

BAO 2004-0327-00009	Date Issued: 05/25/2004	View Request RQ 2004-0327-00009
Summary:	According to Texas Occupations Code §2001.458(a)(8), an organization may use funds derived from the conduct of bingo to pay for utility costs, including trash 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 1140 0001 0299 2342
RETURN RECEIPT REQUESTED**

BAO # 2004-0327-00009

May 25, 2004

Mechele Dorsey
VFW Post 856
406 E Alpine Rd
Austin, Texas 78704

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

Dear Ms. Dorsey:

On March 27, 2004, the Texas Lottery Commission (the "Commission") received your email requesting an advisory opinion related to the use of bingo funds for items such as utility services and trash services relating to the building in which bingo is conducted. 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.

"...We the VFW Post 856 need clarification as to how we can claim the Utility Bills as a donation as we are a 501c. All business that is conducted at our Post is by a valid 501c, except bingo. We would like to invoice bingo for their usage and claim the rest of the utility bill as a donation. I have seen under other opinions issued that we may do this, but I am confused how the auditors want to see our paper trail. I also want a clarification as to the billing of our trash service. We were told by auditing that this was not a bingo

expense, but we are in disagreement, the trash the bingo produces requires a dumpster, without the bingo, we generate 1 can of trash/week.”

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) (8) 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:

(8) fees for callers, cashiers, ushers, janitorial services, and utility supplies and services.

If the “Post” building identified in your letter is used to conduct licensed bingo occasions, then your organization may choose to pay for the utility costs, including trash services, associated with the conduct of bingo out of its Bingo Account. If the building is not used to conduct licensed bingo occasions, then your organization may not claim that the utility and trash costs are reasonable and necessary 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 utility and trash costs related to the conduct of bingo from the expenses related to the non-bingo activities. In addition, the organization must maintain records necessary to substantiate the items of expense related to the conduct of bingo.^[1]

However, it may be possible that the utility costs, including trash 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.

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.¹²¹ If the organization can prove that the utility costs, including trash 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

According to Texas Occupations Code §2001.458(a)(8), an organization may use funds derived from the conduct of bingo to pay for utility costs, including trash 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] See Texas Occupations Code, Section 2001.505(b) which provides in pertinent part:

(b) A license holder shall:

- (1) maintain records to substantiate the contents of each report; and
- (2) furnish a copy of each report to the appropriate governing body.

^[2] 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.