

# MAINE STATE LEGISLATURE

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STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

COMMITTEE ON PERFORMANCE AUDIT

January 3, 1977

Senator Jerrold B. Speers, Chairman  
Legislative Council  
State House  
Augusta, Maine 04333

Dear Senator Speers:

In accordance with House Paper 2173, directing the Committee on Performance Audit to study the State Lottery Commission, we enclose herein the final report of the Committee.

Respectfully submitted,

  
Richard N. Berry

Richard N. Berry  
Senate Chairman

  
Georgette G. Berube

Georgette G. Berube  
House Chairman

enclosures  
JH/sym

REPORT OF THE JOINT STANDING  
COMMITTEE ON PERFORMANCE AUDIT

STUDY ON THE STATE  
LOTTERY COMMISSION

H.P. 2173

Senate

Richard N. Berry, Chairman  
Theodore S. Curtis, Jr.  
Alton E. Cianchette

House

Georgette B. Berube, Chairman  
Anne J. Bachrach  
Richard J. Carey  
Charles G. Dow  
Leighton Cooney  
Thomas R. LaPointe  
John M. Norris, II  
Michael E. Carpenter  
Walter A. Birt  
Samuel A. Hinds

Legislative Assistant - Jonathan C. Hull

## INTRODUCTION

The 107th Legislature, during its First Special Session ordered the Joint Standing Committee on Performance Audit to study the State Lottery Commission, and in particular, to study the revenue expectations, actual revenues, methods for increasing revenues and the current policies of the Commission. (A copy of the Study Order is attached as Appendix A.)

The Committee, through its Chairman, requested the assistance of the Division of Program Review and Evaluation of the Department of Audit on May 25, 1976, and established a Sub-Committee to undertake this study and report back to the Committee. The Department of Audit submitted a written report to the Sub-Committee on October 19th, and a public hearing was held on that report on October 26th. (A copy of the Audit Report and the Lottery Commissioner's Reply are attached as Appendix B.) The Sub-Committee reported to the Committee on November 22, and submitted a draft final report, with its recommendations, to the Committee on December 14th.

The Committee reviewed the draft final report and the accompanying draft legislation at its meeting on December 14, 1976, and after discussion, unanimously voted to submit the draft legislation, and this report, for legislative action during the 108th First Regular Session.

## REPORT

This study was the first experience this Committee has had in utilizing the Department of Audit in its statutorily defined role as a legislative staff agency. (Sec. 5 MRSA §§ 242-B & 243, sub-§6.) From this experience and from the resulting Audit Report, the Committee makes two sets of recommendations. The first set relates to

the Lottery Commisison and its operations; and the second relates to the Department of Audit in its capacity as a legislative staff agency.

Lottery Commission

The Study Order, H.P. 2173, identified three major questions for study:

1. Why are actual lottery revenues below the projected and expected revenues?
2. What methods would increase the Lottery's revenue to the general fund?
3. How effective are Lottery policies in carrying out the intent of the Legislature?

The Audit Report basically answers these questions, and proposes several recommendations for Committee adoption. (See Audit Report pp.3-11 on projected revenues, pp.12-14 on increasing revenues and pp. 15-18 on Lottery policies.) After careful study of the Report and a public hearing at which both the Department of Audit and the Lottery Commission expressed their views, the Committee has decided to limit its recommendations to areas requiring legislative actions. The numerous recommendations of the Department of Audit relating to the management and operation of the Lottery are not included in the Committee's recommendations because such detailed regulation is not appropriate for legislative action. The Committee relies on the Lottery Commission and the persuasive arguments of the Audit Report for implementation of the many administrative changes recommended by the Report (see Lottery Reply, pp.2-3).

The Committee makes the following recommendations for legislative action (draft legislation is attached as Appendix C):

1. Lottery tickets that are awarded as prizes should be included at their full retail value in calculating the 45% to be disbursed as prizes.
2. The Lottery Commission should not expand into other gaming operations unless such expansion is approved by the Legislature.
3. The fee to sales agents should not be increased beyond 8% unless the increase is approved by the Legislature.
4. The advertising of the Lottery Commission should be reviewed by the Attorney General to insure its accuracy and completeness, prior to its release.

In making these recommendations the Committee intends to increase the General Fund revenues generated by the Lottery while not impairing the prize structure of the Lottery.

As the Audit Report noted, the General Fund revenues are directly proportionate to the gross sales of Lottery tickets, and gross sales are directly related to the attitudes of potential buyers (see Audit Report, pp.3-6). The initial projections of General Fund revenues were much too high because of incorrect projections of sales, which were, in turn, based on faulty assessments of the basic attitudes of potential buyers (see Audit Report pp. 4-9; Lottery Reply, pp.1-2). The simplest method of increasing General Fund revenues (i.e., reducing the statutory percentage of sales that must be awarded in prizes) could result in lower revenues, because of the probability that fewer and smaller prizes would reduce sales (see Lottery Reply, p.2). However, the Lottery Commission presently does not include the value of Lottery tickets given

as prizes in calculating the required prize percentage. As tickets are in fact "prizes", the Committee recommends that their value be included in calculating the "prize percentage". And, as the value to the game player of a "free" ticket is the retail price, the value to be used in calculating the "prize percentage" should be the retail price. (See Audit Report, pp.12-13.) Essentially, this recommendation is that Lottery tickets that are used as prizes be treated as any other merchandise that is awarded. If the value of such "free" tickets as prizes were included in the total amount of "prize money", the actual amount of cash required to meet the statutory 45% of sales for prizes would be reduced by \$100,000 to \$500,000 (see Audit Report, p.13). This amount would then be paid into the General Fund, increasing the actual revenues received from the Lottery. As there would be no reduction in the value of the prizes awarded, the Committee foresees no substantial impact on sales.

The other factor affecting revenue is the cost of running the Lottery. Though the percent of gross sales required to operate the Lottery is very high (24%) in comparison to many other states, there appears to be ample justification for this high operation cost (see Audit Report, pp.9-11, 25 & 31). However, there is one "cost" that has increased recently, the increase in the agents commission from 5% to 8%. The Committee does not find a compelling reason to override the Lottery Commission's decision to increase the agent's commission (see Audit Report, p.11 and Lottery Reply, p.2); however, the Committee does foresee possible dangers in future increases. At 8%, Maine's agent commission is the highest in the country (see Audit Report, Attachment 6-A). Thus, the Com-

mittee proposes that legislative approval be required for any increase beyond 8% in Lottery agents commissions. Though this ceiling will not increase General Fund revenues, it will prevent decreases resulting from higher commissions.

The Audit Report suggested that one method of increasing sales, and thus increasing General Fund revenue, was to expand the area of Lottery operations into other games of chance. Thus, it recommended investigation of other States' experiences in numbers games, sports betting and Lucky Seven Games. (See Audit Report, p. 18.) The Committee has no objection to investigating other States' experiences nor to monitoring their activities in other State operated games of chance. However, there does appear to be strong controversy over the question of this State undertaking a broader role in gambling. In view of this controversy and the fact that the Lottery was enacted by referendum, the Committee firmly believes that any expansion in the Lottery's activities should be a legislative decision. As the present statutory authorization is vague as to the actual scope of Lottery operations (see 8 MRSA ch.8) the Committee proposes that legislation be enacted to prohibit extension of Lottery operations without legislative approval. By requiring legislative approval for any expansion, a full and open debate on the merits of any proposal will be insured.

The final recommendation of the Committee relates to the Lottery's public image and past experiences. The public image of the Lottery is its crucial operational attribute, and it has been slightly tarnished in the last year. The experiences of the Lottery Commission in the "Incredible Instant Game" and the "Antique Auto Game" (see Audit Report, pp.19-24; Lottery Reply, p.3) resulted in adverse publicity and potentially serious damage to the Lottery.

Part of the problem was generated by the Lottery Commission's own advertising, and the possibility that it might mislead the general public. No such intention was apparent, but the possibility was detrimental to Lottery operations. To avoid this situation in the future, the Commission recommends that all advertising be reviewed by the Attorney General's Office. This will insure the absolute accuracy and completeness of Lottery advertising, and avoid any adverse implications.

The Committee believes that these proposals will increase the General Fund revenues and correct some minor weaknesses in Lottery operations. The numerous recommendations of the Department of Audit that relate to the management and operation of the Lottery will also, obviously, be carefully considered and weighed on their merits by the Lottery Commission. Beyond this, the best proposal for increasing revenues and correcting the management and operation is further experience.

#### Department of Audit

This study has been the first use, by this Committee, of the Department of Audit as a legislative staff agency. From this experience the Committee has several recommendations. Though such recommendations are not strictly within the limits of the Study Order, the Committee believes they are sufficiently important to be included in this report.

The Department of Audit undertook this study at the request of the Committee (Audit Report, p.1) and carried it out in a thorough and professional manner. However, controversy arose between the Department and the Lottery Commission during the study. Because of the personal nature of certain allegations, and their possible relation to job performance and internal personal problems the Sub-

Committee held an executive session during its hearing on October 26, 1976 to review the charges and rebuttals. The executive session was opened to the public when it became clear that there was no material to be offered that warranted excluding the press and public. The misunderstandings that apparently were the source of the controversy were then discussed in public, along with the findings of the Audit Report.

As a result of this hearing and the study by the Department of Audit, the Committee believes several changes are necessary in the present statute governing the Department of Audit. While the general role of the Department when undertaking committee studies is stated to be that of a legislative staff agency; the specifics of that role are unclear (5 MRSA ch. 11, §§ 241-245). Three particular areas proved sensitive; the authorization required to undertake studies; the distribution of Audit reports; and the authority to make recommendations.

The central problem is that the Department of Audit has dual roles. It is an Executive branch agency that has large discretionary powers in initiating audits and program reviews on its own authority. But it may also serve as a legislative branch agency, that undertakes studies for the Legislature, the Legislative Council or legislative committees. In its legislative staff agency role it is acting as an agency of the Legislature, and may not have the same powers as it has when acting as an Executive agency. However, the distinction between these roles is not clearly stated in the statutes. The confusion of roles led to some disagreement and con-

troversy in the course of this study; and an Attorney General's opinion was sought. (See the request and resulting opinion attached as Appendix D.) The opinion did not substantially clarify the matter.

In order to clarify the role of the Department when undertaking studies for legislative committees, the Committee makes the following recommendations (draft legislation is attached as Appendix E):

1. The Department should review and analyze government programs, finances and activities for legislative committees when authorized in writing to do so. The written authorization should specify the scope of the review and analysis, the manner in which it is to be undertaken and the authority of the Department to make recommendations or reports or to release documents to the public.
2. Any reports or documents prepared as part of a legislatively authorized study should be deemed to be working papers of the Committee authorizing the study, and should not be publicly released except at the Committee's direction.
3. Any recommendations of the Department should be transmitted directly to the Committee for their review. The Department should not make recommendations directly to the agency or department under study without prior approval from the Committee.
4. When undertaking a study under authority of the Legislature or its committees, the Department should exercise only those powers authorized in the written authorization, and should be deemed to be solely a legislative staff agency.

The purpose of these recommendations is not only to clarify the status of the Department when it is undertaking legislative studies, but to insure its responsiveness to the Committee directing the study. Under the present statute, the Department may be simultaneously un-

dertaking a legislative study and acting as an Executive branch investigator. This can result in confusion and controversy, as well as failing to gather the information required by the Committee. Though that did not occur during this study, the possibility was raised that it could occur. If the Department is to prove its usefulness as a legislative staff agency, it must respond to Committees as any other agency of the legislative staff. That response is seriously hampered by an assertion of independent authority to publicly disclose findings or to make direct recommendations.

These proposals are not intended to reduce the authority of the Department when it is acting in its Executive branch role in conducting independent audits or investigations. Rather, they seek to define its legislative role clearly, and thus to avoid confusion and misunderstanding.

These proposals should not be viewed as a reflection on the Department's study or Report to this Committee. The Department has a professionalism and thoroughness that are admirable, and its Report is excellent. The Committee merely makes these recommendations to insure the increased use of the Department as a legislative staff agency.

# STATE OF MAINE

APPENDIX A

In House March 9, 1976

~~Ordered,~~

Whereas, chapter 570 of the public laws of 1973, enacted by the 106th legislature and approved by the voters, created The Maine State Lottery Commission; and

Whereas, among the purposes of this commission are the regulation of State Lotteries and the depositing of receipts from State Lotteries into the State Lottery Fund for the payment of prizes to the holders of winning lottery tickets, for the payment of lottery operating expenses and for payment into the General Fund; and

Whereas, there is some question as to whether the current statutory pay-out percentages from the State Lottery Fund to winning tickets, to lottery operations and to the general fund are the correct percentages for maximum revenue yield from State Lotteries; and

Whereas, the revenue expectations of the State Lottery have recently been far below revenues projected by the State Lottery Commission; and

Whereas, these problems indicate the need for a careful scrutiny of lottery operations by this session of the Legislature; now, therefore, be it

ORDERED, the Senate concurring, that the Joint Standing Committee on Performance Audit shall conduct a study of the operations of the Maine State Lottery Commission, with emphasis on determining the reasons for recent actual lottery revenues falling below revenue expectations, the best methods for increasing the proper yield of the Maine State Lottery and  $\leftarrow \rightarrow$  the effectiveness of current policies of the State Lottery Commission in carrying out the legislative intent embodied in PL 1973, C. 570, as amended; and be it further

Name:

Town:

ORDERED, the Senate concurring, that the committee shall complete this study no later than 90 days prior to the next regular session of the Legislature, and submit to the Legislative Council within the same time period its findings and recommendations, including copies of any recommended legislation in final draft form; and be it further

ORDERED, that upon passage of this Order in concurrence, the Clerk of the House shall forward a suitable copy of this order to the Senate and House chairmen of the committee.

NAME: *Richard J. Carey*  
(Carey)

TOWN: Waterville

HP2173

HOUSE OF REPRESENTATIVES  
READ AND PASSED

MAR 9 1976  
SENT UP FOR CONCURRENCE

*Edwin A. Scott*  
CLERK

*ad* IN SENATE CHAMBER *Lead*  
TABLED BY ~~SEN. SPEERS~~  
OF ~~OF KENNEBEC~~

MAR 10 1976

PENDING *Parsons*  
HARRY N. STARBUCHAN, Secretary

IN SENATE  
TAKEN FROM TABLE ON MOTION  
BY ~~SEN. SPEERS~~ AND ON FURTHER  
OF KENNEBEC  
APR 23 1976  
MOTION BY ~~SEN. SPEERS~~  
OF KENNEBEC  
*Parsons*  
IN CONCURRENCE  
*Harry N. Starbanch*  
SECRETARY

# *Audit* **REPORT**

EVALUATION

MAINE STATE LOTTERY COMMISSION



PREPARED BY:  
MAINE STATE DEPARTMENT OF AUDIT  
DIVISION OF PROGRAM REVIEW AND EVALUATION  
COMPLETED - OCTOBER 1976

**STATE DEPARTMENT OF AUDIT**  
*Augusta, Maine*

EVALUATION

MAINE STATE LOTTERY COMMISSION

PREPARED BY: MAINE STATE DEPARTMENT OF AUDIT  
DIVISION OF PROGRAM REVIEW AND EVALUATION  
COMPLETED - OCTOBER 1976



STATE OF MAINE  
DEPARTMENT OF AUDIT  
AUGUSTA, MAINE 04330

AREA CODE 207  
TEL. 289-2201

R. M. RIDEOUT, JR.  
STATE AUDITOR

LESLIE J. HANN  
DEPUTY STATE AUDITOR  
ROBERT G. REDMAN  
DIRECTOR OF MUNICIPAL AUDITS  
JOHN L. PARRISH  
FRAUD INVESTIGATION DIVISION

October 18, 1976

Senator Richard N. Berry, Senate Chairman  
Representative Georgette B. Berube, House Chairman  
Legislative Committee on Performance Audit  
State House  
Augusta, Maine 04333

Dear Senator Berry and Representative Berube:

I am forwarding herewith for your review and consideration a report on an evaluation of the Maine State Lottery which addresses the following questions and areas of interest:

1. Why has revenue been far below early projections?
2. What is the propriety of the percentages of payout?
3. What is the best method for increasing the yield?
4. The Incredible Instant Game - July 14 to August 27, 1976.
5. The Auto Game - Beginning September 15, 1976.

Other copies are being distributed as listed in the report on the page entitled Report Distribution.

Respectfully submitted,

  
R. M. Rideout, Jr.  
State Auditor

RMRJr:sv

MAINE STATE LOTTERY COMMISSION

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EVALUATION

MAINE STATE LOTTERY COMMISSION

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## EVALUATION

### MAINE STATE LOTTERY COMMISSION

#### BACKGROUND

The Division of Program Review and Evaluation of the Maine State Department of Audit was contacted May 25, 1976 by the Chairman of the Performance Audit Committee with a request to assist that Committee in its examination of the operations of the Lottery Commission in pursuance of a Legislative Order dated March 9, 1976. After an inspection of the Order, the State Auditor instructed the Division Director to design an evaluation plan, gather and analyze appropriate data, formulate opinions and recommendations and report the findings to the Committee at the earliest practical date. Certain aspects of the two most recent instant games required resolution to assure the completeness of the report.

Little time could be devoted to the project in the month of June due to other commitments. With some amount of unavoidable interruptions, detailed planning and initial data gathering began in July and concluded in this completed report scheduled for general release in the month of October 1976.

The Legislative Order suggests five basic topics which are paraphrased as follows:

1. Why has revenue been far below projections?
2. Verify the propriety of the percentages of the distribution of funds.
  - a. Winning Tickets
  - b. Operations
  - c. General Fund
3. Determine the best method for increasing yield to the general fund.
4. Determine the effectiveness of Commission policies in carrying out legislative intent embodied in the Public Laws of 1973, Chapter 570.
5. Scrutinize operations.

#### EVALUATION METHODOLOGY

The sponsor of the Legislative Order was contacted for the purpose of gaining clarification of, and additional insight into, the specific interests of the legislature. It became apparent that in pursuing a satisfactory response to the above mentioned concerns it would be necessary to examine the effectiveness, efficiency, and economy of program performance implicit in items #4 and #5. The annual financial audit of the Lottery Commission will provide additional scrutiny to lottery operations.

After some amount of initial library research into the nature of government-operated lotteries, a work plan was formulated that would best meet the time frame imposed by the order. A series of sub-questions were developed to guide the general progress of the evaluation. The answers to the sub-questions appear as commentary and exhibits under the section entitled, "Findings."

Input to the study was received from current and former members of the Commission and its staff, other state lottery commissions, the company contracted to establish the lottery system, the Lottery Commission's contracted advertiser, the supplier of games utilized, Liquor Commission store employees selling tickets, the State Law Library, a published study on the impact of legalized gambling in other states, contracts of the Commission, the State Budget Officer and State Treasurer and the records of the Commission and the State Controller.

The findings from these sources were subjected to review and analysis and provided the basis for the content of this report.

#### HISTORY OF THE LOTTERY IN MAINE

The legislature after considerable discussion and controversy enacted Chapter 570 of the Public Laws of 1973 which established a State Lottery Commission, subject to voter approval. The approval of the voters was received in November 1973 by a 2-1 margin.

The first members of the Commission were appointed by Governor Kenneth M. Curtis in February 1974 and included:

Peter J. Gorman of Waterville, Chairman  
John McSweeney of Old Orchard Beach, Member  
William Gove, Jr. of Wiscasset, Member  
Donna Tibbets of Brewer, Member  
Peter Sang of Portland, Member

Christo Anton of Biddeford was named the first director of the Lottery at the meeting in February 1974. George Orestis of Lewiston replaced Mr. Anton in January 1975.

Three consulting firms were interviewed in March 1974 for the purpose of determining which would receive the contract for the design of the lottery system to be utilized. The firm of Mathematica, Inc. was selected over Arthur Young, Co. and Analytics, Inc. after a review of the proposals.

In April 1974, Dunn and Theobald, Inc. of Bangor was contracted to be the Lottery's advertising agent. The Commission changed agents in November 1974 to Chellis, Conwell, Gale and Poole, Inc. of Portland.

Managers were employed to direct the operations of the marketing, financial and administration divisions in May 1974. The first sales of Lottery tickets began the week of June 27, 1974.

FINDINGS AND EVALUATION COMMENTARY

Why has revenue been far below projections?

GENERAL . . . . Three factors determine the amount of revenue credited to the General Fund by the Lottery Commission; namely, ticket sales, costs and the amount (45% of sales) set aside for prizes. Costs are relatively fixed, therefore, the key ingredient to the amount of General Fund revenue produced is the amount of gross sales generated.

PROJECTED SALES . . . . The first forecasts of lottery sales appear in transcripts of legislative work sessions. Many figures were discussed at various times prior to the enactment of the enabling statute. Some proved later to be far in excess of what was actually realized, while at least one proved to be reasonably correct. The detail to the initial forecasts is now difficult to locate, but, we corresponded with Mathematica, Inc. of Princeton, New Jersey, the company that was selected to establish the state's lottery system, to learn more of their projection, one of the larger returns predicted.

Mathematica stated that they had estimated gross sales amounting to \$12 to \$20 per capita or \$12 to \$20 million per year assuming a population of 1,000,000. Using the same per capita estimate and correcting for the adjusted Maine census figure at July 1, 1975, the forecast by Mathematica becomes \$13 to \$21 million annually.

The responses to a questionnaire prepared as a part of this study and mailed to several lottery states revealed the following related data in addition to other useful information:

<u>State</u>	<u>Total Population</u>	<u>Gross Sales</u>	<u>Annualized Per Capita Sales</u>
Michigan (1976)	9,108,000	\$225,000,000 (1)	\$24.70
New Hampshire (1976)	808,000	14,500,000 (1)	17.95
Massachusetts (1976)	5,828,000	103,213,524	17.71
Rhode Island (1975)	919,000	15,054,676	16.38
Maryland (1976)	4,048,000	59,700,000	14.75
Connecticut (1976)	3,032,000	29,493,864	9.73
For Comparative Purposes:			
Maine (1976)	1,059,000	8,281,180	7.82

Note: (1) Includes investment income (rounded by Commission)

ACTUAL GROSS SALES . . . . An in-depth review was made of the sales records for selected periods in the first two years of the lottery's operation. These periods were selected to reflect trends in sales which could be used for comparison with the annualized per capita sales of \$12 to \$20 estimated by Mathematica, Inc. Selected period sales figures converted to an annualized per capita sales rate are as follows:

<u>Annualized Per Capita Sales Rate</u>	
\$ 8.48	1st week of lottery sales 6/27/74
5.76	1st 6 months fiscal year 1974-75
4.92	2nd 5½ months fiscal year 1974-75 (excludes 2 weeks of sales in 6/75 of 1st instant-type game)
5.20	1st year 1974-75
14.72	1st 8 weeks of period containing the 1st instant game (6/19/75-8/7/75)
7.82	2nd year 1975-76

The first year annualized per capita sales figure was based on gross sales in 1974-75 of \$5,198,395 which was \$7,801,605 or 60 percent below the lowest estimate of sales by Mathematica, Inc. The second year annualized per capita sales figure was based on gross sales in 1975-76 of \$8,281,180 which was \$4,718,820 or 36 percent below the lowest estimate of sales by Mathematica, Inc.

PROJECTED REVENUES . . . . The amount of revenue actually credited to the General Fund is entirely dependent upon the amount of sales and the costs necessary to produce those sales. As a statutory requirement, at least 45 percent of sales must be set aside to establish a reserve for prizes.

Revenue projected for the General Fund is as follows:

<u>Source</u>	(Stated in \$ Million)	
	<u>1974-75</u>	<u>1975-76</u>
Mathematica, Inc., Princeton, New Jersey	\$5.2 - 9.3	\$5.2 - 9.3
ESCO Research, Inc., Portland	1.9	1.9
Lottery Commission	3.1	11.6
Bureau of the Budget	3.1	4.1

Mathematica's high projection of sales \$20,000,000 minus 45% for prizes of \$9,000,000 and estimated costs of \$1,700,000 was the basis for the \$9.3 million figure. The estimate by the Lottery Commission for 1974-75 was arrived at through a joint effort with the Bureau of the Budget. The \$11.6 million projection for 1975-76 appeared on a budget form signed by the former Director, Mr. Anton as well as the Financial Manager and submitted to the Bureau of the Budget by the Lottery Commission. It was subsequently revised downward by the State Budget Officer to \$4.1 million. Contact with the former Lottery Director shed little light on the specifics of the high estimate for 1975-76. His report for calendar 1974 reflected high hopes for the financial success of the lottery, but, contained no detailed calculation of his projection.

ACTUAL REVENUE . . . . Sales, prize reserves required by statute, and costs in the 1975-76 fiscal year are summarized as follows:

Sales		\$8,281,180
Less:		
Prizes - (At Least 45% of Sales by Statute)	\$3,728,823	
Costs - (23.9% of Sales)	<u>1,978,295</u>	
		5,707,118
		<u>2,574,062</u>
Plus:		
Other Income - Investment Earnings, etc.		<u>35,561</u>
Net Revenue to General Fund - (31.5% of Sales)		<u>\$2,609,623</u>

Net revenue to the General Fund in 1974-75, the first year of lottery operations, was \$1.2 million which was 61% below the amount estimated by the Bureau of the Budget for 1974-75. Net revenue to the General Fund in 1975-76 totaled \$2.6 million which fell short of the Budget Office estimate for that year by 36%.

The vendors' commission on ticket sales is normally a cost of doing business, however, in the case of sales made by state liquor stores the vendors' commission is deposited and credited to the Liquor Fund. Since Liquor Fund earnings are transferred to the General Fund, as is the case with the Lottery Fund, there is an additional financial benefit to the General Fund from the lottery that does not appear on the surface of state financial reporting. The amount credited to the General Fund in this manner in fiscal year 1975-76 was \$59,249 and is not reflected in the above data.

#### EVALUATION COMMENTARY

GENERAL . . . . With the exception of ESCO Research, Inc. of Portland, estimates of revenue to the General Fund from lottery operations have substantially exceeded the actual revenue realized. Several obvious questions flow naturally from this observation, namely:

1. What was the basis of revenue estimates?
2. Was the basis reasonable?
3. If the basis is unreasonable or not clearly identifiable, are there other indicators of the degree to which Maine's lottery system has reached its full potential for revenue?
4. If the full potential for revenue has not been reached, what are the causes?
5. What might be done to improve revenue?

Revenue estimates for the lottery were based largely upon the experience of the few states with lotteries at the time the estimates were made. Some people possibly consider New Hampshire as a suitable vehicle for that purpose due to its relative proximity to Maine and its population makeup. The basis was reasonable, but, should have included a scientific attitudinal survey of the citizens and visitors of the state to strengthen the foundation for the basic assumption that Maine's situation was similar to other states. Lottery revenue is directly dependent upon the volume of sales generated and the latter depends, for the most part, upon the attitudes and financial resources of the people concerned. As a separate point, but equally as important is the accessibility of buyers of lottery chances to sales locations.

Estimates assumed that interesting games would be conducted and that sound, yet imaginative, lottery practices would be exercised in programming and operating games. We refer to what have become more or less standardized techniques such as periodically "overlying" the regular weekly game with a sub-game played with the same ticket, utilizing the instant game concept, and changing games at the earliest indication of a loss of public interest.

In short, projections of lottery revenue were necessarily based upon experience and practices elsewhere, but should have included the skillful integration of well-documented pertinent data applicable to the State of Maine. We have carefully scrutinized certain data and list those matters that we believe have, to some extent, negatively affected revenue produced for the General Fund by the lottery. A discussion of what might be done to improve revenue appears later in the report.

LIMITING FACTORS . . . . Various factors have limited or inhibited the sales of lottery tickets. A number of sources were consulted in the acquisition of opinions and documentation. The following constitutes a compilation of responses that we believe accurately portray the situation. In addition, we include certain observations and comments based upon our research.

1. Maine is a geographically large and isolated state with a population distributed in such a manner as to make difficult the provision of the easy public access to ticket purchases that is extremely critical in the marketing of an "impulse" item. The number, quality and location of lottery ticket sales agents is vitally important in achieving the maximum quantity of ticket sales. It is desirable to have sales agents plentifully and strategically located in every populated area of the state. A consideration in the implementation of this policy, however, is that more agents increase the demands upon the Commission for logistical support and create additional costs to provide the support.
2. In the period of time immediately preceding and subsequent to the initiation of sales there was a considerable amount of poor publicity concerning moral and legal issues thereby creating an unfavorable atmosphere in which to conduct the lottery.
3. There was early and, in some instances, continuing reluctance by certain banks with strategically located branch offices to participate in the distribution and accountability of tickets and cash receipts. This reluctance has reduced the Commission's capacity to acquire and service potentially valuable sales agents. Such reluctance as that described can be attributed, at least in part, to the early opposition of Maine's United States Attorney on the basis of the legal issues referred to in 2., above.

4. Only a relatively complex weekly ticket game was made available in the first year of operation thereby failing to take advantage of the popularity of overlay and instant games. Instant games were proposed to the Commission in August 1974 by Scientific Games, Inc. after a reported earlier financial success with the concept by the Commonwealth of Massachusetts.
5. When the instant game concept was added in June 1975, it was not changed for 45 weeks even though evaluator estimates of week to week sales (utilizing data not specifically designed for this purpose) reflected declining interest. The reason given was the large number of tickets purchased at the advice of Scientific Games, Inc. We were unable to learn, however, of any cost-benefit study designed to determine the advisability of continuing the game to use the unsold tickets on hand or accepting that loss and beginning a new game, expecting to produce sufficient profits to more than compensate for the loss.
6. The Commission lacks current and accurate instant game sales information upon which to base appropriate and timely sales decisions. Sales agents and banks perform a weekly cashup and accounting of weekly game ticket sales while instant game sales run a number of weeks between cashups. The latter is due to the fact that instant tickets are not numbered and would reportedly require bank employees to verify the unused tickets by means of a physical count. Banks have objected to this rather time-consuming practice. In any case, the Commission lacks solid evidence on the volume of instant game ticket sales in the period of time between cashups.
7. A largely unanticipated lack of lottery appeal to tourists was evidenced by a Northeast Markets, Inc. survey. The survey indicated that although 70 percent of Maine's adult tourists were aware of the Maine State Lottery, only 15 percent actually made lottery purchases.
8. Limited enthusiasm and support by state liquor store employees selling tickets has been evidenced. Our analysis of a questionnaire completed by 178 liquor store employees as a part of this study revealed the following attitudes toward selling tickets; 15.2 percent positive, 33.7 percent neutral and 51.1 percent negative. 40.9 percent of store managers report they never encourage their clerks to sell tickets and 32.1 percent of the clerks report that they never do ask customers if they wish to buy lottery tickets. 38.4 percent of the clerks report they ask less than one-half of their customers. The two most frequently cited reasons were that they were too busy and there was no monetary incentive on their part to sell tickets.
9. There has been little evidence of indorsement and support by the news media. The Commission reports that with few exceptions the media does not treat lottery happenings as news and, rather, prefers to require paid advertising. Editorials rarely appear to be supportive of the lottery. On the other hand, we have learned that New Hampshire's leading newspaper with a state-wide circulation, the Manchester Union Leader, enthusiastically supports that state's revenue-producing lottery with front page editorials thereby providing a major assist in acquiring widespread public acceptance.
10. Television and radio advertising was legally limited until January 1975 to drawings conducted as a part of some larger, unrelated event. Normal paid advertising was permitted beginning in January 1975.

11. Telephone communication with the U. S. Department of Commerce revealed the following amounts of disposable income per capita for certain of the lottery states:

<u>State</u>	<u>Disposable Income Per Capita</u>	<u>(Available) Sales Per Capita</u>
New Jersey	\$5,491	\$ N/A
Connecticut	5,484	9.73
Maryland	4,847	14.75
Massachusetts	4,799	17.71
Rhode Island	4,596	16.38
Michigan	4,476	24.70
New Hampshire	4,430	17.95
Maine	3,953	7.82

As evidenced primarily by Connecticut and Michigan, there is no direct causal relationship between disposable income and sales, however, it is still conceivable that some relationship may exist.

12. There is a reluctance on the part of the Commission to employ more than the bare minimum number of staff members necessary to maintain day to day operations and it is believed this creates a heavy workload on the ten field representatives whose job it is to circulate among existing and potential sales agents and banks to establish and maintain sales operations. A continuous heavy workload hinders field representatives from seeking out additional potentially valuable sales agents in desirable locations.
13. Since Maine's per capita sales are significantly lower than other lottery states, we offer the following two mutually exclusive alternatives as a possible logical explanation based upon the observation that individuals either do or do not have the inclination to buy lottery tickets. That is to say, some people exhibit a basic openness to the gambling concept and some do not:
- (1.) By and large, Maine people do not have the inclination to buy lottery tickets (at least at a rate comparable to people in other lottery states),

or

- (2.) a potentially larger lottery market exists in Maine, but, advertising techniques and management practices have failed to arouse and provide easy accessibility to many potential consumers.

If (1.) obtains, then perhaps more realistic projections of net revenue are in order based on available sales and per capita data. If (2.) obtains, then a thorough analysis of lottery operations to date may reveal areas of possible improvement.

OTHER OBSERVATIONS . . . . At our request, the Executive Director of the New Hampshire Sweepstakes Commission offered several observations as possible explanations for the apparent disparity between the relative results of the two lotteries. A summarized version of his answer follows:

1. New Hampshire's demography is more amenable to lottery operations.
2. Large New Hampshire border on heavily populated Massachusetts areas.
3. New Hampshire lottery has complete support from the state's leading newspaper.
4. Maine's lottery was adversely affected by initial opposition of Maine's U. S. Attorney.
5. New Hampshire has twelve years experience.
6. The attitude and actions of New Hampshire's Governor and Attorney General inspired citizens to support the lottery.

The New Hampshire Executive Director concluded his letter by stating, "Your lottery is still very young and needs the chance to mature through experience, innovation and governmental support. You are fortunate that when you started, you had the opportunity to learn from the successes and failures of other states. In my opinion, there is nothing wrong with the Maine State Lottery that a few more years of weathering will not cure."

An additional important factor for New Hampshire's financial success that might be cited, although it was not by the Sweepstakes Director, is that state's use of out-of-state subscription plans. Maine Lottery Commission officials inform us that New Hampshire makes extensive use of that technique while Maine does not pending resolution of the subject in the courts.

COSTS AFFECTING REVENUES . . . . We have discussed some of the limiting factors on achieving high sales, but net revenue is the bottom line on the operating statement and the real purpose for the lottery. The amount of costs directly affects the amount of revenue, therefore, it is appropriate to include the following observations with regard to costs:

	<u>1975-76</u>
Sales	\$8,281,180
Less - Reserved for Prizes - 45.0%	<u>3,728,823</u>
	4,552,357
Less - Cost of Operation - 23.9%	<u>1,978,292</u>
	2,574,065
Plus - Other Income	<u>35,558</u>
Net Revenue to General Fund- 31.5%	<u>\$2,609,623</u>

As can be seen from the above, it cost 23.9 percent of sales to operate the lottery after setting aside 45 percent for prizes.

A closer look at costs discloses the following:

		<u>% of Sales</u>	<u>% of Costs</u>
Ticket Purchases	\$ 167,402	2.0	8.5
Agent Fees	506,584	6.1	25.6
Bank Fees	101,648	1.2	5.1
Salaries and Retirement:			
Administrative Personnel	\$ 230,727*		
Sales Personnel	<u>148,829</u>		
	379,556	4.6	19.2
Direct to Advertiser:			
Chellis, Conwell, Gale & Poole			
Agent Fees	48,000		
Media Expenses	92,500		
Drawing Expenses	18,927		
Surveys	4,853		
Travel	3,705		
Telephone	4,036		
Miscellaneous	<u>12,670</u>		
Sub-total Direct to Advertiser	184,691	2.2	9.3
Direct to Media:			
Television	135,653		
Radio	63,206		
Newspaper	52,695		
Billboards	71,017		
Aerial	6,360		
Point of Sale Material	<u>26,290</u>		
Sub-total Direct to Media	355,221	4.3	18.0
Purolater Courier Service	16,824	0.2	0.8
Scientific Games, Inc.	13,000	0.2	0.7
Data Processing	56,137	0.7	2.8
Travel, Gas, Repairs, etc.	37,985	0.5	1.9
Depreciation	30,920	0.4	1.6
Rentals	34,682	0.4	1.8
Printing and Binding	47,681	0.6	2.4
Miscellaneous	<u>45,961</u>	<u>0.5</u>	<u>2.3</u>
Total Cost of Operation	<u>\$1,978,292</u>	<u>23.9</u>	<u>100.0</u>

\* Reflects one day per week of field representatives (sales) time spent distributing tickets to distributor banks.

The only substantive places to look for possible savings are salaries, advertising and agent fees. The Commission already works at a staff level below that originally designed and appears hard pressed to meet current work demands. The importance of advertising to lottery operations can not be overstated and a correlational study of advertising to resulting sales serves to substantiate this assertion. Because of Maine's relatively low lottery sales, Maine's advertising budget was equal to 6.5 percent of sales in 1975-76 while several other lottery states reflected percentages of 1.0, 1.75, 2.2, 2.5, 2.8 and 3.0 percent. As another factor, Maine's media system for distribution of advertising is composed of numerous daily newspapers, radio and television stations; none of which provide statewide circulation or coverage thereby adding to the cost of advertising.

Sales agents must be paid for the service they perform and to do so requires a sizable portion of the sales dollar. In March 1976 the Commission voted to increase the agents' commission from 5 percent to 8 percent. To the best of our knowledge, based upon the data we have acquired, Maine was the first state lottery to authorize an increase from the usual 5 percent fee.

The minutes of the Commission's meetings shed little real light on the matter except that the Commission accepted the recommendation of the Manager of the Marketing Division who, in turn, based his judgment on an appeal from Hannaford Bros., Inc., the largest wholesale supplier of groceries in the state. A letter from Hannaford to the Marketing Manager referred to the displeasure of their retailers with the 5 percent fee and that 10 percent was the fee desired. The company officer writing the letter stated that he felt retailers would be more aggressive toward selling tickets if the fee were increased thereby producing better overall results for the Commission.

We have seen no documented evidence stating that retail grocers actually intended to terminate their status as sales agents if the fee were not increased. The Hannaford chain can not be faulted for attempting to raise the profit margin for its retailers, but we are not convinced that there was a clear and compelling reason to grant the increase. The Commission, under its statutory authority, made the decision it believed to be proper.

An analysis of the impact of the increased sales commission on weekly game sales revealed no evidence to support the cost-effectiveness of the decision. Three week periods immediately before and after the conversion to 8 percent were selected for analysis since they afforded an evaluation time frame during which few, if any, biasing factors were present. In the three week period subsequent to the commission increase statewide weekly game sales decreased by 14.5 percent from the preceding three week period. This decrease in weekly game sales was accompanied by an increase of 37 percent in agent sales commissions. Since increased sales aggressiveness was not evidenced by agents, the policy change will result in a reduction in the amount available to the General Fund. Using 1975-76 sales as a base for calculations, the projected reduction will approximate \$250,000 in 1976-77.

A very recent telephone survey of eleven lottery states conducted by the evaluators (Attachment 6a) revealed that Maine is the only state to pay sales agents commissions of 8 percent for the sale of lottery tickets. We have learned of no reason why Maine had any more compelling reason than other states to go to the higher percentage. The state nearest to Maine in percentage paid on lottery ticket sales is New York with 6 percent.

Verify the propriety of the percentages of the distribution of funds.

- a. Winning Tickets
- b. Operations
- c. General Fund

GENERAL . . . . Title 8, Section 366, M.R.S.A. requires; "The moneys in said State Lottery Fund shall be appropriated only:

- A. For the payment of prizes to the holders of winning lottery tickets or shares;
- B. For the expense of the division in its operation of the lottery; and
- C. For payment to the General Fund.

The moneys in said State Lottery Fund shall be apportioned so that not less than 45% of the total ticket sales received in the lottery will be disbursed as prizes to holders of winning tickets. All other moneys, less reasonable costs for the proper administration of the State Lottery, will be the state's share."

RESERVE FOR PRIZES . . . . Sales and reserves for prizes in the first two years of lottery operations are as follows:

	<u>1974-75</u>	<u>1975-76</u>	<u>Total</u>
Sales	\$5,198,394	\$8,281,180	\$13,479,574
Reserved for Prizes	2,357,897	3,728,823	6,086,720
Percentage	45%	45%	45%

EVALUATION COMMENTARY

FREE TICKETS IN THE PRIZE STRUCTURE . . . . On the surface, there appears to be little to question concerning the propriety of the percentages of the distribution of funds since the only statutory requirement is to disburse not less than 45 percent of total ticket sales as prizes. A closer look, however, reveals a point worthy of further discussion.

It is common practice to award free tickets as prizes on a certain number of tickets purchased that do not turn out to be winners of cash or merchandise. A question then arises as to what value should be assigned to such free tickets when calculating the attainment of the statutory requirement to disburse 45 percent of sales as prizes.

One line of thought is that free tickets should be valued at actual cost; specifically, printing and handling costs, agent and bank commissions, etc. Another line of thought is to value free tickets at the normal \$1.00 sales price. At the present time the Commission does not place any value on free tickets disbursed as prizes when calculating the fulfillment of the 45 percent of sales requirement.

Arguments can be made in favor of the first two procedures. Consultation with the Assistant Attorney General assigned to Lottery Commission matters, Mr. Robert Stolt, included his verbal informal opinion to be, that under the wording of the present statute the Commission should utilize the actual cost amount in attaining the 45 percent prize requirement. Not including an estimation for administrative handling cost, the recent Incredible Game would have resulted in an additional \$21,865 for the General Fund and the new Auto Game another \$15,553 utilizing this procedure. Assuming four such games were conducted in a fiscal year at the same rate of free tickets, an additional \$74,836 would have been transferred to the General Fund. Again, the latter amount does not include an estimation for administrative handling costs which would serve to further increase the amount to the General Fund.

The other alternative of valuing free tickets at the full \$1.00 normal sales price of a lottery ticket is substantially beneficial in terms of the amount of money transferred to the General Fund. The Incredible Game was programmed for 164,000 free tickets and the new Auto Game for 108,011 or a two game average of 136,205 free tickets. Assuming four such games were conducted in a fiscal year at the same rate of free tickets, the result would be 544,820 free prize tickets or \$544,820 that would be counted in attaining the 45 percent of sales prize requirement.

It is our opinion that a free instant game ticket does represent a \$1.00 prize value to the game player, but, we agree with Mr. Stolt in his view that under existing law, free tickets should only be valued at cost in meeting the 45 percent of sales prize requirement. Therefore, any change to recognize free tickets at retail value in the prize structure would require amending legislation. We do not suggest which course the legislature might choose to pursue, except to note for consideration that Scientific Games assigned a retail value of \$1.00 to free tickets in calculating what might be referred to as the "deductible" portion of the contracted insurance coverage of the Incredible Game.

In summary, the only required percentage of funds to be distributed relates to prizes and that is basically handled properly with the exception that the Commission does not include the cost of free tickets in prize structures designed to meet the statutory 45 percent of sales requirement. Furthermore, we suggest that the legislature exercise its option to pass judgment on the desirability of legislation that would permit the recognition of free tickets at the normal retail price of the game in determining prize structures designed to meet the requirement to disburse prizes of at least 45 percent of sales.

UNCLAIMED PRIZES . . . . The amounts earmarked for the payment of prizes are placed in a suspense account for disbursement to winners presenting valid claims. Amounts remaining unclaimed for more than one year are available for use as prizes in overlays to the regular weekly ticket game. An overlay game provides an opportunity to the weekly game ticket buyer to win overlay money with the regular \$0.50 ticket. Weekly game sales, charted as a part of this study, reflect a marked improvement during overlay periods.

From a business point of view, it is important for the Commission to closely monitor unclaimed prizes so that as soon as a sufficient amount of prizes have remained unclaimed more than one year, an overlay can be instituted at the earliest practical date in order to boost weekly ticket sales. Each passing week is likely to result in the creation of some additional amount of one year old unclaimed prize money from the weekly game alone.

The Financial Manager was questioned as to whether or not he could identify and substantiate the amount of one year old unclaimed prize money in the suspense account at any recent point in time and he replied at first that he could not and then, that he could develop the amount utilizing certain computer printouts. The Financial Manager initially declined to work with the evaluators for what he estimated would only be a one hour or so task and the evaluators declined, in turn, his offer of the computer printouts for the computation. An admitted gap in the computer data and the Financial Manager's general reluctance to participate was interpreted as indicating little likelihood of reliable success.

In any event, the question was not whether the evaluators could calculate the unclaimed prize money available for overlays, but whether or not there is reason to believe that the Commission routinely has at its disposal accurate data upon which to base sound and timely overlay judgments. It should be noted that the weekly game is the chief difficulty in the calculation since instant game prizes are controlled in specific activities of the suspense accounts and the age of those unclaimed monies are readily apparent. In this case, however, the suspense account at August 31, 1976 reflected the greatest portion of its money in the weekly game category; more than \$200,000 in the basic game and \$20,000 in the subscription game, offset in part by negative balances attributed to instant games, creating a net suspense account balance of \$148,751.15.

The aforementioned negative balances are not seen as indicative of another problem, since it is possible that a game might pay out more than the amount reserved for it, as long as there is one year old prize money available in the overall account to make up the difference. The only legal requirement is to pay at least 45 percent of sales in prizes.

In our opinion, the performance of the weekly game can be enhanced through the use of overlays. The lack of readily available and accurate data as to the specific amounts available for this purpose denies the Commission the opportunity to make sound and timely decisions concerning the use of overlay games to stimulate weekly game sales. Further, without accurate data on the age of unclaimed prizes, circumstances are created whereby it would be possible to commit monies for other purposes prior to the attainment of the necessary one year period.

At this writing, the Financial Manager has acknowledged the implications of the situation and is reportedly beginning corrective action on this and certain other associated conditions brought to his attention in the pursuance of the central issue.

Determine the best method for increasing revenue to the General Fund.

EVALUATION COMMENTARY

GENERAL . . . . We have learned of no certain way to substantially increase lottery revenue to the General Fund, short of a possibility outlined in the section concerning the propriety of the distribution of funds or the addition of major new wagering systems, some of which might be legal under existing legislation. With regard to the latter, it is Commission policy to explore techniques utilized by other states.

The following represents a series of comments that might be of some value when working toward producing increased revenue to the General Fund. The comments and suggestions are not necessarily new and unique ideas for the Commission and staff, but, nevertheless, are included here for consideration:

1. Accumulate and translate market and sales information into business-effective actions, methods and procedures:
  - a. Identify major towns whose residents do not purchase lottery tickets in an acceptable proportion to the population as the first step in determining a course of corrective action, if deemed appropriate.
  - b. Identify major towns whose agents do not sell lottery tickets to an acceptable proportion of the population as the first step in determining a course of corrective action, if deemed appropriate.

As a part of this study, we prepared analyses similar to that described in b., above and, as a result, observed several interesting conditions that might be of some use to the Commission in improving market areas. We were informed by the manager of Region I that a color coded civil divisions map of the state prepared by us and reflecting sales levels by town was of some value in identifying sales conditions to be improved.

A technique that might be utilized in pursuing a., above, is to analyze the addresses of winners of lottery prizes in order to determine the rates by town of per capita purchases of tickets. Towns reflecting lower rates of per capita purchases with no readily apparent reason might then be designated to receive extra attention for market development.

As a matter of note; it will be necessary to analyze the addresses of a substantial number of winners in order for the conclusions to be valid.

2. Based upon the premise that lottery tickets are an "impulse" purchase item, the Commission should, as a matter of policy, engage as many productive sales agents as possible consistent with the staff's capability to meet increased work loads. In this regard, cost-effectiveness studies may reveal the desirability of increased staffing.

It is believed that this suggestion relates closely to 1., above.

In the same line, sales agents with very low productivity might be invited to drop from the sales system, provided there is no resulting serious inconvenience to the public, in order to create increased staff time in which to cultivate sales agents with a greater potential for sales productivity.

3. The Bureau of Alcoholic Beverages should include lottery ticket sales in the job descriptions of liquor store employees so that the duty might be taken into consideration when establishing salaries under the new "Hay System." We have contacted the Director of the Bureau of Alcoholic Beverages with favorable results. Implementation should mean the achievement of more willing cooperation by liquor store employees.
4. Approach desirable distributor banks not participating in the sales system on a specific and personalized basis in order to gain their participation, thereby, increasing the potential for additional sales agents. The Marketing Manager is already taking action in this matter by supplying banks with specific information as to the identity of potential agents to utilize the bank. The banks will then be in an improved position to evaluate the business implications for the bank itself.
5. Expand the use of adequate private establishments to substitute as distributor banks where it is difficult to acquire sales agents due to the unavailability of conventional banks participating in the sales system. The Marketing Manager is reportedly exploring such a possibility.
6. Permit a certain number of prospective high-return sales agents, who do not actually become sales agents due to difficulties caused by the necessity to cash-up the weekly game each Wednesday morning at a distributor bank, to carry only instant game tickets which are currently cashed at the convenience of the seller.
7. To the extent possible and practical, acquire accurate weekly instant game sales information upon which to base appropriate and timely sales decisions. This recommendation need not seriously conflict with the preceding recommendation in that those agents need only be encouraged to cash-up as frequently as possible. The agents in this recommendation would provide the basis for lottery officials to make timely business decisions as to appropriate dates at which to end a game or even continue it if the situation permits. Advertising decisions might also receive direct benefit from such information.

8. Maximize the use of overlay games to the regular weekly game. It might be desirable to utilize not only unclaimed prize money, but, money specially earmarked for this purpose from regular sales. The following data indicates that overlays serve as an impetus to weekly game sales:

<u>Name of Overlay</u>	Dowmeast .....Weekly Game Sales.....			<u>% of Increase</u>
	<u>Prior to Start</u>	<u>During Overlay</u>	<u>Increase</u>	
Lucky Losers 1/15-2/5/76	(4 weeks) \$156,005	(4 weeks) \$288,601	\$132,596	85.0
Grand Slam 3/11-4/1/76	(4 weeks) 173,132	(4 weeks) 260,788	87,656	50.6
Son of Lucky Losers 5/27-6/30/76	(6 weeks) <u>212,126</u>	(6 weeks) <u>318,964</u>	<u>106,838</u>	<u>50.4</u>
	<u>\$541,263</u>	<u>\$868,353</u>	<u>\$327,090</u>	<u>60.4%</u>

9. Continue the use of probability games such as the Incredible Game. This assumes the perfection of techniques to prevent purchaser systems designed to reduce the odds of a game. We know of no reason that would preclude the perfection of such techniques, therefore, there is no reason why this popular concept can not be made available to lottery patrons.
10. Explore the possibility of including a provision in the contracts with suppliers of future probability games which guarantees ticket purchasers an advertised minimum return on payoffs resulting from a pari-mutuel pool. In our opinion, when payoffs in a pari-mutuel pool drop consistently below a certain point there is sufficient indication of a defect in game or ticket design. A game supplier should be expected to possess sufficient confidence in the performance of the game to protect the state against the unfavorable and potentially damaging publicity that result in situations such as the recently concluded Incredible Game.
11. Explore the possibility of designing an instant game featuring elements attractive and important to tourists and create billboard and radio advertising to emphasize the point. There are many reasons why state lotteries have evidenced little appeal to tourists, but, it might be possible to overcome at least some of those reasons through careful planning. It is important to a tourist to have quick knowledge of and access to winnings. Drawings necessitating a return to the state are an obvious negative factor.

The foregoing is not presented as a subject thoroughly researched by the evaluators, but we offer the suggestion only as an idea worthy of further consideration. If a game should eventually be adopted with a goal of reaching tourists, it is recommended that a technique be devised to analyze the addresses of winners in order to determine the actual success of achieving the participation in the lottery by out-of-state tourists.

12. Improve the attractiveness of the regular weekly game. Contact with commission officials indicates awareness that the weekly game requires some amount of change to improve sales. A review of weekly game sales discloses a steady decline in popularity with the public.
13. Include in advertising the statutory exemption of winnings from the state income tax.
14. Carefully monitor, analyze and document sales reactions to advertising campaigns, techniques, etc. as an aid in best determining future courses of action with regard to advertising.
15. Determine the marginal utility of employing additional field representatives to improve sales. At the present time, the ten field representatives have large geographical areas and numbers of sales agents and banks to service.
16. Determine the desirability, feasibility and legality of adding a daily or weekly numbers game. Information available to this study was inadequate to form a conclusive opinion in this regard. Conversation with the Director of the Rhode Island Lottery indicated a numbers game might be best limited to several of the state's larger cities. He also suggested that a system of "runners" rather than a telephone system could prove to be worthwhile advice. The Director believes that the numbers game has been a financially valuable addition to the Rhode Island Lottery.
17. Acquire, for future reference, data concerning the State of Delaware's experience with sports betting as the situation continues to develop in that state.
18. Determine the desirability and feasibility of legislation to permit the Maine State Lottery Commission to act as the control for all Lucky Seven Games entering the state. Under this system social clubs and organizations currently using this game would be required to acquire the game through the state with a commission being paid to the state. It is noted, however, that Rhode Island has not experienced much revenue from Lucky Seven and handles the game basically to provide state control.

The preceding are offered as possibly fruitful suggestions worthy of further investigation by lottery staff in their pursuit of increased revenues. They are by no means intended as definitive solutions, nor should the listing be assumed to be complete or all-inclusive.

In general, lottery enterprises require sensitivity and responsiveness to constantly changing public gambling fancies. Although each of the aforementioned suggestions clearly represent direct attempts to increase revenue, the long range importance of good public relations should not be underestimated as an indirect revenue producer. In the final analysis, we believe that a positive public image of lottery operations is indispensable toward fostering the broad public acceptance and support necessary in the creation of a prosperous and popular lottery system.

THE INCREDIBLE INSTANT GAME - July 14, to August 27, 1976

EVALUATION COMMENTARY

THE GAME . . . . The Maine State Lottery's Incredible Game received wide adverse publicity due to the fact that it was a probability game whose published odds for winning were systematically reduced by many players. In a probability game all tickets are potential winners since winning depends entirely upon the success of the player in revealing a winning combination. Ticket purchasers were invited to clear exactly 3 of 12 covered numbers. If the 3 cleared numbers totaled 7, 11 or 21, then the following prize structure was offered:

<u>Total</u>	<u>Prize</u>
7	"wins free ticket and entry into \$50,000 Drawing"
11	"wins \$2.00 and entry into \$50,000 Drawing"
21	"wins your equal share in a Jackpot Drawing (generally \$25)"

In addition to the probability portion of the game, a conventional randomly seeded ticket feature offered the ticket purchaser chances to win \$50, \$1,000, and \$10,000. Since these prizes were limited in number by game design, there was little risk of over-redemption in this portion of the game.

THE SYSTEM . . . . Audit Department staff discovered that some players were paid for an unusually large number of winning tickets during the early weeks of the game. An inspection of the Controller's records confirmed that several individuals had apparently succeeded in significantly reducing the odds of winning.

Following a purchase of only three consecutive tickets from a single pack, a possible relationship was observed between the placement of covered numbers integral to the "probability" portion of the game and a numeric code appearing on the stub part of the ticket with another portion of the game. It was then hypothesized that if many or all tickets were purchased from a given pack, it might be possible to classify those tickets with reference to similar code numbers thereby permitting a systematic approach to the game. Subsequent experimentation confirmed that once the relationship was detected between the code number, actually intended for identification purposes, and the patterns of covered numbers on the tickets, it was not difficult to routinely "beat the game" by virtue of having significantly reduced the published odds for winning.

According to an official published explanation offered by the lottery, "the one thing that Scientific Games and the Maine State Lottery Commission did not count on, or even dream of, was that anyone would consider buying literally hundreds of tickets all at once and then spreading them out on a floor in an attempt to 'see' a pattern." As previously stated, it was not necessary to purchase hundreds of tickets. In any event, however, we believe it is unrealistic to assume that players would not use their imaginations to this limited extent for personal gain. One would not expect naivete of this sort to be exhibited by a designer/producer or administrator of public lotteries. Considerable criticism has emerged from resulting adverse publicity that might ultimately be damaging to the lottery and affect its capacity to produce revenue.

RESULT OF THE SYSTEM . . . . Although the state could not lose money in the "21" portion of the Incredible Game due to its pari-mutuel aspect, it did pay out more winnings than anticipated in the "11" (\$2) portion of the game. Whereas the prize structure approved by the Lottery Commission called for an anticipated \$163,300 in "11" prizes, the actual payout for that portion of the game was \$373,637, for a difference of \$210,337. The total approved prize structure projected a prize fund of \$481,300 (46.5% of sales.) However, actual cash disbursements as of September 20, 1976 have totaled \$682,046 (66% of sales.) We assume that there is little intention on the part of the Lottery Commission to pay out as prizes much more than the 45 percent of sales required as a minimum under the enabling legislation. Therefore, we looked to the insurance clause of the contract to determine how much of the unanticipated payouts could be recovered from the game supplier.

THE CONTRACT . . . . When it became evident that several players had successfully "broken the odds," it was publicly reported that lottery officials maintained the contracted supplier of the game guaranteed, through an insurance policy, that the state would receive 55 cents on the dollar regardless of how much was paid out in winnings. Our review of the contract revealed that lottery officials, and in particular the Financial Manager whose delineated responsibilities include, "handling of contracts and follow through with them," had a limited and confused understanding of the terms of the contract.

In fact, if the insuring clause of the contract is taken at face value and additional negotiations are not possible with the contractor, it appears that the Lottery Commission will have both a substantial over-redemption subject to a claim against Scientific Games, Inc. and a sizable over-redemption not subject to a claim. (Over-redemption, in this case, refers to unanticipated prize payments resulting in a reduction in the amount that would presumably, have become revenue to the General Fund.)

There is some question at this time as to whether or not free ticket prizes can be calculated as prize payments subject to insurance coverage. If they can not be so calculated there would appear to be no claim possible. It is our belief, however, that free tickets should be counted as prize payments subject to insurance since they were included in the calculation of the insurance "deductible" portion of the contract.

Pending resolution of this matter and possible litigation, it is inappropriate to comment further at this time and we defer from assigning unofficial figures as upper and lower limits as to the amount due from the game supplier. We have brought this matter to the attention of the Lottery Director, Financial Manager and Assistant Attorney General assigned to Lottery Commission matters and who had approved the contract as to form. All were admittedly unsure of the specifics of the clause in question.

A sentence in the contract reads; "The liability of Scientific Games is limited to the amount paid to Scientific Games by the above insurance." It was learned that the Lottery Commission did not possess a copy of the insurance policy through which Scientific Games, Inc. indemnified the Maine State Lottery. Instead, the Commission possessed a certificate of insurance stating the maximum amount payable by the insurance company to Scientific Games and no reference to specific conditional terms.

Some question has arisen as to the termination date of the present contract. Although the present contract clearly authorizes the Lottery Commission to purchase two additional games at its option, the contract apparently terminates on September 27, 1976: "In any event, this contract shall terminate 30 days after the announced completion of the Maine State Lottery Incredible Instant Game." We question whether the insurance and other protective features of the present contract can be properly extended beyond the apparent expiration date without an additional rider. This matter is presently pending resolution through the Attorney General's Office.

SUMMARY . . . . It is our belief that the experience of the Incredible Game and its enabling contract have clearly emphasized the importance and necessity of carefully planned game implementation procedures. Contract language, insurance levels, and other protective features mandate objective scrutiny by qualified personnel. The importance of allowing adequate time for game "debugging" by individuals with a non-assuming approach can not be over-emphasized.

Lottery staff rightly concedes that they are "still learning the trade." There are several lessons to learn from the Incredible Instant Game. Although the State of Maine will benefit financially as a result of this game, it remains to be seen exactly how much will be "lost" from the State's share of sales. To date, \$682,046 or 66% of sales has been disbursed in cash prizes to the public, as compared to \$466,515, the minimum payout of 45% mandated by law.

The financial outcome of the Incredible Game could be viewed as resulting in "unrealized revenue" to the General Fund due to an excess of anticipated prize payments. It should be understood, however, that the Lottery Commission may, if it so chooses, transfer "unclaimed prizes" to the General Fund and/or modify the prize structure of a future game to realize this potential revenue to the General Fund without violating the statutory requirement for the amount of prize disbursements. Use of unclaimed prizes precludes its availability for overlays.

Conversation with the Financial Manager indicates a reluctance to acknowledge the financial implications. To place the matter in perspective and take into consideration the subtleties of accounting; if more cash is paid out on an element of the game than was intended and not all of that cash is recovered in the form of insurance, then the result is less cash for the Lottery Fund than originally anticipated. Therefore, less cash is available for whatever purpose, including transfers to the General Fund.

It was unfortunate that the Maine State Lottery experienced public controversy with its first probability game. Probability games of this type offer much by way of attractiveness and appeal to the public. Unlike conventional lottery tickets, they are a true game in so far as each ticket is a potential winner. This contributes toward maintaining high interest levels with lottery players.

As heretofore mentioned, much negative publicity accompanied the Incredible Game. Since program performance, the primary interest of program evaluation, is the product of the planning function, it was deemed appropriate in this case to examine the causes of any situation which might prove detrimental to the credibility and hence public acceptance of the lottery and thereby affecting its revenue producing capability. We do not believe the actual effect of the adverse publicity on lottery revenue will ever be conclusively determined. However, early indications from the Lottery Marketing Manager reflect optimism that the Auto Game sales have not been negatively affected by the publicity of the Incredible Game.

AUTO GAME - Beginning September 15, 1976

EVALUATION COMMENTARY

SALES AGENT ADVANTAGE . . . . On Wednesday September 1, 1976, the Director of the Lottery Commission was informed of the State Auditor's concern relating to an aspect of the instant Auto Game scheduled to begin September 15, 1976. Under the rules for the game, ticket purchasers could collect five losing tickets bearing the prominently displayed picture of the same antique auto and, by so doing, qualify for one of six bonus drawings (five winners each drawing of \$1,000 each for a total of thirty winners and \$30,000.)

It was our contention that sales agents would have a distinct unfair advantage over the ordinary ticket purchaser in acquiring five such matching tickets from the twenty different antique autos to appear on lottery tickets. Whereas a sales agent could always be assured of at least qualifying for the drawings when purchasing five \$1.00 tickets for his own use, the ordinary purchaser buying tickets on an at-random basis would be subject to odds of 1:160,000 of acquiring five matching tickets with only \$5.00. Under such random conditions for the ordinary purchaser, it might become necessary to expend as much as \$81.00 to be assured of five matching tickets.

The Director's response was that the best solution, under the circumstances, was to require agents to sell tickets in strict sequence, theoretically, preventing agents from selecting matching tickets when making personal purchases from within their assigned packs. We believed this to be no real solution since enforcement would be difficult, if not impossible, and there was no reason why an agent could not simply purchase pre-selected tickets as they appeared in the pack during the normal course of sales.

The Director immediately informed the Chairman of the Commission of our concern and we were requested to join a meeting that had been previously scheduled on that same day for another purpose. Present at the meeting were Robert Cott and Jo Dondis of the contracted advertising agency; John Koza, President of Scientific Games, Inc. (supplier of the game); Assistant Attorney General, Robert Stolt; Marketing Manager, Robert Beaudoin; Financial Manager, Martin Cloutier; Lottery Director, George Orestis and Chairman of the Lottery Commission, Peter Gorman.

After stating the nature of our concern, we were told, following some amount of discussion, that all purchasers of tickets would now be permitted to specify which antique auto should appear on tickets purchased. The Marketing Manager observed that serious complaints would likely be registered by certain large and busy agents, such as supermarkets, who would be forced to spend considerable time either sorting or searching for specific tickets prior to making a sale. We agree with the Marketing Manager and currently view the situation as a very real problem in maintaining good relations with sales agents. The solution did, however, at least allow all ticket buyers to have the same opportunity to qualify for the drawings.

Our next concern was that the public be adequately advised prior to the start of and during the course of the game of their prerogative to request specific tickets. At the Chairman's request, the advertising agency representative indicated that notice could still be inserted into certain of the advertising already prepared for the media. Later inquiry and observation revealed the requested public notice was something less than ideal.

The President of Scientific Games left the room at one point in the discussion and returned with a statement addressed to Mr. Gorman that he did not believe the technique would work and that what the Commission should do is simply announce during the second week of the game that any five losing tickets would qualify for the drawings. We found the suggestion contrary to our own sense of propriety since it would be clearly misleading to the public to begin a game with full knowledge that the rules were to change sometime during or after the second week of the game. Mr. Gorman did not accept the suggestion.

It was apparent that those present at the meeting did not agree with our position and it was stated that somewhat similar conditions had existed on occasion in previous games with few known resulting problems. In our opinion, the Commission would likely be unaware of the use of this type of advantage by agents and, further, the existence of the condition in previous games did not serve to resolve the question of propriety for the Auto Game.

In any event, the solution dictated by Mr. Gorman was acceptable to establish the propriety of this phase of the Auto Game. It is our opinion that future games should be carefully screened for general propriety and other important matters, such as those encountered in the Incredible Game, prior to purchase from game suppliers. Sensitivity to such points should serve to assist in maintaining a high-quality image for the lottery thereby improving the climate for sales. Although we believe the well-publicized flaw in the Incredible Game was clearly the responsibility of Scientific Games, Inc., we also feel that the Commission and staff should be cautious and alert to the possibility of intricate negative factors in proposed games. We recommend that, instead of being excessively reliant upon the expertise of game suppliers, the Commission and staff add their own expertise as a supplementary procedure in the attempt to avoid potential problem areas through careful scrutiny of proposed games.

There has been the suggestion by some that lottery sales agents should be restricted from purchasing lottery tickets. We do not endorse this solution for eliminating possible advantages to sales agents in purchasing tickets. This would create additional problems of enforcement, reduce sales, cast implicit suspicion on sales agents who serve voluntarily, and possibly result in the general estrangement of agents from the lottery sales system. As an alternative, it is recommended that games include in their design careful consideration and elimination, to the maximum extent possible, of potential advantages to sales agents purchasing tickets.

POLICY INCONSISTENCY . . . . It is interesting to note an apparent inconsistency in Commission philosophy. Recent paid advertising contained the statement; "we unequivocally discourage anyone from buying more than one or two lottery tickets a week." The next sentence indicates "two .50 cent weekly tickets a week" as producing a satisfactory result for the state. It is assumed that this philosophy would also permit an additional \$1.00 for an instant game ticket for a total of \$2.00 per week.

The inconsistency lies in the fact that the design of the Auto Game encourages the collection of five matching losing tickets for participation in any one of the six bonus drawings. Drawings are to occur as soon as 200,000 tickets are sold in each of three pools of 400,000 tickets. When questioned, Lottery officials said they were hopeful that drawings could occur every two weeks. In fact, one week elapsed between the first and second drawing; the first occurring October 5, 1976 and the second October 12, 1976.

Under the system originally planned, that would not have permitted lottery players to specify which auto ticket was desired, many tickets would necessarily have to be purchased in the attempt to accumulate five matching losing tickets. This situation was described as the "treadmill effect" in the meeting referred to in previous commentary. The "treadmill effect" is a basic technique of lotteries in that a reason is created for individuals to buy a number of tickets in the pursuance of a specific element of the game.

In our opinion, the use of the "treadmill effect" is contrary to the Commission's avowed concern that some persons might purchase too many tickets. Such a contradiction between advertised policy and actual practice exposes the Lottery to the type of editorial criticism that has been cited as damaging in the past to lottery revenue performance.

AUTO GAME CONTRACT . . . . The contract for the Incredible Game gave the Commission the option of entering into two additional games for a stipulated price. The second game selected after the Incredible Game was the Auto Game. Our review of the aforementioned contract indicates that, although the Commission had the authority to enter into the Auto Game, it does not possess an adequate contract specifying all conditional terms of the Auto Game. All aspects of the contract, except the option clause, appear to be directed toward the Incredible Game including the subject of insurance. We have discussed the matter with the Director, Financial Manager and three Assistants Attorney General and our concern has not yet been dispelled nor have we been able to learn of any move to acquire a contract or a rider to the aforementioned contract, adequately detailed as to the specifics of the Auto Game and the game to follow.

As an additional matter, the contract for the Incredible Game includes a statement as follows: "In any event, this contract shall terminate 30 days after the announced completion of the Maine State Lottery Incredible Instant Game." The Incredible Game ended August 27, 1976, therefore, it is difficult to believe that this contract was ever intended to cover subsequent games, although that theory has been suggested. Only the option clause appears to be applicable. The chairman of the Contract Review Committee was consulted for any additional insight that he might contribute to the matter.

If any conflict or disagreement should arise during the course of the Auto Game and the subsequent game, it can not be expected that the terms of the contract would settle the matter, since there does not appear to be an applicable contract. If the dispute involved an insurance claim, we believe the state would be without protection. Certainly the occurrence would receive a certain amount of public notice, thereby, detracting from the Lottery's overall image. As indicated elsewhere in this report, a public lottery's image is indeed a valuable commodity and is not easily restored if once tarnished.

## GENERAL OBSERVATIONS

The following observations are offered with a consideration toward broadening the perspective with which one views the Maine State Lottery. Although these observations are not directly related to what has preceded, or even to each other, we perceive their significance to be worthy of inclusion in this report.

1. Sales activity immediately subsequent to televised drawings do not reflect any promotional advantage to the cost so incurred. There is, however, the possibility that the somewhat regular appearance of the drawings on television fosters, at the very least, psychological acceptance of the lottery as a societal institution. Additionally, the public drawing of winners in this manner undoubtedly serves to verify the openness and credibility of the techniques for determining winners. Therefore the cost-effectiveness of televised drawings remains unknown if one wishes to consider the positive intangible effects of this practice.
2. It is interesting to note that in other lottery states, television stations reportedly compete and pay for the privilege of broadcasting jackpot drawings. In Maine, however, the Commission must pay the television stations to carry the drawings since none of the seven major TV stations has expressed serious interest in purchasing lottery shows. A survey of television stations serves to verify that they do not consider lottery super-drawings (as presently constituted) to have a wide enough audience appeal to warrant purchasing the show.
3. The attractiveness of the lottery game lies in the chance to win a large sum for a small wager and it is doubtful that the published odds influence the lottery player. Prize structures, more than payout percentages, influence the popularity of lotteries. A large number of small prizes maintain interest and rekindle hope of winning grand prizes. Research indicates that cash prizes are preferred over merchandise and that the basic concept or theme of a game plays an important role in the appeal of the game.
4. The most apparent financial observation about the lottery is that it contributes a small percentage to state revenues. In 1975-76, the amount of money transferred to the General Fund by the Maine State Lottery was equivalent to that produced by a sales tax rate of less than one tenth of one percent. The lottery's contribution to the General Fund accounted for approximately one-half of one percent of General Fund expenditures for fiscal 1976.
5. Chapter 39 of the Private and Special Laws of 1975 states; "In order to provide the necessary expenses for operation and administration of the State Lottery Commission, the following amounts, or as much as may be necessary, are allocated from the revenue derived from operations of the fund:" (emphasis added). The phrase underlined renders meaningless the exact amounts that the law goes on to specify, except that it may be assumed the amounts constitute a "target" for the cost of operations. Some states require a 15 percent of sales limitation on spending. Maine expended 23.9 percent of sales to meet operating costs in 1975-76. It is recommended that a percentage limitation not be imposed until the policies and operations of the commission have stabilized into a more detailed and time-tested operational strategy.

6. It will most likely require several years for the lottery to establish a consistent revenue-producing record whereby the legislature can anticipate the amount of money to be transferred to the General Fund. To date, the Commission has moved slowly and carefully in accordance with what they perceive to be the best interests of the people. In our opinion this is a proper approach and will achieve favorable results for all concerned.
7. A major concern of those who oppose or reluctantly favor the lottery operation is the extent to which promotional activities should be exercised — especially by public officials. The lottery business requires constant promotion and innovation in order to maintain desired sales levels. If lottery officials and the legislature come to rely on lottery revenue as a growing, predictable source of income, then concern has been expressed in some of our research that government may lose or find difficult to maintain its ability to restrain its own promotional activities. The conservative approach of the Commission to date should serve to make less likely this possibility in Maine.
8. The contracted advertising agency has assumed a prominent role in the daily operations of the Maine State Lottery. Minutes of an August 12, 1976 Commission meeting contain the following paragraph which is taken from the advertiser's report:

"Mr. Cott (the advertising representative) further informed the Commission that television advertising for the regular weekly game, Downeast Sweepstakes, has been stepped up and that the advertising firm is working on a format and prize structure for a new weekly game and will make a formal presentation to the Commission upon completion of same." (emphasis added)

An August 31, 1976 memorandum issued by the Lottery Director to all personnel instructed that:

"Notice is hereby given that beginning today and henceforth no information of any kind concerning the Lottery (Policy, Statistics, Plans, Past Performance -- INFORMATION OF ANY KIND) will be offered except through the authorized spokespersons for the Lottery, Mr. Robert Cott, who is the Account Executive for the Lottery at Chellis, Conwell & Gale or Ms. Jo Dondis, who is the P.R. person at the Ad Agency.

Your reply will be, "All Lottery information will be extended by Mr. Robert Cott or Ms. Jo Dondis at 774-6361".

There will be no excuse for any deviation from the above policy. Mr. Cott and Ms. Dondis will be the only spokespersons for the Lottery henceforth." (emphasis added)

We do not challenge the ability of the advertiser to conduct such non-advertising ventures. Indeed, the advertising firm has performed creditably. However, we do question the appropriateness of having the advertiser engage in the formulization of prize structures, which, in our opinion, falls within the direct domain of internal lottery management. We recognize the importance and value of a team-approach to lottery management, but would caution against excessive reliance upon the advertiser for skills and expertise which are incumbent upon lottery personnel.

It is our understanding that the August 31, 1976 memorandum was recently canceled, however, taken at face value, it indicates that the Lottery staff does not include an individual or an alternate who is capable of acting as the single spokesperson for lottery matters. If true, such would be an unfortunate and undesirable circumstance.

The relationship of the foregoing to lottery performance is in the lack of self-confidence that is exhibited when the advertiser is utilized to design prize structures and act as the spokesperson for the Lottery, at least under such rigid rules. If the Lottery does not possess the capability to deal with such matters internally, appropriate corrective action is in order. The referenced memo was later canceled.

9. It was observed that the Lottery Commission pays an 8 percent sales agent commission on free ticket prizes won by lottery players and awarded by sales agents in the instant games. Using a standard developed elsewhere in this report of approximately 500,000 free tickets that might be issued as prizes in a year's time, the cost approximates \$40,000 in commissions.

The minutes of the April 11, 1974 Commission meeting read: "The Commission voted and approved the motion that 5 percent of the sales be compensated to agents and 1 percent of the sale be compensated to the banks." (emphasis added)

The minutes of the March 24, 1976 meeting read: "A motion was made by Commissioner Dostie, seconded by Commissioner McSweeney and carried to increase Lottery Ticket Sales Agents' commission to 8 percent effective as soon as practical."

It is unclear from a reading of the minutes whether or not the Commission actually made a decision to pay a sales agent fee for free ticket prizes awarded by sales agents.

10. In other states, unclaimed prizes more than one year old are usually distributed as part of the state's net share of lottery revenues. Based upon data published in 1974, the following states have adopted the policy of retaining unclaimed prize monies for one year and then allocating these monies to the statutory beneficiaries of lottery revenues: New Hampshire, New Jersey, Massachusetts, Pennsylvania, Michigan and Maryland.
11. Although several practices to which we have taken exception in this report have been properly attributed to the Financial Manager in view of the primary responsibilities of that position, we note that ultimate responsibility certainly lies with the Lottery Director and the Lottery Commission.

SUMMARY AND CONCLUSIONS

Why has revenue been far below projections?

The Maine State Lottery was created by the legislature for the purpose of providing additional revenue for the General Fund. Original estimates ranged from \$1.9 to \$9.3 million for the General Fund annually. The second and most recent year of lottery operations resulted in \$2.6 million for the General Fund. The higher amount of estimated revenue was based upon the projections of Mathematica, Inc. of Princeton, New Jersey and is the most frequently recalled revenue estimate in discussions of the lottery's performance. It is noteworthy that a Maine firm, ESCO Research, Inc. of Portland estimated General Fund revenue of \$1.9 million in the first year of 1974-75 and the actual amount was \$1.2 million, thereby achieving a very accurate estimate.

Mathematica, Inc. based their estimate of revenue to the General Fund on the higher amount of \$13 to \$21 million in estimated annual sales, which in turn, is based upon an annualized sales rate of \$12 to \$20 per capita. Research indicates that annualized sales rates of \$12 to \$20 per capita are not at all uncommon in the lottery states with Michigan reflecting an unusually high mark of \$24.70 and Connecticut a low of \$9.73, next to Maine's \$7.82. Rhode Island, Massachusetts and New Hampshire were all in excess of \$16.00. The highest rate Maine has ever achieved during a particular period of time was \$14.72 in annualized per capita sales in the first eight weeks of the first instant game.

It is because sales are low and not because of high costs that the General Fund has failed to reach the higher estimates. Little evidence was observed of costs being in excess of what one might prudently expect in an operation of the type under study. One major area of exception is that of agent commissions to be discussed later. The problem has simply been one of low sales.

A number of limiting factors are advanced in the detailed portion of the report as likely explanations of Maine's comparative low sales. Among these factors are: demographics of the state; initial unfavorable publicity concerning moral and legal issues; reluctance by some banks to act as distributor banks for tickets, thereby, making more difficult the acquisition of sales agents; regular weekly game reflecting low popularity; failure to institute an instant game until June 1975 while it was initially suggested in August 1974 after demonstrating popularity in Massachusetts; failure to change the first instant game for 45 weeks even after interest markedly declined; low popularity with tourists; limited enthusiasm evidenced by liquor store employees selling tickets; little evidence of endorsement and support by the news media; legally limited television and radio advertising until January 1975; lowest disposable per capita income of eight lottery states sampled; and heavy workloads placed on field representatives whose job it is to stimulate the market for ticket sales by working with sales agents and developing additional sales agents.

Possible explanations were offered in the detailed portion of the report for New Hampshire's superior lottery results when compared with Maine. The Executive Director of the Sweepstakes Commission was consulted in this regard. One of the more prominent reasons for New Hampshire's superiority is its twelve years of experience. Another factor is that state's extensive use of out-of-state subscription plans although the practice is pending resolution in the courts.

Maine's costs of operation are 23.9 percent of sales while a typical lottery state's percentage is 15 percent. There is a logical explanation, however, in that the percentage is largely due to the low volume of sales. An arbitrary maximum percentage should not be imposed until it is believed that annual sales levels have stabilized.

The central matter of note under costs of operation was the Commission's decision to change the sales agent commission from five percent to eight percent. Maine is the only state to have adopted this higher percentage of commission among eleven lottery states sampled at a very recent date. Utilizing 1975-76 sales as a base for calculation, the increased cost will amount to at least \$250,000 in 1976-77.

The general conclusion reached in seeking to answer why revenue has been far below projections is that sales were greatly over-estimated mainly as a result of the incorrect assumption that Maine citizens would buy lottery tickets at the same rate as citizens of other states. Additional factors were listed in the basic report and again here in the summary.

Verify the propriety of the percentages of the distribution of funds.

The statutes require that the money in the Lottery Fund be used for payment of prizes (not less than 45 percent of sales), operational expenses and payment to the General Fund (profits).

The question was raised and referred to the legislature for resolution as to whether or not free tickets awarded as prizes should be counted at the regular \$1.00 game price when determining the attainment of the statutory 45 percent of sales requirement. Pending the judgment of the legislature in this regard, the Commission should take steps to value free tickets at cost in the prize structure. An estimate of the increase in return to the General Fund from this action is approximately \$75,000 in a fiscal year and does not include additional amounts that would result from the inclusion of estimated administrative handling costs of such free tickets.

It was disclosed that the Financial Manager of the Commission could not satisfactorily age the unclaimed prizes in the suspense account. When unclaimed prizes are more than one year old such monies become available for use as overlays to the regular weekly game. Overlays are periodically used to spark the sales of the weekly game and constitute a valuable technique for increasing sales. Reportedly, action is currently being taken to age unclaimed prizes.

Determine the best method for increasing revenue to the General Fund.

The evaluation disclosed no certain way to substantially increase revenue to the General Fund short of the possibility previously outlined related to recognizing free tickets in the prize structure at the normal game sales price. A number of comments were offered aimed at assisting in the overall effort. Many of the points are not necessarily new to the Commission and staff.

Prominent among the 18 points was a suggestion that the Commission take steps to:

- a. Identify major towns whose residents do not purchase lottery tickets in an acceptable proportion to the population.
- b. Identify major towns whose agents do not sell lottery tickets to an acceptable proportion of the population.

Both actions would be preliminary to making a determination as to an appropriate course of corrective action.

Another suggestion was to maximize the use of overlay games aimed at improving the sale of weekly game tickets. Additionally, it is believed effort should be expended to increase the attractiveness of the basic weekly game, based upon an analysis of the history of sales.

#### The Incredible Instant Game - July 14 to August 27, 1976

The well publicized events surrounding the Incredible Game were examined and note taken of the actual insurance protection provided by the contract with the game supplier as opposed to what Lottery officials apparently believed the insurance to be. Insurance became an important issue when a weakness in ticket design resulted in cash prize claims substantially beyond those anticipated. Also discussed was the termination date of the contract specified in that document, which may prove to have a bearing on the two subsequent games selected by the Commission under the option clause.

#### Auto Game - Beginning September 15, 1976

The circumstances surrounding the State Auditor's concern with the presence of an unfair advantage to sales agents in the Auto Game and the Commission's handling of that concern was outlined in this section. The suggestion of the game supplier to change the rules of the game after the game had started as a proposed remedy to the situation was found to be offensive to our own sense of propriety and, fortunately, the suggestion was rejected by the Commission Chairman. The recommendation was made that sales agents not be barred from purchasing tickets in an effort to prevent sales agent advantages, rather, it was recommended that games be thoroughly "debugged."

Note was taken of the contradiction between the Commission's publicized concern for individuals buying too many tickets and the Commission's inclusion in the Auto Game of a technique designed to produce a "treadmill effect." It is believed that such a contradiction exposes the Commission to the type of editorial criticism considered as damaging to sales in the past. As a final matter, it was observed that the Commission does not, in the opinion of the evaluators, possess a contract specifically for the Auto Game. Therefore, protective features for both parties are not specified in a binding document. Concern was expressed for the public image of the Lottery as it pertains to future sales, should problems develop in the execution of games without an adequate contract.

### General Observations

A number of general observations were offered to provide additional perspective to one's view of the Lottery. The observations neither related directly to foregoing material or even to each other, but were deemed to be noteworthy in the overall view of lottery operations.

It was observed that proportionately, the Lottery contributes a small percentage to state revenues and finances a small percentage of General Fund expenditures. This has been found to be true in all lottery states.

In conclusion, the Maine State Lottery Commission was proposed as a method for adding substantial revenue to the General Fund without a tax increase. Based upon per capita sales rates in other states, it appeared that the General Fund would realize fairly substantial sums ranging from \$5.2 to \$9.3 million. As it turned out, Maine has not achieved a per capita sales rate comparable to those of other states. This appears to be due to a number of circumstances rather than any one single and clearly identifiable reason.

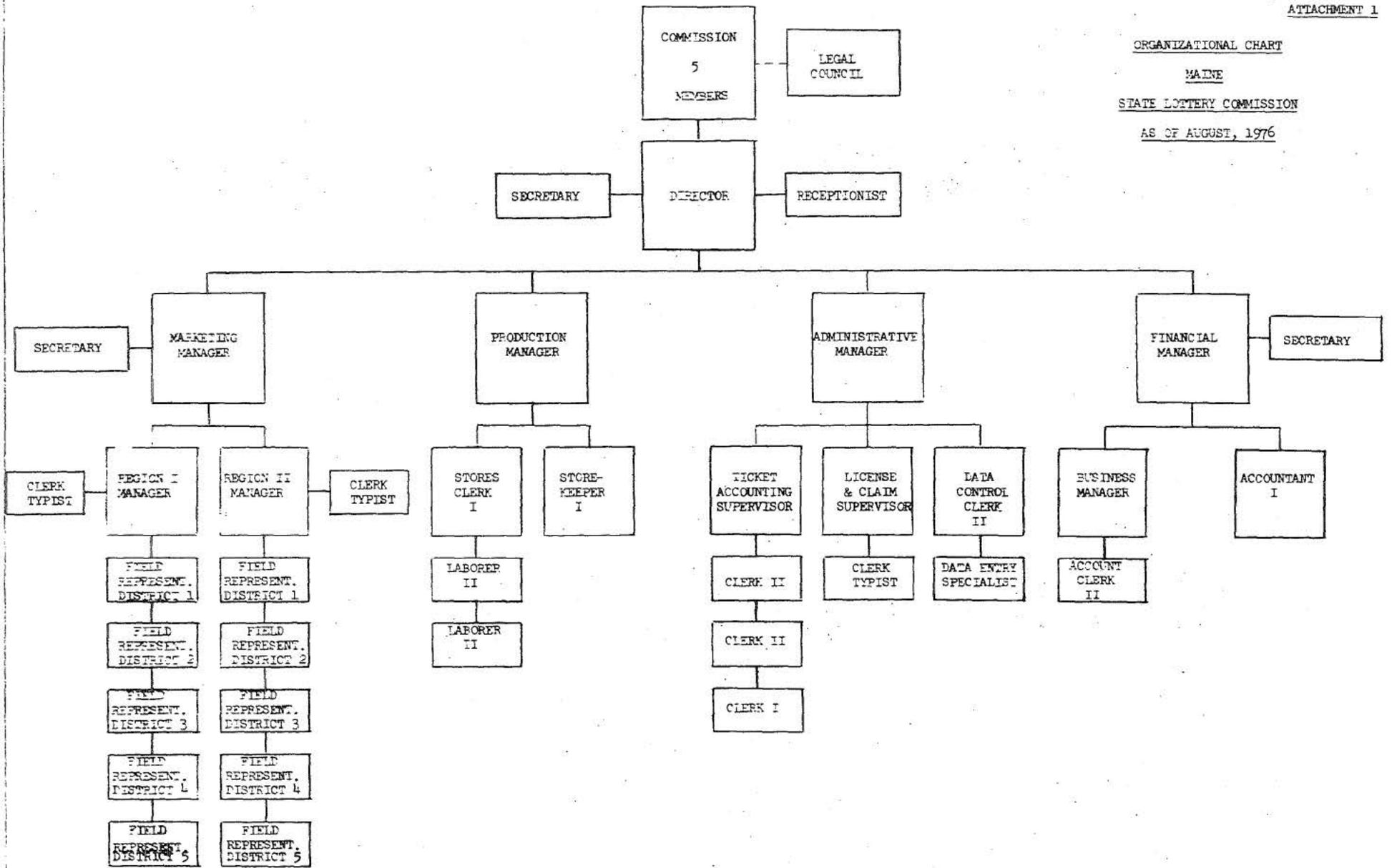
To this point in time, Maine citizens have simply not "warmly embraced" the lottery in overwhelming numbers. There does appear to be some evidence of growth however, and we are led to believe that sales have not yet reached a maximum in annual return. In our opinion, now is the appropriate time for the Commission to reappraise the situation and form a definitive plan of action and pre-determine what results those actions should produce so that effectiveness can later be measured.

Early returns from the current Auto Game reflect a good rate of sales. Perhaps what was considered as adverse publicity resulting from the Incredible Game has, surprisingly, created a reverse effect on sales by calling attention to the lottery. It might even be that the considerable editorial comment appearing in the media has helped the Lottery Commission turn the corner toward new found financial benefits to the State's General Fund.

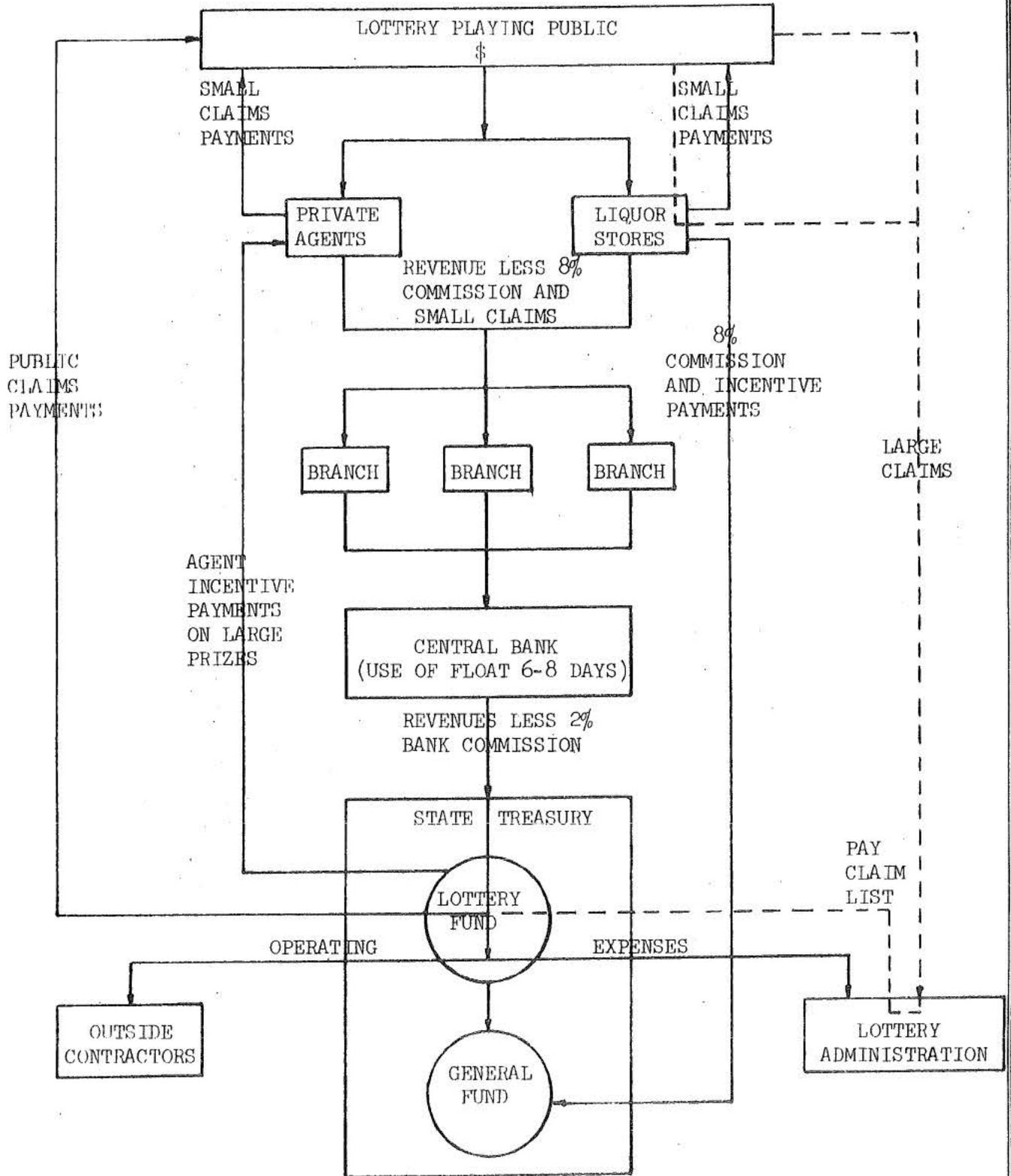
The first draft of this report was reviewed for accuracy with the Lottery Director and his staff as well as the Lottery Commission. This, the final draft, has been revised in consideration of certain objections which were appropriately raised by the Lottery Commission and staff. Attachment 8 provides the written response of the Lottery to this report.

We wish to thank the Commission and staff for the cooperation and assistance provided during the course of the study.

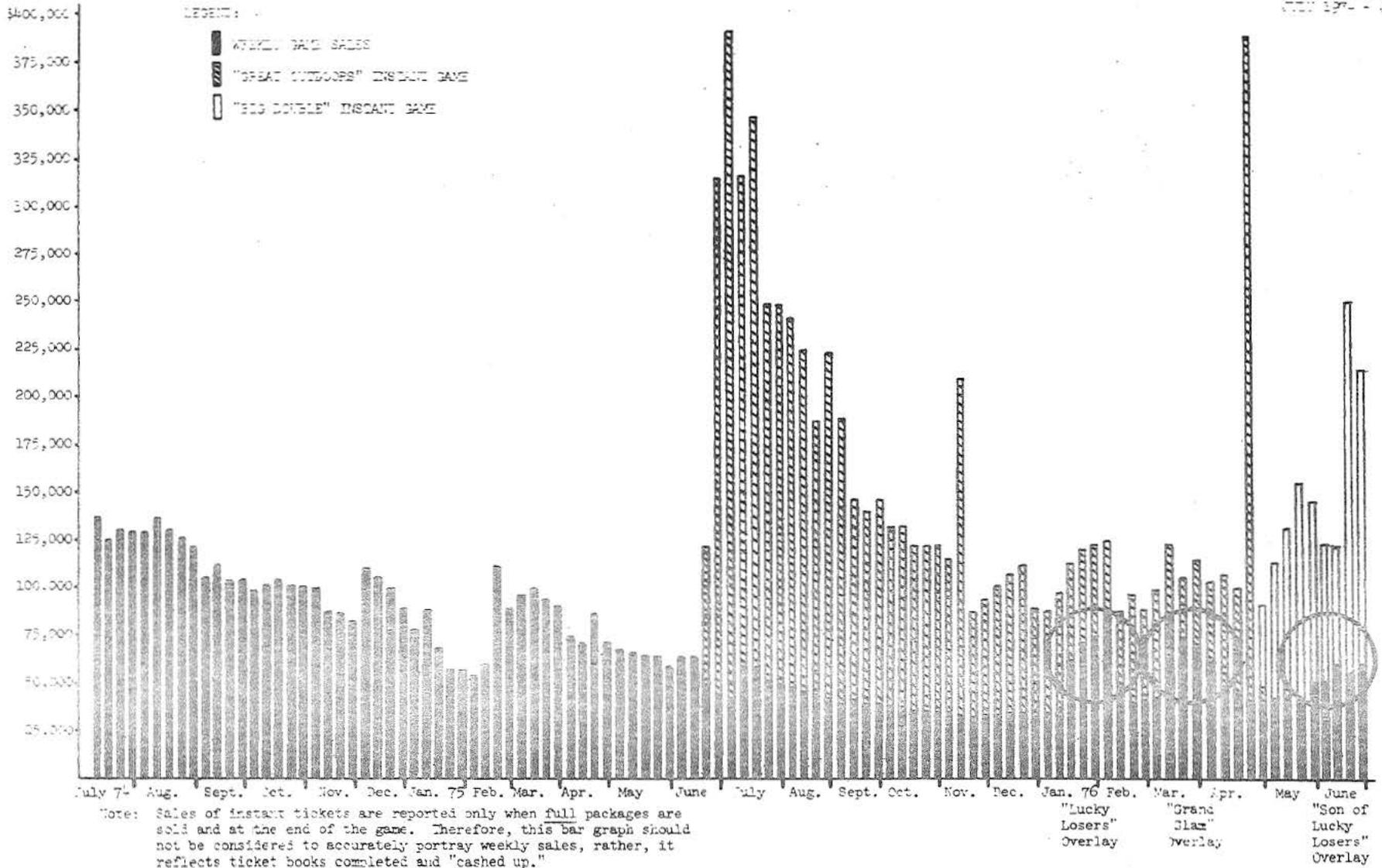
ORGANIZATIONAL CHART  
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 STATE LOTTERY COMMISSION  
 AS OF AUGUST, 1976

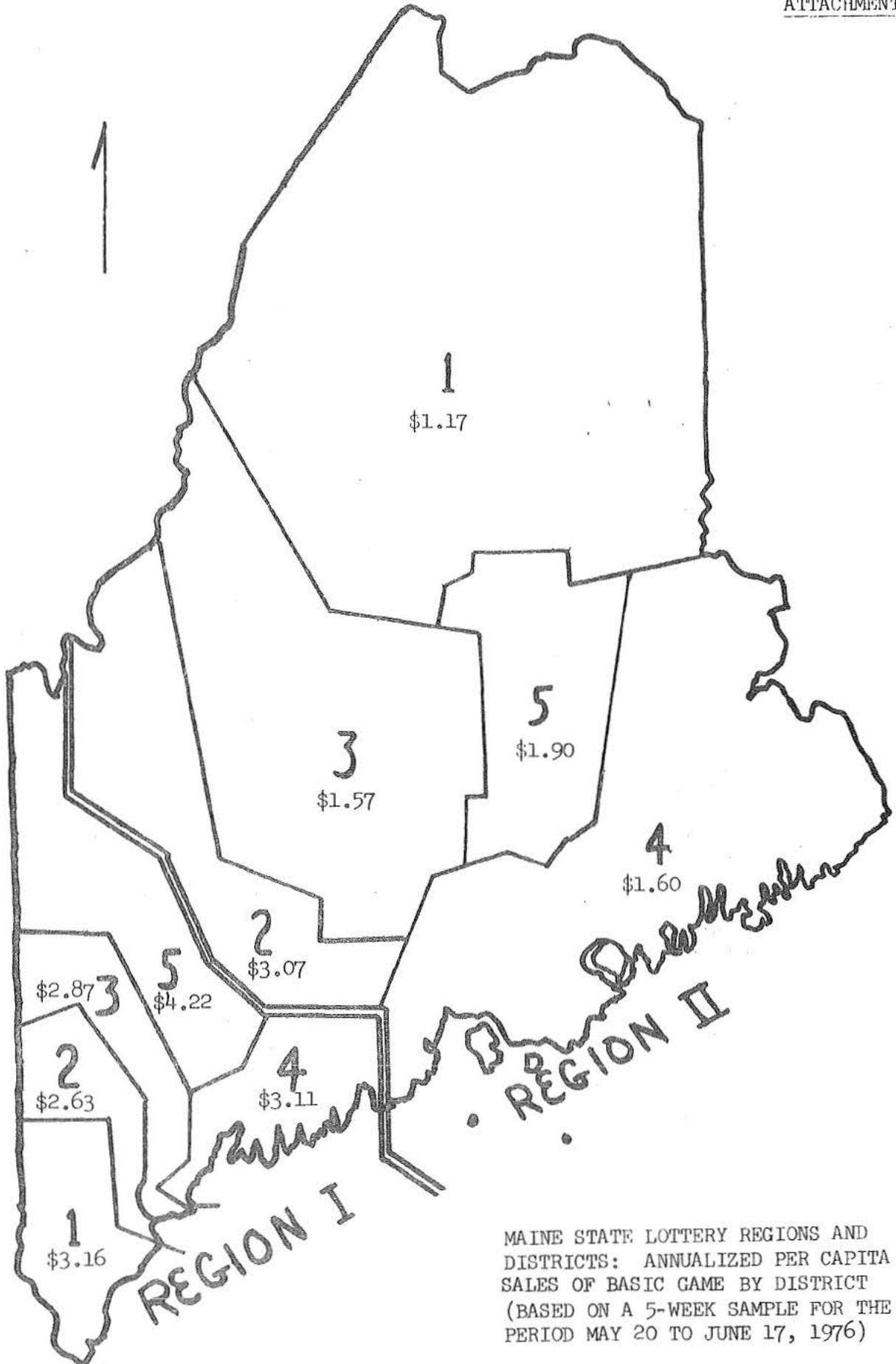


MONEY FLOW IN THE LOTTERY



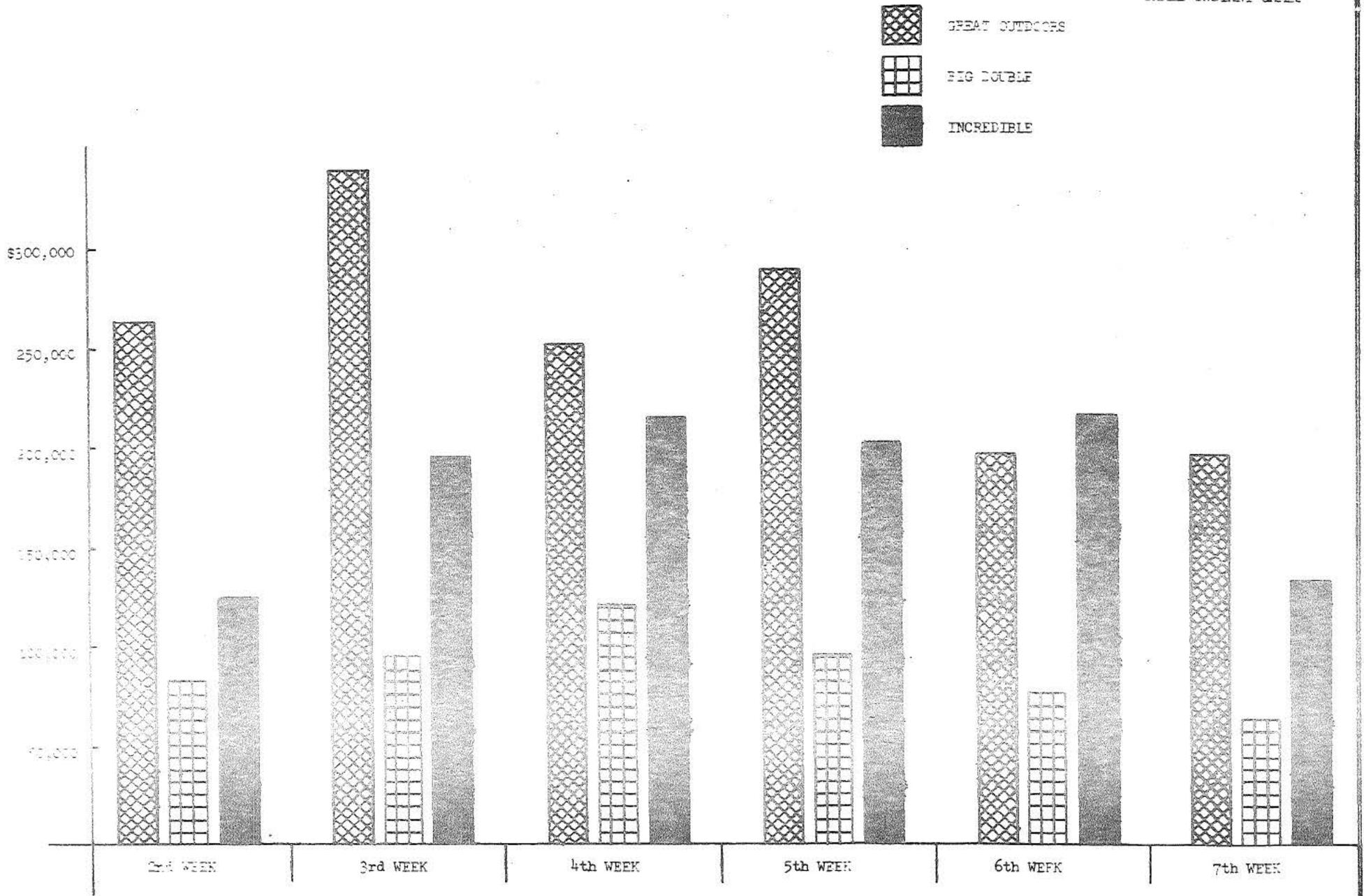
GRAPH OF SALES - BY WEEK  
JULY 1975 - JUNE 1976





MAINE STATE LOTTERY REGIONS AND DISTRICTS: ANNUALIZED PER CAPITA SALES OF BASIC GAME BY DISTRICT (BASED ON A 5-WEEK SAMPLE FOR THE PERIOD MAY 20 TO JUNE 17, 1976)

COMPARISON OF SALES  
THREE INSTANT GAMES



SALES AGENT COMMISSIONS IN OTHER  
LOTTERY STATES AS OF OCTOBER 1, 1976

<u>STATE</u>	<u>COMMISSION PAID TO AGENTS</u>	<u>BONUSES PAID TO AGENTS</u>	<u>OTHER AGENT INCENTIVES</u>
Connecticut (1)	5% - All Games Plus \$2.00 per Book of Instant Tickets	2% on Prizes to \$5,000. $\frac{1}{2}$ % on Larger Prizes	None
Delaware (2)	5% - All Games	2% on Prizes of \$100 and Over	None
Maine	8% - All Games	1% on Prizes of \$1,000 and Over	Not Regularly
Maryland (2)	5% - All Games	1% on Prizes of \$1,000 and Over	$\frac{1}{2}$ % of Gross Set Aside for Agent Incentives
Massachusetts (1)	5% - All Games	1% of All Prizes	Every 5th Ticket Allows Agent to Enter a Special Drawing
Ohio (1)	5% - All Games	$\frac{1}{2}$ % on Prizes of \$1,000 and Over	None
Pennsylvania (3)	5% - All Games	1% on Prizes of \$1,000 and Over	Each 101st Ticket Allows Agent to Enter a Special Drawing.
New Hampshire (1)	5% - All Games	2% to 2/10% on Prizes \$1,000 and Over	None
New Jersey (1)	5% - Weekly Game And \$18.00 Per Book of Instant Tickets(3.6%)	1% on Prizes of \$1,000 and Over	None
New York (4)	6% - All Games	1% on Prizes of \$1,000 and Over	None
Rhode Island (5)	5% - All Games 8% - Numbers	1% on Prizes of \$1,000 and Over	Every 8th Ticket Allows Agent to Enter a Special Drawing

## STATE AGENCY COMMENTS:

- (1) No particular pressure to change rates.
- (2) No particular pressure to change rates. Legislature sets commission rate.
- (3) No particular pressure to change rates. "If 5% is not enough 8% or 10% won't be either." Lottery tickets require no shelf space. Only marginal agents gave up selling tickets.
- (4) Per: Deputy Director: Under no conditions will agent rates be changed. Lottery commissions are pure profit for agents.
- (5) Per Director: Agents will "always" want more.

BANK COMMISSIONS IN OTHER LOTTERY  
STATES AS OF OCTOBER 1, 1976

<u>STATE</u>	<u>COMMISSIONS PAID TO BANK</u>	<u>TIME OF FLOAT *</u>
Connecticut	.75% of Gross Sales	Normal
Delaware (1)	\$3.00 per Agent per week or 1.25% of Gross Sales Whichever is Higher	Normal
Maine	2% of Gross Sales	Normal
Maryland	.50% of Amount Deposited Plus \$140.00 per Year per Branch Bank	28 Days
Massachusetts	None	5 Weeks
Ohio (2)	1.1% of Gross Sales	Normal
Pennsylvania	\$3.00 per Agent per week or 1.25% of Actual Deposit. This election made in Advance by Agent	Normal
New Hampshire	1% of Gross Sales	Normal
New Jersey (3)	.50% on Weekly Game and 1% on Instant Game, both on Actual Deposit	Normal
New York (2)	.75% of Gross Sales	Normal
Rhode Island	\$2.00 per Agent per week plus \$1.00 per pack on Instant Games	Normal

\* Normal indicates that banks have use of funds during the period that funds normally flow through the system.

(1) Banks not involved in sports betting.

(2) Bank commission structure presently being studied.

(3) Banks will receive 1% of actual deposit on all games before the end of the year.



MAINE STATE LOTTERY COMMISSION • 11 PARKWOOD DRIVE • AUGUSTA, MAINE 04330 • (207) 289-2081

George Orestis, Director

August 20, 1976

Stanley R. Sumner, Director  
Program Review and Evaluation  
State of Maine Department of Audit  
Augusta, ME 04330

Dear Mr. Sumner:

The pages which follow are our response to your recent request that we provide our views with regard to certain questions which arise from your interpretation of the Legislative Order of March 9, 1976.

We would like to preface our remarks to your questions concerning the Lottery with this observation. The Lottery is altogether different from other state agencies, and should be so regarded in that light. It is a business enterprise and a profit center. It does not operate on taxpayers money as do other agencies, but rather is completely self supporting. Furthermore, it provides a consumer product rather than a consumer or taxpayer service. Any profit, no matter how much below projected figures, that is turned over to the state's general fund must be recognized as free and clear revenue.

In compliance with your letter dated July 29, 1976, we are pleased to offer the following response to your three basic questions.

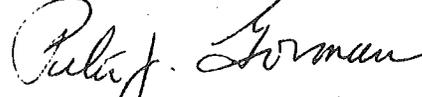
- I. Why has revenue been far below early projections?
  - A. Game consultants initial revenue estimates based on results of other lottery states (excessively high)
  - B. Demographic characteristics of Maine
    1. Lowest per capita income in New England
    2. Lowest population density in New England
    3. Geographically larger than rest of New England
  - C. Damaged image resulting from criticism of lottery operation by the United States attorney of Maine
  - D. Critical press reports alluding to corruption

- E. Fragmented banking distribution network due to items C & D above (still unresolved).
- II. What is the propriety of the percentages of the payout?
- A. The 45% payout is the statutory requirement of the state and is the traditional amount most lottery states assign to prize pools.
  - B. A reduction in the percentage would generate adverse sales results.
  - C. An increase in the percentage would obviously depress revenues to the General Fund.
- III. What is the best method for increasing the yield?
- A. Constant improvement of game products (i.e. the Incredible Instant Game)
  - B. Increase frequency of new games
    - 1. Public interest levels wane after six weeks (sales data analysis)
  - C. Vary the prize structures (merchandise or cash)
    - 1. Seasonal appeals
      - a. Christmas, vacations, etc. (based on on-going marketing surveys)
  - D. Concentrate promotional advertising toward the high yield market areas
    - 1. Bangor, Portland, Lewiston, Waterville, Augusta
  - E. Ticket agent incentive programs
    - 1. Purpose: Ask the public to buy
  - F. Liquor store incentive programs
    - 1. Purpose: Eliminate passive participation
  - G. Fully develop the banking network
    - 1. Purpose: One-stop banking for agents
  - H. Improve tourist sales
    - 1. Billboard promotion (sales analysis)
    - 2. Expand ticket outlet concentration in vacation areas
      - a. Sales booths (Old Orchard Beach, Ski areas, etc.)
      - b. Ticket availability in motels and restaurants
      - c. Special agents
  - I. Administrative cost control programs (ever mindful that a budget trim may appear to be a cost saving but in actuality may impair operations)
    - 1. Cost savings instituted during the past year
      - a. Telephone lines reduced by two
      - b. The closing of the regional office in Augusta
      - c. Maximum of 14 state automobiles available for staff use

Stanley R. Sumner  
Page 3  
August 20, 1976

- d. Maximum staff of 38 as opposed to the authorized 57
  - e. Use of Purolator delivery system
  - f. Future move to lower rent, more efficient, headquarters
  - g. Future elimination of weekly field drawings throughout the state
  - h. Lottery and state Central Computer Services plan the creation of a new weekly game
  - i. Production of superdrawing equipment in-state at enormous savings
- J. Contracted advertising agency offers most economical service
- 1. Full time P-R person
  - 2. Organized and staffed to handle advertising related functions, state is not
  - 3. Buys all advertising space and time and rebates commission
- K. Ticket prices should not be increased
- 1. Too regressive--last resort when all else fails
- L. We have no research data to make an evaluation of the 'Numbers' and 'Lucky 7' games.

Very truly yours,



Peter J. Gorman, Chairman  
Maine State Lottery Commission

PJG/cah



STATE OF MAINE  
DEPARTMENT OF AUDIT  
AUGUSTA, MAINE 04330

AREA CODE 207  
TEL. 289-2201

R. M. RIDEOUT, JR.  
STATE AUDITOR

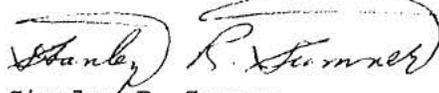
LEBLIE J. HANN  
DEPUTY STATE AUDITOR  
ROBERT G. REDMAN  
DIRECTOR OF MUNICIPAL AUDITS  
JOHN L. FARRISH  
FRAUD INVESTIGATION DIVISION

October 18, 1976

Note Re: Attachment 8

Attachment 8 was intended to be a copy of the Commission's response to this report which was discussed at length on October 13, 1976 with the Commission and division heads. Due to the reported decision of the Commission and staff to answer in detail, it was not possible for the Commission to complete that response for inclusion in this report within the time frame available.

The available time frame was determined by an earlier decision to make the report available to the Legislative Performance Audit Committee at the earliest practical date.

  
Stanley R. Sumner  
Director, Division of Program  
Review and Evaluation



MAINE STATE LOTTERY COMMISSION • 151 CAPITAL STREET • AUGUSTA, MAINE 04330 • (207) 289-2081

George Orestis, Director

October 29, 1976

Representative Richard J. Carey  
27 Sterling Street  
Waterville, Maine 04901

Dear Sir:

In view of the fact that our conference with your committee and the State Audit Department has already taken place our view of our response to the published Audit Report has been considerably altered. As a result we have condensed our reply from a rather comprehensive and detailed, item-by-item reaction to the few pages you hold in your hand. The questions and replies are as follows:

1. Why has revenue fallen far below early projections?
  - A. Mathematica Inc., the original game consultant, based its original revenue estimates on the experience and results of other lottery states. Obviously the estimates were excessively high.
  - B. The demographics characteristics of the State of Maine contributed to the disappointing returns of revenue. The State of Maine has the lowest per capita of income of all the New England states; the population density of the State of Maine offers an insight as to the low revenues generated by the Lottery (i.e. Maine has a per capita density of 32 per square mile while Rhode Island has a per capita density of 900 per square mile). Geographically, the dimensions of the state tend to minimize Lottery ticket sales and to create very formidable obstacles in the operation of the lottery. Advertising costs are necessarily higher: to reach every citizen of the State of Maine only once requires the use of 7 major daily newspapers, 5 TV stations and 20 radio stations.

-2-

- C. The Lottery suffered damages to its image from several sources from its very inception. Advertising in all the media was limited; United States Attorney Peter Mills was very critical; the members of the clergy were very anti-lottery.
  - D. The press has been far from friendly throughout the Lottery's existence and much effort has been expended by the Lottery staff in repairing the image of the Lottery when criticism was very strident.
  - E. The banking network is still incomplete to this day because some of the major banks have refused to come forward and offer the banking resources which would complete the network. Until all the banks participate, it could be truly said that the Lottery is not a fully functional department.
2. What is the propriety of the percentages of the payout?
- A. The 45% payout is the statutory requirement of the state and is the traditional amount most lottery states assign to prize pools.
  - B. A reduction in the percentage would generage adverse sales results.
  - C. An increase in the percentage would obviously depress revenues to the General Fund.
3. What is the best method of increasing the yield?
- A. It is the opinion of the Lottery Commission that the best way to increase the yield is to offer better and better games. Examples of better games are: the probability games called "The Incredible Instant game"; the "Antique Auto game"; the "Lucky Losers" game, etc. etc.
  - B. We have improved our buying procedures:
    - a. inventory purchased for any particular game will probably be limited to 1,600,000 tickets.
    - b. we have shortened the cycle to six weeks since public interest diminishes after that time.
    - c. We will vary the prize structures and broaden the number of prize winners.
      - 1. We will react to the publics demands for different kinds of prizes: Cash, Automobiles, weekend vacations and merchandise such as campers.
      - 2. We will offer seasonal prizes such as flowers at Christmas or groceries at Thanksgiving.

- D. We have based our advertising purchases on the findings of a market survey by Northeast Markets. The media mix strategy was based on the survey. We have concentrated on promotional material in the high yield market areas such as Portland, Lewiston, Augusta, Waterville and Bangor.
- E. We have instituted incentive programs with our point-of-sales people, both the Mama - Papa stores and also the chain stores and we have asked the Liquor store personnel to augment our sales efforts.

Several points of discussion, as you know, surfaced and were considered at length. They were:

1. Paying 8% to all points of sale. In our judgment, it was necessary to pay 8% --- not as an inducement to increase sales, but to stop imminent losses of sales outlets.
2. Free tickets as prizes.  
We believe that a free ticket does not produce a dollar of revenue. We pay out, as required by statute, 45% of every gross dollar collected. The Audit group asks the Legislature to establish the costs of free tickets and the use of free tickets as prizes. An upcoming instant game will not use free tickets in the prize structure.
3. The Incredible Instant Game.  
Because of possible litigation full discussion on the liability of Scientific Games Inc. was not possible.
4. The Contract.  
The Attorney General's Department through Mr. Robert Stolt and Mr. Phil Kilmister assured us we do have a contract with Scientific Games. Discussion developed that the contracting procedure by all Maine departments might be scrutinized and improved.
5. The Auto Game.  
The advertising for the Antique Auto Instant game was changed to accomodate the reservations which the Audit Unit had concerning our advertising promotion. The problems they envisioned and the complications they feared never did develop. The question arose:

Does the Audit Unit have the authority to change or to control any phase of not only the Lottery but of any department in the course of the Audit?

6. Gambling.  
The Audit group recommended that consideration could be given to other types of gaming and made several recommendations which the Lottery Commission will honor.
7. Some differences of opinions were voiced by the Lottery Commission as to the verbiage of the report and a strong opinion offered as to the proper use of authority by the Audit Unit in criticizing a specific person in a specific division of a department.

It is the belief of the Lottery Commission, the Director and the staff that the Audit Report will be a very valuable tool in operating the Lottery and expresses its appreciation for the expertise and courtesy extended to us personally by State Auditor Raymond Rideout. On behalf of the Commission and the staff I express my thanks and appreciation to you and to your committee for the exemplary manner in which you conducted the hearing and the kind spirit which you all showed in discussing with us various ways of improving the Lottery operation. We are always at your service should the need arise.

Very truly yours,



George Orestis  
Director

GO/dlp

Appendix C  
Draft Legislation

AN ACT To Improve The Performance Of the State Lottery.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 8 MRSA § 353, sub-§ 1, ¶A, is amended to read as follows:

A. Types of lotteries to be conducted, except types of lotteries not conducted prior to January 1, 1977 shall not be authorized without the approval of the Legislature;

Sec. 2. 8 MRSA § 353, sub-§ 1, ¶ K, is amended to read as follows:

K. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the general public, except the amount of compensation shall not exceed a commission of 8% of sales unless approved by the Legislature;

Sec. 3. 8 MRSA § 354, sub-§ 1, ¶ J, is enacted to read as follows:

J. Submit all promotional material and advertising to the Attorney General for review and approval of its accuracy and completeness, prior to its public release or use.

Sec. 4. 8 MRSA § 366, sub-§ 2, new sentence at end, is enacted to read as follows:

Lottery tickets or shares that are awarded to certain ticket holders at no cost shall be included as prizes at

their retail price, in meeting the requirement of 45% of total ticket sales be disbursed as prizes.

Sec. 5. 8 MRSA § 368, is enacted to read as follows:

§ 368. Promotion and advertising

All promotional material and advertising of the Lottery shall be submitted to the Attorney General prior to its public release or use. The Attorney General shall review this material and approve it for release or use if it is accurate and compete. No promotional material or advertising shall be publicly released or used by the Lottery without this approval.

Statement of Fact

The purpose of this bill is to enact the recommendations of the Performance Audit Committee's study of the State Lottery, H.P. 2173. A detailed statement of the intentions, purposes and provisions of this bill is contained in the Committee's narrative report. Generally, this bill does the following:

1. The Lottery Commission is not allowed to expand into other types of lotteries without legislative approval.
2. The Lottery Commission is not allowed to raise the agent's commission above 8% without legislative approval.
3. Lottery tickets awarded as prizes are to be valued at retail price and included in the calculation of the 45% of sales requirement to be prizes.
4. All Lottery advertising is to be reviewed by the Attorney General prior to its public release or use.

## SENATE

RICHARD N. BERRY, DISTRICT 8, CHAIRMAN  
THEODORE B. CURTIS, JR., DISTRICT 26  
ALTON E. DIANCHETTE, DISTRICT 23



## HOUSE

GEORGETTE B. BERUBE, LEWISTON, CHAIRMAN  
ANNE J. BACHRACH, BRUNSWICK, SECRETARY  
RICHARD J. CAREY, WATERTOWN  
CHARLES G. DOW, WEST GARDNER  
LEIGHTON COONEY, SARATTA  
THOMAS R. LAPOINTE, PORTLAND  
JOHN M. NORRIS, II, BREWER  
HAROLD L. SILVERMAN, CALAIS  
WALTER A. BIRT, EAST MILLINOCKET  
SAMUEL A. HINDS, SOUTH PORTLAND

## STATE OF MAINE

ONE HUNDRED AND SEVENTH LEGISLATURE

## COMMITTEE ON PERFORMANCE AUDIT

October 29, 1976

The Honorable Joseph E. Brennan  
Attorney General  
State House  
Augusta, Maine 04333

Dear Mr. Brennan,

As a result of a recent report of the Department of Audit to the Lottery Sub-Committee of the Performance Audit Committee, four questions have been raised that require answers. The sub-committee would appreciate your responses to the following questions:

1. Does the Department of Audit, while conducting an investigation and evaluation of financial records, policies and operations of an agency at the request of a legislative committee, have the authority, without prior committee approval, to make direct recommendations to the agency for changes in its procedures or methods of operations, when the legislative request contained neither express authority nor express prohibition of such actions?
2. If such authority exists, does it derive from the legislative request for an investigation and evaluation, or does it derive from the general statutory authority of the Department of Audit?
3. Does the Department of Audit have the authority, to release to the public and press, or to the Governor, a report prepared at the direction and request of a legislative committee, prior to express approval of such release by the Committee?
4. Is the Department required to release to the public and press, or to the Governor, such a report at the time it is released to the sub-committee or committee, under the "Right-to-Know" law?

To aid you in responding to these questions, the following facts are presented. The Joint Standing Committee on Performance Audit was ordered, under H.P. 2173 to study the Lottery Commission (Study Order attached). At the request of the Committee, the Senate Chairman was directed to request the assistance of the Department of Audit, under 5 MRSA §241, sub-§6, which was done verbally on May 25, 1976. During the course of the investigation, the Department made several suggestions to the Lottery Commission concerning its procedures and operations. The Department completed a written report on October 16, 1976, immediately sent it to the Sub-Committee, and, with the consent of the sub-committee, released it to the Governor and public on October 20-21, 1976. The sub-committee held a public hearing on the report on October 26, 1976.

The sub-committee would also emphasize that there is no question being raised about any impropriety in the recommendations or suggestions made directly to the Lottery Commission, nor in the public release of this report. The questions are being raised to allow future clarification of the authority of the Department of Audit when it is conducting a study at the request of a legislative committee.

If you have any need for further information, please feel free to contact me or the Committee's Legislative Assistant, Jonathan Hull.

Sincerely,

*Richard Carey (JCH)*

Rep. Richard Carey  
Sub-Committee Chairman  
Performance Audit Committee



APPENDIX D

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

December 23, 1976

The Honorable Richard J. Carey  
27 Sterling Street  
Waterville, Maine 04901

Dear Representative Carey:

Your letter addressed to the Attorney General in which you inquire as to the authority of the Department of Audit to make recommendations concerning the modus operandi of a state agency, specifically the State Lottery Commission, when an investigatory and evaluation report of said agency is ordered by a Legislative Committee, the derivation of such authority, if it in fact exists, and the authority of the Department of Audit to release its report or fact findings, has been referred to me for an answer.

Answering the questions in their order of presentment, it is my opinion that:

1. The Department of Audit, while conducting an investigation and evaluation of the records, policies and operations of a state agency at the request of a legislative committee, may offer recommendations directly to the agency subject to investigation, absent express legislative direction to the contrary.
2. The derivation of authority for the Department of Audit to make direct recommendations to a state agency whose operations it has been ordered to analyze and evaluate, emanates not only from the terms of a legislative order which formulates the basis for said evaluation, but is also distinctly statutory.
3. The Department of Audit acts in a capacity of "legislative staff" when it prepares an evaluation report at the request of a legislative committee or sub-committee, but if the Department is not expressly prohibited by legislative order, or otherwise, from releasing the contents of such a report prior to its final submission

to any given committee or sub-committee, the Department is not precluded from releasing the contents of its report to the public.

4. The report of the Department of Audit under review is not the report of the Joint Standing Committee on Performance Audit, until said report is accepted in part or in toto by said Committee, and there is no statutory prohibition which would prevent the Department from releasing the contents of its report to the public, after the report has been submitted to the Sub-Committee or Committee.

The comprehensive report of the State Department of Audit prepared by the Division of Program Review and Evaluation of said Department under date of October 1976, represents not the report of the Joint Standing Committee on Performance Audit, the sole agency entrusted with the duty of conducting a study of the Maine State Lottery Commission, but represents merely the conduit through which information flows to the Committee, which may or may not formulate the basis for the Committee's report. The contents of said Audit report may be accepted or rejected in whole or in part by the Committee.

The legislative order under date of March 9, 1976, which authorized the study of the Maine State Lottery Commission by the Joint Standing Committee on Performance Audit provides only that the Committee shall submit to the Legislative Council "its findings and recommendations." Based solely upon this particular legislative order, neither the Committee nor the State Department of Audit is authorized to act in the status of interim ombudsmen and make recommendations directly to the Lottery Commission. In the absence of restrictive language in any given legislative order prohibiting the Department of Audit from rendering recommendations directly to a state agency, however, there is ample statutory authority for the Department to do so.

Chapter 591 of the Public Laws of 1975 (now 5 M.R.S.A. § 242-B) provides that the State Auditor may create a Program Review and Evaluation Division within the Department of Audit, subsections (2) and (3) of said statute read as follows:

"(2) Purpose. It shall be the purpose of the Program Review and Evaluation Division to examine State Government Programs and their administration to ascertain whether such programs are effective, continue to serve their intended purpose, are conducted in an effective and efficient manner, or require modification or elimination, and generally to assist the Legislature in providing greater control over receipt, disbursement and application of public funds.

December 23, 1976

"(3) Assistance to the Legislature. The State Auditor, through the Program Review and Evaluation Division, shall review and analyze the results of government programs and activities carried on under existing law, including the making of cost benefit studies, when ordered by both Houses of the Legislature, or upon his own initiative, or by order of the Legislative Council, or when requested by the Joint Standing Committee on Performance Audit."

The above-quoted statutory language reveals the power of review and analysis which the Legislature has posited in the Department of Audit, and it seems clear that the above-delineated powers of examination and review include the authority to render recommendations directly to state agencies subject to said review.

Lastly, once the Department of Audit submits a report to a legislative committee or sub-committee, the Department ceases to function in the capacity of legislative staff, and the contents of its report are not immune or exempt from dissemination as public information under the terms of our "right-to-know" law.

The terms of 1 M.R.S.A. § 402(3) define public records and certain exceptions thereto, including, but not limited to, the following:

"Records, working papers and interoffice and intraoffice memoranda used or maintained by any Legislator, legislative agency or legislative employee to prepare proposed Senate or House papers or reports for consideration by the Legislature or any of its committees during the biennium in which the proposal or report is prepared."

The above-quoted statutory language cannot reasonably be construed to include evaluation reports compiled by the Department of Audit after their submission to a legislative committee or sub-committee.

In order to insure that such reports remain confidential unless released by the legislative committee or sub-committee for whom they are prepared, amendment of the above-cited language would appear to be necessary.

Very truly yours,

PHILLIP M. KILMISTER  
Assistant Attorney General

Appendix E  
Draft Legislation

AN ACT To Clarify The Powers Of The Department Of Audit  
When It Is Acting As A Legislative Staff Agency.

Be it enacted by the People of the State of Maine, as follows;

Sec. 1. 5 MRSA § 242-B, sub-§ 3, is amended by adding a new sentence at the end to read as follows:

When acting under the order of the Legislative Council or request of the Joint Standing Committee on Performance Audit, the State Auditor shall exercise only those powers authorized under section 243-A.

Sec. 2. 5 MRSA § 243, sub-§ 6, is amended by adding a new sentence at the end to read:

When serving as a staff agency to the Legislature or any of its Committees, the Department of Audit shall exercise only those powers authorized under section 243-A.

Sec. 3. 5 MRSA § 243-A, is enacted to read as follows:

§ 243-A. Legislative staff powers.

The State Auditor or Department of Audit shall provide assistance as authorized under section 242-B, sub-§3, or serve as a legislative staff agency under section 243, sub-§ 6, only when authorized to do so in writing by the Legislature, Legislative Council or a legislative committee. The written authorization shall specify the scope of the review and analysis, the manner in which it is to be undertaken, and the authority of the Department of Audit or State Auditor to make recommendations or reports, or to release documents to the public. No reports or documents prepared under the authority of

this section shall be released to anyone other than the body authorizing the Department's study, without the permission of the authorizing body. No member of the Department shall make recommendations or suggestions to the agency or department under study without prior approval from the authorizing body.

When undertaking a study, review or analysis under this section, section 242-B, sub-§ 3, or section 243, sub-§ 6, the Department shall exercise only those powers authorized by this section or the written authorization; and the Department, when so acting, shall be deemed to be a "legislative agency" under Title 1, section 402, sub-section 3.

#### Statement of Fact

The purpose of this bill is to enact the recommendations of the Performance Audit Committee's study of the State Lottery, H.P. 2173. A detailed statement of the intentions, purposes and provisions of this bill is contained in the Committee's narrative report. Generally, this bill does the following:

1. Requires the Department of Audit to act as a legislative staff agency only on the written authorization of the Legislature, Legislative Council or legislative committees.
2. Prohibits the release of reports or documents prepared as part of a legislative study, unless the authorizing body approves the release.
3. Prohibits the Department from making recommendations to the agency or department being studied, without the prior approval of the authorizing body.
4. Makes the Department a legislative agency under the "right-to-know" law, when undertaking a legislative study, and limits its powers to those granted in the written authorization.