



Texas Lottery Commission

Commissioners:

J. Winston Krause, Chairman • Carmen Arrieta-Candelaria

Peggy A. Heeg • Doug Lowe • Robert Rivera



Alfonso D. Royal III
Director

CERTIFIED MAIL NO. 91 7199 9991 7030 8543 6664
RETURN RECEIPT REQUESTED

December 9, 2016

Richard Bunkley
Chief Operating Officer
Littlefield Corporation
1919 East Riverside Drive
Austin, Texas 78741

Re: Bingo Advisory Opinion Request No. 2017-1102-0001

Dear Mr. Bunkley,

This opinion responds to your request for a bingo advisory opinion received on November 2, 2016, in which you asked five questions regarding various door prize promotions a licensed authorized organization might want to conduct in an attempt to increase attendance or sales. Below are your questions and our responses:

Question 1: Is a licensed authorized organization allowed to run a promotion that gives their first (50) customers a chance to spin a prize wheel which would determine various discounts toward bingo product purchases that each customer would win as a prize? For example the wheel might determine whether the customer wins a \$0, \$1, or \$5 discount toward their buy in.

ANSWER:

No. First, in response to a request for clarification of what you meant by "first (50) customers", you stated you meant the first 50 customers who "make a purchase", as opposed to the first 50 customers who enter the bingo hall regardless of whether they make a purchase.¹

Whether an authorized organization can conduct a promotion as you describe depends on whether the prize wheel promotion is one of the four games of chance authorized by TEX. OCC. CODE ANN. §§2001.416 and 2001.420(c) to be conducted during a bingo occasion; namely charitable bingo conducted in accordance with Chapter 2001, a charitable raffle conducted in accordance with Chapter 2002, a "door prize" game within the meaning of §2001.420(c), or "the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code" under §2001.416(d).

¹ Your email of November 7, 2016.

The prize wheel promotion you describe is not a bingo game under §2001.002(4) (“... a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols conforming to randomly selected numbers or symbols”) or a charitable raffle under §2002.002(6) (“the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize.”).

Nor is the prize wheel promotion you describe a door prize under §2001.420(c), (“[A] licensed authorized organization or other person may not award or offer to award a door prize with a value of more than \$250.”). Neither the Bingo Enabling Act (BEA) nor the Charitable Bingo Administrative Rules includes a definition for “door prize”. Texas case law has not defined the term. Generally, “words and phrases shall be read in context and construed according to the rules of grammar and common usage.”² Webster’s Ninth New Collegiate Dictionary defines “door prize” as “a prize awarded to the holder of a winning ticket passed out at the entrance to an entertainment or function.”

In BAO No. 2006-0119-0008, issued March 31, 2006, the Texas Lottery Commission opined: “[A] prize can be considered a ‘door prize’ only if attendance is the sole requirement for a chance to win the prize.”³ Additionally, an illegal lottery is defined in the Texas Penal Code as “any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.”⁴ The Commission has previously determined in the case of *Texas Lottery Commission v. Nathan Bullard d/b/a Golden Belle Bingo Hall* that “a door prize that involves the element of consideration is considered a lottery.”⁵ The Attorney General has held that a game of chance that does not treat paying entrants and non-paying entrants equally in every respect is a “lottery”.⁶ Since in your response to request for clarification you indicated only paying customers would be allowed to spin the prize wheel, the promotion is an illegal lottery.

Lastly, we consider whether the prize wheel could be considered “a gaming device that is not a gambling device as defined by Section 47.01, Penal Code” under §2001.416(d). Texas Penal Code §47.01 (4) defines a gambling device as:

² TEX. GOV’T CODE ANN. § 311.011.

³ Bingo Advisory Opinion # 2006-0119-0008, March 31, 2006.

⁴ TEX. PEN. CODE ANN. § 47.01.

⁵ *Texas Lottery Commission v. Nathan Bullard d/b/a Golden Belle Bingo Hall, Nathan Bullard d/b/a Brazos Bingo Hall, House of Isaiah Athletes for a Drug Free America, Inc., Mary Queen of Heaven Knights of Columbus, Inc., Gun Barrel City Volunteer Fire Department; Humane Society of Cedar Creek Lake, Inc.; and Payne Springs Volunteer Fire Department* 2013 WL 2146391, at *10 citing *City of Wink v. Griffith Amusement Co.*, 100 S.W.2d 695, 698 (Tex. 1936) (three elements comprise a lottery: (1) consideration; (2) prize(s); and (3) chance); Tex. Pen. Code § 47.01(7) (defining “illegal lottery”). The Proposal For Decision in the *Bullard et. al* matter was issued on Feb. 11, 2013. The Texas Lottery Commission adopted the Findings of Fact and Conclusions of Law in the Proposal for Decision, with the exception of Conclusion of Law No. 9, by Consent Orders approved on August 5, 2013 and September 19, 2013.

⁶ Op. Tex. Att’y Gen. No. LO-97-008 (1997).

Any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

Paragraph B states:

[a gambling device] does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

If a device falls within the paragraph B exception above, it would be an authorized game of chance per TEX. OCC. CODE. ANN. §2001.416. However, the Texas Attorney General and the Texas Lottery Commission have held that a prize of a bingo product or an entry into a bingo game is not a “noncash merchandise prize, toy, or novelty, or a representation of value redeemable for those items” and, therefore, a gaming device that awards such a prize is an illegal gambling device.⁷ Therefore, a discount for a bingo product or entry into a bingo game as you described in your example would disqualify the prize wheel promotion from the paragraph B exception.

Question 2: Is a licensed authorized organization allowed to run a door prize promotion in which the person who wins is determined by a traditional ticket pull and then the prize that person wins is determined by spinning a prize wheel? For example the wheel might determine whether the customer wins a toaster oven or an iPad.

ANSWER:

Yes. It does not matter that the chance element in the door prize promotion you describe is two separate but intertwined games of chance. The entire scheme is still a game of chance. So long as

⁷ TEX. ATTY. GEN. OP. NO. GA-0812 (October 22, 2010); and TEX. ATTY. GEN. OP. NO. GA-0913 (February 27, 2012). *Texas Lottery Commission v. Nathan Bullard d/b/a Golden Belle Bingo Hall; Nathan Bullard d/b/a Brazos Bingo Hall; House of Isaiah Athletes for a Drug Free America, Inc.; Mary Queen of Heaven Knights of Columbus, Inc.; Gun Barrel City Volunteer Fire Department; Humane Society of Cedar Creek Lake, Inc.; and Payne Springs Volunteer Fire Department*, 2013 WL 2146391 (The Proposal For Decision in the *Bullard et. al* matter was issued on Feb. 11, 2013. The Texas Lottery Commission adopted the Findings of Fact and Conclusions of Law in the Proposal for Decision, with the exception of Conclusion of Law No. 9, by Consent Orders approved on August 5, 2013 and September 19, 2013.). See also *Texas Lottery Commission v. Julam Investments, Inc.*, 2016 WL 3568903 (Proposal for Decision issued on June 27, 2016, and adopted by the Texas Lottery Commission on October 13, 2016.).

no consideration is required to participate in the door prize game, and no prize has a value of more than \$250, the game is authorized by TEX. OCC. CODE ANN. §2001.420(c).

Question 3. Is a licensed authorized organization allowed to run a promotion that awards customers based on being seated at numbered tables? Table number winners would be determined by bingo ball draws. For example the caller pulls B-12 and everyone seated at table number 12 wins a T-Shirt.

ANSWER:

Yes. There is nothing in the BEA or Charitable Bingo administrative rules that prohibits group door prize awards. So long as seating is not determined by any kind of payment of consideration to enter the game, seating is open to everyone, and no prize exceeds \$250, the promotion would be allowed.

Question 4. Is a licensed authorized organization allowed to award additional door prize ticket entries based on additional spend?

ANSWER:

No. When asked to clarify what you meant by "additional spend", you responded, "I meant bingo products. Paper cards, electronic cards, or pull tabs. For example a customer might receive an extra door prize ticket with every \$20 spent on pull tabs."⁸

As discussed above in response to your first question, by giving customers who purchase bingo products such as paper cards, electronic cards, or pull tabs, a greater chance of winning the prize, the game is no longer a door prize game, but an illegal lottery.

Question 5: Is a licensed authorized organization allowed to determine a door prize winner with instant pull tab prizes? For example can an organization award a toaster oven to any customer who receives a \$3 instant pull tab winner?

ANSWER:

No. Requiring the purchase of a pull-tab in order to participate in the "door prize" game is consideration. If the element of consideration is present along with chance and prize, then the contest is not a door prize game, but an illegal lottery. Additionally, most likely such a scheme would not be in compliance with the approved prize payout structure, and, therefore, would likely be a violation of 16 TEX. ADMIN. CODE §402.300.

⁸ Your email of November 2, 2016.

SUMMARY

A door prize promotion that involves chance, prize and consideration is an illegal lottery and not authorized. Consideration includes a required purchased in order to participate in the door prize contest.

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 BEA 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.

Sincerely,



Alfonso D. Royal III, Director
Charitable Bingo Operations Division

cc: J. Winston Krause, Chairman
Carmen Arrieta-Candelaria, Commissioner
Peggy A. Heeg, Commissioner
Doug Lowe, Commissioner
Robert Rivera, Commissioner
Gary Grief, Executive Director
Bob Biard, General Counsel