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TEXAS LOTTERY COMMISSION

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Philip D. Sanderson, Charitable Bingo Operations Director

CERTIFIED MAIL NO. 7004 1350 0000 5061 8761
RETURN RECEIPT REQUESTED

BAO # 2008-1004-0002

December 4, 2007

John F. Harvat
Corporate Counsel
GameTech International
900 Sandhill Road
Reno, Nevada 89521

Re: Bingo Advisory Opinion No. 2008-1004-0002

Dear Mr. Harvat:

This advisory opinion responds to your request received on October 4, 2007. Below are the specific scenarios and questions you presented followed by our answers.

Scenario 1: Many of the Texas licensed charitable bingo operators are not professionals. As such we would like to establish a person in Texas either directly or through our Texas license distributors, to work as a free consultant with the charitable operators to improve their operations. We also envision this person taking turns with each charitable operator using our equipment to instruct them in how they conduct and call their bingo games. We would envision this person demonstrating during games ways to make the bingo calls and entire evening more exciting and entertaining. Our question is whether this would be in violation of Section 2001.411 of the Texas Occupations Code, Title 12. Sports, Amusements, and Entertainment Subtitle A Gaming, Chapter 2001 Bingo and if it is a violation just how far can we go to train and educate Texas licensed charitable bingo operators?

ANSWER: Section 2001.411 of the Bingo Enabling Act (Act) (Tex. Occ. Code Ch. 2001) provides:

(a) Except as provided by this section, a person other than a bona fide member of a licensed authorized organization may not conduct, promote, or administer, or assist in conducting, promoting, or administering bingo.

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(b) Only an active member of a licensed authorized organization may be an operator responsible for conducting, promoting, or administering bingo.

(c) A person may not assist in conducting, promoting, or administering bingo except a person who is:

- (1) an active member of the licensed authorized organization;
 - (2) a member of an organization that is an auxiliary to the licensed authorized organization;
 - (3) a member of an organization of which the licensed authorized organization is an auxiliary;
 - (4) a member of an organization that is affiliated with the licensed authorized organization by being, with it, auxiliary to another organization;
- or
- (5) a bookkeeper, an accountant, a cashier, an usher, or a caller.

...

In accordance with § 2001.411, a person other than a member of a licensed authorized organization may not conduct, promote or administer bingo or assist in these activities unless the person falls within one of the listed categories. A person "... demonstrating during games ways to make the bingo calls and entire evening more exciting and entertaining" would be conducting, promoting or administering bingo or assisting in those activities. Such a demonstration would be a violation of § 2001.411 if the person does not qualify for one of the excepted categories. The Act does not prohibit a person from providing training, such as demonstrations, to operators at times other than during bingo games.

Scenario 2: Again with the goal of increasing bingo participation in Texas, we would like to assist the Texas licensed charitable bingo operators using our equipment with their advertising of bingo games. With the restrictions of Section 2001.415 of the Texas Occupations Code and any other applicable Texas regulation in mind, can we, either directly or through a Texas licensed distributor:

1. Assist a Texas licensed charitable bingo operator with their design and placement of advertising keeping in mind that the charitable organization must actually place the advertisement?
2. Assist a Texas licensed charitable bingo operator by donating funds to the charitable organization with the funds being directed to help defray their costs of placing advertising for bingo sessions?

ANSWER: Section 2001.415(a) provides that "[a] person other than a licensed authorized organization, licensed commercial lessor, or the commission may not advertise bingo." Section 2001.411 provides that a person other than a member of a licensed authorized organization "may not ... promote, or ... assist in ... promoting

bingo” except a person who meets the criteria of one of the listed categories. Merriam-Webster’s on-line dictionary provides the following definition of “advertise:”

to call public attention to especially by emphasizing desirable qualities so as to arouse a desire to buy or patronize: PROMOTE.¹

Thus, to advertise is to promote. Therefore, a non-member assisting a licensed authorized organization with its advertising would violate § 2001.411 if the person does not qualify for one of the excepted categories.

A person may not assist a licensed authorized organization by donating funds to help defray the costs of placing advertising for bingo occasions. First, § 2001.459(a)(1) of the Act provides that advertising expenses must be paid from an organization’s bingo account. Second, § 2001.451(b) provides that “[a] licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo” Third, § 2001.451(d) provides “[a] licensed authorized organization may not commingle gross receipts derived from the conduct of bingo with other funds of the organization. Therefore, because advertising expenses must be paid from an organization’s bingo account that may not contain funds other than bingo gross receipts, a person may not donate funds to help pay for advertising for bingo occasions.

Scenario 3: Again with the goal of increasing bingo participation in Texas and the level of enjoyment for the players, can we, either directly or through a distributor donate items to a Texas licensed charitable bingo operator for free give away to attending bingo participants? The intent being to provide something such as free t-shirts for a “t-shirt” night, possibly limited to the first 2-, 3-, 4- etc., to pay for their attendance. This might include other give aways but would not be raffle items.

ANSWER: A person may donate items to a licensed authorized organization for free give away to attending bingo participants as long as the prize does not exceed a value of \$250 in accordance with § 2001.420(c) of the Act.

Scenario 4: Again with the goal of increasing bingo participation in Texas and the level of enjoyment for the players, can we, either directly or through a distributor, donate either cash or items for use by a Texas licensed charitable organization as bingo prizes and door prizes? At all times keeping in mind the amounts must stay within the limits of Section 2001.420 of the Texas Occupations Code requiring a bingo prize be no more than \$750 for a single bingo game, no more than an aggregate of \$2500 in awards for a single bingo occasion and no more than a \$250 value for a door prizes? Additionally, would any free “give aways” as outlined in Scenario 3 above have to be included in the calculations of any of the dollar limits of Section 2001.420?

¹ <http://www.meriam-webster.com/dictionary/advertise>

ANSWER: Because bingo prize expenses, other than authorized cash prizes, must be paid from an organization's bingo account that may not contain funds other than bingo gross receipts, a person may not donate funds or items to help pay for bingo prizes. Section 2001.459(a)(4) of the Act provides that prizes, other than authorized cash prizes, must be paid from an organization's bingo account. In addition, § 2001.451(b) provides that "[a] licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo" Moreover, § 2001.451(d) provides "[a] licensed authorized organization may not commingle gross receipts derived from the conduct of bingo with other funds of the organization. Therefore, a licensed authorized organization may not use donated cash or items as bingo prizes.

A person may donate cash or items for use by a licensed authorized organization as door prizes subject to the \$250 limitation in accordance with § 2001.420(c) of the Act.

SUMMARY

In accordance with § 2001.411, a person other than a member of a licensed authorized organization may not conduct, promote or administer bingo or assist in these activities unless the person falls within one of the categories listed in § 2001.411(c). The Act does not prohibit a person from providing training, such as demonstrations, to operators at times other than during bingo games. A non-member assisting a licensed authorized organization with its advertising would violate § 2001.411 if the person does not qualify for one of the excepted categories. Because advertising expenses must be paid from an organization's bingo account that may not contain funds other than bingo gross receipts, a person may not donate funds to help pay for advertising for bingo occasions. A person may donate items to a licensed authorized organization for free give away to attending bingo participants as long as the prize does not exceed a value of \$250 in accordance with § 2001.420(c) of the Act. Because bingo prize expenses, other than authorized cash prizes, must be paid from an organization's bingo account that may not contain funds other than bingo gross receipts, a person may not donate funds or items to help pay for bingo prizes. A person may donate cash or items for use by a licensed authorized organization as door prizes subject to the \$250 limitation in accordance with § 2001.420(c) of the Act.

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.

Yours truly,



Philip D. Sanderson, Director
Charitable Bingo Operations Division

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