

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

LOTTERY TASK FORCE

Monday, December 2, 2002
Harvest Room, State Capitol
Bismarck, North Dakota

Representative William E. Kretschmar, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives William E. Kretschmar, Kim Koppelman, Andrew Maragos, Lonny Winrich; Senators Bill L. Bowman, Ray Holmberg, Aaron Krauter

Others present: See attached appendix

Chairman Kretschmar said Senator Holmberg will serve as vice chairman of the task force.

Chairman Kretschmar called on Representative Wesley R. Belter, Chairman, Legislative Council, for comments regarding the Lottery Task Force. Representative Belter said the purpose of the task force is to ensure that the Legislative Assembly is involved early in the process of establishing a lottery in the state. He said the people of the state have overwhelmingly voted for the lottery and it is the responsibility of the Legislative Assembly to carry out the people's wishes. He said the task force should work closely with the Attorney General in making some of the initial decisions that need to be made so that once the legislative session begins, the lottery process can move quickly.

Chairman Kretschmar called on Mr. John D. Olsrud, Director, Legislative Council, for comments regarding the task force. Mr. Olsrud said the Legislative Council has the authority to set up committees and to report back to the Legislative Council. He said the Legislative Council has authority to introduce bills, but interim committees do not. He said interim committees have the authority to recommend bills to the Legislative Council. He said because of the time constraints, the task force will not be reporting to the Legislative Council and therefore will not be able to recommend any bills. He said the task force has the responsibility of gathering information and informing the Legislative Assembly of its findings.

In response to a question from Senator Krauter, Mr. Olsrud said individual members of the task force may introduce a bill based upon the information gathered by the task force; however, the task force cannot introduce a bill.

Chairman Kretschmar called on Attorney General Wayne Stenehjem for comments regarding the implementation of a lottery in the state. Attorney General Stenehjem said there are many logistical, administrative, and public policy issues regarding the lottery

which need to be determined. The Attorney General introduced Mr. Keith Lauer, Mr. Chuck Keller, and Ms. Julie Thompson of the Attorney General's Gaming Division. He said 38 states and the District of Columbia conduct lotteries. He said Tennessee and North Dakota recently approved lottery measures. He said no other state requires that a lottery be conducted on a multistate basis. He said there are two multistate national lottery associations. He said the membership of the Multi-State Lottery Association (MUSL) includes 23 states and the District of Columbia. This association, he said, features Powerball, an on-line national lotto game, as its main product. He said MUSL also offers four independent secondary multistate products. He said Mega Millions, the other multistate lottery association, has 10 states as members and features one multistate lotto product, the Mega Millions game.

Attorney General Stenehjem said there are a number of issues to consider for establishing a multistate lottery. He said the state must seek acceptance into the MUSL or Mega Millions association. He said acceptance into MUSL should be favorable. He said the state must meet certain conditions and be accepted by a majority vote of MUSL's board of directors. He said these conditions include:

1. A member must timely pay a percentage of gross sales to MUSL to be held in trust in a common prize pool;
2. A member must make payments to MUSL to partially fund MUSL's budget, special projects, and assessments for joint promotional or marketing projects;
3. A member must have a fully tested internal control system that meets MUSL's minimum standards;
4. A member must forward a claim for a prize of \$5,000 or more to MUSL for validation;
5. A member must sell lottery tickets for a price set by MUSL and the price must include all applicable taxes;
6. A member must sell lottery tickets only through retail agents authorized by the member;
7. A member must, at least weekly, by wire transfer or other means, transfer funds to MUSL; and

8. A member must withhold federal and state income taxes. State income taxes would be withheld by the state in which the winner of the prize was a resident or by the state in which the winning ticket was bought.

Attorney General Stenehjem said acceptance into the Mega Millions may be questionable due to North Dakota's small population.

Regarding the organizational structure of the lottery, Attorney General Stenehjem said one option would be the creation of a new lottery agency, with or without the appointment of an oversight commission. He said an executive director would manage the daily lottery operation. He said another option would be to share the responsibilities among several existing state agencies. For example, he said, the Attorney General could be responsible for licensing retail sites and the Department of Commerce could be responsible for advertising and promotion. He said regardless of the scope of lottery products, there should be a separate "lottery division" within a state agency. He said Connecticut, Georgia, Kentucky, and Louisiana contract with their states' lottery corporations to operate the lotteries. Regardless of the organizational structure, he said, there must be an appropriation or temporary loan for funding necessary startup costs, prize reserve fund, staff, equipment, and operating expenses. He said the state must contract with an equipment and services vendor to provide the computer telecommunications network, terminals, and software in exchange for a percentage of gross lottery sales. He said Montana owns its own computer and terminals. He said to reduce the vendor's fee, North Dakota may want to consider sharing the computer network and management terminal with Minnesota, South Dakota, or Montana.

Attorney General Stenehjem said the staffing level of a lottery will need to be addressed. He said the number of lottery full-time equivalent (FTE) positions in the surrounding states include Minnesota with 197, Montana with 32, and South Dakota with 33. He said these states were unable to quantify the number of FTE positions that work solely with Powerball. He said Montana has seven FTE positions that work solely on marketing and the promotion of scratch tickets. He said there must be signatory authority to enable a person to manage and control the lottery, including contracting with vendors and retail sites and managing the request for proposal (RFP) process. He said another decision to be made is which lottery products will be sold in the state. He said the primary games are the on-line lotto games. He said all states with lotteries operate both lotto and scratch ticket games. He said MUSL operates the "Instant Millionaire" multistate scratch game in 15 of its member lotteries. He said this product could be considered for North Dakota. He said sales of Powerball tickets represent a small percentage of a state's total lottery

gross sales when the state offers scratch tickets and video lottery terminals.

Attorney General Stenehjem said an emergency measure should be considered if the Legislative Assembly wants the lottery to be implemented before August 1, 2003. He said South Dakota's recent timetable from issuing an RFP to using its new lottery system was 10 months. Regarding the fiscal impact of the lottery, he said, based on information provided by MUSL and applying a correlation with South Dakota's Powerball activity, it is estimated that North Dakota may receive at least \$1.3 million of net income per year. He said the estimate is based on a net income rate of 18 percent of projected annual gross sales of \$7.3 million of Powerball tickets. He said the types of retail locations at which tickets will be sold is an important issue. He said in the surrounding states, the majority of tickets are sold at convenience stores and grocery stores. He said Montana has 600 retail sites, South Dakota has 353 retail sites, and Minnesota has 3,252 retail sites. Other issues to be considered, he said, include retailer licensing requirements and fees and retail commission income on sales and prize redemptions. He also said the Legislative Assembly will need to decide the age restrictions on players, the content of lottery advertising, sales at city airports and on Indian reservations, lottery contributions to problem gambling programs, and the use of net income from the sale of lottery tickets. Attorney General Stenehjem submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Bowman, Attorney General Stenehjem said the constitutional amendment passed in November gives North Dakota the authority to join a multistate lottery and to sell any lottery product that is a multistate product.

In response to a question from Representative Winrich, Mr. Lauer said MUSL operates four on-line lotto games and one scratch ticket game, all of which are considered multistate games. Attorney General Stenehjem said North Dakota could conduct any or all of these games. He said criminal background checks are done for charitable gaming.

In response to a question from Senator Krauter, Attorney General Stenehjem said the Mega Millions lottery is probably not interested in North Dakota because of the state's small population. He said Mega Millions was not discussed before the November vote.

Chairman Kretschmar called on Representative Maragos for comments regarding the implementation of the lottery. Representative Maragos said he was appearing as the chairman of the Go Lotto Committee. He said he is not as concerned about the sale of the \$1 ticket that is being purchased by North Dakota residents in surrounding states as he is about the collateral purchases that are being made with the lottery tickets. He said there will be many ways to

approach the implementation of the lottery, but he said the emphasis needs to be on keeping the sales in the state. He said he would not oppose the sale of other MUSL games in addition to Powerball, but Powerball is the game that was proposed before the election. He said the goal of the lottery is to bring the sales of the collateral purchases back to the state.

In response to a question from Representative Koppelman, Representative Maragos said of the top five grossing lottery sites in Minnesota, two are in Moorhead and two are in East Grand Forks. He said the North Dakota lottery will impact Minnesota more than any other state. He said once the lottery is implemented, it is likely the state will see an increase in gas and sales tax revenues.

Via conference call, the committee received testimony from Mr. Rick Wisler, Director, New Hampshire Lottery; Mr. Clint Harris, Director, South Dakota Lottery; Mr. Wayne Dolezal, Legal Counsel, Multi-State Lottery Association; and Mr. Pat Traub, International Game Technology.

Mr. Wisler said all net proceeds of the New Hampshire Lottery are dedicated to the state's education programs. He said New Hampshire has a three-member lottery commission that meets monthly to set policy. He said the New Hampshire Lottery has 15 employees. He said New Hampshire operates its own state lottery game, a tri-state game, and the MUSL games.

Mr. Harris said South Dakota started its lottery in 1987. He said the state operates its own lotto game, called "Dakota Cash", as well as three MUSL games--Wild Card, Hot Lotto, and Powerball. He said South Dakota has a seven-member lottery commission that meets at least quarterly. He said the major decisions affecting the lottery are made by the commission. He said of the \$109 million in net proceeds in 2001, \$102.7 million came from the video lottery, \$3 million from instant win tickets, and \$3.4 million from the on-line lotto games. He said the video lottery proceeds are used for property tax reduction. He said the South Dakota Lottery has 33 employees. Of those 33, he said, 11 are employed to work on the video lottery and the remaining 22 work with the instant ticket and on-line lottery games.

Mr. Dolezal said MUSL began in 1987 with seven states as a way for states to pool their efforts in establishing their lotteries. Today, he said, MUSL has 26 members, the most recent of which are the Virgin Islands and California. He said MUSL currently has five active games, including Powerball, Wild Card, Two by Two, Hot Lotto, and an instant ticket game called Instant Millionaire. He said California is looking at participation in an international game. He said each member's state lottery director serves on the MUSL Board of Directors.

Mr. Traub said he was employed as the deputy director for the Indiana Hoosier Lottery and now is employed with a lottery vendor company. He said it is

important for a state lottery to ensure that every possible safeguard and control is in place. He said a state lottery will not be allowed to make a mistake and will certainly not be allowed two mistakes.

In response to a question from Representative Maragos, Mr. Harris said each state contracts with a vendor for the printing of instant winner or scratch tickets. He said MUSL does not have scratch ticket games.

In response to a question from Representative Maragos, Mr. Dolezal said the staffing needs for operating on-line games include a marketing staff, especially during the initial launch of the lottery; a sales staff to maintain relations with the lottery and the retailers; an accounting staff to make withdrawals and deposits and to pay the bills to MUSL and the vendors; a small warehouse staff for ticket stock; a systems operations staff to design and test new games, to answer questions from retailers, and for internal controls; and a managerial staff.

In response to a question from Representative Kretschmar, Mr. Harris said South Dakota has approximately 350 retail on-line lotto terminals. He said South Dakota's vendor contract has a ceiling of 400 terminals. He said the number of terminals depends on the number of people in an area. He said the number of terminals is about one per 1,500 people. He said most terminals are located in convenience stores and supermarkets. He said bookstores and video rental businesses are not good terminal locations. He said grocery and convenience stores are best because lottery tickets are impulse purchases. He said South Dakota's law, which requires the retailers to be financially sound, helps to weed out some of the retailers who want terminals.

In response to a question from Representative Maragos, Mr. Traub said the security side of the operation is the responsibility of the state. Mr. Dolezal said the state can contract for a number of the services, such as the equipment vendor. However, he said the state must have an administrative staff and security staff. He said the Nebraska and Montana lotteries have a staff of about 20. Mr. Wisler said the state's system of checks and balances is important and a security staff is critical. Mr. Harris said the internal control system is the state's responsibility and must be under the state's control.

In response to a question from Representative Koppelman, Mr. Wisler said Kentucky, Connecticut, and Louisiana operate quasi-state lotteries, but no states have 100 percent privatized lotteries. He said the vendor and marketing services are often privatized, but the security and accounting are the responsibility of the state. Mr. Dolezal said a number of federal laws may apply if a state privatizes its lottery operations.

Chairman Kretschmar called on Mr. Jack McDonald for comments concerning the lottery. Mr. McDonald said he was appearing on behalf of the

North Dakota Newspaper Association, the North Dakota Broadcasters Association, and the North Dakota Cable Television Association. He said these associations are concerned about the regulation of lottery advertising. He said North Dakota Century Code Section 12.1-28-02, which prohibits a lottery and restricts lottery advertising, will need to be amended. He said he recommends that all references to restrictions on lottery advertising be deleted. Mr. McDonald submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Kretschmar called on Mr. Warren Dekrey, North Dakota Council on Gambling Problems, for comments regarding the implementation of the lottery. Mr. Dekrey said before the election the voters were led to believe that only one game, Powerball, would be played. He said the committee is now looking at a possible five games that may be played. He said North Dakota must take all measures necessary to provide for the security of the lottery. He said the age for purchasing lottery tickets should be 21. He said a portion of the lottery funds should be set aside for gambling addiction treatment. He said the lottery should be required to make a full disclosure of expenses and revenue. He said a conflict of interest would exist if the same agency were responsible for both enforcement and promotion.

Chairman Kretschmar called on Ms. Kathy Meagher, Charitable Gaming Advisory Board, for comments regarding the lottery. Ms. Meagher said the advisory board would be available as a resource if needed.

Chairman Kretschmar called on Mr. Bruce Murry, Protection and Advocacy Project, for comments regarding the lottery. Mr. Murry said budget shortfalls make new funding sources, such as the lottery, important. He said programs funded by traditional funding sources will look to lottery revenues as a way to fill the budgetary gap.

Chairman Kretschmar called on Mr. Warren Wenzel, Pastor, United Methodist Church, Linton, for comments regarding the lottery. Mr. Wenzel said a diligent search for the truth on the lottery issues must be made. He said misleading statements were made before the election. He said he would encourage the Legislative Assembly to put controls on the advertising of the lottery. He said selling lottery tickets in convenience stores and gas stations exposes a new group of people to gambling. He said there should be areas that are free of gambling. He said if the information received at this hearing had been given to the public before the vote, the outcome of the vote would have been different. He said it will be a challenge for the Legislative Assembly to put together a bill that will be acceptable to the people of the state.

Chairman Kretschmar called on former Governor Arthur A. Link for comments concerning the lottery. Governor Link said he was opposed to the constitutional amendment authorizing a state lottery and is

opposed to the state promoting the sale of lottery tickets. He said the language in the constitutional amendment stated that the lottery is for the benefit of the state. He said the Legislative Assembly will owe it to the people of the state to ensure that the lottery is for the benefit of the state. He said it will be the responsibility of the task force and the Legislative Assembly to provide a complete and detailed disclosure of the costs of the lottery.

Chairman Kretschmar called on Ms. Christina Kindel, North Dakota Family Alliance, for comments concerning the lottery. Ms. Kindel said the lottery will have a destructive impact on the people of the state, especially the young people. She said the North Dakota Family Alliance will follow this issue and will be available to provide information.

In response to a question from Representative Maragos, Ms. Kindel said she has read impact studies on the effects of a lottery.

In response to a question from Representative Winrich, Ms. Kindel said the impact studies specifically outlined the risk of the lottery and video gaming on young people.

In response to a question from Senator Bowman, Ms. Kindel said the North Dakota Family Alliance would recommend that the age to purchase a lottery ticket be set at 21. She said the state's 18-to 20-year-olds do not need another thing on which to waste their money.

Committee Discussion

In response to a question from Senator Krauter, Representative Maragos said the state's residents who buy their lottery tickets in the state will also purchase other items here, such as gas and cigarettes.

In response to a question from Senator Krauter, Representative Kretschmar said the state will be limited in offering only those products that are considered multistate lottery products. He said the constitution does not give the state the authority to operate its own lottery games.

In response to a question from Senator Krauter, Mr. Lauer said MUSL does offer a scratch game called Instant Millionaire. He said an Attorney General's opinion may be needed to determine if the state can participate in that game.

In response to a question from Senator Bowman, Mr. Lauer said a scratch ticket lottery game would be in direct competition with the charitable gaming pull tabs.

In response to a question from Senator Holmberg, Mr. Lauer said approximately 68 percent of Minnesota's lottery ticket sales are scratch or instant winner tickets. He said he may be able to get information on a breakdown between lotto and instant winner ticket sales in Moorhead and East Grand Forks.

In response to a question from Representative Koppelman, Representative Maragos said a decision

will need to be made as to whether the state wants to restrict the lottery to just Powerball or to include other games.

In response to a question from Senator Krauter, Mr. Lauer said with the exception of raffles and bingo, the age for charitable gaming is 21. He said the age for gaming at the Indian casinos was increased from 18 to 21 in 1999. He said the age for buying lottery tickets in the surrounding states is 18. He said the minimum age to play South Dakota's video lottery is 21.

Representative Maragos said it is important that the purpose of the lottery is not defeated. He said we do not want to make an item illegal in North Dakota which can be purchased legally in a surrounding state.

In response to a question from Representative Maragos, Mr. Lauer said the tribes may want the ability to sell lottery tickets on the reservations. He said that would be a matter for the Governor to negotiate with the tribes.

In response to a question from Senator Krauter, Mr. Lauer said when North Dakota makes a lottery ticket a legal product, it may be possible to sell a lottery ticket from another state.

In response to a question from Representative Maragos, Mr. Lauer said he would get information from South Dakota on the number of lottery terminals versus video gaming terminals. He said Mr. Harris has extended an invitation to visit the South Dakota Lottery to discuss its operation, management, and security. He said South Dakota pays 14.098 percent of its sales to its vendor.

In response to a question from Representative Koppelman, Mr. Lauer said the vendor percentage depends on the population of the state and the amount of projected sales.

Chairman Kretschmar said he would like to see a bill forwarded to the Legislative Assembly which is sponsored by individual legislators. Representative Maragos said he will sponsor a bill that can be a

starting point. He said the bill will provide for a lottery that closely resembles the lotteries of the surrounding states. He said the lottery is an economic issue and the intent is to not drive the state's citizens out of state to buy their lottery tickets.

In response to a question from Senator Bowman, Representative Maragos said the state will need to have its statutory authority in place before the state can apply for membership in MUSL.

Senator Holmberg said a number of issues will need to be tackled, including the sale of scratch tickets. Representative Maragos said the task force is just gathering information and the intent is not to take a stand on scratch tickets. He said the Attorney General will be able to provide guidance on some of these issues.

In response to a question from Representative Koppelman, Mr. Lauer said the Attorney General's Gaming Division may be able to do the licensing with the addition of another staff person.

In response to a question from Representative Winrich, Mr. Lauer said a state lottery needs to be developed before an application to join MUSL can be made.

Chairman Kretschmar said the task force will travel to Pierre, South Dakota, on December 19 to tour the South Dakota Lottery offices and operations. He said following the tour, the next meeting of the task force will be on January 6, 2003.

Chairman Kretschmar adjourned the meeting at 11:45 a.m.

Vonette J. Richter
Task Force Counsel

ATTACH:1