

BAO 2003-1006-0001	Date Issued: 12/05/2003	View Request RQ 2003-1006-0001
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Summary:

**CERTIFIED MAIL NO. 7001 2510 0001 6206 4364
RETURN RECEIPT REQUESTED**

BAO # 2004-1006-

00001

December 5, 2003

Beth Kisor, President
Benbrook Lakeshore Neighbor's Association
5270 Starlight Drive S.
Fort Worth, Texas 76126

Re: Request for Advisory Opinion relating to the use of bingo funds

Dear Ms. Kisor,

On October 6, 2003, the Texas Lottery Commission (the "Commission") received your letter requesting an advisory opinion related to the charitable status of your organization and the allowable use of funds derived from bingo. Your letter presents several questions to the Commission regarding the appropriate use of funds from the organization's Bingo Account. Accordingly, I have enclosed a copy of Texas Occupations Code, sections 2001.451 through 2001.459. Each of these statutes address issues related to the use of funds derived from the conduct of bingo.

The following is a restatement of the questions posed in your letter followed by the Commission's response.

1. Would we be considered a charity?

ANSWER: According to Texas Occupations Code §2001.059(a), "a person may request from the commission an advisory opinion regarding compliance with this chapter and the rules of the commission." The scope of an advisory opinion is limited to compliance with the Bingo Enabling Act (the "Act") and

the Charitable Bingo Administrative Rules. Whether your organization is a charity is determined by its status with the Internal Revenue Service (IRS). An advisory opinion as to compliance with the Act cannot address whether an organization is a “charity.”

QUESTIONS 2 - 10

Before answering the remaining questions, some general information regarding the appropriate use of funds derived from the conduct of bingo would be informative. Section 2001.453(a)(1) and (2) of the Act provides, in pertinent part, that an organization may draw a check on its bingo account for the payment of necessary and reasonable bona fide expenses incurred and paid in connection with the conduct of bingo, or for the disbursement of net proceeds derived from the conduct of bingo for charitable purposes. Thus, your remaining questions regarding the appropriate use of bingo funds are answered in the context of the provisions of the Act which relate to authorized expenses and charitable distributions.

An organization may not use money from the Bingo Account for expenses it claims are necessary and reasonable unless the expenses were incurred and paid in connection with the conduct of bingo. Sections 2001.458 and 2001.459 of the Act provide examples of items that are considered necessary and reasonable bona fide expenses, if directly related to the conduct of bingo. Based on the facts presented, each of the expenses identified in your letter relate to costs incurred and paid in connection with activities other than the conduct of bingo.

The section of the Act relating to the distribution of charitable proceeds was recently changed during the 78th Legislature, Regular Session (effective September 1, 2003). Currently, the staff is engaged in informal rulemaking regarding an administrative rule pertaining to the distribution of charitable proceeds. At this time, many of the issues surrounding the distribution of charitable proceeds are being considered as part of the informal rulemaking process. Therefore, this advisory opinion may not be able to provide specific “Yes or No” answers with regard to some of the questions posed in your letter. As an interested party, you may want to consider participating in the rulemaking process by providing informal comment on the current draft rule, “Use of Net Proceeds for Charitable Purposes”. This may be accomplished by contacting the Charitable Bingo Division at 1-800-BINGO-77 (1-800-246-4677) or by visiting the bingo website at www.txbingo.org.

Section 2001.454 of the Act now reads as follows:

- (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 26 U.S.C. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.102. If the organization is not required to obtain a federal tax exemption under 26 U.S.C. Section 501, the organization's net proceeds are dedicated to the charitable purpose of the organization only if directed to a cause, deed, or activity that is consistent with the purposes and objectives for which the organization qualifies as an authorized organization under Section 2001.102.

Based on this new language, an organization may claim a charitable distribution if money derived from the net proceeds of bingo is directed to a cause, deed or activity that is consistent with the federal tax exemption of the organization, and so long as the organization does not pay its members, officers, or governing body, other than reasonable compensation for services provided.

2. [Paraphrased] Could we prorate the cost of insurance, utilities and management for the 501(c)(3) groups that used the community center and use this portion for our organization's expenses? If so, are there guidelines for this?

ANSWER: Based on the facts presented in your letter, the costs associated with your community center would not be considered necessary and reasonable expenses incurred and paid in connection with the conduct of bingo.

However, these costs may be considered a charitable distribution under section 2001.454 of the Act. The cost of insurance, utilities and management of your community center may be prorated and that portion of the costs associated with the participating organizations may be claimed as a charitable distribution so long as the charities are not charged to use the community center.

Based on the legislative changes to section 2001.454, your organization may claim that the necessary costs incurred in maintaining the community center are for charitable purposes if maintaining a community center is a cause, deed and activity that is consistent with the organization's tax exempt status with the IRS.

3. Newsletters are mailed about once a quarter to all residents of the area, whether dues paying members or not. Would the expenses of providing non-member residents be able to come from our Bingo Account?

ANSWER: Based on the facts presented in your letter, the costs associated with your newsletters would not be considered necessary and reasonable

expenses incurred and paid in connection with the conduct of bingo.

However, the costs incurred during the preparation and delivery of newsletters to residents within the neighborhood may be considered a charitable distribution. If the issuance of newsletters is a cause, deed or activity consistent with the tax exempt status of the organization, then your organization may direct funds from the Bingo Account for that purpose as a charitable distribution.

4. How about the expense of a flagpole for the Community Center?

ANSWER: Based on the facts presented in your letter, the costs associated with your community center or the flagpole would not be considered necessary and reasonable expenses incurred and paid in connection with the conduct of bingo.

The costs associated with the flagpole may be considered a charitable distribution and therefore an allowable use of funds from the Bingo Account so long as the flagpole is a cause, deed or activity consistent with the tax exempt status of the organization. The construction of a flagpole would most clearly be consistent with the tax exempt status of a non-profit organization formed for a patriotic purpose.

5. One year there was a resident family (not dues paying members of the BLNA) who suffered the loss of their homes due to a fire. A neighbor allowed them to live in their guest house for a month and our organization paid for their utility bill while there. We took that from Bingo Account funds. Was this permissible?

ANSWER: Based on the facts presented in your letter, the costs associated with your community center would not be considered necessary and reasonable expenses incurred and paid in connection with the conduct of bingo.

However, the use of Bingo Account funds for this reason may be permissible as a charitable distribution if this is a cause, deed or activity consistent with the federal tax exemption status acquired by your organization from the IRS. If the IRS granted your organization a Chapter 501 exemption because it would be engaged in activities consistent with financial aid to residents, then this use of funds could be considered a charitable distribution.

6. What about the practice of cost recovery where funds are used from the Bingo Account and paid back? An example of this was when we sponsored a Fire Ant Clinic for several neighborhood groups and purchased an organic bait product at cost, then collected the same amount to pay back.

ANSWER: As provided in Section 2001.453 of the Act, a licensed authorized organization may use funds from its Bingo Account to pay necessary and reasonable expenses incurred and paid in connection with the conduct of bingo or for charitable purposes. Based on the facts presented, it appears that the term “cost recovery” is in essence a loan because the money is borrowed from the Bingo Account and subsequently paid back. The practice of taking money from the Bingo Account as a loan is not authorized under the Act, and therefore, is not an appropriate use of funds derived from the conduct of bingo.

7. In the past we have hired youth to mow the lawn at the Community Center. Could payment for this be taken from the Bingo funds?

ANSWER: Based on the facts presented in your letter, the costs associated with your community center would not be considered necessary and reasonable expenses incurred and paid in connection with the conduct of bingo.

The use of Bingo Account funds for this purpose would be permissible as a charitable distribution, based on the assumption that the maintenance of the community center and the adjoining grounds is a cause, deed or activity consistent with the federal tax exempt status granted to your organization by the IRS.

8. We had thought about contracting with a Scout troop to pick up litter on the main County Road accessing our community. Could this be linked with a charitable donation to the troop?

ANSWER: Based on the facts presented in your letter, the costs associated with your community center would not be considered necessary and reasonable expenses incurred and paid in connection with the conduct of bingo.

Yes. The sponsorship of a Scout troop or a general donation to the Boy Scouts would be an appropriate use of funds derived from bingo as a charitable distribution if considered a cause, deed or activity consistent with the federal tax exemption status granted to your organization by the IRS.

9. And we have had to have the help of a CPA in filing the IRS requirements to remain a Nonprofit organization. Since this is necessary to being able to be licensed for Charitable Bingo, could this be payable from our Bingo Account?

ANSWER: Based on the facts presented in your letter, the costs associated with your community center would not be considered necessary and reasonable expenses incurred and paid in connection with the conduct of bingo.

The use of Bingo Account funds for this reason may be permissible as a

charitable distribution if this is a cause, deed or activity consistent with the federal tax exemption status acquired by your organization from the IRS.

10. And should the entire Bingo Account be liquidated annually as distributions are paid out to charities. Or can a reserve be carried over. If so, what are the guidelines as to how much may be carried over?

ANSWER: There is no express provision in the Bingo Enabling Act which calls for the complete liquidation of the Bingo Account on an annual basis. However, section 2001.457 of the Act entitled, "Required Disbursements to Charity" provides, in pertinent part,

“(a) Before the end of each quarter, a licensed authorized organization shall disburse for charitable purposes an amount not less than 35 percent of the organization's adjusted gross receipts from the preceding quarter, less the amount of authorized expenses not to exceed six percent of the gross receipts.

(b) If a licensed authorized organization fails to meet the requirements of this section for a quarter, the commission in applying appropriate sanctions may consider whether, taking into account the amount required to be distributed during that quarter and the three preceding quarters and the charitable distributions for each of those quarters, the organization has distributed a total amount sufficient to have met the 35 percent requirement for that quarter and the three preceding quarters combined.

(c) A licensed authorized organization that has ceased to conduct bingo for any reason and that has unexpended bingo funds shall disburse those funds to charitable purposes before the end of the next calendar quarter after the calendar quarter in which the organization ceases to conduct bingo.

(d) In this section:

(1) "Adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by an organization and prizes paid in the preceding quarter; and

(2) "Cost of goods purchased by an organization" means the cost of bingo paper or pull-tab bingo tickets purchased by the organization.”

Notwithstanding other provisions within the Act, all licensees conducting bingo must make the 35% required charitable disbursements and accurately report that information to the Commission. However, there is no specific statutory requirement that the Bingo Account be liquidated annually.

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,

William L. Atkins, Director
Charitable Bingo Operations Division

Cc: C. Tom Clowe, Jr., Chairman
James A. Cox, Jr., Commissioner
Rolando Olvera, Commissioner

Kimberly L. Kiplin, General Counsel