Opinion No. 2012-059

June 29, 2012

The Honorable Kim Hammer
State Representative
1411 Edgehill
Benton, Arkansas 72015-3128

Dear Representative Hammer:

You have requested my opinion on the following questions concerning a particular contract entered into by the Arkansas Lottery Commission:

1. Did former Lottery Commissioner Ernie Passailaigue exceed his authority in negotiating and renegotiating any terms of the original contract with Scientific Gaming Corporation?

2. If it is deemed that former director Passailaigue did exceed his authority, what civil action may be taken by the state to recoup any lost funds?

3. Did the Arkansas Lottery Commission exceed its authority in renegotiating a contract with Scientific Gaming Corporation?

4. If it is determined that former director Passailaigue and or the Lottery Commission exceeded their authority in the contract negotiation process, does this void the existing contract without penalty to the state?

5. Did Scientific Gaming Corporation violate any laws or contract agreements by signing the revised contract?

6. Has Scientific Gaming Corporation, in the modification of the original contract, created an option for the state to void the current contract in its entirety without cost to the state?

7. Did changes in the original contract give an unfair advantage to Scientific Gaming Corporation in future renegotiations, including three (3) one-year options?

8. Were 'Tel-Sell' operations part of the original contract?

9. Do changes noted on page six (6) of twenty (20) of the State Auditor's report violate the terms of the original contract?

RESPONSE

The questions you have raised are outside the scope of my review in the context of an official opinion. I am required by law to provide my opinion on questions of law to members of the General Assembly and various state officials.[1] However, the opinion writing function of this office generally does not extend to such factual matters as the review of the terms of specific contracts or the circumstances attending a contract's execution.[2] Your questions invite such a review.[3] Because I lack the resources and the authority to undertake a fact-intensive review of this nature when issuing opinions, I must respectfully decline to address the above questions.

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[1] A.C.A. § 25-16-706 (Repl. 2002).

[2] *E.g.*, Op. Att'y Gen. 2002-340 ("It is not the appropriate role of the Attorney General to construe the provisions of contracts or other agreements in the context of an Attorney General's opinion, or to interpret the meaning of terms in such contracts or agreements in that context. This type of review often involves factual questions, such as intent, which the Opinions Division of the Attorney General's office is not equipped or empowered by law to investigate.") *See also* Op. Att'y Gen. 98-121("All of the particular facts, including the terms of any agreement, would have to be considered in order to fully assess the validity of [the] contract. The construction of a contract is generally beyond the scope of an Attorney General opinion."); Op. Att'y Gen. 2004-067 (declining to determine the impact of a particular contract, stating that the question "may be impacted by the provisions of the contract between the parties, as well as various facts that are external to but related to the contract, including the intent of the parties to the contract, the manner in which the contract has been carried out, and the particular nature of the parties' relationship in actual practice.")

[3] This office has not been provided with any contract, nor any facts surrounding its terms or execution. Even if a contract had been made available, however, it is not generally within the authority of this office to construe terms of a particular contract in an official opinion.

I regret that I could not be of assistance in this matter. If I may be of assistance in the future, please do not hesitate to contact me.

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN MCDANIEL
Attorney General

DM/EAW:cyh