



Office of the Comptroller of the Currency

Interpretive Letter #752

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12 U.S.C. 25AA

September 26, 1996

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Dear []:

This is in response to your letter of September 13, 1996, addressed to Eric Thompson. Your letter was referred to me for reply. You requested confirmation that the OCC would not find a national bank performing certain banking services in connection with a state lottery to be in violation of 12 U.S.C. 25a. I have reviewed the activities that you described, and agree that they are permissible and do not cause any violation of the statute.

FACTS

According to your letter, a national bank maintains an account entitled the Lottery Gross Revenue Account for the Treasurer of the State who, along with the Executive Director of the lottery, are the government officials charged with the administration of the state lottery. The Bank also provides a service known as "Bank Cashing Quick Cash" for the State Lottery Commission. That service works in the following manner.

Lottery tickets are sold at state-authorized retail outlets, such as drug stores. Banks do not sell lottery tickets. If a ticket holder wins a prize of between \$600.00 and \$5,000.00, the holder presents the winning ticket to an authorized retail outlet where he or she will receive a "Pay to Bearer" form after the retailer has verified that the ticket is indeed a winning ticket. At this point, the winner may choose to obtain a Quick Cash Claim Form from the retailer and take it to the Bank for payment (alternatively, the winner may mail a claim form to the Lottery Commission).

If the Quick Cash Claim Form method of payment is selected, the winner and retailer fill in certain identifying and authenticating information called for on the form. The winner then surrenders the lottery ticket to the retailer and has the form notarized. The notarized form is then presented to the Bank.

At the Bank, a Bank representative such as a teller will inspect the Quick Cash Claim Form to make sure that it is completely filled out with all required information, verify the identity of the person presenting the documents using normal methods of photo identification such as a driver's license or passport, and verify that the presenter is at least 18 years of age. If all appears in order, the winner will endorse the Pay to Bearer instrument on the back. Before any payment can be made, the Bank representative must contact the State Lottery Claims Department by telephone to receive payment authorization. The Bank will verify to the claims representative that all of the paperwork is in order and provide other necessary

information, such as the Bank's "lottery use" branch number, winner's Social Security number, prize amount, and ticket control number from the Pay to Bearer instrument.

Once the lottery's computer system has validated the prize, the Lottery Claims Department personnel will give the Bank representative an authorization number and confirm the amount authorized to be paid out of the state's account maintained at the Bank for the lottery. The Bank representative then enters further information, such as the authorization number and name of the Claims Department employee, on the Quick Cash Claim Form, and signs, dates, and stamps the form. The winner is then paid the sum authorized, less the Bank's \$10.00 processing fee. Payment can be made in cash, by official check, or deposit to a new or existing account. Appropriate documents, such as the original of the Quick Cash Claim Form and the Pay to Bearer instrument, and information including the total number of transactions and total dollar amount of claims paid out, are forwarded to the Lottery Commission on a daily basis.

The Bank's activities are limited to those described above. The Bank does not sell lottery tickets, nor does it in any way advertise or publicize the existence of the lottery, or promote participation in it. The Bank also does not announce, advertise, or publicize the existence or identity of any participant or winner in the lottery.

LEGAL ANALYSIS

National banks are generally prohibited from participating in lotteries by 12 U.S.C. 25a.<NOTE: Identical prohibitions also apply to state member banks, federally-insured nonmember banks, and federally-insured thrifts. See 12 U.S.C. 339, 1829a, and 1463(e), respectively.> Under this statute, national banks may not:

- (1) deal in lottery tickets;
- (2) deal in bets used as a means or substitute for participation in a lottery;
- (3) announce, advertise, or publicize the existence of any lottery;
- (4) announce, advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.

12 U.S.C. 25a(a). In addition, national banks may not permit the use of their banking offices by anyone else for any of the above purposes, or permit direct access from their banking offices to any premises used for the above purposes. 12 U.S.C. 25a(b). "Dealing in" lottery tickets includes making, taking, buying, selling, redeeming, or collecting such tickets. 12 U.S.C. 25a(c)(1).

Twelve U.S.C. 25a was enacted in 1967, at a time when the first state lotteries were being introduced. Congress believed that it was not in the best interest of financial institutions to participate in gambling activities, including the sale of lottery tickets to the public. The legislation was seen as an expression of existing national policy to refrain from using federal facilities for the promotion and advertisement of lotteries, and it was deemed appropriate to extend this policy to federally-insured depository institutions. S. Rep. No. 727, 90th Cong., 1st Sess. 2-3 (1967), *reprinted in* 1967 U.S.C.C.A.N. 2228, 2229-30.

However, as originally introduced, the legislation was so broad that it would have prohibited national banks from providing normal banking services for states operating lotteries. This was deemed to be too severe and accordingly, an amendment was added to make it clear that national banks are not prohibited from providing lawful banking services connected with the operation of lotteries. H.R. Conf. Rep. No. 1018, 90th Cong., 1st Sess. 1, *reprinted in* 1967 U.S.C.C.A.N. 2228, 2242. That amendment is embodied in 12 U.S.C. 25a(d):

Nothing contained in this section prohibits a national bank from accepting deposits or cashing or otherwise handling checks or other negotiable instruments, or performing other lawful banking services for a State operating a lottery, or for an officer or employee of that State who is charged with the administration of the lottery.

I find that your client's activities fall squarely within this exception. The Bank's role is simply that of a paying agent, a traditional banking activity. *See, e.g.*, Interpretive Ruling 7.1011, 61 Fed. Reg. 4849, 4864 (1996) (to be codified at 12 C.F.R. 7.1011) (acting as payroll issuer); letter of James J. Saxon, Comptroller of the Currency, July 22, 1965 (unpublished) (acting as paying agent for notes and interest coupons issued by a depositor).

Interpretive Ruling 7.1011 permits national banks to disburse to an employee of a customer payroll funds deposited with the bank by that customer. Such disbursement can be made directly to the employee, or by crediting the employee's account at the payor bank or at another institution. The services provided by your client for the State Lottery are essentially the same. The Bank is simply disbursing funds placed on deposit by its customer, the State Lottery Commission, to individuals having a valid claim on those funds.

As noted above, the statute forbids national banks to "deal in" lottery tickets, which includes redeeming such tickets. However, under the facts that you presented, the Bank does not redeem lottery tickets. They are redeemed at the retailer, when the winner relinquishes the ticket in exchange for the Pay to Bearer and Quick Cash Claim Form documents. It is these documents that are presented to the Bank, and they do not satisfy the statutory definition of "lottery ticket" because they do not represent an expectancy or possibility of becoming a winner in a lottery. The lottery has already been won at that point. By issuing a Pay to Bearer document to the holder in exchange for the winning ticket, the State has already identified the winner and redeemed the ticket. The documents received by the Bank would be more accurately described as payment vouchers, evidencing a liquidated claim and a perfected right to payment.

CONCLUSION

In my opinion, the activities performed by the Bank are legally permissible and do not constitute a violation of 12 U.S.C. 25a. The Bank does not "deal in" lottery tickets within the meaning of the statute, but performs lawful banking services for its customer, the State Lottery Commission. The Bank Cashing Quick Cash service is the functional equivalent of cashing paychecks, paying drafts, or funding other evidences of debt issued by a commercial customer from customer funds already deposited in the bank. These financial intermediary activities are traditional banking functions, and 12 U.S.C. 25a expressly permits national banks to perform such lawful banking services in connection with a state lottery.

This opinion is based on the facts described in your letter. A material change in the facts could require a different conclusion.

I hope that this has been responsive to your inquiry. If you have further questions on this matter, please feel free to call me at (202) 874-5300.

/s/

Christopher C. Manthey
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