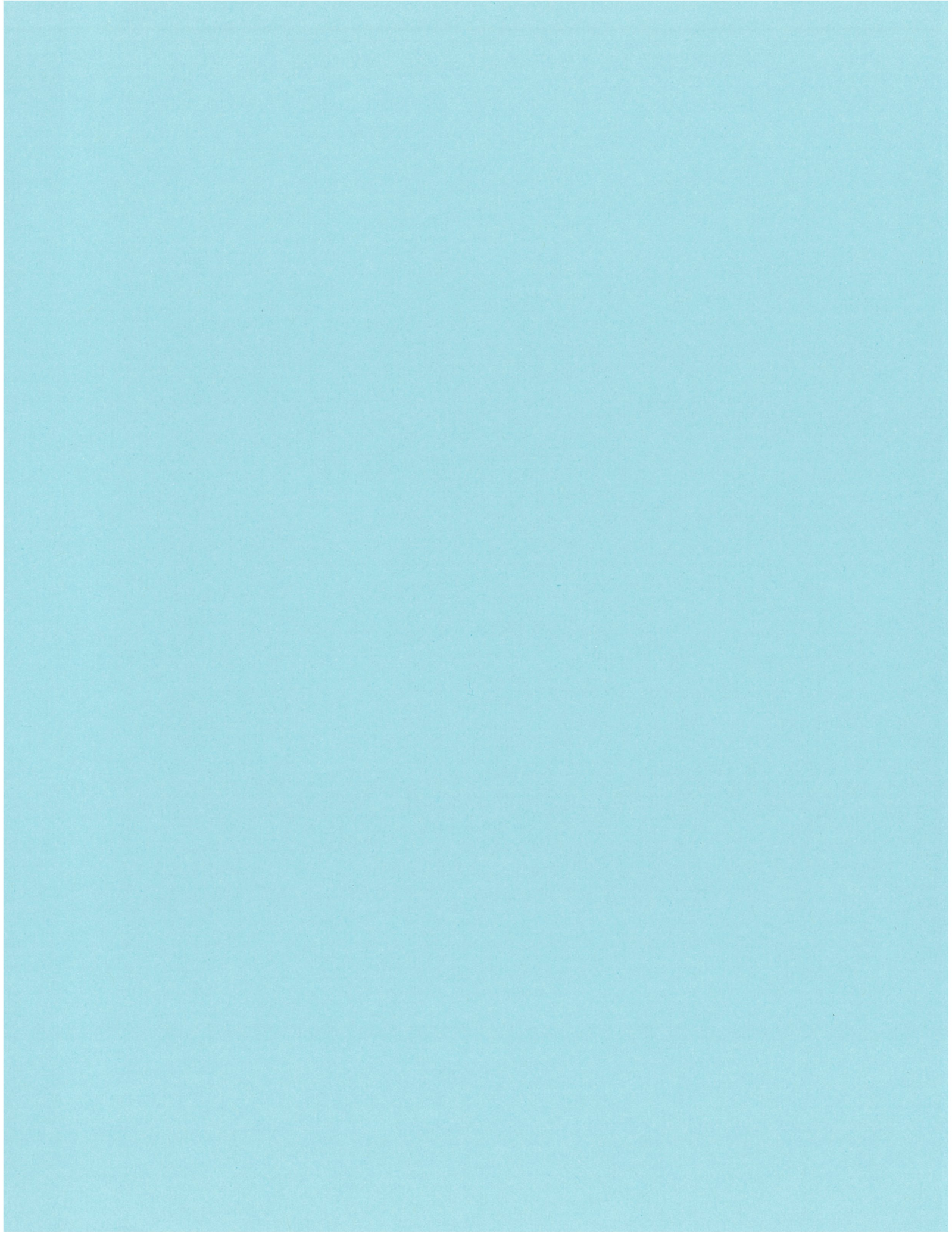
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ROBERT RIVERA, COMMISSIONER

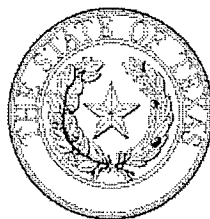
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ERIK C. SAENZ, COMMISSIONER









# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

October 23, 2019

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

VIA E-MAIL

**RE: Docket No. 362-19-4567; Texas Lottery Commission v. Gul Enterprises LLC, d/b/a Texaco Corner, License No. 179429**

Dear Mr. Grief:

On October 4, 2019, the Staff (Staff) of the Texas Lottery Commission (Commission) filed exceptions to the Administrative Law Judge's (ALJ's) Proposal for Decision (PFD). Gul Enterprises LLC d/b/a Texaco Corner (Respondent) did not reply to the exceptions. Staff continues to argue that a 90-day suspension is the appropriate sanction in this case. The ALJ recommends a 30-day suspension. In the PFD, the ALJ explained and distinguished the cases cited by Staff in which a 90-day suspension was imposed. In this case, the ALJ recognized that Respondent, through Mr. Tejani, purchased prize-winning tickets from unlicensed retailers, induced another to transfer a right to claim a prize, and claimed a lottery prize by means of misrepresentation. The ALJ distinguished this case from other cases because Staff failed to prove that Mr. Tejani received compensation for claiming the tickets. In the other cases cited by Staff, the retailer owners profited by claiming the tickets. Furthermore, a suspension for a first occurrence ranges from 10 to 90 days under 16 Texas Administrative Code § 401.160(g)(10). Because Mr. Tejani's actions suggest a lower level of culpability, the ALJ recommends a 30-day suspension.

Furthermore, although the ALJ's recommendation is stated in a conclusion of law and not in a recommendation section, the Commission still has the authority to change the recommendation, and the ALJ declines to move his recommendation to a separate section as Staff suggests.

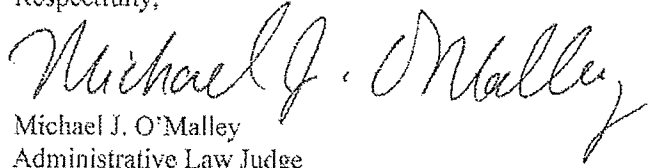
SOAH DOCKET NO. 362-19-4567

Exceptions letter

Page 2

Therefore, the ALJ does not recommend any changes to his PFD based on Staff's exceptions, and the PFD is now ready for consideration by the Commission.

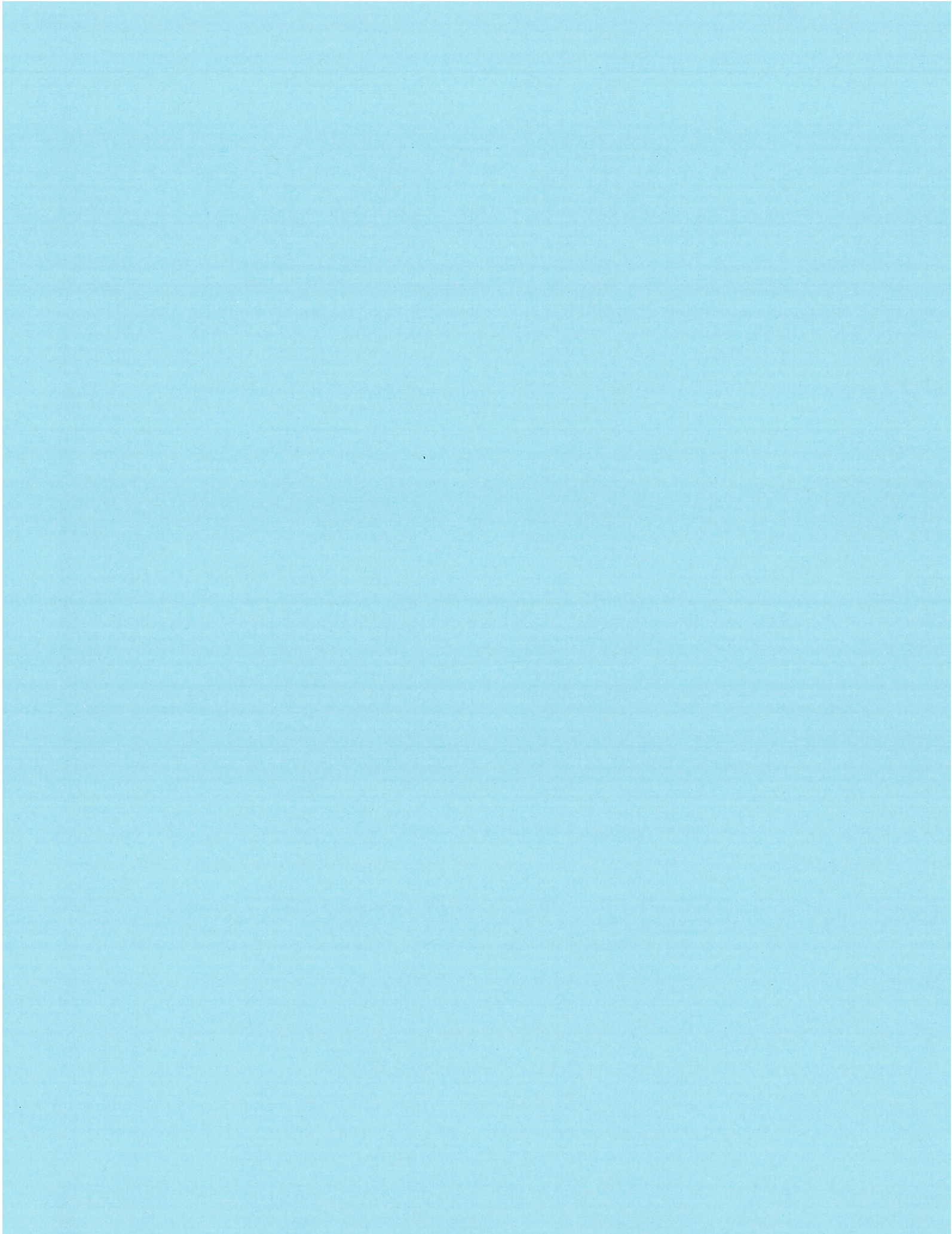
Respectfully,

A handwritten signature in black ink, reading "Michael J. O'Malley". The signature is written in a cursive, flowing style. The first name "Michael" is written with a large, prominent "M". The last name "O'Malley" is written with a large, prominent "O" and a long, sweeping tail on the "y".

Michael J. O'Malley  
Administrative Law Judge

MJO/rmc

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701-VIA E-MAIL  
Gul Enterprises LLC d/b/a Texaco Corner 1411 Crockett Dr., Tyler, Texas 75701-VIA REGULAR MAIL



**SOAH DOCKET NO. 362-19-4567**

<b>TEXAS LOTTERY COMMISSION</b> <b>Petitioner</b>	§ § § § § § § §	<b>BEFORE THE STATE OFFICE</b>   <b>OF</b>   <b>ADMINISTRATIVE HEARINGS</b>
<b>v.</b>		
<b>GUL ENTERPRISES LLC</b> <b>D/B/A TEXACO CORNER</b> <b>Respondent</b>		

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**TEXAS LOTTERY COMMISSION’S EXCEPTIONS TO THE ADMINISTRATIVE  
LAW JUDGE’S PROPOSAL FOR DECISION**

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COMES NOW the Texas Lottery Commission (Commission) and files these *Exceptions to the Administrative Law Judge’s Proposal for Decision*.

**I. Background.**

After a contested case hearing on July 30, 2019, the Administrative Law Judge (ALJ) issued his Proposal for Decision (PFD) in which he found Respondent violated Tex. Gov’t Code §§ 466.308(a)(1) and 466.310(a)(1), and 16 Tex. Admin. Code § 401.158(b)(31) and (33)(A) and (D), as follows:

- Respondent violated Tex. Gov’t Code §466.308(a)(1) and 16 Tex. Admin. Code §401.158(b)(31) through its owner, Aslam Tejani, by intentionally or knowingly claiming a lottery prize or a share of a lottery prize by means of fraud, deceit or misrepresentation.
- Respondent violated Tex. Gov’t Code §466.310(a)(1) and 16 Tex. Admin. Code §401.158(b)(33)(A) through its owner, Mr. Tejani, by inducing another person to assign or transfer a right to claim a prize.
- Respondent violated 16 Tex. Admin. Code §401.158(b)(33)(D) through its owner, Mr. Tejani, by purchasing a lottery ticket from a person who was not a licensed lottery retailer.

Applying the penalty guidelines of Tex. Gov’t Code ch. 466 and 16 Tex. Admin. Code §401.160(g), Commission staff asked the ALJ to recommend suspension of Respondent’s license

for 90 days. Instead of making a recommendation as to an appropriate sanction, the ALJ made the following conclusion of law:

11. Based on the Findings of Fact and Conclusions of Law set out above, Respondent's Lottery Retail Sales Agent's license should be suspended for 30 days.

Commission staff takes exception to Conclusion of Law No. 11. The Commission welcomes recommendations of administrative law judges as to appropriate sanctions, but a proposed sanction is not a legitimate conclusion of law. With due respect, the proposed sanction being styled as a conclusion of law purports to usurp the Commission's discretion to determine the appropriate sanction.

**II. Public Policy Favors a 90-day Suspension and It Is Irrelevant Whether the Retailer Profited from the Unlawful Transaction.**

The State Lottery Act (Act) requires the Commission's executive director to deduct delinquent tax amounts, monies owed to state agencies and delinquent child support from a prize winner's lottery winnings.<sup>1</sup> Accordingly, sound fiscal policy as well as public welfare considerations support a 90-day suspension as the appropriate penalty to deter the unlawful behavior in this case; behavior that allows prize winners who are indebted to the state to go undetected.

In fiscal year 2019, over 800 million lottery scratch tickets were sold by over 18,000 licensed Texas Lottery sales agents. With this high volume of transactions, the Commission obviously lacks the resources to monitor the specific facts of each individual prize claim at a retail location. Not only is this a resource issue, but the fact situation where a lone player approaches a store clerk, or as in this case, an owner, to claim a prize (a scenario repeated millions of times each year) is particularly susceptible to allowing the type of violations presented in this case to occur

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<sup>1</sup> Tex. Gov't Code §466.407.



without detection. It is challenging for the Commission to discover such violations, and even when they are found it is often difficult for the Commission to prove whether the retailer profited from the purchase. Indeed, because the public interest goal is to deter retailer behavior that deprives the state of money owed, including delinquent child support payments, it is the Commission's position that it is irrelevant whether the retailer benefited from the unlawful transaction.<sup>2</sup> By unlawfully purchasing another person's ticket, Respondent also prevented the proper federal taxation of the prize. The Commission is required by the Internal Revenue Service (IRS) to file a W-2G form for lottery prizes of \$600 or more, and Respondent prevented the IRS reporting of the money he paid to the prizewinner.<sup>3</sup>

Most of these types of violations go unnoticed. In most instances, there is nothing unusual about the claimant or the ticket when it is presented to a Commission Claim Center for payment. Thus, when the Commission does obtain evidence of a violation, such as here, it is with the knowledge that for every noticed violation, numerous other violations go undetected. Conclusion of Law No. 5 of the PFD notes that Respondent bore the burden of proof in this case. Yet, Respondent failed to provide evidence, other than his own self-serving testimony, that he paid the customers in full. The PFD points out that the Commission failed to identify the customers from whom Respondent purchased the lottery tickets,<sup>4</sup> and yet, does not point out that Respondent failed to identify the customers to establish his claim that he paid the customers in full. Unlike the Commission, Respondent knows the identity of the customers he paid; yet he failed to identify or present any of those customers. Accordingly, Respondent's testimony should be given little or no

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<sup>2</sup> Under the State Lottery Act and Commission rules, it does not matter if a sales agent profits from an unlawful purchase. *See* Tex. Gov't Code §§ 466.308, .310(a); 16 Tex. Admin. Code §401.158(b)(31), (33), (40). The lottery prize must be paid to the lawful owner. *See* Tex. Gov't Code §466.256.

<sup>3</sup> *See 2019 Instructions for Forms W-2G and 5754*, DEPARTMENT OF THE TREASURY INTERNAL REVENUE SERVICE, <https://www.irs.gov/pub/irs-prior/iw2g--2019.pdf> (last visited Sept. 27, 2019).

<sup>4</sup> PFD at 10.

weight.

The Act does not authorize the Commission to assess monetary penalties against licensed retailers, nor does it authorize the Commission to take enforcement action against lottery players or the general public. The only tools at the Commission's disposal to deter the unlawful behavior presented in this case are license suspension and license revocation.<sup>5</sup> Based on the Commission's extensive experience with retailers, in a case like this, where the owner himself committed the violation, a 30-day suspension is akin to a slap on the wrist. It is insufficient to deter this behavior because unscrupulous retailers are aware these types of violations can be difficult for the Commission to detect. If they know their license will be suspended for only 30 days instead of 90 days, they may actually be incentivized to take their chance on repeating the behavior. In other words, a short-term suspension against an owner-offender essentially sanctions an enforcement loophole that allows the fraudulent behavior to continue. The Commission, as the state agency mandated by the Legislature to exercise strict control and close supervision over all lottery games to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery,<sup>6</sup> believes the only effective way to fulfill its mandate to deter this owner behavior, and to spread the message to the retailer community that the Commission will not tolerate it, is to impose a longer 90-day suspension.

The Commission's recommendation conforms to the Act and the standard penalty chart in 16 Tex. Admin. Code §401.160(g). And, in similar contested cases, where a sales agent's owner has purchased the prize-winning ticket of another person, the Commission has consistently suspended the license for 90 days.<sup>7</sup>

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<sup>5</sup> Tex. Gov't Code §466.155(a)(5) and 16 Tex. Admin. Code §401.158(a).

<sup>6</sup> Tex. Gov't Code §466.014(a).

<sup>7</sup> Exhibits 7 and 8.

### III. Exception to Conclusion of Law No. 11

The Commission staff takes further exception to the ALJ's proposed Conclusion of Law No. 11, which states, "Based on the Findings of Fact and Conclusions of Law set out above, Respondent's Lottery Retail Sales Agent's license should be suspended for 30 days." Staff asserts Respondent should be suspended for 90 days. Proposed Conclusion of Law No. 11 is actually a recommendation as to what is an appropriate sanction, not a conclusion of law. Under Texas law, "A recommendation for sanctions is not a finding of fact or conclusion of law."<sup>8</sup> "The mere labeling of a recommended sanction as a finding" does not bind an agency.<sup>9</sup> An "ALJ's proposed conclusions of law were not conclusions but recommended sanctions and while the ALJ may recommend a sanction, it is up to the [agency] to determine appropriate sanctions."<sup>10</sup> "An Agency has broad discretion in determining which sanctions best serve statutory policies committed to agency's oversight."<sup>11</sup> "The choice of penalty is vested in the agency, not in the courts."<sup>12</sup> "The agency is charged by law with discretion to fix the penalty when it determines that the statute has been violated."<sup>13</sup>

"The mere labeling of a recommended sanction as a conclusion of law or as a finding of fact does not change the effect of the ALJ's recommendation."<sup>14</sup> Because Tex. Gov't Code §2001.058(e) restricts the Commission's ability to change a conclusion of law, the Proposal for Decision, by distinguishing the recommended sanction as a conclusion of law, calls into question the Commission's lawful discretion to deviate from the ALJ's recommended sanction and

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<sup>8</sup> See F. Scott McCown & Monica Leo, *When Can an Agency Change the Findings or Conclusions of an ALJ?; Part Two*, 51 BAYLOR L. REV. 63 (1999).

<sup>9</sup> *Grotti v. Texas State Bd. of Medical Examiners* No. 03-04-00612-CV, 2005 WL 2464417, at 9 (Tex. App.—Austin, October 6, 2005).

<sup>10</sup> *Texas State Bd. of Dental Examiners v. Brown*, 281 S.W.3d 692, 699 (Tex. App.—Corpus Christi, 2009).

<sup>11</sup> *Fay-Ray Corp. v. Texas Alcoholic Beverage Com'n*, 959 S.W.2d 362, 369 (Tex. App.—Austin, 1998).

<sup>12</sup> *Sears v. Tex. State Bd. of Dental Examiners*, 759 S.W.2d 748, 751 (Tex. App.—Austin 1988, no writ).

<sup>13</sup> *Id.*

<sup>14</sup> *Texas State Bd. of Dental Examiners v. Brown* 281 S.W.3d 692, 697 (Tex. App.—Corpus Christi, 2009).



determine a penalty. Based on previous Commission orders, the Commission may lawfully disagree with the ALJ that an owner needs to profit from an unlawful purchase of a lottery prize to justify a 90-day suspension.

#### **IV. Conclusion**

For the reasons stated above, the Commission respectfully requests that the ALJ either (1) issue an Amended Proposal for Decision deleting Conclusion of Law No. 11, or (2) restyle Conclusion of Law No. 11 as a recommended sanction.

Respectfully submitted,

/s/ Kristen Guthrie

Kristen Guthrie  
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Texas Lottery Commission  
P.O. Box 16630  
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Telephone: (512) 344-5475  
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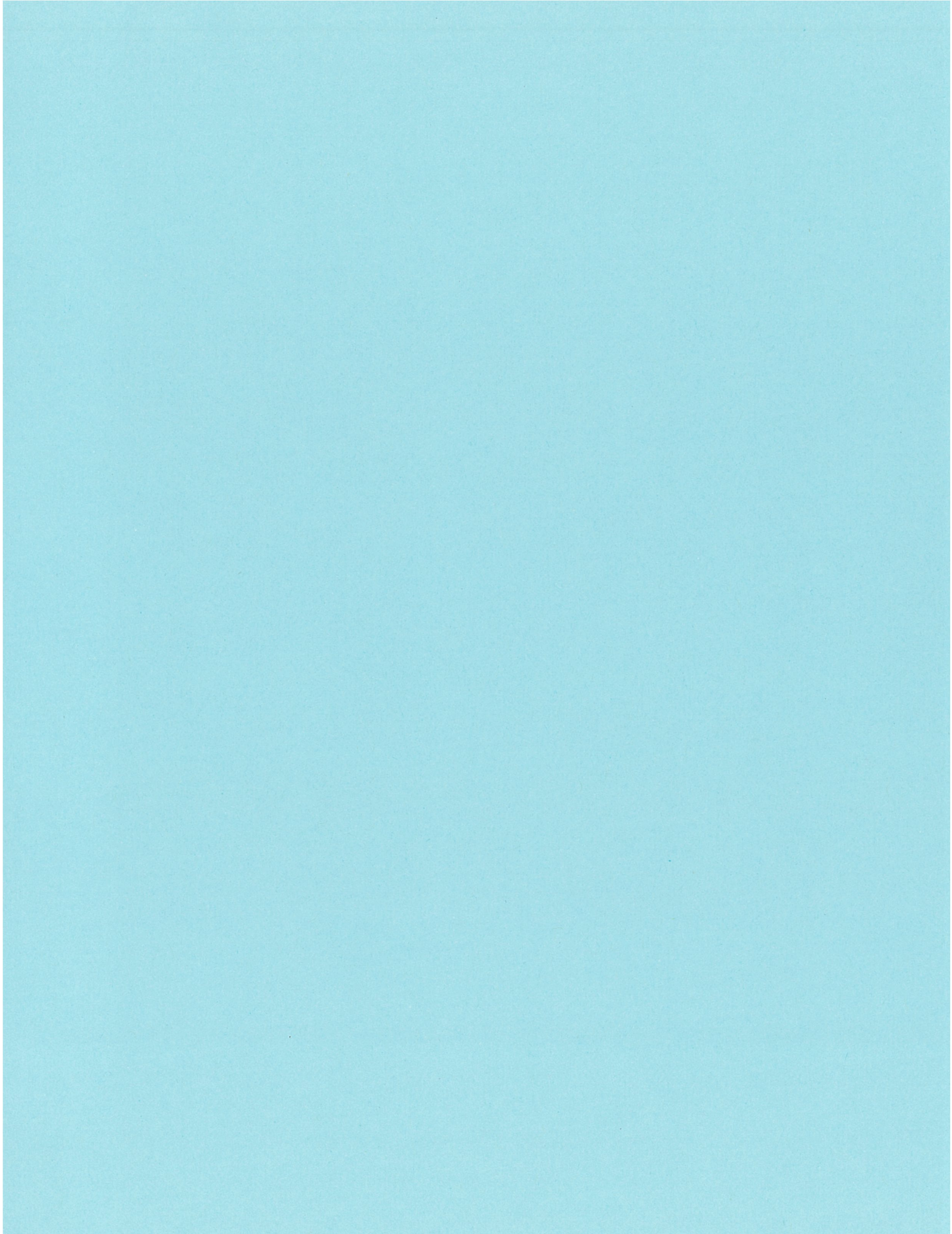
### CERTIFICATE OF SERVICE

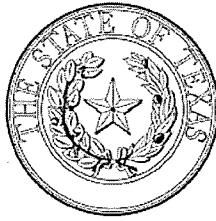
I certify that on October 4, 2019, a true and correct copy of the *Texas Lottery Commission's Exceptions to the Administrative Law Judge's Proposal for Decision* was served on the following individuals at the locations and in the manner indicated below.

Gul Enterprises LLC  
d/b/a Texaco Corner  
1411 Crockett Dr.  
Tyler, TX 75701

*via Cert. Mail No. 91 7199 9991 7031 0736 5682  
and First Class U.S. Mail  
via email at aslam.tejani@yahoo.com*

/s/ Kristen Guthrie  
Kristen Guthrie  
Assistant General Counsel





# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

September 20, 2019

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

**VIA E-MAIL**

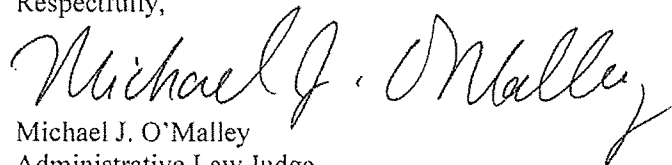
**RE: Docket No. 362-19-4567; Texas Lottery Commission v. Gul  
Enterprises LLC, d/b/a Texaco Corner, License No. 179429**

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, a SOAH rule found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Respectfully,

  
Michael J. O'Malley  
Administrative Law Judge

MJO/rmc

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701-**VIA E-MAIL**  
Gul Enterprises LLC d/b/a Texaco Corner 1411 Crockett Dr., Tyler, Texas 75701-**VIA REGULAR MAIL**

P.O. Box 13025 Austin, Texas 78711-3025 | 300 W. 15<sup>th</sup> Street Austin, Texas 78701  
Phone: 512-475-4993 | Fax: 512-475-4994  
[www.soah.texas.gov](http://www.soah.texas.gov)

**SOAH DOCKET NO. 362-19-4567**

<b>TEXAS LOTTERY COMMISSION,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
<b>v.</b>	§	
	§	<b>OF</b>
	§	
<b>GUL ENTERPRISES LLC d/b/a TEXAS</b>	§	
<b>CORNER,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The staff (Staff) of the Texas Lottery Commission (Commission) alleges that Gul Enterprises LLC d/b/a Texas Corner, Sales Agent License No. 179429 (Respondent), through its managing member and owner, Aslam Tejani, violated the State Lottery Act<sup>1</sup> and Commission Rules<sup>2</sup> by unlawfully purchasing customers' winning lottery tickets totaling \$2,400. Staff also alleges Respondent misrepresented to the Commission's Claim Center staff on an official Commission claim form that he was the lawful claimant of the prize-winning ticket and was the only person entitled to the prize. For these alleged violations, Staff seeks a 90-day suspension of Respondent's license.

The Administrative Law Judge (ALJ) finds that Respondent committed the alleged violations; however, the ALJ concludes that the Commission should impose a 30-day suspension of Respondent's license.

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<sup>1</sup> Tex. Gov't Code ch. 466.

<sup>2</sup> 16 Texas Admin. Code ch. 401.

## II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

On July 30, 2019, Administrative Law Judge Michael J. O'Malley convened the hearing on the merits at the State Office of Administrative Hearings facilities in Austin, Texas. Kristen Guthrie, attorney, appeared and represented Staff. Aslam Tejani and his brother-in-law and landlord, Ghulan Ali, appeared for Respondent. The hearing concluded that same day and the record closed on August 30, 2019, after the Commission filed the transcript.

## III. APPLICABLE LAW

Texas Government Code § 466.155(a) states:<sup>3</sup>

- (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

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<sup>3</sup> Texas Government Code § 466.155 was revised effective June 7, 2019. This Proposal for Decision cites the Code in effect during the time in which the alleged conduct occurred.

- (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.

Texas Government Code §466.402(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(a) provides:

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

...

(b)

- (31) licensee 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;
- (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 regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

The Commission imposes penalties, including suspensions and revocations, in accordance with 16 Texas Administrative Code § 401.160, which specifies factors to be considered and penalty ranges for various violations.

#### **IV. DISCUSSION AND EVIDENCE**

At the hearing, Staff submitted Exhibits 1 through 8 and the testimony of Mr. Carlos Salinas, an investigator with the Commission; and Ms. Nancy Guerra, a Commission Retailer Services Specialist. Respondent offered neither exhibits nor testimony of any witness.

Respondent is licensed by the Commission as a ticket sales agent to sell Texas lottery tickets at its store located at 2700 E. 5th Street (Texaco Corner), Tyler, Texas.<sup>4</sup> Texaco Corner was originally licensed in May 2015.<sup>5</sup>

Staff's investigations indicate that Mr. Tejani submitted four claims at the Tyler Claim Center (TCC):

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<sup>4</sup> Pet. Ex. 5.

<sup>5</sup> Pet. Ex. 5.



1. On June 12, 2017, Mr. Tejani presented a “Daily 4 draw game ticket” (Daily 4) (No. 0023-064679170-13..21) to the TCC for a 600 dollar prize.<sup>6</sup> Mr. Tejani was required to complete and sign a claim form detailing ticket and claimant information. He indicated on the claim form that he had been given the winning ticket. In response to the question on the claim form inquiring where the ticket was purchased, Mr. Tejani put a “?”.<sup>7</sup>
2. On July 31, 2017, Mr. Tejani submitted a second claim form at the TCC. Mr. Tejani presented with the claim form a Daily 4 ticket (No. 0072-059849216-13..21) for a 600 dollar prize.<sup>8</sup> On the claim form, Mr. Tejani represented that he was given the ticket and that he did not know where the ticket was purchased.<sup>9</sup>
3. On May 14, 2018, Mr. Tejani submitted a third claim form with a Daily 4 ticket (No. 0358-037919499-13..21) for a 600 dollar prize. In response to where the ticket had been purchased, Mr. Tejani put a “?”.<sup>10</sup>
4. Mr. Tejani presented his most recent claim to the TCC on August 27, 2018 with a Daily 4 ticket (No. 0464-037591297-13..21) for a 600 dollar prize. As he did for the previous three claims, Mr. Tejani represented that he was given the ticket and in response to the question asking where the ticket had been purchased, Mr. Tejani put a “?”.<sup>11</sup>

The claim forms also include the following language,

Under penalty of law, I declare that to the best of my knowledge and belief, the information entered above is correct and correctly identifies the person entitled to claim this prize; no other person is entitled to claim any part of this prize; and the recipient is not prohibited by law from purchasing a ticket or claiming, collecting or receiving a lottery prize or share of a prize. I understand it is a violation of law

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<sup>6</sup> Pet. Ex. 3.

<sup>7</sup> Pet. Ex. 4.

<sup>8</sup> Pet. Ex. 3.

<sup>9</sup> Pet. Ex. 4.

<sup>10</sup> Pet. Ex. 3.

<sup>11</sup> Pet. Ex. 4.

for any person to intentionally or knowingly, claim or aid another in claiming a lottery prize, or a share of a prize, by means of fraud, deceit, or misrepresentation, or to intentionally or knowingly alter or forge a ticket.<sup>12</sup>

Upon examining the claim forms submitted by Mr. Tejani, the Commission initiated an investigation because it found Mr. Tejani's answers suspicious.

**A. Carlos Salinas's Testimony**

Mr. Salinas conducted an investigation into Texaco Corner's lottery ticket operations on November 29, 2018.<sup>13</sup> To test whether Respondent was complying with proper claim procedures, Mr. Salinas requested and obtained a \$1,000 prize scratch-off ticket, otherwise known as a compliance ticket, to present at Texaco Corner. Mr. Salinas testified that he entered Texaco Corner, bought a drink, and then presented the ticket to Mr. Tejani to be scanned.<sup>14</sup> When the ticket was scanned, Mr. Salinas heard a winning musical tone for a higher-tiered prize.<sup>15</sup> Mr. Tejani informed Mr. Salinas that he would need to go to the claim center to cash the ticket.<sup>16</sup>

After revealing the true nature of his visit, Mr. Salinas questioned Mr. Tejani about the four claims submitted to the TCC. Mr. Tejani indicated that all of the claims he submitted at the TCC were for tickets from customers he knew well. Mr. Tejani stated that he paid his customers cash for the full prize amount in lieu of them claiming the prize at the TCC.<sup>17</sup> Mr. Salinas also testified that Mr. Tejani indicated he was unaware that this practice was unlawful and promised to discontinue the practice.

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<sup>12</sup> Pet. Ex. 3.

<sup>13</sup> Transcript (Tr.) at 12.

<sup>14</sup> Tr. at 12.

<sup>15</sup> Pet. Ex. 4.

<sup>16</sup> Tr. at 13.

<sup>17</sup> Tr. at 14.

**B. Nancy Guerra's Testimony**

Ms. Guerra testified that Mr. Tejani admitted that he had not purchased any of the four winning tickets himself during an informal conference he had with Staff.<sup>18</sup> Ms. Guerra also stated that when Mr. Tejani attempted to validate those winning tickets, he would have received a terminal message prompting him that the ticket was for a higher-tiered prize that needed to be claimed either in person at the TCC or via mail.<sup>19</sup>

Additionally, Ms. Guerra provided testimony that the Commission is required to deduct certain delinquencies (*i.e.*, delinquent tax amounts, delinquent child support, *etc.*) from a prize winner's lottery winnings.<sup>20</sup> Thus, if Mr. Tejani's customers had any outstanding obligations listed under Texas Government Code § 466.407, those debts would need to be satisfied before the prize winners could use the prize money for other spending. Staff asserts that Mr. Tejani's actions prevented the TCC from checking if those customers had any unpaid debts because he represented that he was the only person entitled to claim the prize.

Ms. Guerra stated that she believed Mr. Tejani's actions to be egregious and recommends a 90-day suspension based on suspensions in other cases with similar circumstances.<sup>21</sup>

**V. ANALYSIS**

The ALJ finds that Mr. Tejani did commit the alleged violations, and for reasons discussed below, concludes that the Commission should suspend Respondent's license for 30 days.

The facts in this case are undisputed. Mr. Tejani acquired four winning Daily 4 tickets from customers of Texaco Corner, and then went to the TCC to claim the prizes. Mr. Tejani admitted he had purchased the tickets from customers on at least two separate occasions. The first

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<sup>18</sup> Tr. at 39.

<sup>19</sup> Tr. at 27.

<sup>20</sup> Tr. at 33; Tex. Gov't Code § 466.407.

<sup>21</sup> Tr. at 34; Pet. Ex. 7; Pet. Ex. 8.

was during Mr. Salinas's investigation on November 29, 2018.<sup>22</sup> The second admission by Mr. Tejani occurred during an informal conference between Staff and Respondent.<sup>23</sup>

In this case, each of the four winning tickets was generated by a licensed retailer and was purchased by a customer before it was taken to Mr. Tejani.<sup>24</sup> None of the customers was a licensed lottery retailer. Mr. Tejani exchanged \$600 for each winning ticket and thus completed a transaction with each customer. Therefore, Mr. Tejani violated 16 Texas Administrative Code § 401.158(b)(33)(D) by purchasing the prize-winning tickets from unlicensed lottery retailers.

Additionally, Mr. Tejani induced another person to assign or transfer a right to claim a prize, in violation of Texas Government Code § 466.310(a) and 16 Texas Administrative Code § 401.158(b)(33)(A). Mr. Tejani indicated to Mr. Salinas that he paid well-known customers the entire prize amount and then went to claim the ticket at the claim center. By his own admission, Mr. Tejani induced those customers to transfer the right to claim a prize by offering them a cash payout. Those customers specifically mentioned that they were presenting the ticket to Mr. Tejani in lieu of going to the claims center. Regardless of whether he was doing a "favor" for his customers for which he received no cash compensation, Mr. Tejani induced those customers to transfer their right to the prize by providing cash in lieu of having to follow proper procedure at the TCC. Accordingly, Respondent violated Texas Government Code § 466.310(a) and 16 Texas Administrative Code § 401.158(b)(33)(A).

The evidence suggests that Mr. Tejani was alerted to the impermissibility of cashing those \$600 tickets for customers. Staff's Investigative Report showed that Respondent scanned all four winning tickets prior to claiming the prizes. Meanwhile, Mr. Salinas heard a pitched tone when the compliance ticket was scanned, and Ms. Guerra testified that a warning should have appeared on Mr. Tejani's terminal when the ticket was scanned.<sup>25</sup> So, when Mr. Tejani scanned each winning ticket, he would have heard a pitched tone indicating a higher-tiered prize and received a

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<sup>22</sup> Tr. at 12-14.

<sup>23</sup> Tr. at 39.

<sup>24</sup> Pet. Ex. 3.

<sup>25</sup> Pet Ex. 4; Tr. at 27.

warning prompt on his terminal. These notices undercut Mr. Tejani's argument that he did not realize the practice of cashing tickets greater than \$599 was not allowed. In fact, it seems more likely that he did know because he did not grant Mr. Salinas the same "favor" he granted to his customers.

Furthermore, Mr. Tejani violated Texas Government Code § 466.308(a)(1) and 16 Texas Administrative Code § 401.158(b)(31) by misrepresenting on an official claim form that he was the lawful claimant to the prize. Misrepresenting that he was the only person entitled to the prize is also a violation of 16 Texas Administrative Code § 401.158(b)(31), because Mr. Tejani intentionally or knowingly claimed a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.

On the claim forms he submitted to the TCC, Mr. Tejani recorded himself as the claimant and made no indication that the funds were actually owed to his customers. Mr. Tejani also put a "?" in response to the question of where he purchased the tickets. In doing so, Mr. Tejani misrepresented to the claims center that he and no one else was the lawful recipient of the prizes. When he completed the claim form, Mr. Tejani executed a declaration that the information on the form identified the "person entitled to claim this prize; no other person is entitled to claim any part of this prize."<sup>26</sup> While Mr. Tejani may not have known where the ticket was purchased, it is undeniable that he knew his customers were the lawful claimant of those winning tickets. By misrepresenting the identity of the lawful claimant, Mr. Tejani also circumvented the claims process potentially enabling his customers from having to pay any outstanding obligations due. Therefore, Mr. Tejani violated Texas Government Code § 466.308(a)(1) and 16 Texas Administrative Code § 401.158(b)(31).

Finally, Staff is seeking to suspend Respondent's license for 90 days and argues that Mr. Tejani damaged the integrity and transparency of the lottery system. Staff presented similar

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<sup>26</sup> Pet. Ex. 3.

cases where an administrative law judge awarded a 90-day suspension for licensees who had claimed prizes for others. The punishment range for licensees is:<sup>27</sup>

First Occurrence: 10 – 90-day Suspension to Revocation

Second Occurrence: 30 – 90-day Suspension to Revocation

Third Occurrence: Revocation

However, Staff and the Commission have not shown that a 90-day suspension is justified in this case. Staff never identified the customers from whom Mr. Tejani purchased the winning tickets. Consequently, Staff did not produce any evidence that Mr. Tejani received compensation for claiming the tickets.

The cases cited by Staff in favor of a 90-day suspension can be distinguished from this case. For example, in *Texas Lottery Commission v. Everest Associates LLC d/b/a Quick Stop* (Quick Stop), Docket No. 362-18-2320, the owner purchased a \$5,000 winning ticket for \$3,750.<sup>28</sup> Additionally, *In the Matter of Guru Nanak Food, Inc. d/b/a Kountry Korner* (Kountry Korner), Case No. 2019-264, the owner purchased and traded \$600 in scratch tickets and \$400 in cash for a winning \$1,000 ticket.<sup>29</sup> Mr. Tejani's actions suggests a lower level of culpability when compared with the owners of Kountry Korner or Quick Stop. Kountry Korner and Quick Stop are cases where the owner took an additional step in inducing players to transfer their rights to the claims, using the illegal circumvention of the claims process to profit. In this case, Staff produced no evidence that Respondent profited from players.

Mr. Tejani placed a “?” on the claim form in response to where the ticket had been purchased, and also checked the box saying that the ticket had been given to him. These responses show that Mr. Tejani may have been trying to be truthful on the forms, further indicating that he is not as culpable an actor as those in the cases cited by Staff.

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<sup>27</sup> 16 Tex. Admin. Code § 401.160(g)(10).

<sup>28</sup> Pet. Ex. 7.

<sup>29</sup> Pet. Ex. 8.

Since this was Mr. Tejani's first occurrence, the ALJ concludes that a suspension of Respondent's license for 30 days is the appropriate sanction.

## VI. FINDINGS OF FACT

1. Gul Enterprises LLC d/b/a Texaco Corner (Texaco Corner) is licensed by the Texas Lottery Commission (Commission) as Ticket Sales Agent No. 179429 to sell Texas Lottery tickets at its store located at 2700 E. 5th Street, Tyler, Texas.
2. Texaco Corner was originally licensed by the Commission on May 4, 2015.
3. Aslam Tejani is the owner and managing member of Texaco Corner.
4. On June 12, 2017, Mr. Tejani presented a Daily 4 draw game ticket at the Tyler Claim Center (TCC) for a \$600 prize. Mr. Tejani wrote only his name for the claimant and received the prize money.
5. On July 31, 2017, Mr. Tejani presented a Daily 4 draw game ticket at the TCC for a \$600 prize. Mr. Tejani wrote only his name for claimant and received the prize money.
6. On May 14, 2018, Mr. Tejani presented a Daily 4 draw game ticket at the TCC for a \$600 prize. Mr. Tejani wrote only his name for claimant and received the prize money.
7. On August 27, 2018, Mr. Tejani presented a Daily 4 draw game ticket at the TCC for a \$600 prize. Mr. Tejani wrote only his name for claimant and received the prize money.
8. The Commission's Operations Division analyzed the frequency and circumstances of Respondent's claims. The investigation confirmed the facts set forth in Findings of Fact 4, 5, 6, and 7.
9. The Commission's Enforcement Division Investigator Mr. Carlos Salinas conducted an on-site investigation of Respondent on November 29, 2018.
10. Mr. Salinas entered Texaco Corner and presented a compliance ticket to Mr. Tejani. When Mr. Tejani scanned the compliance ticket, Mr. Salinas heard a pitched tone indicating a higher-tiered prize.
11. Mr. Tejani told Mr. Salinas that Mr. Salinas had to go to the TCC to claim his reward.

12. When questioned about the aforementioned four claims, Mr. Tejani stated to Mr. Salinas that he had obtained them from customers of Texaco Corner and paid them the full prize amount.
13. Respondent has no previous violations.
14. Staff mailed notice of opportunity to show compliance to Respondent on February 14, 2019. The notice was sent via first class and certified mail.
15. On May 10, 2019, Staff mailed a notice of hearing to Respondent, by first class and certified mail to its address of record, informing Respondent that:
  - a. Staff alleged that Respondent presented four lottery claims and collected \$2,400 in total prize payments on June 12, 2017; July 31, 2017; May 14, 2018; and August 27, 2018.
  - b. Staff alleged that Respondent had violated Texas Government Code § 466.308(a)(1), 466.310(a)(1) and 16 Tex. Admin. Code § 401.158(b)(31), (33)(A), and (33)(D); and
  - c. A contested hearing would be held by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH) on July 30, 2019.
16. On July 30, 2019, ALJ Michael J. O'Malley convened the hearing on the merits at SOAH in Austin, Texas. Kristen Guthrie, attorney, appeared at the hearing and represented Staff. Mr. Tejani, owner, and his brother-in-law, Ghulan Ali, appeared at the hearing and represented Respondents. The hearing concluded that day and the record closed on August 30, 2019, after the Commission filed the transcript.

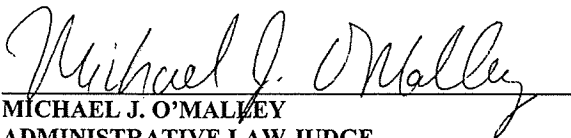
## VII. CONCLUSIONS OF LAW

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 contested cases referred by the Commission, 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. Respondent is subject to sanction because it, through its owner Mr. Tejani, intentionally or knowingly claimed a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation. Tex. Gov't Code § 466.308(a)(1); 16 Tex. Admin. Code § 401.158(b)(31).
7. Respondent is subject to sanction because it, through its owner Mr. Tejani, induced another person to assign or transfer a right to claim a prize. Tex. Gov't Code § 466.310(a)(1); 16 Tex. Admin. Code § 401.158(b)(33)(A).
8. Respondent is subject to sanction because it, through its owner Mr. Tejani, purchased a lottery ticket from a person who is not a licensed lottery retailer. 16 Tex. Admin. Code § 401.158(b)(33)(D).
9. Based on the above Findings of Fact, Respondents violated Texas Government Code §§ 466.308(a)(1), 466.310(a)(1), and 16 Texas Administration Code § 401.158(b)(31), (33)(A) and (D).
10. The Commission penalty policy allows for a 10-90 day suspension to revocation for a first occurrence. 16 Tex. Admin. Code § 401.160(g)(10).
11. Based on the Findings of Fact and Conclusions of Law set out above, Respondent's Lottery Retail Sales Agent's license should be suspended for 30 days.

**SIGNED September 20, 2019.**

  
MICHAEL J. O'MALLEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING



Date: DECEMBER 12, 2019

DOCKET NO. 362-19-6876

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
v.	§	
	§	
AMY INVESTMENTS INC.	§	
D/B/A TRIANGLE MARKET OF	§	
BEAUMONT, TEXAS	§	
RETAILER NO. 175531	§	
RESPONDENT	§	LOTTERY COMMISSION

**ORDER OF THE COMMISSION**

TO: Amy Investments Inc.  
d/b/a Triangle Market of Beaumont, Texas  
310 ML King Jr. Pkwy.  
Beaumont, TX 77701

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.

The Commission, after review and due consideration of the PFD and exceptions and replies filed, if any, adopts the ALJ's Findings of Fact and Conclusions of Law as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Amy Investments Inc. d/b/a Triangle Market of Beaumont, Texas, is hereby revoked.

**Commission Order No. 20-0023**

**Date: DECEMBER 12, 2019**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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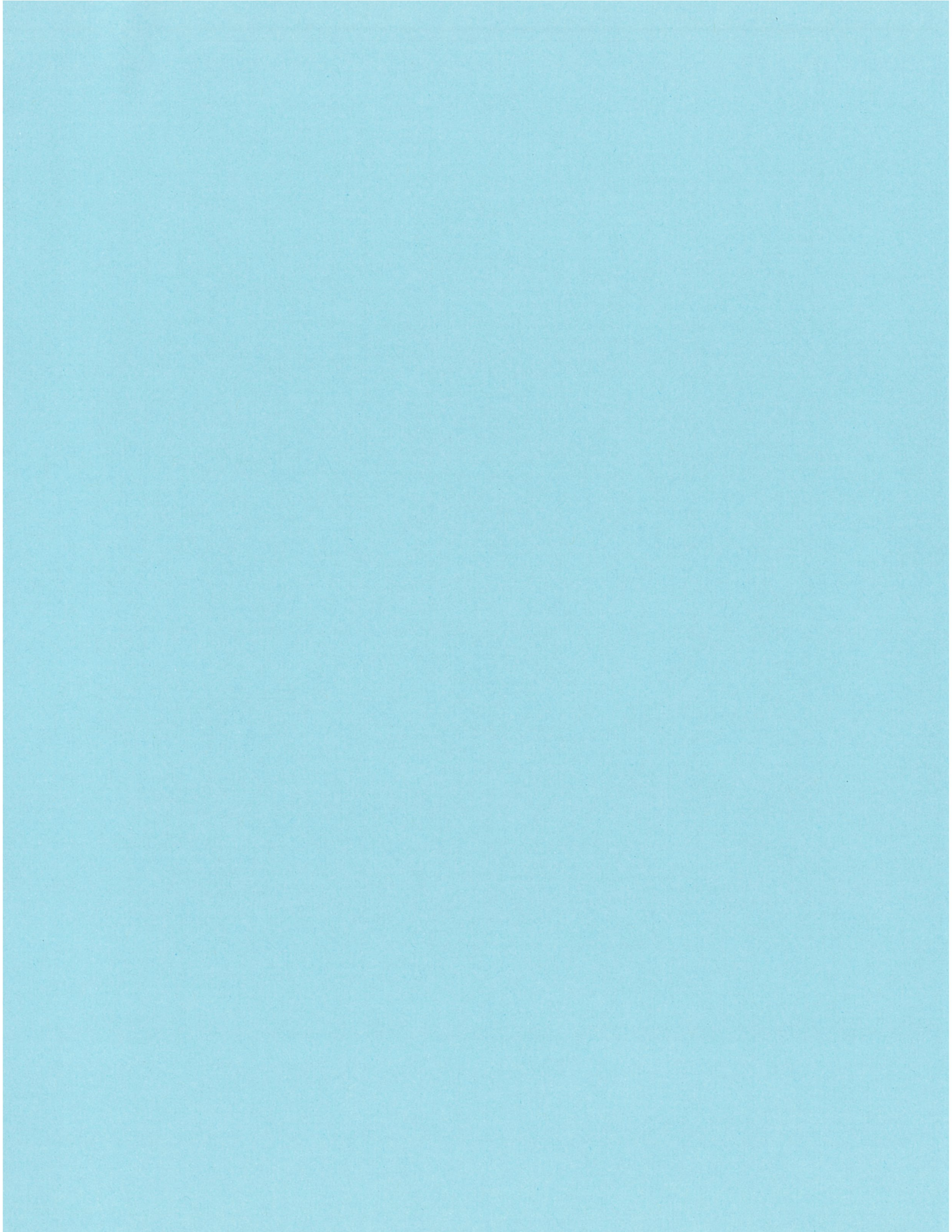
MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER





# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

October 28, 2019

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

VIA E-MAIL

**RE: Docket No. 362-19-6876 Texas Lottery Commission v. Amy Investments Inc., d/b/a, Triangle Market of Beaumont, Texas License No. 175531**

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, a SOAH rule found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

Henry D. Card  
Administrative Law Judge

HDC/rmc

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin TX 78701 – VIA E-MAIL  
Amy Investments Inc., 310 ML King Jr. Pkwy, Beaumont, TX 77701 -VIA REGULAR MAIL

P.O. Box 13025 Austin, Texas 78711-3025 | 300 W. 15<sup>th</sup> Street Austin, Texas 78701  
Phone: 512-475-4993 | Fax: 512-475-4994  
[www.soah.texas.gov](http://www.soah.texas.gov)

**SOAH DOCKET NO. 362-19-6876**

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>LOTTERY OPERATIONS DIVISION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>AMY INVESTMENTS INC, AGENT</b>	§	
<b>D/B/A TRIANGLE MARKET</b>	§	
<b>OF BEAUMONT, TEXAS</b>	§	
<b>SALES AGENT LICENSE NO. 175531,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff/Commission) seeks to revoke the lottery sales agent's license held by Amy Investments, Inc. d/b/a Triangle Market of Beaumont, Texas (Licensee), on the grounds that Licensee currently owes the Commission money from the sale of Lottery tickets and has failed to have sufficient funds available to cover electronic funds transfers to the Commission four or more times within a 12-month period. The Administrative Law Judge (ALJ) recommends revocation of the license.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Jurisdiction and notice were not contested and are discussed in the Findings of Fact and Conclusions of Law. On October 3, 2019, the hearing to consider Staff's allegations was conducted by ALJ Henry D. Card at the State Office of Administrative Hearings in Austin, Texas. Staff appeared through Kristen Guthrie, Assistant General Counsel for the Commission. Licensee appeared through its owner, Riaz Bhatti. After the presentation of evidence and arguments, the hearing was adjourned and the record closed the same day.



## II. EVIDENCE AND ANALYSIS

Joel Garza, retail services specialist with the Commission, testified and presented documentary evidence that Licensee has failed to have sufficient funds available to cover an electronic funds transfer to the Commission on five occasions within the past year, for reasons other than bank error. Those amounts and dates are as follows:

August 14, 2019:	\$2,679.57
August 7, 2019:	\$ 484.50
June 19, 2019:	\$9,892.88
June 12, 2019:	\$1,398.90
June 5, 2019:	\$3,060.30 <sup>1</sup>

As of the date of the hearing, Licensee owed \$9,891.82 to the Commission. Mr. Garza testified that Licensee's actions were in violation of Texas Government Code § 466.351 and 16 Texas Administrative Code (TAC) §§ 401.351-.352, which require licensees to have adequate funds available through electronic funds transfer. The Commission's rule at 16 TAC § 401.353 also requires retailers to maintain sufficient funds for electronic funds transfers and further provides that if a retailer's license has been summarily suspended for insufficient funds four times in a 12-month period, that license shall be revoked. Texas Government Code § 466.155(a) also states that a license may be revoked if a licensee has violated that chapter of the Government Code or a rule adopted pursuant to that chapter.

Mr. Bhatti testified that his manager had been remiss in taking care of the financial aspects of his store's Lottery business. He was willing to pay the amount he owes and stated that he wished to keep his store's Lottery license. He wished to cooperate with the Commission.

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<sup>1</sup> Staff Exhibits 1, 4, 5, 8.



The ALJ appreciates that Licensee is willing to pay the amount owed and is interested in retaining its Lottery license. Staff proved, however, that Licensee has violated the statutes and rules set forth above. As of the date of the hearing, Licensee owed money to the Commission. Even if that money were paid, Licensee failed to have sufficient funds available to cover electronic funds transfers to the Commission four or more times within a 12-month period. Under the applicable statutes and rules, the Commission has the authority and the obligation to revoke Licensee's license. The ALJ concludes that it should do so.

### III. FINDINGS OF FACT

1. Amy Investments, Inc. Agent d/b/a Triangle Market of Beaumont, Texas (Licensee), is a lottery sales agent licensed by the Texas Lottery Commission (Commission). Licensee holds license number 175531.
2. On September 5, 2019, the Commission staff (Staff) sent a notice of hearing to Licensee.
3. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
4. On October 3, 2019, the hearing to consider Staff's allegations was conducted by Administrative Law Judge Henry D. Card, at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff appeared through Kristen Guthrie, Assistant General Counsel for the Commission. Licensee appeared through its owner, Riaz Bhatti. After the presentation of evidence and arguments, the hearing was adjourned and the record closed the same day.
5. Licensee has failed to have sufficient funds available to cover an electronic funds transfer to the Commission on five occasions within the past year, for reasons other than bank error. Those amounts and dates are as follows:

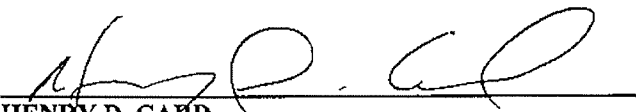
August 14, 2019:	\$2,679.57
August 7, 2019:	\$ 484.50
June 19, 2019:	\$9,892.88
June 12, 2019:	\$1,398.90
June 5, 2019:	\$3,060.30

6. As of the date of the hearing, Licensee owed \$9,891.82 to the Commission.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Texas Government Code § 466.155.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Texas Government Code ch. 2003.
3. Proper and timely notice of the hearing was effected upon Licensee pursuant to Texas Government Code §§ 2001.051-52 and 16 Texas Administrative Code (TAC) § 401.205(a)(4).
4. Licensee's actions were in violation of Texas Government Code §466.351 and 16 TAC §§ 401.351-.352.
5. Licensee's license should be revoked pursuant to Texas Government Code § 466.155(a) and 16 TAC § 401.353.

**SIGNED October 28, 2019.**

  
HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



Date: DECEMBER 12, 2019

**DOCKET NO. 362-20-0063**

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE TEXAS</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>HH INTERNATIONAL INC.</b>	§	
<b>D/B/A FAMOUS FOOD STORE</b>	§	
<b>RETAILER LICENSE NO. 145370</b>	§	
<b>Respondent</b>	§	<b>LOTTERY COMMISSION</b>

**ORDER OF THE COMMISSION**

TO: HH International Inc.  
d/b/a Famous Food Store  
2601 Hemphill St.  
Fort Worth, TX 76110  
*via email at javedhussain198@yahoo.com*

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the above-styled case in which HH International Inc. d/b/a Famous Food Store (Respondent) 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 hearing in the referenced case before SOAH was provided to Respondent, pursuant to Tex. Gov't Code §§ 2001.051 and 2001.052 and 1 Tex. Admin. Code §§ 155.401 and 155.501(b). The 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.

**Date: DECEMBER 12, 2019**

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

3. The Commission, by and through its attorney of record, filed a motion to dismiss the case from the SOAH docket and to remand the case to the Commission for informal disposition, in accordance with Tex. Gov't Code §2001.058(d-1) and 1 Tex. Admin. Code §155.501(d).

4. The ALJ conditionally dismissed the case from the SOAH docket and remanded the case to the Commission for informal disposition under Tex. Gov't Code §2001.056, provided the Respondent did not file a motion to set aside the default no later than 15 days from the date of the ALJ's conditional order.

5. The Respondent did not file a motion to set aside the default within the 15 days from the date of the ALJ's conditional order.

## **II. Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code §466.155 and 16 Tex. Admin. Code ch. 401.

2. The Respondent violated Tex. Gov't Code ch 466 (the State Lottery Act) and/or Title 16 Tex. Admin. Code ch. 401 (Rules for the Administration of State Lottery Act) as set forth in the Commission's notice of hearing.

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

**Date: DECEMBER 12, 2019**

**III. Order**

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration of the administrative record of the above-styled case, this matter is hereby disposed of by default, and:

1. All allegations set forth in the Commission's notice of hearing are deemed admitted; and

2. The Texas Lottery Ticket Sales Agent license of HH International Inc. d/b/a Famous Food Store is hereby suspended for ninety (90) days.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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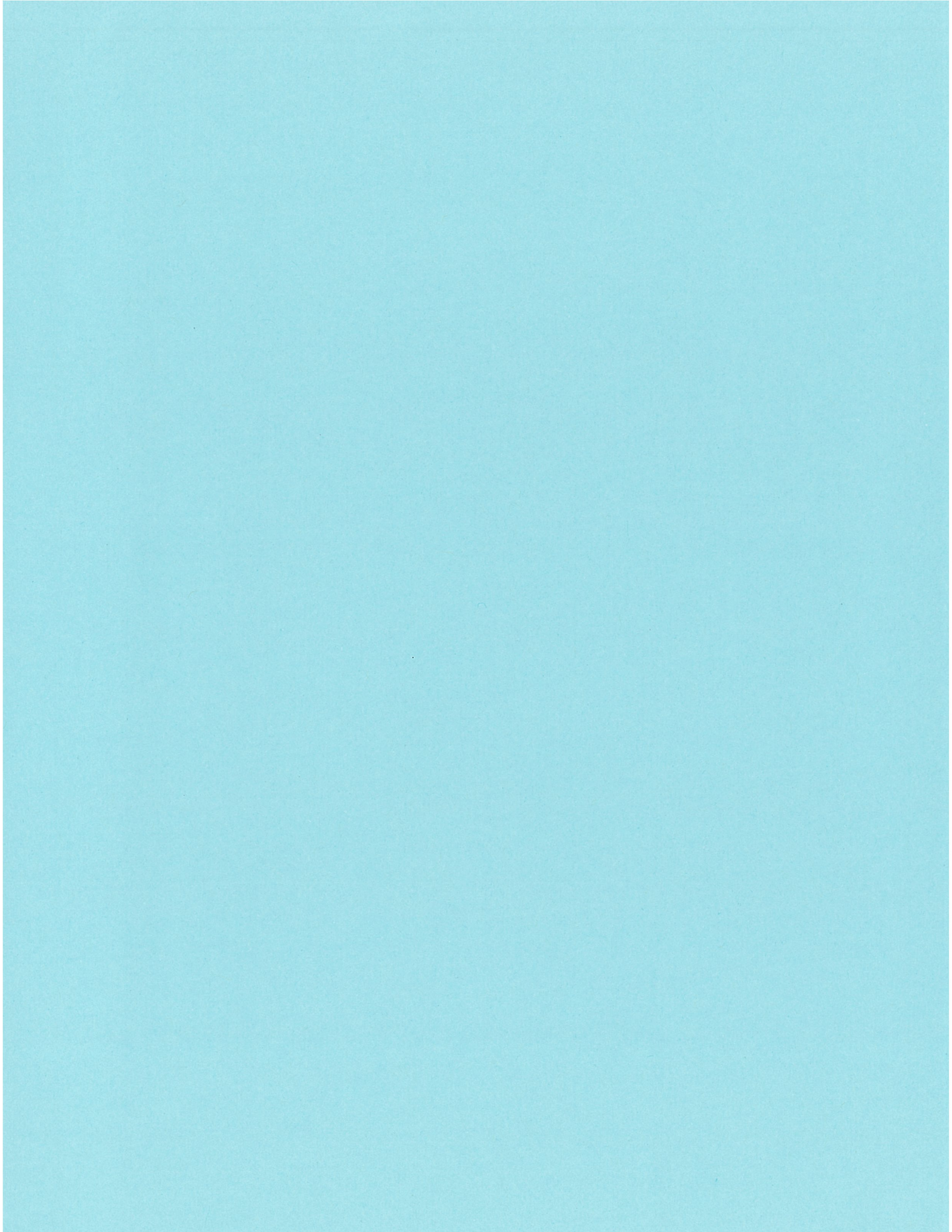
MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER





SOAH DOCKET NO.: 362-20-0063

IN THE MATTER OF § BEFORE THE STATE OFFICE  
§  
THE SUMMARY SUSPENSION §  
of CERTAIN LOTTERY RETAILER § OF  
LICENSES § ADMINISTRATIVE HEARINGS

ORDER OF REMAND

A hearing in this matter was convened on November 6, 2019, before the State Office of Administrative Hearings (SOAH). Kristen Guthrie, Assistant General Counsel, represented the Texas Lottery Commission (Commission). HH International Inc, d/b/a Famous Food Store (Respondent) did not appear at the hearing. In accordance with 1 Texas Administrative Code § 155.501(b)(2), a notice of hearing was served on each of the Respondents by certified mail and by email. The notices of hearing included the time, date and location of the hearing, a statement of the factual allegations and applicable statutes and rules, 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 in the notice of hearing might be granted by default against the party that fails to appear at hearing. Furthermore, the Commission served the notices of hearing via certified mail to each Respondent's last known address as it appears on the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Timely and adequate notice of the hearing was provided to each Respondent pursuant to Texas Government Code §§ 2001.051 and 2001.052, and 1 Texas Administrative Code § 155.401.

Based on Respondent's failure to appear at the hearing despite being provided adequate notice of it, the Commission filed a Motion to Remand to the Commission for informal disposition, the above referenced matter and requested this matter be dismissed from SOAH's docket, in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d).

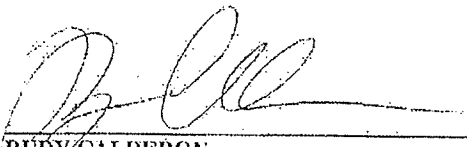
Upon receiving proof that adequate notice of the hearing was provided to Respondent, the Administrative Law Judge (ALJ) granted the Commission's motion to dismiss the case from SOAH's docket and to remand it to the Commission based on Respondent's failure to appear at the hearing.

THEREFORE IT IS ORDERED that this matter be dismissed from SOAH's docket in accordance with 1 Texas Administrative Code § 155.503(a). Respondent is informed that, should it wish to have the default dismissal and remand set aside under 1 Texas Administrative Code § 155.503(a)(3), it shall file adequate motion to set aside this order no later than 15 days from the date of this order.



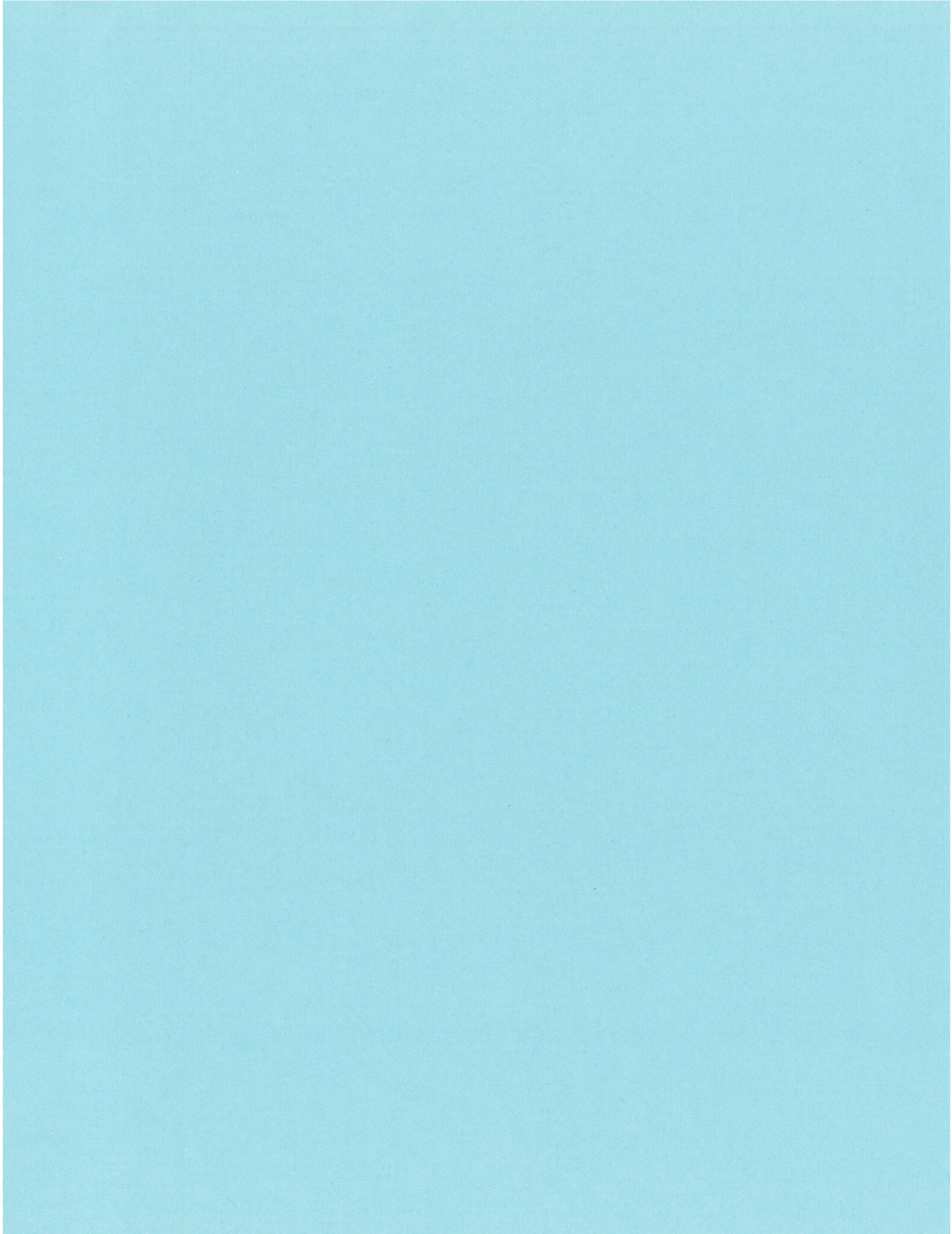
In accordance with 1 Texas Administrative Code § 155.503(a)(2), if Respondent files a motion to set aside the dismissal within 15 days of this order, the ALJ will rule on the motion and either grant it upon good cause shown or in the interests of justice, resulting in the dismissal being set aside and the hearing being re-opened, or the ALJ will deny the motion and issue a final order of dismissal and remand. In the absence of a timely motion to set aside the default dismissal, this order will become final on the sixteenth day after its issuance without further action by the ALJ, in accordance with 1 Texas Administrative Code § 155.503(a)(4). The dismissal of the case will remove it from SOAH's docket, and the case file will be returned to the Commission for final disposition.

SIGNED November 19, 2019

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RUDY CALDERON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



*Commissioners:*

J. Winston Krause,  
*Chairman*

Mark A. Franz

Robert Rivera

Erik C. Saenz



# TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Michael P. Farrell, *Charitable Bingo Operations Director*

FIRST CLASS UNITED STATES MAIL

and

CERTIFIED MAIL NO. 91 7199 9991 7031 0736 5637

Date of Notice: September 12, 2019

HH International Inc.  
d/b/a Famous Food Store  
2601 Hemphill St.  
Fort Worth, TX 76110

*via email at [javedhussain198@yahoo.com](mailto:javedhussain198@yahoo.com)*

**RE: NOTICE OF FINAL HEARING ON SUSPENSION OR REVOCATION OF  
LOTTERY LICENSE; DOCKET NO. 362-20-0063  
TEXAS LOTTERY TICKET SALES AGENT LICENSE NO. 145370**

Dear Mr. Hussain:

Be advised that this letter is a formal notice that a final public hearing to consider the suspension or revocation of the above-referenced lottery license, pursuant to the provisions of the Tex. Gov't. Code Chapters 466, 2001, and 2003; 1 Tex. Admin. Code Chapter 155; and 16 Tex. Admin. Code Chapter 401, will be held as follows:

<b>TIME OF HEARING:</b>	<b>9:00 a.m.</b>
<b>DATE OF HEARING:</b>	<b>November 6, 2019</b>
<b>LOCATION OF HEARING:</b>	<b>State Office of Administrative Hearings William P. Clements Building 300 West 15<sup>th</sup> St. 4<sup>th</sup> Floor Austin, Texas 78701</b>

P.O. Box 16630 • Austin, Texas 78761-6630

Phone (512) 344-5000 • FAX (512) 478-3682 • Bingo FAX (512) 344-5142

[txlottery.org](http://txlottery.org) • [txbingo.org](http://txbingo.org)

**I.**  
**Factual Matters Asserted**

On November 15, 2018, HH International Inc. d/b/a Famous Food Store (Famous Food Store), by and through its owner Javed Hussain, attempted to purchase a lottery ticket from a person who is not a licensed lottery retailer, in violation of Tex. Admin. Code §401.158(b)(33)(D); induced another person to assign or transfer a right to claim a prize, initiated or accepted an offer to sell the right to claim a prize, and/or initiated or accepted an offer of compensation from another person to claim a lottery prize, in violation of Tex. Gov't Code §466.310(a) and 16 Tex. Admin. Code §401.158(b)(33)(A)(B). Specifically, On November 15, 2018, as a result of an internal Commission review, a Commission investigator presented a Texas Lottery scratch ticket with a prize value of \$1,000 for validation at Famous Food Store. A store clerk, later identified as Javed Hussain, offered to purchase the winning ticket from the investigator for \$500. When asked by the investigator if he had purchased tickets from customers before, Mr. Hussain responded that he had.

**II.**  
**Legal Authority and Jurisdiction**

The Texas Lottery Commission has jurisdiction over this matter pursuant to the State Lottery Act, Tex. Gov't Code §466.155, and 16 Tex. Admin. Code Chapter 401.

The State Office of Administrative Hearings has jurisdiction over this matter pursuant to Tex. Gov't Code Chapter 2003.

**III.**  
**Applicable Statutes and Rules**

Tex. Gov't Code §466.151(e) states:

The director may issue a license to a person only if the director finds that the person's experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery.

Tex. Gov't Code §466.155(a) states, in pertinent part:

After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

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

Tex. Gov't Code §466.155(c) states:

At a 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.

Tex. Gov't 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.

Tex. Gov't Code §466.402(b) states:

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

16 Tex. Admin. Code §401.158 states, in pertinent part:

(b) Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

...  
(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.

16 Tex. Admin. Code §401.360 states:

Retailers may pay any lottery prize of less than \$600, after complying with established validation procedures. However, if a retailer validates a ticket of up to \$600, that retailer shall pay the prize amount on the ticket. Prizes of \$600 or more shall be paid by the Texas Lottery by mail or at a designated lottery claim center.

16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, 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 regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

All visitors to the William P. Clements Building without an agency or DPS issued ID card will be required to sign a log and receive a visitor's pass. Persons going to a hearing at the State Office of Administrative Hearings (SOAH) will need to identify to the security officer the hearing that they are attending. Persons must provide the officer with the SOAH docket number to be allowed access



to the hearing room. Individuals should allow additional time to go through the security process. Failure to provide the docket number may result in delaying the individual's arrival to the hearing. **PLEASE NOTE: This notice of hearing is not a summons. If you do not oppose the suspension or revocation of your license, your appearance at the hearing is not required. If you do oppose the suspension or revocation of your license, you have the right to appear and present evidence.**

**TITLE 16 TEXAS ADMINISTRATIVE CODE §401.207 REQUIRES THAT YOU FILE A WRITTEN ANSWER TO THE ALLEGATIONS IN THIS NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS (BY FAX AT 512-322-2061) AND PROVIDE A COPY TO THE UNDERSIGNED (BY FAX AT 512-344-5189 OR EMAIL AT LEGAL.INPUT@LOTTERY.STATE.TX.US) AT LEAST TEN (10) CALENDAR DAYS BEFORE THE DATE OF THE HEARING. FAILURE TO FILE A WRITTEN ANSWER BY THIS DATE AND/OR TO APPEAR AT THE HEARING MAY RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND RELIEF REQUESTED BEING GRANTED BY DEFAULT.**

The hearing is conducted under authority of the State Lottery Act, Texas Government Code Chapters 466.155 and 466.160, together with Title 16 of the Texas Administrative Code Chapters 401.153, 401.158-159, and 401.201-227.

The State Office of Administrative Hearings (SOAH) is now offering you the ability to receive service of orders and other documents issued by SOAH through email rather than mail or fax. To elect to receive service of SOAH-issued documents by email, go to the SOAH website ([www.soah.state.tx.us](http://www.soah.state.tx.us)), click on the "Service by Email" tab, and follow the instructions.

**NOTE: Your request to receive SOAH-issued documents by email does not change the procedures you must follow in order to file documents with SOAH. The requirements for filing documents and providing copies to the other parties are set out in Sections 155.101 and 155.103 of SOAH's Procedural Rules, which are available on SOAH's website under the "Procedural Rules" tab.**

All hearings are formal due-process matters governed by and conducted in accordance with law, including the Texas Government Code Chapters 2001 and 466, the Texas Rules of Civil Procedures, the Texas Rules of Evidence, and Title 16 of the Texas Administrative Code Chapter 401.

A court reporter will be present, and a record of the proceedings will be created. It is, however, the sole and exclusive responsibility of each party to request and pay for any printed transcript.

**Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at [www.soah.texas.gov](http://www.soah.texas.gov), or in printed format upon request to SOAH.**

The Commission reserves the right to amend this Notice of Hearing.

Sincerely,

/s/ Kristen Guthrie  
KRISTEN GUTHRIE  
Assistant General Counsel  
Texas Lottery Commission

### **CERTIFICATE OF SERVICE**

Pursuant to the Texas Rules of Civil Procedures Rule 21a, Texas Government Code Chapter 466.155(b), and to Title 16 of the Texas Administrative Code Chapter 401.205, I do hereby certify that on this the 12th day of September, 2019, a true and correct copy of the foregoing *Notice of Final Hearing on Suspension or Revocation of Lottery License* has been served by First Class United States Mail and Certified Mail No. 91 7199 9991 7031 0736 5637, by depositing each mailing in a post office or official depository under the care and custody of the United States Postal Service, enclosed in a postpaid wrapper properly addressed to HH International Inc. d/b/a Famous Food Store, 2601 Hemphill St., Fort Worth, TX 76110.

/s/ Kristen Guthrie  
KRISTEN GUTHRIE  
Assistant General Counsel  
Texas Lottery Commission  
P.O. Box 16630  
Austin, Texas 78761-6630  
(512) 344-5465  
(512) 344-5189 Fax

cc: State Office of Administrative Hearings  
Lottery Operations Division, Retailer Services Department





**Commission Order No. 20-0025**

**Date: DECEMBER 12, 2019**

**Case No. 2020-72**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>BOYS AND GIRLS CLUB OF</b>	<b>§</b>	
<b>CENTRAL TEXAS INC.</b>	<b>§</b>	
	<b>§</b>	
<b>TAXPAYER NO. 12621328850</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and Boys and Girls Club of Central Texas Inc. (Boy and Girls Club) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into the following Consent Order.

**AGREED FINDINGS OF FACT**

1. Boys and Girls Club is licensed by the Commission to conduct bingo under Taxpayer No. 12621328850.
2. On August 7, 2018, Boys and Girls Club became a member of Aces High Bingo Unit (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. The Unit dissolved on August 31, 2019.
3. Until the dissolution, the Unit was comprised of the following members: Boys and Girls Club, Boys and Girls Club of Gatesville Inc., Boys and Girls Club of Lampasas Inc., CASA of Bell and Coryell Counties, Exchange Club of Killeen, and West Volunteer Fire Department Hose Co No 1. The Unit conducted Bingo at Aces High Bingo hall located at 2001 W. Adams Ave., Ste. E, Temple, Texas 76504.

4. Bingo operations of the Unit and its members resulted in negative net proceeds in the amount of \$71,186.00 for the third quarter of 2018 (July 1 through September 30) through the second quarter of 2019 (April 1 through June 30).

5. On August 26, 2019, the Unit and its members requested a waiver of the requirement that its bingo operations result in positive net proceeds.

6. The Division determined the Unit and its members failed to show good cause that compliance with the net proceeds requirement would be detrimental to the Unit members' existing or planned charitable purposes, and consequently denied the waiver on September 5, 2019.

#### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (the Bingo Enabling Act), Tex. Gov't Code ch. 467, and 16 Tex. Admin. Code ch. 402.

2. Boys and Girls Club is required to follow the Bingo Enabling Act and Commission rules to maintain its license.

3. Tex. Occ. Code §2001.451 states, in pertinent parts:

...

(g) The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period.

...

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

(1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

(2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.

4. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...

(5) violates this chapter or a term of a license issued under this chapter.

5. 16 Tex. Admin. Code §402.450(b) states, in pertinent part:

Detrimental Charitable Purpose Waiver:

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period.

6. 16 Tex. Admin. Code §402.452 states, in pertinent parts:

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.

...

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior four (4) quarter period.

(2) Members of units failing to meet the net proceed requirement may subject their license to conduct bingo to administrative action, up to and including revocation.

...

(e) A licensed authorized organization may apply for a waiver from the net proceeds requirement by showing good cause that compliance is detrimental to the organization's existing or planned charitable purposes. Waiver applications must be submitted in accordance with §402.450 of this chapter (relating to Request for Waiver).

7. Boys and Girls Club's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.353(a), as a result of Boys and Girls Club's violation of Tex. Occ. Code §§ 2001.451(g)(1) and 2001.554(a)(5), and 16 Tex. Admin. Code §402.452.

## MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Boys and Girls Club agrees to its terms, acknowledges understanding them, and waives its right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Pursuant to Tex. Occ. Code §2001.451(k), the Commission agrees to grant Boys and Girls Club a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

(a) Boys and Girls Club is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Boys and Girls Club must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club must timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).

(b) Additionally, if Boys and Girls Club satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through

December 31), and the first and second quarters of 2021 (January 1 through June 30). Boys and Girls Club will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Boys and Girls Club must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club must timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).

- (c) If Boys and Girls Club is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Boys and Girls Club consents to the revocation of its conductor's license without further notice or hearing.

4. Boys and Girls Club agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against it by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, will not, however, form the basis for, nor be used as, evidence against Boys and Girls Club in a future license renewal application, absent order alleged violations.

5. Boys and Girls Club agrees that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that Boys and Girls Club failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

Boys and Girls Club of Central Texas Inc.

Texas Lottery Commission  
Charitable Bingo Operations Division

By: William Vernon 11-21-2019  
William Vernon  
Bingo Chairperson

DATE

By: Michael 11/27/19  
Michael P. Farrell  
Director

DATE

**Commission Order No. 20-0025**

**Date: DECEMBER 12, 2019**

**Case No. 2020-72**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>BOYS AND GIRLS CLUB OF</b>	<b>§</b>	
<b>CENTRAL TEXAS INC.</b>	<b>§</b>	
	<b>§</b>	
<b>TAXPAYER NO. 12621328850</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Boys and Girls Club of Central Texas Inc.'s (Boys and Girls Club) conductor license, pursuant to the provisions of Tex. Occ. Code §2001.451(k), Boys and Girls is hereby granted a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) Boys and Girls Club is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Boys and Girls Club shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request.

**Commission Order No. 20-0025**

**Date: DECEMBER 12, 2019**

Further, Boys and Girls Club shall timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).

- (b) Additionally, if Boys and Girls Club satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31) and the first and second quarters of 2021 (January 1 through June 30). Boys and Girls Club will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Boys and Girls Club shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club shall timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).
- (c) If Boys and Girls Club is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Boys and Girls Club consents to the revocation of its conductor's license without further notice or hearing.



**Commission Order No. 20-0025**

**Date: DECEMBER 12, 2019**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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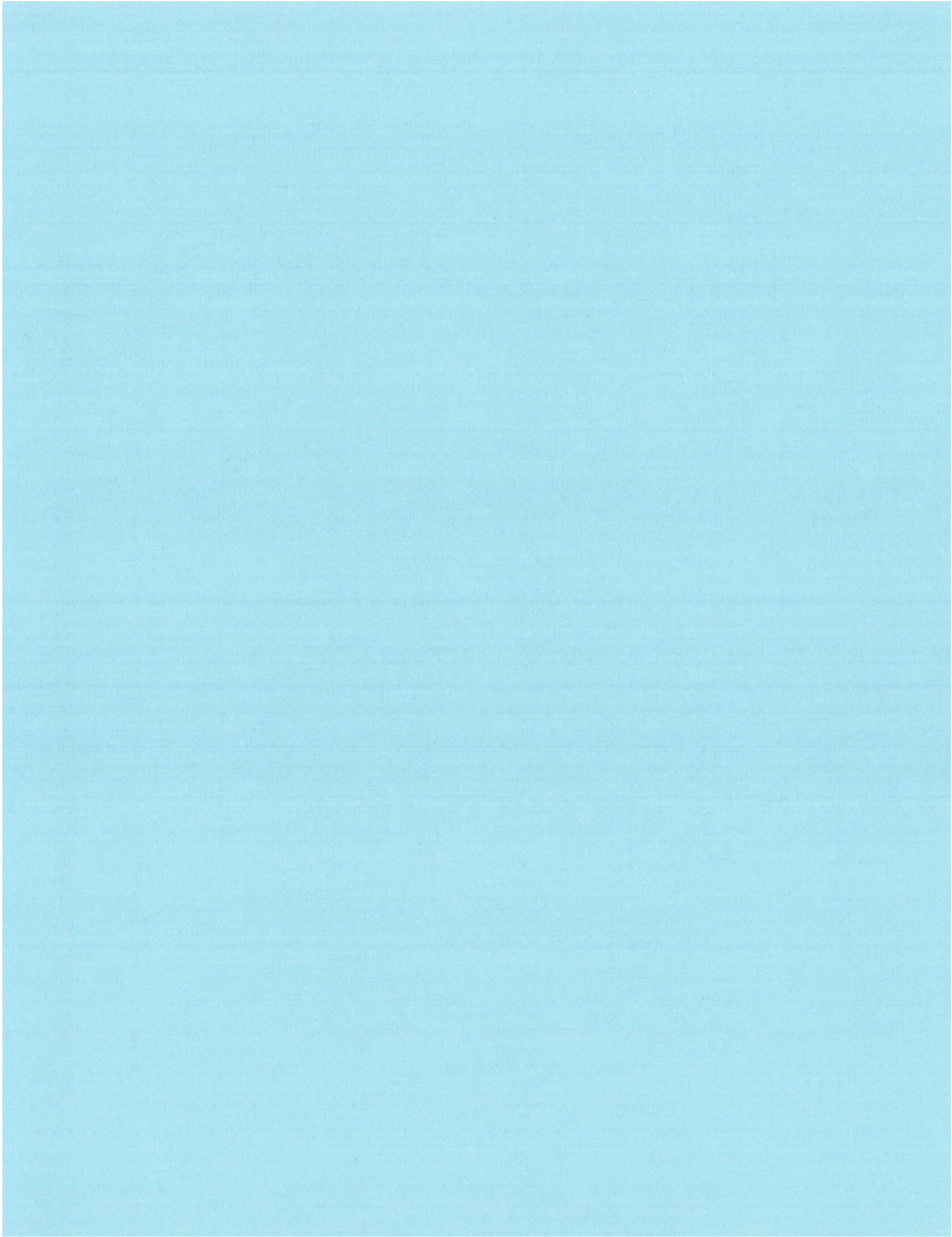
MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER



Commission Order No. 20-0026

Date: DECEMBER 12, 2019

Case No. 2020-73

IN THE MATTER OF

BOYS AND GIRLS CLUB OF  
GATESVILLE INC.

TAXPAYER NO. 14545754856

§  
§  
§  
§  
§  
§

BEFORE THE TEXAS

LOTTERY COMMISSION

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and Boys and Girls Club of Gatesville Inc. (Boys and Girls Club) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into the following Consent Order.

**AGREED FINDINGS OF FACT**

1. Boys and Girls Club is licensed by the Commission to conduct bingo under Taxpayer No. 14545754856.
2. On September 2, 2018, Boys and Girls Club became a member of Aces High Bingo Unit (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. The Unit dissolved on August 31, 2019.
3. Until the dissolution, the Unit was comprised of the following members: Boys and Girls Club of Central Texas Inc., Boys and Girls Club, Boys and Girls Club of Lampasas Inc., CASA of Bell and Coryell Counties, Exchange Club of Killeen, and West Volunteer Fire Department Hose Co No 1. The Unit conducted bingo at the Aces High Bingo hall located at 2001 W. Adams Ave., Ste. E, Temple, Texas 76504.

4. Bingo operations of the Unit and its members resulted in negative net proceeds in the amount of \$71,186.00 for the third quarter of 2018 (July 1 through September 30) through the second quarter of 2019 (April 1 through June 30).

5. On August 26, 2019, the Unit and its members requested a waiver of the requirement that its bingo operations result in positive net proceeds.

6. The Division determined the Unit and its members failed to show good cause that compliance with the net proceeds requirement would be detrimental to the Unit members' existing or planned charitable purposes, and consequently denied the waiver on September 5, 2019.

7. On September 1, 2019, Boys and Girls Club became a member of Redman Bingo Unit.

#### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (the Bingo Enabling Act), Tex. Gov't Code ch. 467, and 16 Tex. Admin. Code ch. 402.

2. Boys and Girls Club is required to follow the Bingo Enabling Act and Commission rules to maintain its license.

3. Tex. Occ. Code §2001.451 states, in pertinent parts:

...

(g) The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period.

...

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

(1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

(2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.

4. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...

(5) violates this chapter or a term of a license issued under this chapter.

5. 16 Tex. Admin. Code §402.450(b) states, in pertinent part:

Detrimental Charitable Purpose Waiver:

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period.

6. 16 Tex. Admin. Code §402.452 states, in pertinent parts:

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.

...

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior four (4) quarter period.

(2) Members of units failing to meet the net proceed requirement may subject their license to conduct bingo to administrative action, up to and including revocation.

...

(e) A licensed authorized organization may apply for a waiver from the net proceeds requirement by showing good cause that compliance is detrimental to the organization's existing or planned charitable purposes. Waiver applications must be submitted in accordance with §402.450 of this chapter (relating to Request for Waiver).

7. Boys and Girls Club's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.353(a), as a result of Boys and Girls Club's violation of Tex. Occ. Code §§ 2001.451(g)(1) and 2001.554(a)(5), and 16 Tex. Admin. Code §402.452.



## MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Boys and Girls Club agrees to its terms, acknowledges understanding them, and waives its right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Pursuant to Tex. Occ. Code §2001.451(k), the Commission agrees to grant Boys and Girls Club a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) Boys and Girls Club is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Boys and Girls Club must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club must timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).
- (b) Additionally, if Boys and Girls Club satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through

December 31), and the first and second quarters of 2021 (January 1 through June 30). Boys and Girls Club will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Boys and Girls Club must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club must timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).

- (c) If Boys and Girls Club is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Boys and Girls Club consents to the revocation of its conductor's license without further notice or hearing.

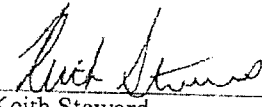
4. Boys and Girls Club agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against it by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, will not, however, form the basis for, nor be used as, evidence against Boys and Girls Club in a future license renewal application, absent order alleged violations.

5. Boys and Girls Club agrees that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that Boys and Girls Club failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

Boys and Girls Club of Gatesville Inc.

Texas Lottery Commission  
Charitable Bingo Operations Division

By:  11/26/2019  
Keith Steward DATE  
Bingo Chairperson

By:  11/27/19  
Michael P. Farrell DATE  
Director



Commission Order No. 20-0026

Date: DECEMBER 12, 2019

Case No. 2020-73

IN THE MATTER OF

BOYS AND GIRLS CLUB OF  
GATESVILLE INC.

TAXPAYER NO. 14545754856

§  
§  
§  
§  
§  
§

BEFORE THE TEXAS

LOTTERY COMMISSION

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Boys and Girls Club of Gatesville Inc.'s (Boys and Girls Club) conductor license, pursuant to the provisions of Tex. Occ. Code §2001.451(k), Boys and Girls Club is hereby granted a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) Boys and Girls Club is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Boys and Girls Club shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club shall timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

**Commission Order No. 20-0026**

**Date: DECEMBER 12, 2019**

If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).

- (b) Additionally, if Boys and Girls Club satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31), and the first and second quarters of 2021 (January 1 through June 30). Boys and Girls Club will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Boys and Girls Club shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club shall timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter 2020 – second quarter 2021).
- (c) If Boys and Girls Club is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Boys and Girls Club consents to the revocation of its conductor's license without further notice or hearing.

**Commission Order No. 20-0026**

**Date: DECEMBER 12, 2019**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

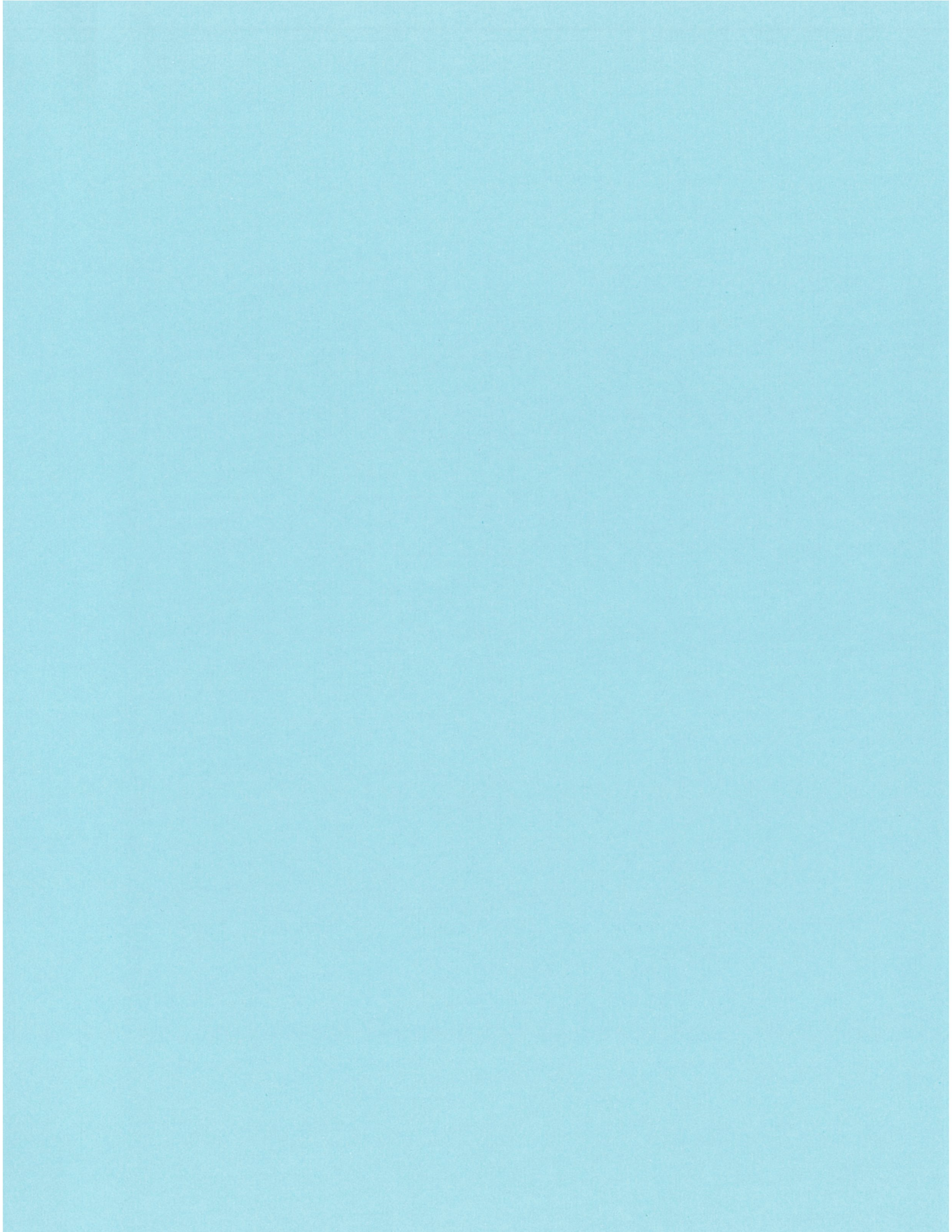
Entered this 12<sup>TH</sup> day of DECEMBER 2019.

\_\_\_\_\_  
J. WINSTON KRAUSE, CHAIRMAN

\_\_\_\_\_  
MARK A. FRANZ, COMMISSIONER

\_\_\_\_\_  
ROBERT RIVERA, COMMISSIONER

\_\_\_\_\_  
ERIK C. SAENZ, COMMISSIONER



**Commission Order No. 20-0027**

**Date: DECEMBER 12, 2019**

**Case No. 2020-74**

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
BOYS AND GIRLS CLUB OF	§	
LAMPASAS INC.	§	
	§	
TAXPAYER NO. 14545756182	§	LOTTERY COMMISSION

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and Boys and Girls Club of Lampasas Inc. (Boys and Girls Club) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into the following Consent Order.

**AGREED FINDINGS OF FACT**

1. Boys and Girls Club of Lampasas Inc. is licensed by the Commission to conduct bingo under Taxpayer No. 14545756182.
2. On September 2, 2018, Boys and Girls Club of Lampasas Inc. became a member of Aces High Bingo Unit (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. The Unit dissolved on August 31, 2019.
3. Until the dissolution, the Unit was comprised of the following members: Boys and Girls Club of Central Texas Inc., Boys and Girls Club of Gatesville Inc., Boys and Girls Club, CASA of Bell and Coryell Counties, Exchange Club of Killeen, and West Volunteer Fire Department Hose Co No 1. The Unit conducted bingo at the Aces High Bingo hall located at 2001 W. Adams Ave., Ste. E, Temple, Texas 76504.



4. Bingo operations of the Unit and its members resulted in negative net proceeds in the amount of \$71,186.00 for the third quarter of 2018 (July 1 through September 30) through the second quarter of 2019 (April 1 through June 30).

5. On August 26, 2019, the Unit and its members requested a waiver of the requirement that its bingo operations result in positive net proceeds.

6. The Division determined the Unit and its members failed to show good cause that compliance with the net proceeds requirement would be detrimental to the Unit members' existing or planned charitable purposes, and consequently denied the waiver on September 5, 2019.

7. On September 1, 2019, Boys and Girls Club became a member of Charity 2 Bingo Unit.

#### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (the Bingo Enabling Act), Tex. Gov't Code ch. 467, and 16 Tex. Admin. Code ch. 402.

2. Boys and Girls Club is required to follow the Bingo Enabling Act and Commission rules to maintain its license.

3. Tex. Occ. Code §2001.451 states, in pertinent parts:

...

(g) The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period.

...

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

(1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

(2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.

4. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...

(5) violates this chapter or a term of a license issued under this chapter.

5. 16 Tex. Admin. Code §402.450(b) states, in pertinent part:

Detrimental Charitable Purpose Waiver:

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period.

6. 16 Tex. Admin. Code §402.452 states, in pertinent parts:

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.

...

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior four (4) quarter period.

(2) Members of units failing to meet the net proceed requirement may subject their license to conduct bingo to administrative action, up to and including revocation.

...

(e) A licensed authorized organization may apply for a waiver from the net proceeds requirement by showing good cause that compliance is detrimental to the organization's existing or planned charitable purposes. Waiver applications must be submitted in accordance with §402.450 of this chapter (relating to Request for Waiver).

7. Boys and Girls Club's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.353(a), as a result of Boys and Girls Club's violation of Tex. Occ. Code §§ 2001.451(g)(1) and 2001.554(a)(5), and 16 Tex. Admin. Code §402.452.

## MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Boys and Girls Club agrees to its terms, acknowledges understanding them, and waives its right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Pursuant to Tex. Occ. Code §2001.451(k), the Commission agrees to grant Boys and Girls Club a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) Boys and Girls Club is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Boys and Girls Club must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club must timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).
- (b) Additionally, if Boys and Girls Club satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through



December 31), and the first and second quarters of 2021 (January 1 through June 30). Boys and Girls Club will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Boys and Girls Club must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club must timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).

- (c) If Boys and Girls Club is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Boys and Girls Club consents to the revocation of its conductor's license without further notice or hearing.

4. Boys and Girls Club agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against it by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, will not, however, form the basis for, nor be used as, evidence against Boys and Girls Club in a future license renewal application, absent order alleged violations.

5. Boys and Girls Club agrees that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that Boys and Girls Club failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

Boys and Girls Club of Lampasas Inc.

Texas Lottery Commission  
Charitable Bingo Operations Division

By: *Pamela Hunter* *11/27/19*  
Pamela Hunter DATE  
Bingo Chairperson

By: *M. Farrell* *11/27/19*  
Michael P. Farrell DATE  
Director

Commission Order No. 20-0027

Date: DECEMBER 12, 2019

Case No. 2020-74

IN THE MATTER OF

BOYS AND GIRLS CLUB OF  
LAMPASAS INC.

TAXPAYER NO. 14545756182

§  
§  
§  
§  
§  
§

BEFORE THE TEXAS

LOTTERY COMMISSION

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Boys and Girls Club of Lampasas Inc.'s (Boys and Girls Club) conductor license, pursuant to the provisions of Tex. Occ. Code §2001.451(k), Boys and Girls Club is hereby granted a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) Boys and Girls Club is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Boys and Girls Club shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club shall timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

**Commission Order No. 20-0027**

**Date: DECEMBER 12, 2019**

If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).

- (b) Additionally, if Boys and Girls Club satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31), and the first and second quarters of 2021 (January 1 through June 30). Boys and Girls Club will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Boys and Girls Club shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Boys and Girls Club shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Boys and Girls Club shall timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Boys and Girls Club fails to comply with any requirements of this subsection, then, upon notice by the Division, Boys and Girls Club shall promptly surrender its conductor's license. Further, Boys and Girls Club shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter 2020 – second quarter 2021).
- (c) If Boys and Girls Club is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Boys and Girls Club consents to the revocation of its conductor's license without further notice or hearing.

**Commission Order No. 20-0027**

**Date: DECEMBER 12, 2019**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

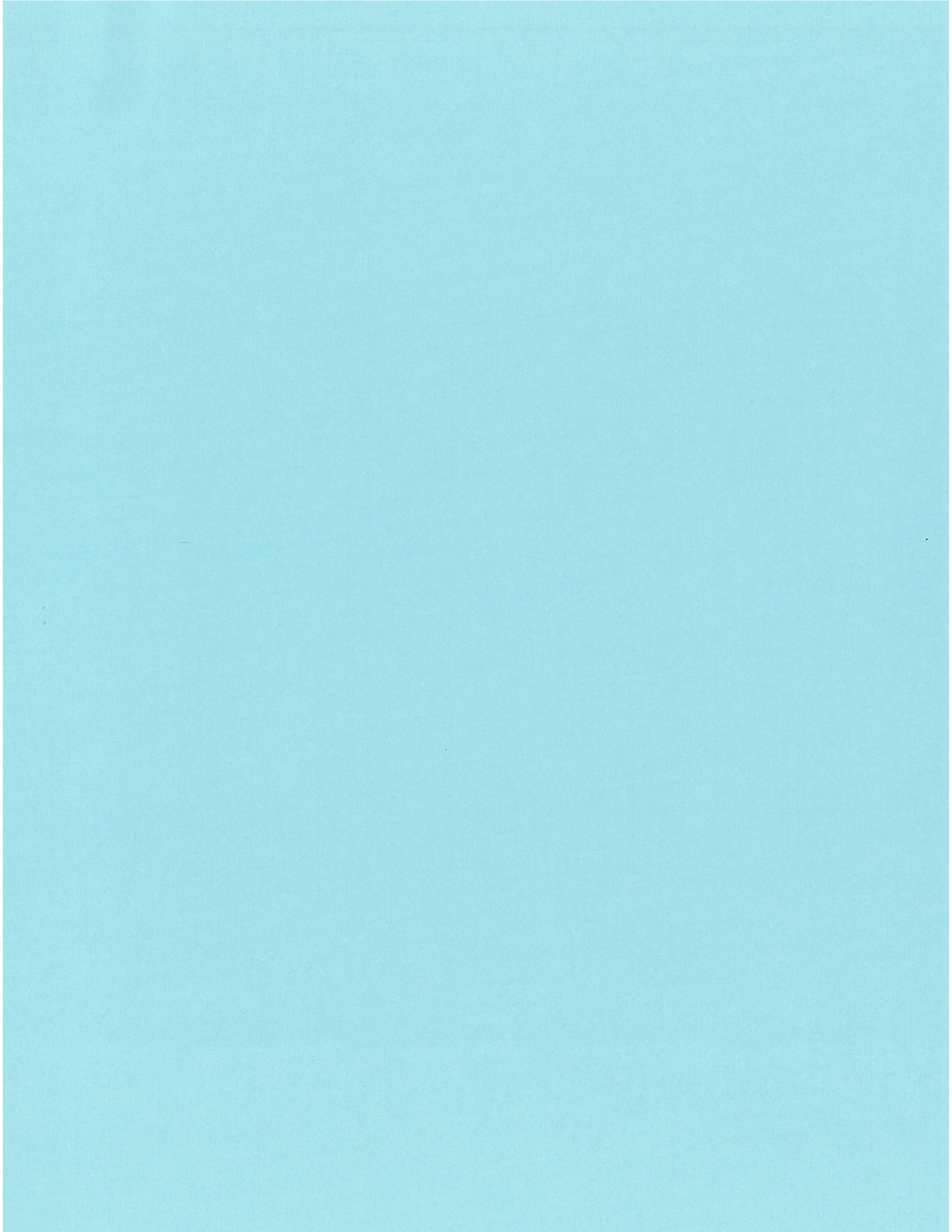
Entered this 12<sup>TH</sup> day of DECEMBER 2019.

\_\_\_\_\_  
J. WINSTON KRAUSE, CHAIRMAN

\_\_\_\_\_  
MARK A. FRANZ, COMMISSIONER

\_\_\_\_\_  
ROBERT RIVERA, COMMISSIONER

\_\_\_\_\_  
ERIK C. SAENZ, COMMISSIONER





**Commission Order No. 20-0028**

**Date: DECEMBER 12, 2019**

**Case No. 2020-75**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>CASA OF BELL AND CORYELL</b>	<b>§</b>	
<b>COUNTIES</b>	<b>§</b>	
	<b>§</b>	
<b>TAXPAYER NO. 14717716659</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and CASA of Bell and Coryell Counties make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into the following Consent Order.

**AGREED FINDINGS OF FACT**

1. CASA of Bell and Coryell Counties is licensed by the Commission to conduct bingo under Taxpayer No. 14717716659.
2. On August 7, 2018, CASA of Bell and Coryell Counties became a member of Aces High Bingo Unit (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. The Unit dissolved on August 31, 2019.
3. Until the dissolution, the Unit was comprised of the following members: Boys and Girls Club of Central Texas Inc., Boys and Girls Club of Gatesville Inc., Boys and Girls Club of Lampasas Inc., CASA of Bell and Coryell Counties, Exchange Club of Killeen, and West Volunteer Fire Department Hose Co No 1. The Unit conducted bingo at the Aces High Bingo hall located at 2001 W. Adams Ave., Ste. E, Temple, Texas 76504.

4. Bingo operations of the Unit and its members resulted in negative net proceeds in the amount of \$71,186.00 for the third quarter of 2018 (July 1 through September 30) through the second quarter of 2019 (April 1 through June 30).

5. On August 26, 2019, the Unit and its members requested a waiver of the requirement that its bingo operations result in positive net proceeds.

6. The Division determined the Unit and its members failed to show good cause that compliance with the net proceeds requirement would be detrimental to the Unit members' existing or planned charitable purposes, and consequently denied the waiver on September 5, 2019.

#### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (the Bingo Enabling Act), Tex. Gov't Code ch. 467, and 16 Tex. Admin. Code ch. 402.

2. CASA of Bell and Coryell Counties is required to follow the Bingo Enabling Act and Commission rules to maintain its license.

3. Tex. Occ. Code §2001.451 states, in pertinent parts:

...

(g) The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period.

...

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

(1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

(2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.



4. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...

(5) violates this chapter or a term of a license issued under this chapter.

5. 16 Tex. Admin. Code §402.450(b) states, in pertinent part:

Detrimental Charitable Purpose Waiver:

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period.

6. 16 Tex. Admin. Code §402.452 states, in pertinent parts:

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.

...

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior four (4) quarter period.

(2) Members of units failing to meet the net proceed requirement may subject their license to conduct bingo to administrative action, up to and including revocation.

...

(e) A licensed authorized organization may apply for a waiver from the net proceeds requirement by showing good cause that compliance is detrimental to the organization's existing or planned charitable purposes. Waiver applications must be submitted in accordance with §402.450 of this chapter (relating to Request for Waiver).

7. CASA of Bell and Coryell Counties' license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.353(a), as a result of CASA of Bell and Coryell Counties' violation of Tex. Occ. Code §§ 2001.451(g)(1) and 2001.554(a)(5), and 16 Tex. Admin. Code §402.452.

## MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, CASA of Bell and Coryell Counties agrees to its terms, acknowledges understanding them, and waives its right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Pursuant to Tex. Occ. Code §2001.451(k), the Commission agrees to grant CASA of Bell and Coryell Counties a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) CASA of Bell and Coryell Counties is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, CASA of Bell and Coryell Counties must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, CASA of Bell and Coryell Counties must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, CASA of Bell and Coryell Counties must timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If CASA of Bell and Coryell Counties fails to comply with any requirements of this subsection, then, upon notice by the Division, CASA of Bell and Coryell Counties shall promptly surrender its conductor's license. Further, CASA of Bell and Coryell Counties must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).
- (b) Additionally, if CASA of Bell and Coryell Counties satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net

proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31), and the first and second quarters of 2021 (January 1 through June 30). CASA of Bell and Coryell Counties will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, CASA of Bell and Coryell Counties must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, CASA of Bell and Coryell Counties must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, CASA of Bell and Coryell Counties must timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If CASA of Bell and Coryell Counties fails to comply with any requirements of this subsection, then, upon notice by the Division, CASA of Bell and Coryell Counties shall promptly surrender its conductor's license. Further, CASA of Bell and Coryell Counties must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).

- (c) If CASA of Bell and Coryell Counties is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, CASA of Bell and Coryell Counties consents to the revocation of its conductor's license without further notice or hearing.

4. CASA of Bell and Coryell Counties agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against it by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, will not, however, form the basis for, nor be used as, evidence against CASA of Bell and Coryell Counties in a future license renewal application, absent order alleged violations.

5. CASA of Bell and Coryell Counties agrees that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that CASA of Bell and Coryell Counties failed to comply with the terms of this Memorandum of

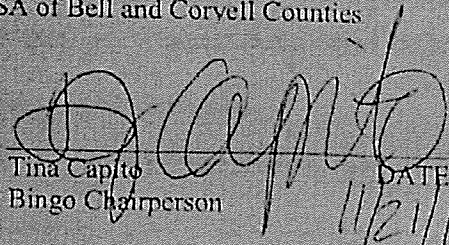
Agreement and Consent Order, the Commission may seek any and all authorized remedies,  
including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

CASA of Bell and Corvell Counties

Texas Lottery Commission  
Charitable Bingo Operations Division

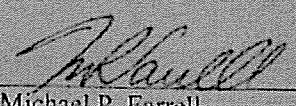
By:

  
Tina Capito  
Bingo Chairperson

DATE

11/21/19

By:

  
Michael P. Farrell  
Director

DATE

11/21/19

Date: DECEMBER 12, 2019

Case No. 2020-75

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
CASA OF BELL AND CORYELL	§	
COUNTIES	§	
	§	
TAXPAYER NO. 14717716659	§	LOTTERY COMMISSION

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of CASA of Bell and Coryell Counties' conductor license, pursuant to the provisions of Tex. Occ. Code §2001.451(k), CASA of Bell and Coryell Counties is hereby granted a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) CASA of Bell and Coryell Counties is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, CASA of Bell and Coryell Counties shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, CASA of Bell and Coryell Counties shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request.

**Commission Order No. 20-0028**

**Date: DECEMBER 12, 2019**

Further, CASA of Bell and Coryell Counties shall timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If CASA of Bell and Coryell Counties fails to comply with any requirements of this subsection, then, upon notice by the Division, CASA of Bell and Coryell Counties shall promptly surrender its conductor's license. Further, CASA of Bell and Coryell Counties shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).

- (b) Additionally, if CASA of Bell and Coryell Counties satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31), and the first and second quarters of 2021 (January 1 through June 30). CASA of Bell and Coryell Counties will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, CASA of Bell and Coryell Counties shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, CASA of Bell and Coryell Counties shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, CASA of Bell and Coryell Counties shall timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If CASA of Bell and Coryell Counties fails to comply with any requirements of this subsection, then, upon notice by the Division, CASA of Bell and Coryell Counties shall promptly surrender its conductor's license. Further, CASA of Bell and Coryell Counties shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).
- (c) If CASA of Bell and Coryell Counties is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, CASA of Bell and Coryell Counties consents to the revocation of its conductor's license without further notice or hearing.

**Commission Order No. 20-0028**

**Date: DECEMBER 12, 2019**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

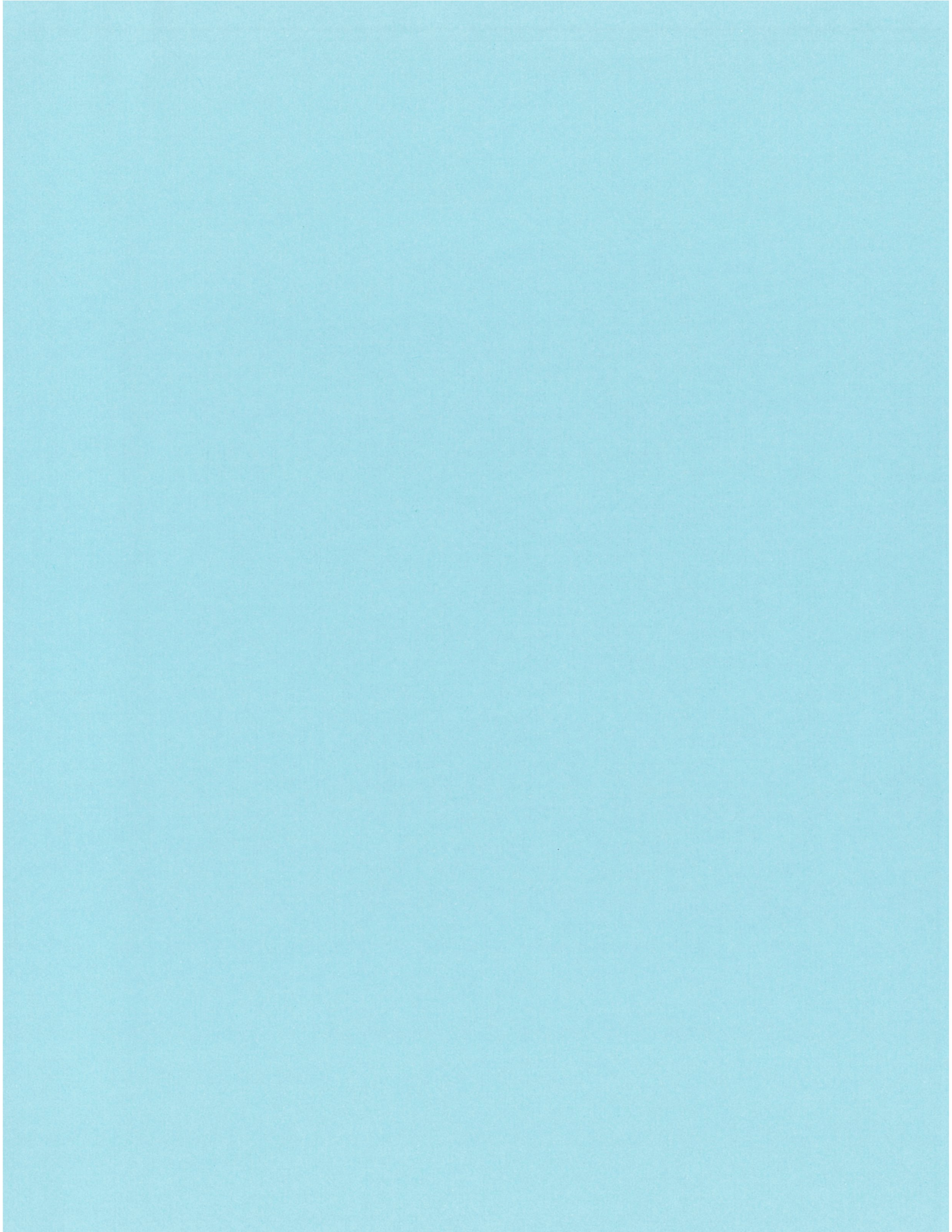
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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER







Commission Order No. 20-0029

Date: DECEMBER 12, 2019

Case No. 2020-76

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
EXCHANGE CLUB OF KILLEEN	§	
	§	
TAXPAYER NO. 17460729696	§	LOTTERY COMMISSION

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and Exchange Club of Killeen make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into the following Consent Order.

**AGREED FINDINGS OF FACT**

1. Exchange Club of Killeen is licensed by the Commission to conduct bingo under Taxpayer No. 17460729696.
2. On January 1, 2019, Exchange Club of Killeen became a member of Aces High Bingo Unit (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. The Unit dissolved on August 31, 2019.
3. Until the dissolution, the Unit was comprised of the following members: Boys and Girls Club of Central Texas Inc., Boys and Girls Club of Gatesville Inc., Boys and Girls Club of Lampasas Inc., CASA of Bell and Coryell Counties, Exchange Club of Killeen, and West Volunteer Fire Department Hose Co No 1. The Unit conducted bingo at the Aces High Bingo hall located at 2001 W. Adams Ave., Ste. E, Temple, Texas 76504.

4. Bingo operations of the Unit and its members resulted in negative net proceeds in the amount of \$71,186.00 for the third quarter of 2018 (July 1 through September 30) through the second quarter of 2019 (April 1 through June 30).

5. On August 26, 2019, the Unit and its members requested a waiver of the requirement that its bingo operations result in positive net proceeds.

6. The Division determined the Unit and its members failed to show good cause that compliance with the net proceeds requirement would be detrimental to the Unit members' existing or planned charitable purposes, and consequently denied the waiver on September 5, 2019.

7. On September 1, 2019, Exchange Club of Killeen became a member of Belton Wild Card Bingo Unit.

#### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (the Bingo Enabling Act), Tex. Gov't Code ch. 467, and 16 Tex. Admin. Code ch. 402.

2. Exchange Club of Killeen is required to follow the Bingo Enabling Act and Commission rules to maintain its license.

3. Tex. Occ. Code §2001.451 states, in pertinent parts:

...

(g) The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period.

...

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

(1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

(2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.

4. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...  
(5) violates this chapter or a term of a license issued under this chapter.

5. 16 Tex. Admin. Code §402.450(b) states, in pertinent part:

Detrimental Charitable Purpose Waiver:

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period.

6. 16 Tex. Admin. Code §402.452 states, in pertinent parts:

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.

...

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior four (4) quarter period.

(2) Members of units failing to meet the net proceed requirement may subject their license to conduct bingo to administrative action, up to and including revocation.

...

(e) A licensed authorized organization may apply for a waiver from the net proceeds requirement by showing good cause that compliance is detrimental to the organization's existing or planned charitable purposes. Waiver applications must be submitted in accordance with §402.450 of this chapter (relating to Request for Waiver).

7. Exchange Club of Killeen's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.353(a), as a result of Exchange Club of Killeen's violation of Tex. Occ. Code §§ 2001.451(g)(1) and 2001.554(a)(5), and 16 Tex. Admin. Code §402.452.

## MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Exchange Club of Killeen agrees to its terms, acknowledges understanding them, and waives its right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Pursuant to Tex. Occ. Code §2001.451(k), the Commission agrees to grant Exchange Club of Killeen a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) Exchange Club of Killeen is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Exchange Club of Killeen must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Exchange Club of Killeen must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Exchange Club of Killeen must timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Exchange Club of Killeen fails to comply with any requirements of this subsection, then, upon notice by the Division, Exchange Club of Killeen shall promptly surrender its conductor's license. Further, Exchange Club of Killeen must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).
- (b) Additionally, if Exchange Club of Killeen satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through

December 31), and the first and second quarters of 2021 (January 1 through June 30). Exchange Club of Killeen will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Exchange Club of Killeen must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Exchange Club of Killeen must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Exchange Club of Killeen must timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Exchange Club of Killeen fails to comply with any requirements of this subsection, then, upon notice by the Division, Exchange Club of Killeen shall promptly surrender its conductor's license. Further, Exchange Club of Killeen must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).

- (c) If Exchange Club of Killeen is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Exchange Club of Killeen consents to the revocation of its conductor's license without further notice or hearing.

4. Exchange Club of Killeen agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against it by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, will not, however, form the basis for, nor be used as, evidence against Exchange Club of Killeen in a future license renewal application, absent order alleged violations.

5. Exchange Club of Killeen agrees that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that Exchange Club of Killeen failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

Exchange Club of Killeen

Texas Lottery Commission  
Charitable Bingo Operations Division

By: Robert A. Sutton 11/26/19  
Robert Sutton  
Bingo Chairperson

By: M. Farrell 11/27/19  
Michael P. Farrell  
Director

**Commission Order No. 20-0029**

**Date: DECEMBER 12, 2019**

**Case No. 2020-76**

**IN THE MATTER OF**

**EXCHANGE CLUB OF KILLEEN**

**TAXPAYER NO. 17460729696**

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**BEFORE THE TEXAS**

**LOTTERY COMMISSION**

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of Exchange Club of Killeen's (Exchange Club of Killeen) conductor license, pursuant to the provisions of Tex. Occ. Code §2001.451(k), Exchange Club of Killeen is hereby granted a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) Exchange Club of Killeen is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, Exchange Club of Killeen shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense, including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Exchange Club of Killeen shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Exchange Club of Killeen shall timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

**Commission Order No. 20-0029**

**Date: DECEMBER 12, 2019**

If Exchange Club of Killeen fails to comply with any requirements of this subsection, then, upon notice by the Division, Exchange Club of Killeen shall promptly surrender its conductor's license. Further, Exchange Club of Killeen shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).

- (b) Additionally, if Exchange Club of Killeen satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31), and the first and second quarters of 2021 (January 1 through June 30). Exchange Club of Killeen will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, Exchange Club of Killeen shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, Exchange Club of Killeen shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, Exchange Club of Killeen shall timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If Exchange Club of Killeen fails to comply with any requirements of this subsection, then, upon notice by the Division, Exchange Club of Killeen shall promptly surrender its conductor's license. Further, Exchange Club of Killeen shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter 2020 – second quarter 2021).
- (c) If Exchange Club of Killeen is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, Exchange Club of Killeen consents to the revocation of its conductor's license without further notice or hearing.



**Commission Order No. 20-0029**

**Date: DECEMBER 12, 2019**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

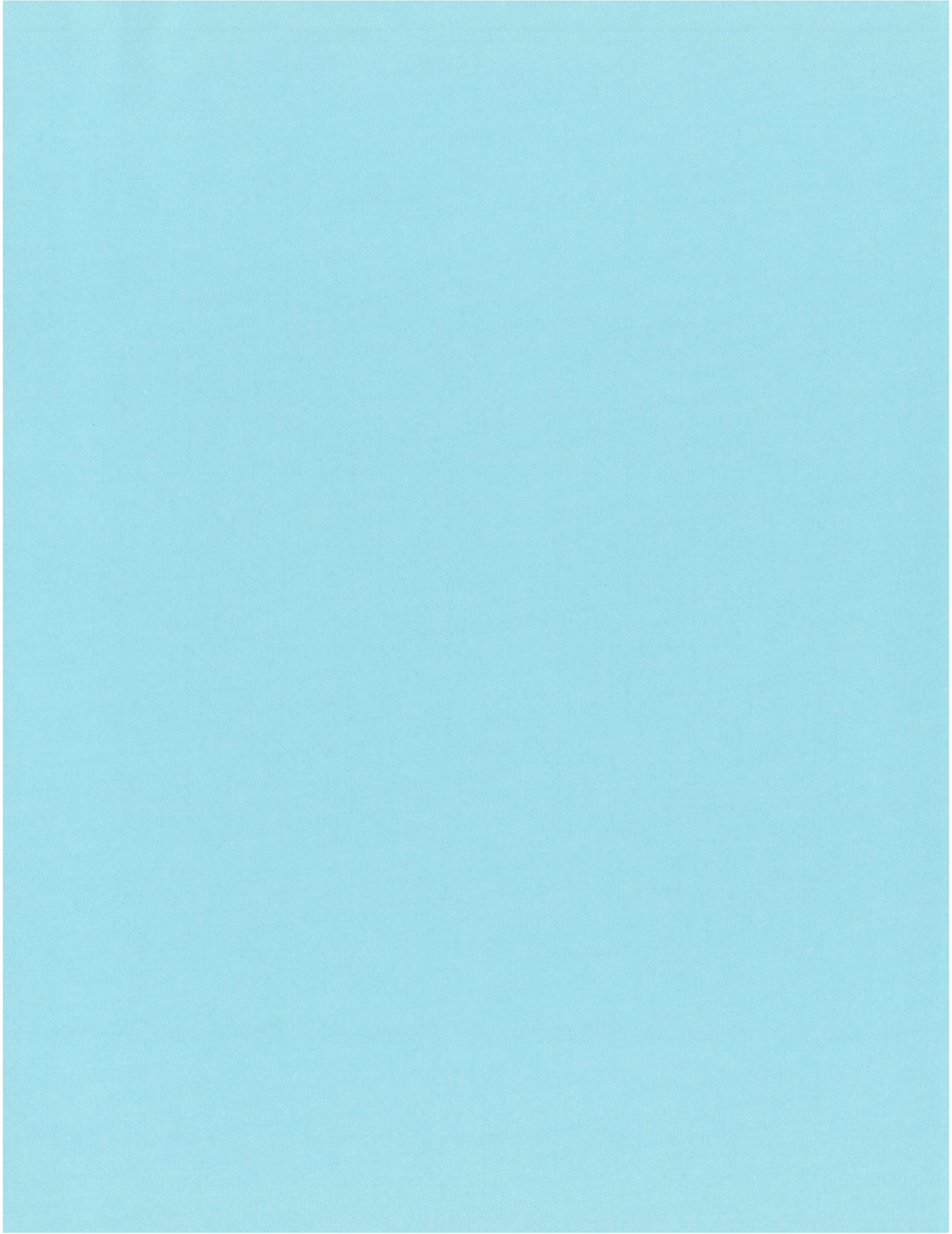
Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER



Commission Order No. 20-0030

Date: DECEMBER 12, 2019

Case No. 2020-77

IN THE MATTER OF

WEST VOLUNTEER FIRE  
DEPARTMENT HOSE CO NO 1

TAXPAYER NO. 14729541665

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BEFORE THE TEXAS

LOTTERY COMMISSION

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and West Volunteer Fire Department Hose Co No 1 (West VFD) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into the following Consent Order.

**AGREED FINDINGS OF FACT**

1. West VFD is licensed by the Commission to conduct bingo under Taxpayer No. 14729541665.
2. On October 8, 2018, West VFD became a member of Aces High Bingo Unit (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. The Unit dissolved on August 31, 2019.
3. Until the dissolution, the Unit was comprised of the following members: Boys and Girls Club of Central Texas Inc., Boys and Girls Club of Gatesville Inc., Boys and Girls Club of Lampasas Inc., CASA of Bell and Coryell Counties, Exchange Club of Killeen, and West VFD. The Unit conducted bingo at the Aces High Bingo hall located at 2001 W. Adams Ave., Ste. E, Temple, Texas 76504.

4. Bingo operations of the Unit and its members resulted in negative net proceeds in the amount of \$71,186.00 for the third quarter of 2018 (July 1 through September 30) through the second quarter of 2019 (April 1 through June 30).

5. On August 26, 2019, the Unit and its members requested a waiver of the requirement that its bingo operations result in positive net proceeds.

6. The Division determined the Unit and its members failed to show good cause that compliance with the net proceeds requirement would be detrimental to the Unit members' existing or planned charitable purposes, and consequently denied the waiver on September 5, 2019.

#### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (the Bingo Enabling Act), Tex. Gov't Code ch. 467, and 16 Tex. Admin. Code ch. 402.

2. West VFD is required to follow the Bingo Enabling Act and Commission rules to maintain its license.

3. Tex. Occ. Code §2001.451 states, in pertinent parts:

...

(g) The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period.

...

(k) A licensed authorized organization may apply to the commission for a waiver of the requirements of this section and Section 2001.457. The commission may grant the waiver on a showing of good cause by the organization that compliance with this section and Section 2001.457 is detrimental to the organization's existing or planned charitable purposes. An organization applying for a waiver establishes good cause by providing to the commission:

(1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

(2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.

4. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...

(5) violates this chapter or a term of a license issued under this chapter.

5. 16 Tex. Admin. Code §402.450(b) states, in pertinent part:

Detrimental Charitable Purpose Waiver:

(1) A licensed authorized organization may submit to the Commission an Application for Waiver to be exempt from the requirements that:

(A) bingo operations must result in net proceeds over the organization's license period.

6. 16 Tex. Admin. Code §402.452 states, in pertinent parts:

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period. If the organization has a two year license, the net proceeds from the conduct of bingo must result in a positive amount over each year of the organization's license period.

...

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior four (4) quarter period.

(2) Members of units failing to meet the net proceed requirement may subject their license to conduct bingo to administrative action, up to and including revocation.

...

(e) A licensed authorized organization may apply for a waiver from the net proceeds requirement by showing good cause that compliance is detrimental to the organization's existing or planned charitable purposes. Waiver applications must be submitted in accordance with §402.450 of this chapter (relating to Request for Waiver).

7. West VFD's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.353(a), as a result of West VFD's violation of Tex. Occ. Code §§ 2001.451(g)(1) and 2001.554(a)(5), and 16 Tex. Admin. Code §402.452.

## MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, West VFD agrees to its terms, acknowledges understanding them, and waives its right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. Pursuant to Tex. Occ. Code §2001.451(k), the Commission agrees to grant West VFD a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) West VFD is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, West VFD must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, West VFD must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, West VFD must timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If West VFD fails to comply with any requirements of this subsection, then, upon notice by the Division, West VFD shall promptly surrender its conductor's license. Further, West VFD must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).
- (b) Additionally, if West VFD satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31), and the first and second quarters of 2021 (January 1 through June 30). West VFD will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the



Division regarding the status of net proceeds for the year, West VFD must pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, West VFD must provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, West VFD must timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If West VFD fails to comply with any requirements of this subsection, then, upon notice by the Division, West VFD shall promptly surrender its conductor's license. Further, West VFD must provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).

- (c) If West VFD is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, West VFD consents to the revocation of its conductor's license without further notice or hearing.

4. West VFD agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against it by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, will not, however, form the basis for, nor be used as, evidence against West VFD in a future license renewal application, absent order alleged violations.

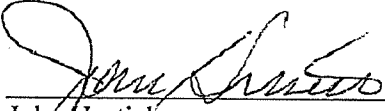
5. West VFD agrees that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that West VFD failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

West Volunteer Fire Department Hose Co No 1

Texas Lottery Commission

Charitable Bingo Operations Division

By:  11-21-19  
John Hurtick DATE  
Bingo Chairperson

By:  11/27/19  
Michael P. Farrell DATE  
Director



**Commission Order No. 20-0030**

**Date: DECEMBER 12, 2019**

**Case No. 2020-77**

**IN THE MATTER OF**

**WEST VOLUNTEER FIRE  
DEPARTMENT HOSE CO NO 1**

**TAXPAYER NO. 14729541665**

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**BEFORE THE TEXAS**

**LOTTERY COMMISSION**

**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of West Volunteer Fire Department Hose Co No 1's (West VFD) conductor license, pursuant to the provisions of Tex. Occ. Code §2001.451(k), West VFD is hereby granted a conditional waiver of the requirement of Tex. Occ. Code §2001.451(g), that a licensed bingo conductor must have positive net proceeds over its license period, under the following terms:

- (a) West VFD is required to generate positive net proceeds for the first quarter of 2020 (January 1 through March 31) and second quarter of 2020 (April 1 through June 30). To facilitate an accurate determination by the Division regarding the status of net proceeds for the first and second quarters of 2020, West VFD shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, West VFD shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, West VFD shall timely and accurately complete and file all quarterly reports and all supplements for the first and second quarters of 2020, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

**Commission Order No. 20-0030**

**Date: DECEMBER 12, 2019**

If West VFD fails to comply with any requirements of this subsection, then, upon notice by the Division, West VFD shall promptly surrender its conductor's license. Further, West VFD shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (first and second quarters of 2020).

- (b) Additionally, if West VFD satisfies the requirements of the above subsection (a), the Division will conduct a review for positive net proceeds after June 30, 2021 that shall include the third and fourth quarters of 2020 (July 1 through December 31), and the first and second quarters of 2021 (January 1 through June 30). West VFD will be required to demonstrate positive net proceeds for the 12-month period from July 1, 2020 through June 30, 2021. To facilitate an accurate determination by the Division regarding the status of net proceeds for the year, West VFD shall pay all bingo expenses in full within thirty (30) days of receiving an invoice for the incurred expense including, but not limited to, purchases of bingo paper and pull-tabs, purchases and leases of bingo equipment, employee expenses, rent and premises expenses, professional services and license fees. If requested by the Division, West VFD shall provide the Division proof of payment of any bingo expenses within ten (10) days of the request. Further, West VFD shall timely and accurately complete and file all quarterly reports and all supplements for the four quarters at issue, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. If West VFD fails to comply with any requirements of this subsection, then, upon notice by the Division, West VFD shall promptly surrender its conductor's license. Further, West VFD shall provide the Division notification of any financial obligation incurred but not invoiced or paid during the reporting period (third quarter of 2020 – second quarter of 2021).
- (c) If West VFD is required to surrender its license pursuant to the above subsections (a) or (b) and fails to do so promptly upon being notified by the Division, West VFD consents to the revocation of its conductor's license without further notice or hearing.

**Commission Order No. 20-0030**

**Date: DECEMBER 12, 2019**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 12<sup>TH</sup> day of DECEMBER 2019.

Entered this 12<sup>TH</sup> day of DECEMBER 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

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ERIK C. SAENZ, COMMISSIONER