

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA

RICHARD CORCORAN, in his
Official capacity as Speaker
For the Florida House of
Representatives,

Plaintiff,

v.

Case No. 2017-CA-365

TOM DELACENSERIE, in his
Official capacity as Secretary
Of the Florida Department
Of the Lottery,

Defendant.

**ORDER ON FINAL EVIDENTIARY/NON-JURY HEARING AND FINAL
JUDGEMENT**

THIS CAUSE came before the Court on March 6, 2017
for final evidentiary, non-jury hearing on the issues
between the Speaker of the Florida House and the
Secretary of the Florida Lottery.

1. The parties were each represented by counsel,
who waived opening statements and, during the course of
the trial stipulated to the admissibility of 14
exhibits [A through N].

The Four Witnesses

2. House Appropriations Commission Staff Director JoAnne Leznoff testified first, and described the budgeting process and certain budget-related terms.

3. Budget Chief [Government Operations & Technology Appropriations Subcommittee] Bruce Topp testified next.

4. After the plaintiff rested, the defense first called Lottery Department Deputy Chief of Staff/Director of Legislative Affairs Michael Manley.

5. Lottery Procurement Management Director Summer Sylestrie testified next.

The Issue

6. The matters for resolution are whether the Lottery Secretary complied with the pertinent provisions of the Florida appropriations laws in the manner in which the Secretary (1) issued an Invitation to Negotiate [ITN] in February 2015 and (2) entered

into and signed a September 2016 contract with Global Solutions Corporation [IGT] relative to operation of certain aspects of the Florida Lottery between October 2017 and October 2031.

The Pertinent Facts

7. Florida's Constitution provides for three separate, co-equal branches of government, with each branch having its own areas of responsibility, and a separation of powers provision [Article II, Section 3] prohibiting a person belonging to one branch from exercising "any powers appertaining to either of the other branches unless expressly provided" in the Constitution.

8. The Legislature has the exclusive responsibility for passage of laws, including budgeting and appropriations laws. Article III, Florida Constitution. Chiles v. Children A, B, C, D, E and F, 589 So.2d 260 (Fla. 1991).

9. The Executive Branch [including the Governor, Lieutenant Governor and the other officials in the executive branch] has the responsibility of exercising the administrative power to carry out legislative directives, ensuring "the laws be faithfully executed". Article IV, Florida Constitution.

10. The judicial power is vested in the Judicial Branch. Article V, Florida Constitution.

11. Since the 2003-2004 fiscal year contract, the Lottery Contract has been with GTECH. [Composite Exhibit H].

12. The interactions during the GTECH contract term between the legislative and executive branches relative to the GTECH contract [which expires this fall] appear to have been collegial and consistent with the various appropriations statutes and implementing bills.

13. If a budget amendment was needed relative to the GTECH contract because sales exceeded estimates, Lottery Department officials interacted appropriately

with legislative staff and the amendments were approved, five times during the contract term beginning in 2003.

14. Initially, the only lottery machines were terminals which issued draw tickets. In 2009, the Legislature approved the Lottery Department request to add Instant Ticket Vending Machines [ITVM] for scratch off tickets; in 2012, the Legislature approved the Lottery Department request for Full Service Vending Machines [FSVM] for both draw and scratch off tickets.

15. In 2013, the Legislature chose not to fund a requested increase in the number of draw terminals, which would have increased the number of draw ticket terminals by 300 machines, from 500 to 800.

16. Things between the Lottery Department and Legislature proceeded uneventfully and without reported complaint through the remaining years until Legislative Staff received the legislative budget request [LBR] for the Lottery Department in October 2016.

17. At that time, Lottery Department personnel disclosed for the first time the existence of an already signed 15 year contract with IGT [twelve year basic term through 2028, plus an immediately exercised three year extension through 2031]. [Exhibit A].

18. The 2016 IGT contract incorporated the ITN the Lottery Department issued in February 2015 [Exhibit C], another document that had not previously been provided or disclosed to the Legislature.

19. Chapter 24, Florida Statutes sets forth the Lottery Department's specific authority; neither chapter 24 nor any other statute or constitutional provision exempts the Lottery Department from the general provisions in chapters 215 and 216, Florida's general financial and budgeting provisions.

20. In pertinent part, section 216.311 makes clear that no state agency may "contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated" to that agency "unless

specifically authorized by law, and any contact or violation of this chapter shall be null and void".

Section 216.311(1), Florida Statutes.

21. Further, with respect to a contract in excess of \$5 million, section 216.313 specifies that an executive branch officer or employee

may not enter into any contract or agreement on behalf of the state. . .which binds the state or its executive agencies. . .in excess of \$5 million unless the contract identifies the specific appropriation of state funds from which the state will make payment under the contract in the first year of the contract, unless the Legislature expressly authorizes the agency. . .to enter into such contract absent a specific appropriation of funds.

Section 216.313, Florida Statutes.

22. The Legislative intent regarding use of public funds for procurement is spelled out in section 287.001, Florida Statutes. The Speaker's witnesses, Appropriations Staff Director JoAnne Leznoff and Budget Chief Bruce Topp, (whose responsibility includes the Lottery Department) also credibly testified to the importance of orderly spending, predictability and

consistency, allowing for spending and budgeting decisions to be made on the merits.

23. For procurement contracts exceeding one year, Section 287.0582 provides for a contingency statement to be included:

No executive branch public officer or employee shall enter into any contract on behalf of the state, which contract binds the state or its executive agencies for the purchase of services or tangible personal property for a period in excess of 1 fiscal year, unless the following statement is included in the contract: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature".

24. The annual appropriations process begins with the agencies and judicial branch submitting their LBR's to the Legislature in October of each year, for consideration during the appropriations process which culminates in the regular appropriations and budgeting during the annual springtime legislative session. The Legislature may provide specific appropriation details by using proviso language relative to a particular "issue" [item for which an appropriation is made] and

separate enabling language may be used as appropriate. Adjustments can be made between sessions through the Legislative Budget Commission approval process, or through budget amendments needed to conform estimates to actual revenues and expenditures; these processes are collaborated on by Legislative and Executive staff.

25. There are three appropriation line items/issues pertinent in this case: 2674 [terminal machines for draw tickets], 2675 [ITVM - vending machines for scratch off tickets] and 2676 [FSVM - vending machines for both draw and scratch off tickets].

26. The recurring budget for the three pertinent issues for the current 2016-2017 fiscal year totals \$34.6 million, some \$12.9 million less than the \$47.5 million the Lottery Department requested in its October 2016 LBR for the first year of the new IGT contract. Stated differently, the Lottery LBR for the upcoming 2017-2018 fiscal year is more than 37% higher than the current year appropriation.

27. As indicated by all of the witnesses, the Lottery Department did not obtain Legislative approval prior to issuing the 2015 ITN, and did not obtain Legislative approval prior to signing the 2016 contract and three year renewal, with the total contract effective from 2017 through 2031.

The Parties' Positions

27. The House expresses concern about the excessive unbudgeted, unauthorized expenditure, about the Lottery Department not identifying the specific source of the funds needed for the first year of the IGT contract, and about the Lottery Department not having requested, or received, the requisite Legislative authorization in advance, as would have been appropriate.

28. On behalf of the Florida House of Representatives, the Speaker also contends that the February 2015 ITN and the September 2016 IGT contract violate Florida Law, including sections 216.311 and 216.313, Florida Statutes.

29. The Lottery Department contends that, as long as the ITN and IGT contract contain the contingency language making the effectiveness of the contract contingent on annual appropriations, it need do nothing else and can ignore other statutes such as the budgeting requirements in sections 216.311 and 216.313, Florida Statutes.

The Procedural Posture of the Case

30. The Speaker framed this declaratory and injunctive action as one for a writ of quo warranto, essentially asking that the Lottery Department, through its Secretary, demonstrate "by what authority" the Secretary and Lottery Department entered into (and simultaneously extended by renewal) the IGT contract. The Lottery Secretary's response is essentially that he did not need any authority as long as the "contingent on annual appropriation" language is in the ITN and contract.

31. Actions seeking issuance of a writ of quo warranto are governed by Rule 1.630, Florida Rules of Civil Procedure. See also, Padovano, J., Florida Civil Practice, 2014 s. 30:3 and Florida Jur.2d ss.1-59, "Quo Warranto".

32. Quo warranto is available to challenge the right of a public officer to take a particular action in an official capacity. *Padovano, supra*, at s.30:3, fn 3.

FINDINGS AND FINAL JUDGEMENT

This quo warranto action was tried before the Court on March 6, 2017, on the Speaker's complaint and the Secretary's answer.

Based upon the testimony, credibility and demeanor of the witnesses, Exhibits A through N, the arguments of counsel and the pertinent provisions of the Florida Constitution and Statutes, and the Court being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. The Lottery Secretary did not comply with mandatory requirements of Florida Law, specifically sections 216.311 and 216.313, in the issuance of the ITN in February 2015 and in the execution of the IGT contract in September 2016, in that the amounts involved exceeded the prior year appropriation, no specific appropriation was identified, the contract exceeded \$5 million and was for multiple years, and the Lottery Secretary did not obtain the required advance authorization.

2. As a result, the Lottery Secretary lacked the legal authority to enter into the IGT contract, which must therefore be found to be void and unenforceable. [The incorporation of the ITN into the IGT contract does not change or correct the voidness, as the Lottery Secretary did not comply with the controlling statutes and laws relative to the issuance of the ITN].

3. Inclusion in the ITN and in the IGT contract of the contingency language is insufficient to demonstrate compliance with the other separate applicable,

mandatory provisions [section 216.311 and 216.313], which serve a separate purpose and must also be complied with, in addition to the section 287.0582 language requirement.

4. Judgement granting the relief requested is entered in favor of the Plaintiff, Speaker Richard Corcoran and against Defendant, Lottery Secretary Tom Delacenserie.

5. Jurisdiction is reserved to assess taxable costs sought timely.

ORDERED AND ADJUDGED this 7th day of March, 2017 in Tallahassee, Leon County, Florida.



KAREN GIEVERS
Circuit Judge

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