



Texas Lottery Commission



Commissioners:

Robert G. Rivera, Chairman

Cindy Fields • Mark A. Franz • Clark E. Smith • Jamey Steen

LaDonna Castañuela
Director

November 7, 2024

Mr. Kris Keller
Croatoan Inc.
11123 IH 35 N. Bldg. 1
San Antonio, TX 78233

Via Certified Mail No. 9214 8901 9403 8386 5605 41

Re: Bingo Advisory Opinion Request No. 2025-1001-0001

Dear Mr. Keller:

This opinion responds to your request for a bingo advisory opinion received via email on October 1, 2024. Specifically, you asked the following questions:

I am writing to seek clarification regarding a matter related to use of an online gambling applications. If a customer has an online gambling app and plays it on their phone during the bingo session. Is that considered a second game of chance? How are we to know if the game they are playing cost money to play? Or if they win prizes? Are we even entitled to question a person what they are doing on their phone? According to rule no. 402 I have posted Texas Administration code along with the house rules, upon reviewing the rules, I noticed it does not mention anything specific regarding the online apps, during bingo games.

Below is our response:

Your request raises several issues related to a customer using an online gambling application on his or her phone during a bingo session. The most relevant law to your request is Tex. Occ. Code §2001.416(a), which states “[a] game of chance other than bingo or a raffle conducted under Chapter 2002 may not be conducted or allowed during a bingo occasion.” Subsection (c) of that law states “[t]he commission shall adopt rules for the implementation of this section.” “Game of chance” is not defined in the Bingo Enabling Act (“BEA”).

The Texas Lottery Commission (“Commission”) has adopted a rule interpreting the law at 16 Tex. Admin. Code §402.211 (“Rule”), titled “Other Games of Chance.” Subsection (a)(1) defines “Game of chance” as “[a] game or contest that awards a prize and whose outcome is determined, at least in part, by the element of chance or luck.” Subsection (b) states “[e]xcept as otherwise provided in subsection (c) of this section, a person may not conduct or allow a game of chance at a bingo premises during a bingo occasion at the premises.” The exceptions listed in subsection (c) include bingo, door prizes, charitable raffles, and amusement machines that are not gambling devices.

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Your first question is whether an online gambling phone application is considered a second game of chance, i.e. a game prohibited by BEA §2001.416. Whether a particular phone application constitutes a “game of chance” is a fact-specific determination that can only be made on a case-by-case basis. According to the Rule, such an application would only be considered a “game of chance” if it “...awards a prize...” and is “...determined, at least in part, by the element of chance or luck.” If such an application awards a prize based in any part on chance, then under the rule it constitutes a “game of chance.” If the application does not award a prize, or if it awards a prize based entirely on skill, then it is not a “game of chance.” Cost or consideration to play the game is not part of the Rule’s definition of “game of chance.”

Your subsequent questions raise the issue of liability for allowing a customer to play a second game of chance on his or her phone during a bingo occasion. According to the BEA, a second game of chance “may not be conducted or allowed during a bingo occasion.” Because the law does not specify who is liable for allowing the game, it appears that the Commission may discipline any licensee or registered worker who violates the law. This is supported by the Rule, which prohibits “a person” from allowing the game. The only “persons” the Commission has jurisdiction over are licensees and registered workers. “Allow” is not defined in the BEA or the Charitable Bingo Administrative Rules (“Rules”), but common definitions include “to permit,” or “to fail to restrain or prevent.”¹ Both of these definitions imply a level of awareness that the activity is occurring. As such, a licensee or registered worker must know that the app in question constitutes a “game of chance” as defined by the Rule in order to “allow” it. A licensee or registered worker violates the law if they know that a customer is playing a second game of chance during an occasion and they permit it or fail to stop it. A licensee or registered worker who does not know whether an application constitutes a “game of chance” cannot be found to have “allowed” it in violation of the law.

You ask “[a]re we even entitled to question a person what they are doing on their phone?” There is nothing in the BEA or the Rules that prohibits a licensee or registered worker from asking a customer a question about potentially illegal activity. Additionally, nothing in the BEA or the Rules prevents an organization from prohibiting illegal activities in its house rules and removing a customer who violates those rules.

SUMMARY

Bingo Enabling Act Section 2001.416(a) provides that a game of chance other than bingo or a raffle may not be allowed during a bingo occasion. A licensee or registered worker who knows that a customer is playing a second game of chance during an occasion and fails to stop it violates the law. Bingo licensees and registered workers may investigate suspicious activity, and conductors may adopt house rules that prohibit illegal games and provide for the removal of players who violate the house rules.

¹ <https://www.merriam-webster.com/dictionary/allow>

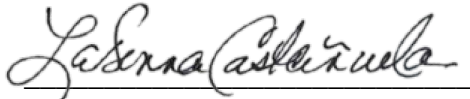
This advisory opinion cannot be construed as a tax ruling or otherwise interpretative of the Internal Revenue Code. The information provided is completely limited to the context of the BEA and the Rules.

This advisory opinion is based on the laws, rules, and regulations in effect at the time of issuance. All the information provided herein is subject to changes in law.

This opinion is purely advisory in nature and is limited to the particular questions at issue at the time of the facts presented in the request. Therefore, this opinion must not be relied upon as a pre-determination regarding any conduct which is not substantially consistent with the opinion and the facts stated in the request.

This Bingo Advisory Opinion was reviewed by the Commission at the October 29, 2024, Commission open meeting.

Sincerely,

A handwritten signature in black ink, reading "LaDonna Castañuela", written over a horizontal line.

LaDonna Castañuela, Director
Charitable Bingo Operations Division

cc: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Clark E. Smith, Commissioner
Jamey Steen, Commissioner
Ryan Mindell, Executive Director
Bob Biard, General Counsel
Tyler Vance, Assistant General Counsel