

BAO 2003-1208-0002	Date Issued: 02/05/2004	View Request RQ 2003-1208-0002
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Summary:	According to Texas Occupations Code §2001.458(a)(3) and (6), an organization may use funds derived from the conduct of bingo to pay for insurance, repair and maintenance costs as items of expense for a building in which bingo is conducted so long as the costs are reasonable and necessary to the conduct of bingo, and the costs are paid out of the Bingo Account.
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**CERTIFIED MAIL NO. 7001 2510 0001 6206 3510
RETURN RECEIPT REQUESTED**

BAO # 2003-1208-00002

February 5, 2004

John T. Spahr
VFW Post 8587
1000 North College Street
Georgetown, Texas 78626

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

Dear Mr. Spahr,

On December 8, 2003, the Texas Lottery Commission (the "Commission") received your email requesting an advisory opinion related to the use of bingo funds for items such as insurance, repair and maintenance of the building in which bingo is conducted. In that letter, you also asked if it was correct to use funds derived from the conduct of bingo to pay for liability insurance needed to conduct bingo. For your convenience, enclosed is 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. Is it proper to transfer money from the Bingo Account to the General Fund to pay for items such as insurance and the repair and maintenance of the building in which bingo is conducted?

ANSWER:

Money derived from the conduct of bingo should not be transferred from the Bingo Account to the organization's General Fund for the purpose of paying reasonable and necessary expenses connected to the conduct of bingo. Pursuant to Texas Occupations Code §2001.451, an organization shall maintain one regular checking account designated

as the Bingo Account, all funds derived from bingo shall be deposited in that account, and an organization may not commingle the funds derived from the conduct of bingo with other funds of the organization.

Texas Occupations Code §2001.453(a) provides that an organization may withdraw funds from the Bingo Account only for payment of necessary and reasonable expenses incurred and paid in connection with the conduct of bingo, charitable purposes, or deposit into a Bingo Savings Account. If the organization designates funds to pay for reasonable and necessary expenses related to the conduct of bingo pursuant to Texas Occupations Code §2001.458, then payment should be made out of the organization's Bingo Account.

Texas Occupations Code §2001.458(a)(3) and (6) provides in pertinent part:

(a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

(3) repairs to premises and equipment;...

(6) stated rental or mortgage and insurance expenses;

Based on the facts and circumstances provided in your request for an advisory opinion, VFW Post 8587 may choose to pay for the insurance, repair and maintenance costs associated with the conduct of bingo out of its Bingo Account. If the building is used for activities other than bingo, it would be necessary to separate the repair, maintenance and insurance costs related to the conduct of bingo from the expenses related to the other activities. In addition, the organization must maintain records necessary to substantiate the items of expense related to the conduct of bingo.

However, it may be possible that the insurance, repair and maintenance costs related to non-bingo activities may be paid with funds derived from bingo. The Bingo Enabling Act provisions relating to the distribution of charitable proceeds were recently revised during the 78th Legislature, Regular Session (effective September 1, 2003).

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. If the organization can prove that the repair, maintenance and insurance costs associated with non-bingo activities are 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, then those costs may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo.

2. Is it proper to use funds derived from the conduct of bingo to pay for the liability insurance required to conduct bingo occasions?

ANSWER:

Texas Occupations Code §2001.458(a)(6) provides that insurance expenses which are reasonable and necessary to conduct bingo are items of expense which may be paid with funds out of an organization's Bingo Account. If payment of the liability insurance is reasonable and necessary to conduct bingo at the building owned by VFW Post 8587, then that liability insurance is an authorized item of expense. To the extent the liability insurance is used to insure other activities in the building, it would be necessary for the organization to separate the insurance expenses related to the conduct of bingo so that the costs related to non-bingo activities are not categorized as reasonable and necessary bingo expenses. In addition, the organization must maintain records necessary to substantiate the items of expense related to the conduct of bingo.

SUMMARY

According to Texas Occupations Code §2001.458(a)(3) and (6), an organization may use funds derived from the conduct of bingo to pay for insurance, repair and maintenance costs as items of expense for a building in which bingo is conducted so long as the costs are reasonable and necessary to the conduct of bingo, and the costs are paid out of the Bingo Account.

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