

BAO 2004-0322-00010	Date Issued: 05/13/2004	View Request RO 2004-0322-00010
Summary:	Consistent with Texas Occupations Code §2001.458(a)(3), an organization may use funds derived from the conduct of bingo to pay for loan payments for roof repair 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	

**CERTIFIED MAIL NO. 7001 2510 0002 0891 8279
RETURN RECEIPT REQUESTED**

BAO # 2004-010

May 13, 2004

David W. Moser
Fraternal Order of Eagles
San Jacinto Aerie No. 3098
12749 Market Street Road
Houston, Texas 77015

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

Dear Mr. Moser:

On March 24, 2004, the Texas Lottery Commission (the "Commission") received your letter requesting an advisory opinion related to the use of bingo funds to make loan payments for a new roof for the building in which the chapter is housed. For your convenience, enclosed is a copy of Texas Occupations Code, sections 2001.451 through 2001.459. Each of these statutes addresses issues related to the use of funds derived from the conduct of bingo.

The following is the question posed in your letter followed by the Commission's response:

Our organization has recently obtained a bank loan to put a new roof on our building. We are requesting approval to make the payments out of the bingo funds.

ANSWER:

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) 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.

If the building identified in your letter is used to conduct licensed bingo occasions, then your organization may choose to make loan payments for the roof out of its Bingo Account. If the building is not used to conduct licensed bingo occasions, then your organization may not claim that the loan payments for the roof are reasonable and necessary costs to conduct bingo. Thus, those costs would not be allowable as an item of expense under Texas Occupations Code, Section 2001.458. If the building is used to conduct licensed bingo and non-bingo activities, then it would be necessary to separate the roof loan costs related to the conduct of bingo from the roof loan expenses related to the non-bingo activities. In addition, the organization must maintain records necessary to substantiate the roof repair loan payment items of expense related to the conduct of bingo.

However, it may be possible that the roof loan 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 2001.002. 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 2001.002.

An organization may now 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.^{[\[1\]](#)} If the organization can prove that the roof repair loan 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. As noted above, the organization must maintain records necessary to substantiate that the use of funds is directed to a cause, deed or activity that is consistent with the federal tax exemption of the organization.

SUMMARY

Consistent with Texas Occupations Code §2001.458(a)(3), an organization may use funds derived from the conduct of bingo to pay for loan payments for roof repair 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

[\[1\]](#) Section 2001.002 (19) “Nonprofit organization” means an unincorporated association or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon’s Texas Civil Statutes). The organization:

1. may not distribute any of its income to its members, officers, or governing body, other than a reasonable compensation for services; and
1. must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.