

BAO 2004-0203-00005	Date Issued: 04/05/2004	View Request <a href="#">RQ 2004-0203-00005</a>
Summary:	Pursuant to 16 TAC §402.555, computer hardware and software used in connection with a card-minding system must be approved by the Commission prior to use in Texas.	

**REGISTERED MAIL NO. RR 422 385 343 US  
RETURN RECEIPT REQUESTED**

BAO # 2004-0203-00005

April 5, 2004

Video King Gaming Systems  
d/b/a Power Bingo King  
Attn: Mark Newton, Director of Regulatory Compliance  
Unit 12-59 Scurfield Boulevard  
Winnepeg, Manitoba, Canada R3Y 1V2

*via registered mail*

Re: Request for Advisory Opinion relating to Title 16, Texas Administrative Code §402.555

Dear Mr. Newton:

On February 3, 2004, the Texas Lottery Commission (the "Commission") received your email requesting an advisory opinion regarding Title 16, Texas Administrative Code §402.555. Your email presents several questions to the Commission regarding the testing and approval of computer hardware and software in relation to card-minding devices.

Below are the issues identified in your email followed by the Commission's response.

**1. Hardware suppliers: The new rules allow for the testing and approval of standard "off-the-shelf" computer PC's to be used as part of a networked card minding system. Typically it is more economical for distributors to purchase these units locally, but the rules are a bit unclear on this topic. What we specifically want to do is allow our distributors to purchase systems onto which they will load our approved software and then install these systems at licensed locations. This raises the following questions:**

- 1. Is the sale of "off-the-shelf" computers for use in bingo halls restricted to licensed bingo manufacturers or can they be purchased from computer manufacturers such as Dell.**

**ANSWER:** The use of computer hardware in connection with either a fixed base or portable bingo card-minding device is considered to be the use of bingo equipment. The

receipt of bingo equipment, by purchase or otherwise, is limited by Texas Occupations Code, Section 2001.407(c) & (e), which states:

(c) A licensed distributor may not receive by purchase or otherwise bingo equipment or supplies from a person other than a licensed manufacturer or another licensed distributor.

(e) Except for a purchase made by a licensed authorized organization under Subsection (f), a licensed authorized organization or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4) may not obtain by purchase or otherwise bingo equipment or supplies from a person other than a licensed distributor.

Subsection (f) of the statute provides that upon prior written approval of the Commission, a licensed authorized organization may make an occasional sale of certain bingo equipment to another licensed authorized organization.<sup>[1]</sup> Notwithstanding this exception, a licensed authorized organization must purchase or otherwise obtain bingo equipment and supplies from a licensed distributor and a licensed distributor must purchase or otherwise receive bingo equipment and supplies from either a licensed manufacturer or another licensed distributor.

Computer hardware which is used as part of a card-minding device in the conduct of bingo is considered bingo equipment. Texas Occupations Code, Section 2001.002(5)(A)(ii) provides in pertinent part:

“Bingo equipment” means equipment used, made or sold for the purpose of use in bingo. The term:

(A) includes:

(ii) an electronic or mechanical cardminding device

Title 16, Texas Administrative Code §402.555(a)(2) defines the terms “card-minding system” and “card-minding device” as follows:

(2) Card-minding system. Any electronic or computerized device and related hardware and software that is interfaced with or connected to equipment used to conduct a game of bingo as defined in Occupations Code, §2001.002. A card-minding system consists of the following two parts:

(A) Card-minding device. An electronic or mechanical device, either portable or fixed-base, that is used by a bingo player to mark representations of bingo card faces stored in the device. A portable card-minding device refers to a hand-held, custom-built or customized, single purpose device designed to be used by a player to play bingo. A fixed-base card-minding device refers to a stationary computer on which a manufacturer's proprietary software is used by a player to play bingo. A card-minding device may be designed to be played in conjunction with paper.

(B) Site system. Computer hardware, software, and peripheral equipment, that is located at the bingo premises, is controlled by the licensed authorized organization, and

interfaces with, connects with, controls or defines the operational parameters of card-minding devices and must include, but is not limited to, the following components: point of sale station, a caller station verifier, required printers, dial-up modem, proprietary executable software, report generation software and an accounting system and database. All references to and requirements of site systems and card-minding systems throughout this rule shall be applicable to manufacturers of card-minding devices designed to be played with paper, but the function or action required by the rule may be performed in a manner other than electronically.

Thus, any computer hardware used in connection with either a fixed base or portable bingo card-minding device is bingo equipment, and therefore, the receipt of such computer hardware is limited to licensed distributors and licensed authorized organizations as provided by Texas Occupations Code, Section 2001.407(c) & (e).

Computer hardware that is used in connection with a site system, and which is not used as part of a fixed base or portable card-minding device, is not considered bingo equipment for purposes of Texas Occupations Code, Section 2001.407(c) & (e) because the term “site system” is not included in the definition of “Bingo equipment” in Texas Occupations Code, Section 2001.002(5). Thus, on its face it may appear that the sale of this “site system” hardware is not limited to manufacturers, distributors and licensed authorized organizations. However, each licensed manufacturer seeking approval from the Commission must submit all components of a card-minding system so that the Commission may determine whether the system conforms with the requirements and restrictions contained in Texas Occupations Code, Chapter 2001 and the applicable charitable bingo administrative rule.<sup>[2]</sup> When a licensed manufacturer submits “site system” computer hardware to the Commission for approval as part of a card-minding system, the hardware becomes a secondary component<sup>[3]</sup> which is subject to testing and regulation,<sup>[4]</sup> and the hardware may not be sold, leased or otherwise furnished without approval from the Commission.<sup>[5]</sup> If the card-minding system is approved, the “site system” hardware, as a secondary component, may be maintained or replaced *by the manufacturer* [emphasis added] without the prior written approval of the Commission, as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played.<sup>[6]</sup>

Unless computer hardware is submitted to the Commission for testing or approval by a licensed manufacturer and approved for use as bingo equipment or a secondary component, a licensed distributor or a licensed authorized organization may not obtain, by purchase or otherwise, that item of computer hardware for use in connection with the conduct of bingo as either a fixed base or portable card-minding device or associated site system.

**2. What documentation is required to be submitted to the TLC test lab to allow them to evaluate if testing these computers is required?**

**ANSWER:** Based on the answer to the previous questions, this question is moot. All computer hardware used in connection with a card-minding system must be submitted to

the Commission for testing, or the Commission must be otherwise be notified as provided by the provisions of 16 TAC §402.555.

**3. What documentation is required to be maintained by both the distributor and manufacturer to track the installation or relocation of these units?**

**ANSWER:** Based on the answer to Question No. 1.1, this question is moot. 16 TAC §402.555(h) details the records which licensed manufacturers, licensed distributors and licensed authorized organizations must maintain regarding card-minding devices and systems.

**2. Report Generation: We understand that the report generation software contained within the Card Minding System cannot be changed without testing and approval by the TLC. However there are other methods of generating reports form [sic] the transactional databases that does [sic] not require the changing of software. For example the database could be transferred to another machine and the reports generated there, or 3<sup>rd</sup> party report generation software could be used to access the information. This raises the following questions:**

- 1. If the information required by rule to be reported is contained within the reports approved by the TLC, are we permitted to supplement these with customized reports? We can design “report layouts” that can be used by the approved software to generate these reports, what we need to know is if we can add the report layouts to existing installed software.**

**ANSWER:** A licensed manufacturer may supplement existing reports, so long as the Commission approved report generating software required by 16 TAC §402.555 is not modified<sup>[7]</sup> absent Commission approval, the electronic format of the report is approved by the Commission,<sup>[8]</sup> and the information required to be filed by licensed manufacturers<sup>[9]</sup> is provided in those reports.

- 2. If we use third party software to access the information contained within the transactional database does the TLC require prior testing of the third party software? We use “Crystal Reports” to design our reports currently, which also has [sic] a dynamic report format generation utility that could be used to design reports ad-hoc.**

**ANSWER:** The Commission does not require testing of stand alone third party software used to access information contained within the transactional database, so long as the Commission approved report generating software required by 16 TAC §402.555 is not modified<sup>[10]</sup> absent Commission approval. However, if the third party reporting software is connected to the card-minding system, it is a secondary component.<sup>[11]</sup> Thus, the Commission must be informed, in writing, of the connected software the manufacturer intends to use prior to implementation,<sup>[12]</sup> and the Commission must approve the connected software prior to its use in connection with a card-minding system.<sup>[13]</sup>

## SUMMARY

Pursuant to 16 TAC §402.555, computer hardware and software used in connection with a card-minding system must be approved by the Commission prior to use in Texas.

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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,

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

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[\[1\]](#) See Texas Occupations Code, Section 2001.407(f), which provides:

(f) With the prior written consent of the commission, a licensed authorized organization may make an occasional sale of bingo cards or of a used bingo flash board or blower to another licensed authorized organization.

[\[2\]](#) See 16 TAC §402.555(c)(1)(A), which provides in pertinent part:

(A) Submissions must include all associated hardware, software, written operating manuals and technical information, to the extent not already in the commission's possession, in order to allow the commission to determine whether the components

submitted and the card-minding system that will contain the components complies with the Occupations Code, Chapter 2001 and charitable bingo administrative rules.

[3] See 16 TAC §402.555(a)(8), which defines a secondary component as follows:

(8) Secondary component. Additional software or hardware components, provided by the manufacturer, that are part of or are connected to a card-minding system that does not affect the conduct of the game of bingo. Secondary components may include computer screen backgrounds, battery charge up software routines, printers, printer software drivers, and charging racks.

[4] See 16 TAC §402.555(b)(4), which provides in pertinent part:

(4) The commission shall determine whether all proprietary software and portable card-minding devices required to be tested, as well as other components of card-minding systems, conform with the requirements and restrictions contained in the Occupations Code, Chapter 2001 and charitable bingo administrative rules. The decision by the commission to approve or disapprove any component of a card-minding system is administratively final.

[5] See 16 TAC §402.555(b)(3), which provides in pertinent part:

(3) Secondary components, including hardware components of fixed-base card-minding devices and non-proprietary software, may not be sold, leased, or otherwise furnished, including demonstrated except as provided by subsection (i)(5) of this section, to any person in this state, for use in the conduct of bingo unless approved by the commission for use within the state. However, manufacturers may conduct routine maintenance activities and replace secondary components of a card-minding system without prior commission approval as long as this activity does not affect the operation of any proprietary software or the manner in which a bingo game is played.

[6] Id.

[7] See 16 TAC 402.555(c)(1)(B)(ii), which provides in pertinent part:

(ii) Software modifications that require testing and a subsequent fee are alterations to the proprietary software that affects the requirements or restrictions as identified in this rule or Occupations Code, Chapter 2001 while not making substantial changes to previously approved proprietary software or hardware platforms.

[8] See 16 TAC 402.580(e)(1), which provides in pertinent part:

(1) A manufacturer or distributor shall file a report on a form prescribed by the commission or in an electronic format prescribed by the commission, reflecting each sale or lease of bingo equipment, and to the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state.

[9] Id.

[10] See footnote 7.

[\[11\]](#) See footnote 3.

[\[12\]](#) See 16 TAC §402.555(c)(2), which provides in pertinent part:

(2) The commission must be informed via a written communication of all secondary components of a card-minding system that a manufacturer intends to be sold, leased, or otherwise furnished for use in the conduct of bingo prior to such use.

[\[13\]](#) See footnote 5.