

James A. Cox, Jr.
Chairman

David J. Schenck
Commissioner

Fernando C. Reyes
Commissioner



TEXAS LOTTERY COMMISSION

Anthony J. Sadberry, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

CERTIFIED MAIL NO. 7004 1350 0000 5061 8839
RETURN RECEIPT REQUESTED

BAO # 2008-0401-0007

May 20, 2008

Duncan Edwards, Service Coordinator
Plano Community Home West
3905 American Drive
Plano, TX 75075

Re: Bingo Advisory Opinion Request No. 2008-0401-0007

Dear Mr. Edwards:

This advisory opinion responds to your request received on April 1, 2008. Below are your questions followed by our answer.

1. Can a visiting family member attend a Bingo session at our Senior Living facility?
2. We are currently considered exempt from licensing until June 25, 2009. I was told that jurisdiction in these matters may be passing from the TLC to our local District Attorney. Can you confirm this and also tell me when this change will occur?

ANSWER:

The Bingo Enabling Act (BEA) does not provide for the Commission to require persons exempt under Tex. Occ. Code §2001.551 to apply for an exemption. Therefore, on April 29, 2008, the Commission approved repeal of Bingo Administrative Rule 16 TAC §402.406 relating to Exemptions from Licensing Requirements. The rule is not necessary because the BEA does not require an exempt organization to obtain Commission approval of exempt status. As a result, the Charitable Bingo Operations Division no longer considers requests for exemptions from licensing.

Although the BEA requires generally that a person conducting bingo must be licensed, §2001.551(b) provides that some circumstances do not require licensing, including bingo conducted

- (3) on behalf of an organization of individuals 60 years of age or over, a senior citizens' association, a senior citizens' community center program

operated or funded by a governmental entity, the patients in a hospital or nursing home, residents of a retirement home, or the patients in a Veteran's Administration medical center or a military hospital, solely for the purpose of amusement and recreation of its members, residents, or patients, when:

- (A) no player or other person furnishes anything of more than nominal value for the opportunity to participate; and
- (B) the prizes awarded or to be awarded are nominal; . . .

An entity that conducts bingo in accordance with §2001.551(b)(3) is exempt from obtaining a license to conduct bingo. One of the requirements of §2001.551(b)(3) is that bingo is conducted "solely for the purpose of amusement and recreation of its members, residents or patients." If a bingo session is conducted only for this purpose and participation and prize costs are nominal, a visiting family member may attend.

Each entity is responsible for ensuring its compliance with §2001.551(b). Section 2001.551(c) provides that conducting, promoting, or administering bingo that does not comply with §2001.551(b) is a third degree felony. A county or district attorney may bring an action in state court to stop unlawful conduct of bingo.

SUMMARY

The Bingo Enabling Act does not provide for the Commission to require persons exempt under Tex. Occ. Code §2001.551 to apply for an exemption. If a bingo session is conducted by an entity in accordance with §2001.551(b)(3) only for the purpose of amusement and recreation of its members, residents, or patients and participation and prize costs are nominal, a visiting family member may attend. A county or district attorney may bring an action in state court to stop unlawful conduct of bingo.

This advisory opinion cannot be construed as a tax ruling or otherwise interpretive of the Internal Revenue Code. The information provided is completely limited to the context of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

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

This opinion is purely advisory in nature and is limited to the particular questions at issue and to the facts presented in the request. Therefore, this opinion must not be relied upon as a previous

determination regarding any conduct which is not substantially consistent with the opinions and facts stated in the request.

By *PSM*
Yours truly,

Philip D Sanderson

Philip D. Sanderson, Director
Charitable Bingo Operations Division

cc: James A. Cox, Jr., Chairman
David J. Schenck, Commissioner
Fernando C. Reyes, Commissioner
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel