

**OPINION NO. 80-055****Syllabus:**

1. Pursuant to R.C. 3770.06, the State Lottery Commission must transfer unclaimed prize awards to the state lottery fund, to be used for any purpose for which that fund may be used.
2. Pursuant to R.C. 3770.06, the Director of Budget and Management is responsible for making the determination as to when moneys in the state lottery fund shall be transferred into the general revenue fund and for ascertaining that at least thirty percent of all revenue accruing from the sale of lottery tickets is transferred into the general revenue fund. Unclaimed prize money constituting part of the state lottery fund may be transferred to the general revenue fund and counted toward this thirty percent requirement.

To: Edwin C. Taylor, Executive Director, Ohio Lottery Commission, Cleveland, Ohio  
By: William J. Brown, Attorney General, September 11, 1980

I have before me your opinion request on behalf of the Ohio Lottery Commission which poses the following questions:

1. What use, if any, may the Lottery Commission make of unclaimed prize funds?
2. May these funds be used toward the thirty percent required to be transferred into the general revenue fund pursuant to R.C. 3770.06(D)?

With regard to the requirement of 3770.06(D) that no less than thirty percent of the total revenue accruing from the sale of lottery tickets be transferred into the general revenue fund, the following questions have arisen:

- [3.] At what time intervals is the Lottery Commission required to make such transfers?
- [4.] What time intervals should be used to determine if the 30% requirement is being met, i.e. bi-annually, yearly, monthly, weekly?

As to the use of unclaimed prize money, R.C. 3770.07 states in pertinent part as follows:

Lottery prize awards shall be claimed. . .within one year of the date on which such prize award was announced. If no valid claim to the prize award is made within the prescribed period, the prize money or the cost of goods and services awarded as prizes, or if such goods or services are resold by the commission, the proceeds from such sale, shall be returned to the state lottery fund and distributed in accordance with section 3770.06 of the Revised Code. (Emphasis added.)

According to the express provisions of R.C. 3770.07, unclaimed prize money is to be returned to the state lottery fund and distributed in accordance with R.C. 3770.06.

Subsequent to the submission of your request, the General Assembly amended certain portions of R.C. Chapter 3770. Am. S.B. 139, 113th Gen. A. (1980) (eff. Aug. 1, 1980). Amended R.C. 3770.06 states in pertinent part as follows:

There is hereby created the state lottery fund into which shall be deposited all revenues received from sales of lottery tickets and license fees. Moneys shall be disbursed on the order of the auditor of state, pursuant to vouchers or invoices signed by the director of the state lottery commission. The moneys in the state lottery fund shall be subject to appropriation by the General Assembly. Total disbursements for monetary prize awards to holders of winning lottery tickets and purchases of goods and services awarded as prizes to holders of winning lottery tickets shall be of an amount equal, as nearly as is practicable, to forty-five per cent of the total revenue accruing from the sale of lottery tickets.

Whenever, in the judgment of the director of budget and management, the amount to the credit of the state lottery fund is in excess of that needed to meet the maturing obligations of the commission and as working capital for its further operations, the director of budget and management shall certify the amount of such excess to the commission and to the auditor of state. The auditor of state shall thereupon issue an order on the treasurer of state to transfer such amounts to the general revenue fund. Provided, however, that the amount to be transferred into the general revenue fund shall equal no less than thirty per cent of the total revenue accruing from the sale of lottery tickets.

There is hereby established the annuity prizes special account in the state lottery fund. With the approval of the director of budget and management, an amount sufficient to fund annuity prizes shall be transferred from the state lottery fund and credited to the annuity prizes special account.

Pursuant to R.C. 3770.06, state lottery fund moneys may be disbursed pursuant to vouchers or invoices signed by the Director of the Commission, may be appropriated by the General Assembly, may be transferred to the general revenue fund, or may be transferred to the annuity prizes special account.

Therefore, in specific answer to your first question, unclaimed prize awards must be returned to the state lottery fund. As part of the state lottery fund, they may be used for any purpose for which that fund may be used.

Your second question seeks an interpretation of the sentence in R.C. 3770.06 (formerly in R.C. 3770.06(D)), quoted above, which requires that the "amount" transferred into the general fund equal at least thirty percent of the revenue of ticket sales. Specifically, you wish to know whether unclaimed prize awards can be applied to the thirty percent requirement. The "amount" transferred to the general fund refers to the excess funds left in the state lottery fund after the maturing obligations have been met and working capital has been set aside. The statute does not refer to unclaimed prize money as an identifiable portion of the state lottery fund. Hence, it is evident that, once it is transferred into the state lottery fund, unclaimed prize money does not have a separate identity. Rather, unclaimed prize money simply constitutes part of the fund. As such, it may be part of the money transferred into the general revenue fund in an amount equal to at least thirty percent of the revenue of ticket sales. I must add, however, that the Lottery Commission is not responsible for making a determination that the thirty percent requirement is met. Instead, as discussed below, the amended statute specifically gives such responsibility to the Director of Budget and Management. R.C. 3770.06.

Your third and fourth questions were addressed directly by Am. S.B. 139. As quoted above, R.C. 3770.06 specifies that, "[w]henver" the Director of Budget and Management finds that "the amount to the credit of the state lottery fund is in excess of that needed to meet the maturing obligations of the commission and as working capital for its further operations," he shall certify the amount of excess in the state lottery fund to the Lottery Commission and to the Auditor of State. The Auditor of State shall issue an order upon the Treasurer of State to transfer this excess to the general fund. The requirement that excess funds be transferred is addressed to the Director of Budget and Management, and not to the Lottery Commission. Thus, it is clear from the statute that the intervals for the making of transfers into the general revenue fund are left to the determination of the Director of Budget and Management. Hence, your questions as to when the Lottery Commission must make transfers and how it should decide if the thirty percent requirement is met are no longer relevant.

Accordingly, it is my opinion, and you are advised, that:

1. Pursuant to R.C. 3770.06, the State Lottery Commission must transfer unclaimed prize awards to the state lottery fund, to be used for any purpose for which that fund may be used.
2. Pursuant to R.C. 3770.06, the Director of Budget and Management is responsible for making the determination as to when moneys in the state lottery fund shall be transferred into the general revenue fund and for ascertaining that at least thirty percent of all revenue accruing from the sale of lottery tickets is transferred into the general revenue fund. Unclaimed prize money constituting part of the state lottery fund may be transferred to the general revenue fund and counted toward this thirty percent requirement.