

BAO 2004-0827-0025	Date Issued: 10/14/2004	View Request RQ 2004-0827-0025
--------------------	-------------------------	--

Summary:	Texas Occupations Code §2001.059(a) provides that a person may request from the commission an advisory opinion regarding compliance with Texas Occupations Code chapter 2001 (Bingo Enabling Act) and the rules of the Commission. A request for an advisory opinion related to the legal requirements for a notary public is not a proper request because the requirements are not addressed in the Bingo Enabling Act or Commission rules. A request for an advisory opinion must be in regards to compliance with the Act and the rules of the Commission. Therefore, this request does not fall within the scope of Texas Occupations Code §2001.059(a).
----------	--

**FIRST CLASS UNITED STATES MAIL
and
CERTIFIED MAIL NO. 7004 0750 0001 3237 6106
RETURN RECEIPT REQUESTED**

BAO # 2004-0827-0025

October 14, 2004

Owen Anderson
4165 Bluebonnet Hilltop Drive
Fort Worth, Texas 76126

Re: Licenses- Notarization of Documents

Dear Mr. Anderson:

On August 27, 2004, the Texas Lottery Commission (the "Commission") received your e-mail requesting an advisory opinion related to the notarization of license application documents submitted to the Commission. Below is your question followed by the Commission's response.

Pursuant to International Fort Worth Military Ball Inc. License application stamped JUL 19 2004, Taxpayer Number 17522859788: It indicates that Sharon Ives is the Sec./Tres with a date of 5/25/04.

Pursuant to you [sic] records for Trust Agreement for Fun Time Unit Trust, Fed ID# 20-1178080, it indicates that Sharon Ives is the Designated Agent.

At the same time Sharon Ives signs off on all the above Trust documentation (even for Fort Worth Military Ball Inc. of which she is an officer) as the Notary Public.

In my opinion, there seems to be an enormous conflict of interest based on the above by Sharon Ives. The basic tenants indicate that "the act of taking and certifying acknowledgments cannot be performed by a notary public financially or beneficially interested in the transaction; and one who is a party to an instrument, cannot act as a notary public."

Therefore, are the documents legal as presented or do they need to be redone? Will some type of corrective action be taken regarding the Notary involved in this matter?

ANSWER:

Texas Occupations Code §2001.059(a) provides the following:

A person may request from the commission an advisory opinion regarding compliance with this chapter and the rules of the commission.

Neither Texas Occupations Code Chapter 2001 (the Act) nor the Commission's charitable bingo rules address who may properly notarize documents filed with the Commission. Resolution of an issue regarding a notary public may reside with the Texas Secretary of State or the Texas judicial system. Consistent with the statute cited above, a request must relate to compliance with the Act or Commission rules. Because your question does not relate to the Act or rules, it does not fall within the statutory parameters established for advisory opinion requests. Therefore, the questions presented are not proper subjects for an advisory opinion under Texas Occupations Code §2001.059(a).

SUMMARY

Texas Occupations Code §2001.059(a) provides that a person may request from the commission an advisory opinion regarding compliance with Texas Occupations Code chapter 2001 (Bingo Enabling Act) and the rules of the Commission. A request for an advisory opinion related to the legal requirements for a notary public is not a proper request because the requirements are not addressed in the Bingo Enabling Act or Commission rules. A request for an advisory opinion must be in regards to compliance with the Act and the rules of the Commission. Therefore, this request does not fall within the scope of Texas Occupations Code §2001.059(a).

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
Jim Cox, Jr., Commissioner
Rolando Olvera, Commissioner
Kimberly L. Kiplin, General Counsel
Sandra Joseph, Assistant General Counsel
Bruce Miner, Licensing Manager