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TEXAS LOTTERY COMMISSION

Gary Grief, Executive Director

Sandra K. Joseph, Charitable Bingo Operations Director

October 10, 2013

Thurman Reynolds
Bingo Chairperson
VFW Post #8919
El Paso, TX

Re: Bingo Advisory Opinion Request No. 2014-1008-0001

Dear Mr. Reynolds:

This Bingo Advisory Opinion is in response to your August 6, 2013 e-mail¹ posing the following questions:

I have been trying for over a month to find a way to obtain Bingo Hard Cards. I have been provided a list of "Licensed Bingo Distributors", but none of them have hard cards. After advising the Bingo Division of this, I was told to see if one of the distributors would be willing to order hard cards for me. I called all 16 of the distributors on the list, but none will order the hard cards for me.

There is also a list of manufacturers on the website, but I was told I cannot order directly from the manufacturers; I have to go through the distributors.

Since hard cards are not covered in any of the legislature, is it necessary to go through non-cooperative distributors to obtain them? For hard cards only, is it possible to go directly to a manufacturer? Is it possible to get an "exception to the rule" to obtain hard cards?

You ask these questions on behalf of the licensed authorized organization for which you serve as bingo chairperson.

ANSWER:

Bingo cards, including bingo hard cards, qualify as "bingo equipment" under the Bingo Enabling Act (the "Act").² Section 2001.407(a) of the Act provides that a licensed manufacturer may not

¹ In response to your e-mail, staff in the Commission's Charitable Bingo Operations Division initially attempted to address your questions informally, rather than by issuing a formal Bingo Advisory Opinion. Unfortunately, Commission staff have been unable to resolve your questions informally. Therefore, on October 8, 2013 the Commission decided to treat your e-mail as a request for a formal Bingo Advisory Opinion. The Commission considers your request to have been sent on that date.

furnish, by sale or otherwise, bingo equipment to a person other than a licensed distributor. Furthermore, section 2001.407(e) of the Act generally provides that a licensed authorized organization may not obtain by purchase or otherwise bingo equipment from a person other than a licensed distributor. Therefore, the Act explicitly prohibits licensed authorized organizations from obtaining bingo equipment, including bingo hard cards, from licensed manufacturers. Licensed authorized organizations generally must obtain bingo equipment from licensed distributors.

Anticipating the answer above, you next ask whether it is possible for the Commission to grant an exception that would allow your organization to obtain bingo hard cards directly from a licensed manufacturer. Unless explicitly authorized in statute, the Commission has no authority to grant an exception to a restriction imposed by statute.³ Section 2001.407(f) of the Act explicitly authorizes a licensed authorized organization, with the prior written consent of the Commission, to make an occasional sale of bingo cards to another licensed authorized organization. No other exception is permitted. Accordingly, the Commission may not authorize a licensed authorized organization to obtain bingo hard cards directly from a licensed manufacturer. The Commission may, however, authorize a licensed authorized organization to occasionally sell bingo hard cards to another licensed authorized organization.

SUMMARY

The Bingo Enabling Act explicitly prohibits licensed authorized organizations from obtaining bingo equipment, including bingo hard cards, from licensed manufacturers. Licensed authorized organizations generally must obtain bingo equipment from licensed distributors. The Commission may not authorize a licensed authorized organization to obtain bingo hard cards directly from a licensed manufacturer. The Commission may, however, authorize a licensed authorized organization to occasionally sell bingo hard cards to another licensed authorized organization.

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.

² Tex. Occ. Code § 2001.002(5)(A)(iv); 16 Tex. Admin. Code § 402.301(a)(1)-(2).

³ See *Pub. Util. Comm'n of Tex. v. City Pub. Serv. Bd. of San Antonio*, 53 S.W.3d 310, 316 (Tex. 2001) (an agency may not exercise a power contradictory to a statute).

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,



Sandra K. Joseph, Director
Charitable Bingo Operations Division

cc: J. Winston Krause, Chairman
Jodie G. Baggett, Commissioner
Veronica Ann Edwards, Commissioner
Katie Dickie Stavinoha, Commissioner
Gary Grief, Executive Director
Bob Biard, General Counsel