
Memorandum

To: Acting Chair and Commissioners
Cc: Debbie Hilton Creek, Acting Executive Director & Chief People Officer
From: Kristina Gasson, General Counsel
Date: February 20, 2024
Subject: Sale of Lottery Products by Marijuana Establishments

Issue

The Cannabis Control Commission (“Commission”) received an inquiry from a Marijuana Establishment (“ME”) as to whether it may become separately licensed by the Massachusetts State Lottery Commission (“MSLC” or “Lottery”) and sell Lottery products at its retail location.

Lottery Sales

The MSLC requires that proposed locations be a retail business and cannot be established for the sole purpose of selling MSLC products.¹ Lottery products are commonly sold throughout the Commonwealth in liquor, grocery, and convenience stores.² The MSLC has an application process for Lottery Agent applicants and strict compliance obligations for licensed entities.³ Applicants must undergo a financial review, a criminal background screening, and a site assessment.⁴

Once licensed, Lottery Agents have several obligations to the MSLC.⁵ These obligations include, but are not limited to, compliance with state laws and directives issued by the MSLC Director, granting MSLC agents and representatives an irrevocable license to enter its premises, and providing all books and records for inspection at reasonable hours upon demand.⁶

Commission Statutory and regulatory authority

The Commission enjoys broad legal authority with “all the powers necessary or convenient to carry out and effectuate its purposes.”⁷ The Commission has the authority to condition or restrict a license, and set standards for the licensure of MEs.⁸ The Commission has expressly permitted

¹ See <https://www.masslottery.com/about/becoming-an-agent>

² See <https://www.masslottery.com/tools/location-finder>

³ 961 CMR 2.00.

⁴ 961 CMR 2.08(2); see also [Massachusetts Lottery, Becoming and Agent, Application Details](#)

⁵ 961 CMR 2.20.

⁶ *Id.*

⁷ G.L. c. 94G, § 4(a).

⁸ G.L. c. 94G, § 4(a)(xi); G.L. c. 94G, § 4(a½)(v).



sales of a limited category of non-Marijuana products in its regulations, such as Marijuana Accessories and Marijuana Establishment Branded Goods (“Branded Goods”), and expressly allows MEs to sell these products.⁹

When interpreting a statute or regulation, the court first reviews the text.¹⁰ “Language should be given effect consistent with its plain meaning. If the language is clear and unambiguous, it must be interpreted as written,” unless doing so would produce an absurd or unworkable result.¹¹ A statute or regulation is ambiguous when reasonably well-informed persons can understand it in two or more different ways.¹² If the statute or regulation is ambiguous, the agency’s “reasonable interpretation of [the statute or regulation] is generally entitled to deference.”¹³

Here, Commission laws and regulations neither explicitly allow nor prohibit MEs from selling lottery tickets. While Commission regulations passively refer to a Licensee’s tax obligations relative to the sale of Marijuana Products versus non-Marijuana items,¹⁴ the Commission has historically limited the sale of non-Marijuana items by Marijuana Retailers as a matter of policy.¹⁵ This policy is, in part, due to the Commission’s previous public discussions indicating its intent to limit the types of non-Marijuana items that Marijuana Retailers may sell.¹⁶

Commission regulations reflect this intent as Marijuana Retailers, like other MEs, are only explicitly licensed to take certain actions, including to purchase, repack, white label, and transport Marijuana and Marijuana Products and to sell Marijuana and Marijuana Products to consumers.¹⁷ Commission regulations also intentionally identify certain non-Marijuana items, such as Marijuana Accessories and Marijuana Establishment Branded Goods, that Licensees may also offer for sale.¹⁸

⁹ 935 CMR 500.002.

¹⁰ *DeCosmo v. Blue Tarp Redevelopment, LLC*, 487 Mass. 690, 696 (2021).

¹¹ *Id.* (quoting *Boss v. Leverett*, 484 Mass. 553, 557 (2020) (brackets omitted); see also *DiMasi v. Sec’y of Commonwealth*, 491 Mass. 186, 191-92 (2023)).

¹² See *Town of Falmouth v. Civil Service Com’n*, 447 Mass. 814, 818 (2006).

¹³ *DeCosmo*, 487 Mass. at 696.

¹⁴ See, e.g., 935 CMR 500.140(5)(g) (requiring MEs to “adopt separate accounting practices at the point of sale for Marijuana Products and non-Marijuana products”) and 935 CMR 501.140(5)(b) (requiring MTCs to “adopt separate accounting practices at the point-of-sale for Marijuana and Marijuana Product sales, and non-Marijuana sales.”).

¹⁵ See Enforcement Counsel Advisory, Subject: Non-Marijuana Product Sales (June 6, 2022) (“Until the Commission authorizes the sale of additional items, such as prepackaged food and drinks, MEs may not sell non-Marijuana products that are not explicitly authorized by 935 CMR 500.00, 935 CMR 501.000 or via an [Executive Director]-approved interpretation or policy.”).

¹⁶ See [Massachusetts Cannabis Control Commission Public Meeting](#) (Aug. 28, 2020) at 1:28:20 to 2:04:40 (discussing whether certain amendments to Commission regulations would allow Marijuana Retailers to sell any non-Marijuana product).

¹⁷ See 935 CMR 500.002 (definition of Marijuana Retailer); 935 CMR 500.050(8)(a)1.

¹⁸ See 935 CMR 500.002; see also 935 CMR 500.140(5)(g); 935 CMR 500.141(3)(e) (authorizing Social Consumption Establishments to sell Marijuana Accessories after receiving permission from the Commission); 935 CMR 500.145(1)(a) (including Marijuana Accessories and Marijuana Establishment Branded Goods in the definition of “delivery items”); 935 CMR 500.146(4)(f) (requiring Delivery Operators to “adopt separate accounting practices at the point of sale for Marijuana and Marijuana Product sales, and non-Marijuana sales”); 935 CMR 501.140(5)(b), (c), and (e).

In addition to the implicit limits on the permissible activities under the license, Commission regulations also directly compel Licensees to adopt “procedures to prevent loitering and ensure that only individuals engaging in activity *expressly or by necessary implication permitted by 935 CMR 500.000 and its enabling statute* are allowed to remain on the Premises.”¹⁹ Here, because the purchase of lottery tickets is not expressly or impliedly permitted by Commission regulations or G.L. c. 94G, a plain reading of the regulation would prohibit that activity.

However, since the statute does not forbid the sale of non-Marijuana items, Commission policies limiting or prohibiting the same may be revised upon further review by the Commission.²⁰

Compliance Considerations

As the Commission deliberates whether to permit lottery sales in MEs, there are other matters that the Investigations and Enforcement Department would consider when monitoring compliance with Commission regulations.

Of note, the age restrictions for sales of each products differs. Lottery sales are authorized for persons aged 18 and older; conversely, adult-use cannabis sales are restricted to persons aged 21 and older.²¹ Statutes also restrict persons under 21 from entering an ME’s licensed premises.²² These restrictions will remain effective even if the Commission permits lottery sales and MEs will be required to adhere to existing processes to ensure access is limited to consumers over 21 years old. Access to the premises could also conceivably expand to non-consumers and non-patients (*i.e.*, Lottery-only customers). Moreover, because Lottery operations would involve the pay out of cash to prize winners, the Licensee’s onsite cash-holding burden would increase,²³ introducing other potential public safety elements to daily operations which may be of interest to the host community. Allowance of Lottery sales may also complicate the department’s ability to

¹⁹ 935 CMR 500.110(1)(b) (emphasis added); *see also* 935 CMR 501.110(1)(b) (imposing the same requirement for MTCs). Due to these requirements, lottery games like Keno, a game of chance where you purchase a ticket and then wait for a video screen at an establishment to reveal the numbers, may be prohibited because it would encourage the purchaser to wait for the results.

²⁰ Of note, Colorado permits MEs in the state to sell lottery tickets; however, the lone ME taking advantage of that allowance has since stopped the practice. *See* Westword, [Colorado Dispensaries Can Sell Lottery Tickets, According to State Officials](#) (Oct. 4, 2023) (noting that, according to the Colorado Marijuana Enforcement Division, the “state law banning dispensaries from selling consumable items that don’t contain cannabis, such as tobacco and non-infused food and drinks” does not prohibit dispensaries from selling “merchandise, smoking accessories and other retail products.” In that instance, “[t]he point of sale is at the reception desk up front, away from the rooms in which medical and recreational marijuana transactions take place.”).

²¹ *See* G.L. c. 10, § 29 (“No ticket or share shall be sold to any person under age eighteen”), and M.G.L. c. 94G, §§ 1, 2, and 7. MTCs offering lottery sales may have different considerations since the purchase of medical Marijuana is not restricted to persons 21 and older.

²² *See* G.L. c. 94G, § 4(a½)(xxi) (directing the Commission to adopt regulations including “a prohibition on persons under 21 entering marijuana establishments”); 935 CMR 500.140(2)(a) (“An individual shall not be admitted to the Premises, unless the Marijuana Retailer has verified that the individual is 21 years of age or older by an individual’s proof of identification.”).

²³ *See* 961 CMR 2.38(2), allowing prize winners to cash winning tickets of up to \$600 at a Sales Agent’s premises. A prize winner could conceivably seek to cash many winning tickets at the Sales Agent’s premises during one visit.

perform compliance monitoring and enforcement relative to Licensees' obligation to prevent loitering on the Premises.²⁴

Because the Commission lacks the statutory authority to enforce laws pertaining to the Lottery, department staff would not be responsible for monitoring compliance with MSLC statutes and regulations.²⁵ Nonetheless, if authorized to sell lottery tickets, Licensees would have to submit Standard Operating Procedures (SOPs) to the department detailing the Licensee's process for separating and recording Marijuana sales from Lottery sales.²⁶ Licensees would also have to notify the Commission of the types of lottery games that would be offered at the Premises. This information will allow department staff to perform a compliance review for potential conflicts that may arise with Commission statutes or regulations.

Lastly, Licensees may be required to notify the Commission if they are cited for any Lottery-related violations pursuant to 935 CMR 500.104(5) and 501.104(5).²⁷ MEs have an ongoing obligation to comply with "any applicable ... laws or regulations of the Commonwealth."²⁸ Accordingly, violations of state laws and regulations, even as they relate to the Licensee's obligations as a Lottery Commission Sales Agent, may impact its standing with the Commission and could result in sanctions, license suspension or revocation, or denial of its License renewal application.²⁹

Policy Considerations

While a Marijuana Retailer may meet the MSLC's requirement of a retail business, the Commission's regulations do not expressly authorize the sale of Lottery products. Given that the Commission has previously expressed caution as to what a Marijuana Retailer may sell, and the policy of seeking Commissioner authorization for additional retail items, the issue of whether MEs may sell Lottery products if licensed by the MSLC, is ripe for Commission consideration. Additionally, a vote to authorize sales of Lottery products in MEs may also lead to requests and inquiries from other Licensees that the Commission permit sales of other retail items such as prepackaged food items or to request additional licenses from other state and local agencies to sell or offer items or services.

If the Commission were inclined to allow for MEs to become licensed Lottery Agents, then such a policy should be considered at Public Meeting. The Commission may also wish to deliberate as to whether Lottery product sales may occur at Medical Marijuana Treatment Centers, since these entities are more akin to pharmacies than retail businesses that currently sell Lottery products. In

²⁴ See 935 CMR 500.110(1)(b) (adopting procedures to prevent loitering and ensure that only individuals engaging in activity permitted by statute and regulations are allowed to remain on the premises).

²⁵ See G.L. c. 10, § 24 (granting authority to conduct a state lottery to the MSLC); *see also Massachusetts Muni. Wholesale Elec. Co. v. Massachusetts Energy Siting Council*, 411 Mass. 183, 194 (1991) (holding that an administrative agency's powers are granted by the Legislature and articulated via the agency's enabling act).

²⁶ 935 CMR 500.140(5)(g) (A retailer shall adopt separate accounting practices at the point of sale for Marijuana and Marijuana Product sales, and non-Marijuana sales).

²⁷ Licensees are required to "keep current all information required by [Commission regulations] or otherwise required by the Commission." 935 CMR 500.104(5) and 501.104(5).

²⁸ 935 CMR 500.450(3); 935 CMR 501.450(3).

²⁹ *Id.*

the alternative, the Commission could take no action, and decline to authorize the sale of Lottery products in MEs.

If authorized, the Legal and Investigations & Enforcement Departments would explore a Memorandum of Understanding or other agreement with the MSLC regarding compliance inspections or related matters.

Potential Motion Language

Move to authorize Marijuana Establishments, if duly licensed by the Massachusetts State Lottery Commission, to sell Lottery products, provided the Licensee complies with 935 CMR 500.000, including but not limited to requirements with respect to cash handling and loitering, and all applicable Massachusetts State Lottery Commission rules and regulations.