

original

NO. 35778-0

---

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

---

WASHINGTON STATE LOTTERY COMMISSION,

Respondent,

v.

CHRISTOPHER R. GRANTON,

Appellant.

FILED  
APR 11 11 11:51  
COURT OF APPEALS  
DIVISION II  
BY [Signature]  
DEPUTY

---

**BRIEF OF RESPONDENT**

---

ROBERT M. MCKENNA  
Attorney General

MICHAEL S. TRIBBLE  
Assistant Attorney General  
WSBA No. 30508  
1125 Washington Street SE  
PO Box 40100  
Olympia, WA 98504  
360-753-2711

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	COUNTERSTATEMENT OF THE ISSUES .....	1
III.	COUNTERSTATEMENT OF THE CASE .....	2
IV.	ARGUMENT .....	5
	A. The Lottery Correctly Applied The Law And The Final Order Is Consistent With Agency Rules Under RCW 34.05.570(3)(d) And (h).....	5
	1. The Lottery Will Only Pay A Jackpot Prize If The Claimant Presents An Official Mega Millions Ticket.....	6
	2. The Final Order Is Consistent With The Agency Rules Cited By Mr. Granton.....	7
	a. WAC 315-30-040 Prohibits Issuance Of Tickets After A Draw Break; It Does Not Mandate Sale Before The Break .....	8
	b. WAC 315-30-020 States That A Lottery Ticket Shall Be The Only Acceptable Evidence Of The Numbers Selected. ....	10
	c. Lottery Produced All Documents In Its Possession In Compliance With WAC 315-20- 115.....	11
	d. WAC 315-12-050 And -110 Discuss Disclosure Of Public Records And Have No Relation To The Final Order.....	13
	B. The Superior Court Review Of The Lottery Final Order Is Not Relevant To This Proceeding.....	14
V.	CONCLUSION .....	15

## TABLE OF AUTHORITIES

### Cases

<i>Aponte v. Dep't of Soc. &amp; Health Servs.</i> , 92 Wn. App. 604, 965 P.2d 626 (1998).....	9
<i>Heinmiller v. Dep't of Health</i> , 127 Wn.2d 595, 903 P.2d 433 (1995).....	15
<i>Magula v. Benton Franklin Title Co., Inc.</i> , 131 Wn.2d 171, 930 P.2d 307 (1997).....	7
<i>O'Connor v. Dept. of Social &amp; Health Servs.</i> , 143 Wn.2d 895, 25 P.3d 426 (2001).....	12, 13
<i>Port of Seattle v. Pollution Control Hearings Board</i> , 151 Wn.2d 568, 90 P.3d 659 (2004).....	7
<i>State v. Wilbur</i> , 110 Wn.2d 16, 749 P.2d 1295 (1988).....	8

### Statutes

RCW 34.05 .....	5, 14
RCW 34.05.570(1).....	5
RCW 34.05.570(3).....	6
RCW 34.05.570(3)(d).....	7
RCW 34.05.570(3)(h) .....	7, 14
RCW 42.56 .....	12, 13
RCW 67.70.060(5).....	5

**Other Authorities**

*Blacks Law Dictionary* 781 (8th ed. 2004) ..... 8

**Regulations**

WAC 10-08..... 6

WAC 10-08-135..... 7

WAC 315-12-050..... 2, 13, 14

WAC 315-12-110..... 2, 13, 14

WAC 315-20..... 14

WAC 315-20-005..... 6

WAC 315-20-115..... 2, 11, 13

WAC 315-30..... 10

WAC 315-30-020..... 2, 10, 11

WAC 315-30-020(1)..... 10

WAC 315-30-020(3)..... 10

WAC 315-30-020(4)..... 8

WAC 315-30-040..... 2, 9

WAC 315-30-040(2)..... 8, 9

WAC 315-38-050(3)..... 1, 6, 7

## I. INTRODUCTION

The Lottery will only pay a Mega Millions jackpot prize if the claimant presents “an official Mega Millions ticket. . . .” WAC 315-38-050(3).

The Appellant, Christopher R. Granton attempted to purchase a Washington State Lottery (Lottery) Mega Millions official game ticket for the drawing on April 8, 2005. He filled out an official play slip, handed it to a convenience store clerk, who attempted to process it, but he left the store without purchasing a ticket because the machine would not process his play slip.

Without buying a ticket, Mr. Granton thereafter sought the Mega Millions prize from the Lottery for the April 8, 2005 drawing.

Lottery requests that this Court affirm Lottery’s Final Order dismissing Mr. Granton’s claim.

## II. COUNTERSTATEMENT OF THE ISSUES

A. When Mr. Granton never purchased a Mega Millions ticket for the drawing in question, did the Lottery appropriately dismiss his claim of the prize?

- B. Is the Final Order consistent with WAC 315-30-040 when the rule prohibits issuance of tickets after a draw break, but does not mandate sale before the break?
- C. Is the Final Order consistent with WAC 315-30-020 which states that a Lottery ticket shall be the only acceptable evidence of the numbers selected?
- D. Is the Final Order consistent with WAC 315-20-115, which discusses production of documents in discovery, when Lottery provided requested documents in its possession?
- E. Is the Final Order consistent with WAC 315-12-050 and -110 which discuss disclosure of public records when the Lottery never received a public records request from Mr. Granton?
- F. If appellate review is of Lottery's Final Order, should this Court decline to address Mr. Granton's issues related to the superior court judicial review?

### **III. COUNTERSTATEMENT OF THE CASE**

Around 6:40 p.m. on April 8, 2005, Mr. Granton filled out a Lottery play slip and handed it to a convenience store clerk in an attempt to purchase a Mega Millions lottery ticket. Administrative Record (AR) 21-22, 24-27, 102. The clerk attempted to process the ticket, but the ticket distribution machine would not allow it. AR 21-22, 24-27, 102. As a

result, Mr. Granton admits he never purchased a ticket for the game in question. AR 28, 102. Subsequently, Mr. Granton sought the Mega Millions jackpot and claimed that the numbers on the play slip that he used in attempt to purchase a Mega Millions ticket matched the winning numbers for the Mega Millions game of April 8, 2005. AR 39, 102.

On June 27, 2005, Mr. Granton was notified by the Lottery that his claim was denied because he could not produce a winning ticket for the game in question, and that he could request a hearing on the matter. AR 51-52. Mr. Granton filed a request for an administrative hearing with the Lottery on July 5, 2005. AR 53.

Administrative prehearing process commenced when an Administrative Law Judge (ALJ) from the Office of Administrative Hearings issued an Order for Telephonic Prehearing Conference to the parties on August 4, 2005. AR 56. The prehearing conference was held on August 25, 2005 where the Lottery informed Mr. Granton and the ALJ that it intended to file a Motion for Summary Judgment seeking to dismiss Mr. Granton's claim as a matter of law. AR 1-11. During this prehearing conference, Mr. Granton requested the Lottery produce its investigative file regarding his claim and a year's worth of data kept by a third party contractor regarding the ticket distribution machine that did not process his playslip. AR 2-5. The ALJ told Mr. Granton that if he needed more

data than the Lottery had, he would need to request subpoenas be drafted by the ALJ, but that he would have to serve the subpoenas himself. AR 2-5. Subsequently, the Lottery provided Mr. Granton with its investigative report and with the data it had collected from the third party contractor. AR 54, 20, 163.

On August 26, 2005, the Lottery filed its Motion for Summary Judgment. AR 85-88. Mr. Granton thereafter responded. AR 28-35. And on October 4, 2005, the ALJ heard oral argument from the parties during a prehearing conference. AR 12-19.

Previously, on September 22, 2005, Mr. Granton filed a request for public record with the Office of Administrative Hearing (although made on Lottery forms) and it was put into the administrative record. AR 159. During the prehearing conference on October 4, 2005, Mr. Granton again raised the issue of wanting data from the third party contractor. AR 13. Lottery communicated that they were prepared to work cooperatively with Mr. Granton and the third party contractor to provide Mr. Granton with the data he was seeking—should summary judgment be denied and the data become arguably relevant for a hearing on the merits of Mr. Granton's issues. AR 13.

After viewing all of the evidence in the light most favorable to Mr. Granton, on October 11, 2005, the ALJ issued an Initial Order dismissing

Mr. Granton's claim because he never purchased a ticket for the Mega Millions drawing on April 8, 2005. AR 101-107. Mr. Granton filed a Petition for Review by the Lottery and on March 7, 2006, the Lottery issued its Final Order affirming the initial Order of the ALJ. AR 108-118. Mr. Granton moved for reconsideration of the Final Order on March 17, 2006, which was denied by the Lottery on the same date. AR 119-132.

On March 27, 2006, Mr. Granton filed his Petition for Judicial Review in Thurston County Superior Court. Clerk's Papers (CP) 3-11. On November 15, 2006, the case was reassigned to a different Judge, stated to be effective January 1, 2007. CP 46. However, on December 15, 2006, the newly assigned Judge heard oral arguments from the parties and affirmed the Lottery Final Order. CP 75-77. Mr. Granton now appeals to this Court.

#### IV. ARGUMENT

**A. The Lottery Correctly Applied The Law And The Final Order Is Consistent With Agency Rules Under RCW 34.05.570(3)(d) And (h)**

Administrative proceedings before the Lottery are governed by the Administrative Procedure Act, RCW 34.05. RCW 67.70.060(5). In those proceedings, Mr. Granton had the burden of demonstrating the invalidity of Lottery's Final Order. RCW 34.05.570(1). In order to prevail in his appeal, Mr. Granton must establish one of the grounds

listed in RCW 34.05.570(3). Throughout the various sections of his Brief of the Appellant, Mr. Granton argues that the following grounds of RCW 34.05.570(3) apply:

(d) The agency has erroneously interpreted or applied the law;<sup>[1]</sup>

....

(h) The order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency.<sup>[2]</sup>

**1. The Lottery Will Only Pay A Jackpot Prize If The Claimant Presents An Official Mega Millions Ticket**

The Lottery will only pay a jackpot prize if the claimant presents “an official Mega Millions ticket matching all game play, serial number, and other validation data” in the Lottery’s computer system. WAC 315-38-050(3). The Mega Millions ticket is the “only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize.” *Id.*

The Model Rules of Procedure, WAC 10-08, apply to all Lottery adjudicative proceedings. WAC 315-20-005. The Model Rules provide for summary judgment when the record shows no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of

---

<sup>1</sup> Br. Appellant 5 (Error 3), 15 (Argument).

<sup>2</sup> Br. Appellant 4 (Error 1), 5 (Error 2), 5 (Error 4).

law. WAC 10-08-135; *Magula v. Benton Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997).

Mr. Granton admitted that he did not actually purchase a Mega Millions ticket for the April 8, 2005 Mega Millions drawing. AR 28, 102. Therefore, he was not entitled to collect the jackpot prize under WAC 315-38-050(3), and the Lottery properly granted summary judgment and issued a Final Order dismissing his claim.

Because Lottery correctly applied the law, Mr. Granton has failed to prove he is entitled to relief under RCW 34.05.570(3)(d). Mr. Granton has also failed to prove the Lottery Final Order is inconsistent with agency rules.

**2. The Final Order Is Consistent With The Agency Rules Cited By Mr. Granton<sup>3</sup>**

An agency final order may be overturned if it is inconsistent with an agency rule and the agency fails to explain the inconsistency by stating facts and reasons demonstrating a rational basis for the inconsistency. RCW 34.05.570(3)(h); *Port of Seattle v. Pollution Control Hearings Board*, 151 Wn.2d 568, 634, 90 P.3d 659 (2004). Mr. Granton alleges that the Lottery Final Order is inconsistent with several agency rules.

---

<sup>3</sup> Several of the rules cited by Mr. Granton have been amended since April 8, 2005. Therefore, all rules discussed in relation to Mr. Granton's arguments that the Final Order is inconsistent therewith, refer to them as they existed on April 8, 2005. It is important to note, however, that none of the amendments would change the outcome of this case.

However, “inconsistent” as used in this section of the APA (Administrative Procedures Act) is neither defined in the statute nor previously construed by Washington courts. When not previously defined, courts look to the plain meaning of the statute. *State v. Wilbur*, 110 Wn.2d 16, 18, 749 P.2d 1295 (1988). “Inconsistent” has been defined as follows:

Mutually repugnant or contradictory. Contrary, the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other . . . .

*Blacks Law Dictionary* 781 (8th ed. 2004).

The following sections state why the Final Order is consistent with the rules cited by Mr. Granton.

**a. WAC 315-30-040 Prohibits Issuance Of Tickets After A Draw Break; It Does Not Mandate Sale Before The Break**

Mr. Granton claims that Lottery’s Final Order is inconsistent with WAC 315-30-040(2). On April 8, 2005, that rule stated as follows:

The director shall announce for each type of on-line game the time for the end of sales prior to the drawings. TDMs<sup>[4]</sup> will not process orders for on-line tickets for that drawing after the time established by the director.

---

<sup>4</sup> WAC 315-30-020(4) defined ticket distribution machine (TDM) as the “computer hardware through which an on-line retailer enters the combination selected by a player and by which on-line tickets are generated and claims are validated.

WAC 315-30-040(2) prohibits sale of online tickets *after* a time established by the Director, i.e. the draw break time. It does not hold that tickets *must* be sold, in spite of any computer or operator malfunction, (or for any other reason) prior to the draw break time established by the Director.

Mr. Granton claims that this rule should be construed beyond its plain meaning. He would like it construed to hold that ticket distribution machines *must* process orders for on-line tickets prior to the draw break time established by the Director. However, agency rules, like statutes, should be given their plain meaning and not be subject to construction unless their language is ambiguous. *Aponte v. Dep't of Soc. & Health Servs.*, 92 Wn. App. 604, 617-18, 965 P.2d 626 (1998).

Under the plain meaning of WAC 315-30-040(2), the Lottery would only be in violation of the rule if the ticket distribution machine issued Mr. Granton a Mega Millions ticket after the draw break time established by the Director. Because Mr. Granton admits he did not purchase or receive a ticket at any time on April 8, 2005, the Final Order is consistent with WAC 315-30-040.

b. **WAC 315-30-020 States That A Lottery Ticket Shall Be The Only Acceptable Evidence Of The Numbers Selected.**

Mr. Granton alleges that WAC 315-30-020 mandates that a ticket should have been given to him after he turned in a play slip. WAC 315-30-020 is the definition section of Chapter 315-30 WAC and states in pertinent part as follows:

(1) On-line game. A lottery game in which a player **pays a fee** to a lottery retailer and selects a combination of digits, numbers, or symbols; type and amount of play; and drawing date and receives a computer generated ticket with those selections printed on it. The lottery will conduct a drawing to determine the winning ticket or the winning combination(s) in accordance with the rules of the specific game being played. **Each ticket bearer whose valid ticket includes a winning combination shall be entitled to a prize** if claim is submitted within the specified time period.

....

(3) On-line ticket. A computer-generated ticket issued by an on-line retailer to a player as a receipt for the combination(s) a player has selected. **That ticket shall be the only acceptable evidence of the combination(s) of digits, numbers, or symbols selected.** On-line tickets may be **purchased** only from on-line retailers.

WAC 315-30-020(1), (3) (emphasis added).

Mr. Granton did not play a draw game (as that term is defined) because he admittedly did not purchase a ticket. WAC 315-30-020(1). Moreover, Mr. Granton was not entitled to collect a prize because he did not have “the only acceptable evidence of the combination(s) of . . . numbers . . . selected . . . .” WAC 315-30-020(3).

Contrary to Mr. Granton's argument, WAC 315-30-020 does **not** state that a Lottery terminal must issue a lottery ticket to every person who submits a play slip to a Lottery retailer in all circumstances. Because Mr. Granton admits he did not purchase or receive a ticket at any time for the drawing on April 8, 2005, the Final Order is consistent with WAC 315-30-020.

**c. Lottery Produced All Documents In Its Possession In Compliance With WAC 315-20-115**

Mr. Granton alleges that the Lottery failed to properly handle his requests for documents and therefore, the Final Order is inconsistent with WAC 315-20-115. WAC 315-20-115 provides:

Upon request by any party to the adjudicative proceeding, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven days of the request, but for good cause shown, not less than three business days prior to the date of the hearing.

Several prehearing conferences were held in this matter where discovery and requests for documents were discussed. During the August 25, 2005 prehearing conference, the parties discussed the discovery information Mr. Granton was seeking. AR 2-5. Mr. Granton wanted a year's worth of data regarding the ticket distribution machine (TDM) from which he attempted to purchase a Mega Millions ticket. AR 2-5. The Lottery advised that the bulk of the information was not with the Lottery but with a third party, and that Mr. Granton would need to work

with the ALJ to draft subpoenas and then issue them. AR 3-5. During the October 4, 2005 prehearing conference held prior to the summary judgment motion, the Lottery communicated that they were prepared to work cooperatively with Mr. Granton and the third party contractor to provide Mr. Granton with the data he was seeking, should summary judgment be denied and the data become arguably relevant for a hearing on the merits of Mr. Granton's issues. AR 12-13.

Mr. Granton does not take issue with the Lottery's discovery process in the substance of his brief; instead, he argues that the Lottery violated its discovery rule by not providing him with public documents he requested under the Public Record Act<sup>5</sup> and Lottery public record rules.<sup>6</sup> However, the discovery process and public records requests are two parallel but separate tools that a citizen can utilize to obtain public records from a state agency. *See generally O'Connor v. Dept. of Social & Health Servs.*, 143 Wn.2d 895, 25 P.3d 426 (2001). In *O'Connor*, the state attempted to limit a litigant's ability to obtain information to the discovery process. *Id.* 897. The Washington Supreme Court ruled that the state could not limit Ms. O'Connor's statutory right to seek public records

---

<sup>5</sup> RCW 42.56.

<sup>6</sup> Br. Appellant 20.

under the Public Disclosure Act<sup>7</sup> through a discovery order—recognizing the independent nature of the two processes. *Id.* 910.

The Lottery complied with its discovery rules in WAC 315-20-115 by providing Mr. Granton its investigative report and the data it had gathered. AR 54, 20, 163. The Lottery was prepared to work with Mr. Granton to obtain further discovery if the case were to proceed to hearing on the merits. AR 12-13. Therefore the Final Order is consistent with WAC 315-20-115.

**d. WAC 315-12-050 And -110 Discuss Disclosure Of Public Records And Have No Relation To The Final Order**

Mr. Granton alleges that the Final Order is inconsistent with WAC 315-12-050 and WAC 315-12-110 because the Lottery allegedly failed to respond to his public disclosure request. Both of these regulations deal with requests for public records and the procedures for denial—not adjudicative procedures. The discovery process and public records requests are two unrelated tools that a citizen can utilize to obtain public records from a state agency. *See generally O'Connor.*

Through the administrative prehearing process, Mr. Granton was fully apprised of the procedures he needed to follow for gathering information. He had the formal discovery process available to him under

---

<sup>7</sup> Since the *O'Connor* decision, the Public Records Act has been recodified at RCW 42.56.

WAC 315-20 and RCW 34.05, and he, in fact, used those processes as discussed in the preceding section. Existence or nonexistence of a public records request under the Public Records Act bears no relevance on an adjudicative proceeding.

During the litigation, Mr. Granton filed a Lottery public records form with the Office of Administrative Hearings, but not with the Lottery. AR 159. Even if the Lottery had received and failed to process a public record request from Mr. Granton, it would neither render the adjudicative process he received unfair, nor render the Lottery Final Order inconsistent with WAC 315-12-050 and WAC 315-12-110 because these rules bear no relation to the Final Order.

Because Lottery's Final Order is consistent with all Lottery rules cited by Mr. Granton, he has failed to prove he is entitled to relief under RCW 34.05.570(3)(h) and the Lottery's Final Order should be affirmed.

**B. The Superior Court Review Of The Lottery Final Order Is Not Relevant To This Proceeding**

On appeal to this Court, Mr. Granton raises issues related to the superior court's review of the Final Order. He criticizes that a Thurston County Superior Court Judge was reassigned to the case at the last minute with allegedly no previous experience reviewing agency final orders. He also alleges error with the superior court's analysis in affirming the Final Order. Mr. Granton's criticism of the superior court process is irrelevant

on appeal because “this Court sits in the same position as the superior court, applying the standards of the [Administrative Procedures Act] APA directly to the record before the agency.” *Heinmiller v. Dep’t of Health*, 127 Wn.2d 595, 601, 903 P.2d 433 (1995). Therefore, this Court should not address the issues Mr. Granton has raised regarding the superior court process.

#### V. CONCLUSION

Based on the foregoing, the Lottery respectfully requests this Court affirm the Final Order in this matter and dismiss all of Mr. Granton’s claims.

RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of July, 2007.

ROBERT M. MCKENNA  
Attorney General

A handwritten signature in black ink, appearing to read "M. Tribble", with a long horizontal flourish extending to the right.

MICHAEL S. TRIBBLE  
Assistant Attorney General  
WSBA No. 30508

COURT OF APPEALS  
DIVISION II

NO. 35778-0

07 JUL 11 PM 1:21

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

WASHINGTON STATE LOTTERY  
COMMISSION,

Respondent,

v.

CHRISTOPHER GRANTON,

Appellant.

DECLARATION OF  
SERVICE

I, Nicole Teeter, make the following declaration:

1. I am over the age of 18, a resident of Thurston County, and not a party to the above action.

2. On July 10, 2007, I caused to be served a true and correct copy of the Brief of Respondent as follows:

Christopher Granton  
10413 13<sup>th</sup> Avenue Court S.  
Tacoma, WA 98444  
 via US Postal Service

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 10<sup>th</sup> day of July, 2007 at Olympia, Washington.

[Signature]  
NICOLE TEETER