



Gary Grief  
Deputy Executive Director

# Texas Lottery Commission

Commissioners - James A. Cox, Jr., Chairman • David J. Schenck • Mary Ann Williamson



Philip D. Sanderson  
Director

**CERTIFIED MAIL NO. 7005 1820 0004 4682 6414**  
**RETURN RECEIPT REQUESTED**

BAO # 2009-1017-0002

December 10, 2008

Patricia Greenfield  
Greenfield Bingo Services  
P.O. Box 2065  
Weatherford, TX 76086

Re: Bingo Advisory Opinion Request # 2009-1017-0002

Dear Ms. Greenfield:

This advisory opinion responds to your request received on October 17, 2008, with additional clarifying information received on November 4, 2008. In sum you asked:

Can 501(c)(3),(4), and (19) organizations use their charitable distributions to pay for their own organization's executive director's salary, meeting room, and for meals that are included with renting the room?

**ANSWER:**

In regards to disbursement for charitable purposes, Tex. Occ. Code §2001.454 provides:

- (a) A licensed authorized organization shall devote to the charitable purposes of the organization its net proceeds of bingo and any rental of premises.
- (b) Except as otherwise provided by law, the net proceeds derived from bingo and any rental of premises are dedicated to the charitable purposes of the organization only if directed to a cause, deed, or activity that is consistent with the federal tax exemption the organization obtained under 16 U.S.C. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002.

Texas Occupations Code §2001.002(19)(A) provides that a non-profit organization “may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services . . . .” Therefore, personal food expenses of members may not be treated as a charitable contribution. The organization may not distribute any of its income to its members as beneficiaries of a charitable purpose.

If the payments for an executive director’s salary and for a meeting room are consistent with the charitable purposes of the organization’s 501(c) status and qualification as a nonprofit organization as defined by Tex. Occ. Code §2001.002, the payments would be allowable use of bingo and rental net proceeds. The legitimacy of each organization’s charitable distributions would be considered in light of its particular exemption and charitable purposes as recognized by the Internal Revenue Service. Determination of whether or not a specific payment is an allowable distribution of funds would depend on evaluation of specific facts relating to the payment.

Charitable Bingo Administrative Rule 16 TAC §402.502 describes the type of information an organization must maintain to identify its charitable purpose and to substantiate its charitable distributions. In addition, subsection (e) of the rule provides:

(e) A use of net proceeds, which would not be considered as a cause, deed, or activity dedicated to the charitable purposes of the organization and not consistent with the 26 U.S.C. Section 501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization, are any use of proceeds which:

- (1) inures to the benefit of any private shareholder, individual, officers, governing body or other member other than as reasonable compensation for services rendered;
- (2) has no documentation to substantiate the use of net proceeds; or
- (3) does not further the organization's cause, deed or activity consistent with the federal tax exempt application or other written purposes furnished to the commission that are consistent with the organization's tax exemption.

If the organization can prove that a payment is directed to a cause, deed or activity that is consistent with the federal tax exemption the organization obtained under 16 U.S.C. Section 501 and qualification as a nonprofit organization as defined by Tex. Occ. Code Section 2001.002, then the payment may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo. As noted above, the organization must maintain records necessary to substantiate the appropriate use of funds.



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## SUMMARY

If an organization maintains records proving that its use of funds is consistent with its charitable purpose and qualification as a nonprofit organization as defined by Tex. Occ. Code Section 2001.002, the organization may use funds derived from the conduct of bingo to pay for an executive director's salary and for a meeting room. Personal food expenses of members may not be treated as a charitable contribution. In accordance with Texas Occupations Code §2001.002(19)(A), an organization may not distribute any of its bingo proceeds to a member except as reasonable compensation for services.

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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  
David J. Schenck, Commissioner  
Mary Ann Williamson, Commissioner  
Gary S. Grief, Deputy Executive Director  
Kimberly L. Kiplin, General Counsel