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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

March 8, 2007

**Interpretive Letter #1085**  
**August 2007**  
**12 USC 25A**

Subject: Banking Services for State Lottery Manager

Dear [ ]:

This is in response to your letter requesting confirmation that it would be legally permissible for a national bank to provide normal banking services to the private manager of a state lottery. As explained in more detail below, we agree that such activities would be permissible for a national bank and would not violate 12 U.S.C. § 25a.

Proposed Activities

You related in your letter that you represent a client that is acting as a special financial advisor to a state government (“State”). For a number of years, the State has operated a statewide lottery (“Lottery”). Pursuant to legislation now pending in the State legislature, the State is considering entering into a management agreement with a private, non-governmental party (“Manager”) to manage operation of the Lottery on the State’s behalf. The Manager would be subject to extensive oversight and regulation by the State and the State would continue to receive revenues from the Lottery, less a portion paid to the Manager as a fee. The pending legislation would not permit the creation of private lotteries; the only change would be the introduction of the Manager to oversee the operation of the State Lottery.

The ability to obtain banking services would be important to the Manager, and it is important for the State to be able to assure prospective Managers that they will be able to obtain banking services once they are managing the Lottery. You noted that it would be practically impossible to manage the Lottery without access to ordinary banking services. Although there is no intent to involve a bank in the actual operation of the Lottery (*e.g.*, in the sale or redemption of tickets), the Manager will have operating and other funds that it will need to deposit for safekeeping. The Manager will also need a checking account in order to pay its bills and to make disbursements to winners of the Lottery. It is possible that a Manager might seek other ordinary banking services from a national bank as well, such as bank loans or letters of credit.

## Federal Statutes

In 1967, Congress amended the National Bank Act to generally prohibit national banks from participating in lotteries.<sup>1</sup> Under this legislation, codified as 12 U.S.C. § 25a, a national bank may not “deal in lottery tickets,” “deal in bets used as a means or substitute for participation in a lottery,” “announce, advertise, or publicize the existence of any lottery,” or “announce advertise, or publicize the existence or identity of any participant or winner, as such, in a lottery.” In addition, a national bank may not permit “the use of any part of any of its banking offices by any persons for any purpose forbidden to the bank” under the statute, and may not permit “direct access by the public from any of its banking offices to any premises used by any person for any purpose forbidden to the bank” under the statute. Criminal penalties are provided for any person who knowingly violates section 25a.<sup>2</sup>

A “lottery” is defined as including:

any arrangement whereby three or more persons (the “participants”) advance money or credit to another in exchange for the possibility or expectation that one or more but not all of the participants (the “winners”) will receive by reason of their advances more than the amounts they have advanced, the identity of the winners being determined by any means which includes —

(A) a random selection;

(B) a game, race, or contest; or

(C) any record or tabulation of the result of one or more events in which any participant has no interest except for its bearing upon the possibility that he may become a winner.<sup>3</sup>

It is clear that state lotteries such as the Lottery fall within this definition. In light of these provisions, the State would like to confirm, in advance of contracting with a Manager, that the Manager will be able to obtain banking services from a national bank.

## Legal Analysis

We agree that 12 U.S.C. § 25a does not prohibit a national bank from taking deposits from, and providing ordinary banking services to, the Lottery or its private Manager. Section 25a was enacted in direct response to the development of state lotteries and particularly the lottery adopted by New York, which originally involved the sale of tickets directly by banks.<sup>4</sup>

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<sup>1</sup> Pub. L. No. 90-203, § 1, 81 Stat. 608 (1967). The legislation also contained identical prohibitions for other types of insured depository institutions. See 12 U.S.C. § 339 (state member banks); 12 U.S.C. § 1829a (state non-member banks); 12 U.S.C. § 1463(e) (savings associations).

<sup>2</sup> 18 U.S.C. § 1306.

<sup>3</sup> 12 U.S.C. § 25a(c)(2).

<sup>4</sup> S. Rep. No. 727, 90th Cong., 1st Sess. 1, 2 (1967), *reprinted in* 1967 U.S.C.C.A.N. 2228, 2228-29 (“Senate Report”).

The legislative history makes it clear that this was the focus of the legislation. According to the Senate Report, “[t]he purpose of [the bill] is to prohibit federally insured banks and thrift institutions from selling lottery tickets to the public. . . . The bill would prohibit such institutions from advertising or publicizing lotteries or permitting its premises to be used for the sale or promotion of lottery tickets.”<sup>5</sup>

However, Congress was careful to make it clear that national banks would not be forbidden to offer ordinary banking services, such as taking deposits, offering a checking account, or cashing checks, to any person involved in a lottery. Thus, the statute expressly authorizes national banks to provide such services:

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.<sup>6</sup>

The Report of the House Committee on Banking and Currency makes it clear that this provision was intended to exclude normal banking services from the prohibitions of the statute:

There is no interference whatever with customary banking services. Banks may continue to accept deposits, perform checking account services, make loans, and perform any other services which they are now authorized to perform, without being obliged to inquire into the nature of the customer’s business any more than under existing law. The bill merely provides that the covered institutions cannot directly participate in the gambling activities specified in the bill, or permit these specified activities to be carried out on the premises under their control.<sup>7</sup>

The Conference Committee reaffirmed that paragraph (d) was added “to make clear the intention not to prohibit the acceptance of deposits and the performance of other lawful banking services.”<sup>8</sup>

Accordingly, the OCC has affirmed that national banks may provide normal banking services for state lotteries.<sup>9</sup> The Department of Justice, which is responsible for enforcement of the criminal penalties, has also recognized that the intent of 12 U.S.C. § 25a appears to be the prohibition of

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<sup>5</sup> *Id.* at 1, reprinted in 1967 U.S.C.C.A.N. 2228, 2228.

<sup>6</sup> 12 U.S.C. § 25a(d).

<sup>7</sup> H.R. Rep. No. 382, 90th Cong., 1st Sess. 2 (1967).

<sup>8</sup> H.R. Conf. Rep. No. 1018, 90th Cong., 1st Sess. 1 (1967), reprinted in 1967 U.S.C.C.A.N. 2228, 2242.

<sup>9</sup> Interpretive Letter No. 752, September 26, 1996, reprinted in [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-117.

the sale and advertising of lottery tickets by banks and does not prevent banks from providing recordkeeping and escrow services for state lotteries.<sup>10</sup>

### Conclusion

For the reasons discussed above, I conclude that 12 U.S.C. § 25a does not prohibit national banks from accepting deposits from, or providing other normal banking services to, the Lottery or a private entity that becomes the Manager of the Lottery. Such services are expressly authorized by 12 U.S.C. § 25a(d).

This opinion is based upon the factual representations contained in your letter. A material change in the facts could lead to a different conclusion.

I trust that this has been responsive to your inquiry. If you have further concerns, please do not hesitate to contact me at (202) 874-5300.

Sincerely,

*signed*

Christopher C. Manthey  
Special Counsel  
Bank Activities and Structure Division

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<sup>10</sup> Department of Justice press release dated September 6, 1974, *quoted in Canal National Bank v. Mills*, 405 F. Supp. 249, 253 (D. Me. 1975).