

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Lottery: Agents Liability
8 M.R.S.A. § 353.1

JOSEPH E. BRENNAN
ATTORNEY GENERAL



RICHARD S. COHEN
JOHN M. R. PATERSON
DONALD G. ALEXANDER
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333
January 10, 1978

To: George Orestis, Director, Lottery Commission
From: Sarah Redfield, Assistant Attorney General
Re: Liability of Agents

This is in response to your memorandum of August 10, 1977, in which you requested an opinion as to whether the persons selling lottery tickets as agents of the Maine State Lottery Commission (hereinafter "the Commission") may be held financially responsible for the value of tickets alleged to have been stolen from them, and to your memorandum of November 22, 1977, in which you request an opinion as to the liability of such agents for improper payments of invalid prizes.

As a general matter, the Commission's statute authorizes the adoption of rules and regulations for the licensing of agents to sell tickets or shares, see 8 M.R.S.A. § 353.1.I, § 355. The Commission also has the authority to adopt rules regulating the selection of winners, the method of sale of tickets and payment of prizes and the method of compensation of agents, see generally 8 M.R.S.A. § 353.1. In addition, the Director "may require a bond from every licensed agent, in such amount as provided in the rules and regulations of the commission," 8 M.R.S.A. § 354.1.D and may recommend the suspension or revocation of agent licenses, 8 M.R.S.A. § 354.1.E.

Given this broad range of regulatory power, it would appear that the Commission could address the problems raised by your memoranda by adopting specific rules governing the Commission's relationship with agents. For example, the Commission could provide by regulation that the agent is responsible for the value of all tickets received by him and shall reimburse the Commission therefor unless excused after hearing by the Commission, in the case of theft, fire, loss or the like. Similarly, the Commission could by regulation provide that the agent bears the responsibility for incorrect payment of prizes. In the alternative, or in addition, the Commission could require an agent's bond to cover such loss, negligence, etc.

Liability for past theft or improper payments is governed by existing law. Of course, theft by the agent is a crime as defined by the Criminal Code and should be reported and investigated as such. Where theft by the agent cannot be proven and/or in cases of improper payment, the existing licensing provisions appear, nevertheless, to hold the agent responsible. From the materials submitted to this office by the Commission's Business Manager, it appears that the current license application form provides that "the applicant for a lottery sales agent's license agrees to be bound by and comply with the rules and regulations and instructions promulgated heretofore and hereafter by the Maine State Lottery . . . , " Conditions for Licensing, #1 (emphasis supplied). Condition #4 specifically provides

"The applicant agrees that all lottery tickets accepted from the Maine State Lottery or its authorized distributor or safekeeping depository, are deemed to have been purchased by the applicant and the price paid therefore; less the appropriate commission if any, unless unsold tickets are returned to the authorized distributor or safekeeping depository on or by the stated deadline."

The Commission's operating procedures likewise indicate that

"Each licensed Agent must abide by the regulations established by the Maine State Lottery Commission pertinent sections of which are outlined in these Procedures. And in particular to observe the condition and rules governing the game(s) currently in effect," (Section # 1.4),

and provide as to ticket security that

"Each Agent upon receipt of tickets from his assigned Bank is financially accountable for the net value of the tickets received.

"Experience has revealed that numerous larcencies, robberies are a consequence of laxity on the Agent's part, i.e. leaving tickets, income, etc. too available to the public. It is, therefore, a requirement that Sales Agents confirm that Ticket Security has been observed; otherwise financial accountability in full will be demanded." (Section #37 3.7. See also #3.9.A.)

The procedures also specifically address the issue of erroneous payment by agents as follows:

"Frequently invalid winning tickets are redeemed by Agents and the charge deducted from the various pack reports. These are returned to the Agent by billing and/or the assigned field representative to recover the funds. The redeeming Agent is responsible to insure that payment is made correctly, and is therefore responsible for restitution." (Section #3.2. emphasis supplied)

While it is my understanding that the above-quoted procedures are not duly adopted rules of the Commission, it appears from the conditions to the license application that they are made applicable to agents, although proper interpretation of its own regulation and instructions is a matter for the Commission, not this office, to determine.



SARAH REDFIELD
Assistant Attorney General

SR:jg