

<b>BAO 2004-0623-00021</b>	<b>Date Issued: 08/23/2004</b>	<b>View Request</b> <a href="#">RQ 2004-0623-00021</a>
Summary:	According to Texas Occupations Code §§2001.453 and 454, an organization may use funds derived from the conduct of bingo to pay for items of expense for building construction and maintenance so long as the expenses are for charitable purposes consistent with those of the organization.	

**FIRST CLASS UNITED STATES MAIL  
and  
CERTIFIED MAIL NO. 7001 2510 0002 0891 7418  
RETURN RECEIPT REQUESTED**

BAO # 2004-0623-

021

August 23, 2004

W. T. Evans, Finance Officer  
Thomas A Langford, Commander  
AMVETS Post 007  
P.O. Box 3026  
Odessa, Texas 79760

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

Dear Mr. Evans and Mr. Langford:

On June 23, 2004, the Texas Lottery Commission (the "Commission") received your letter requesting an advisory opinion related to the use of bingo funds for the purpose of constructing and furnishing a building to be used by boy and girl scouts and as a community center for citizens in your area. 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.

Below is your question followed by the Commission's response:

On December 27<sup>th</sup>, 2002 we purchased approximately one and a half acres of land in the amount of \$20,000 for the purpose of building a scout hut building and camping ground for both the boy and girl scouts and also to build a building to be used by scouts and as a community center for the citizens in our area....

Our desire is to use Bingo funds and donations for this project and we have already received permission to not have to pay Ad Valorem Taxes on this property. Our plans are for a 50 by 100ft. Building[sic] complete with air conditioning. The cost will be less than \$100,000 which we request you let us use from our Bingo fund.

ANSWER:

Texas Occupations Code §2001.453(a) provides that an organization may withdraw funds from its 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. Authorized disbursements should be made from the organization's bingo account.

Texas Occupations Code §2001.454(b) provides

(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 purposes 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.

If the building identified in your letter is used for charitable purposes consistent with those of AMVETS Post 007, then your organization may choose to pay for the building out of its bingo account. If not, then your organization may not claim that the building costs are disbursements for charitable purposes. Thus, those costs may or may not be allowable as disbursements for charitable purposes under Texas Occupations Code, §§2001.453 and 454.

In addition, the organization must maintain records necessary to substantiate that the disbursements are for allowable charitable purposes. If the organization can prove that the disbursements 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 §§2001.453 and 454, an organization may use funds derived from the conduct of bingo to pay for items of expense for building construction and maintenance so long as the expenses are for charitable purposes consistent with those of the organization.

---

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  
Marshall McDade, Audit Manager  
Sandra Joseph, Assistant General Counsel