

BAO 2004-1014-0033	Date Issued: 12/13/2004	View Request RQ 2004-1014-0033
Summary:	Consistent with Texas Occupations Code Section 2001.551 the Texas Association of School Boards, Inc. may not play bingo without obtaining a charitable bingo license when there is no charge to play and prizes are incidental. As an alternative, if the Board applies and is licensed as an authorized organization under Texas Occupations Code Section 2001.101, the Board could conduct bingo consistent with the provisions of the Bingo Enabling Act.	

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and
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RETURN RECEIPT REQUESTED**

BAO # 2004-1014-0033

December 13, 2004

Debbie Harrington
Texas Association of School Boards, Inc.
PO Box 400
Austin, Texas 78767-0400

Re: Bingo Licensing

Dear Ms. Harrington:

On October 14, 2004, the Texas Lottery Commission (the "Commission") received your request for an advisory opinion related to bingo licensing. Below is your question followed by the Commission's response.

We are a non-profit organization here in Texas that occasionally provides fun activities for our employees as an appreciation for their hard work and as team building functions. We purchased a Bingo game from a local retail store to use for this purpose. There is no charge to the employees to play. We do, however give small incidental prizes for the winners of the games. We were told that we had to obtain a permit in order for us to occasionally use the game of Bingo during one of these functions.

In reading the rulings, it appeared that these were centered around those wishing to open a Bingo Hall, so to speak. A place of business where one paid in order to play and the winnings had the possibility of being substantial enough to become reportable revenue to the IRS.

Is there a distinction between what we are doing and the desire to open a place of business or where money exchanges hands in order to participate? Is it indeed true that we would need a permit to play Bingo when used for our purposes as stated above?

ANSWER:

The Bingo Enabling Act (Texas Occupations Code Chapter 2001) does not make a distinction in licensing requirements based on whether or not there is a charge for playing bingo. Texas Occupations Code Section 2001.551(a) provides the following:

Section 2001.551. UNLAWFUL BINGO; OFFENSE.

(a) In this section, "bingo" or "game" means a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random, **whether or not a person who participates as a player furnishes something of value for the opportunity to participate.** (emphasis added).

In addition, Texas Occupations Code Section 2001.413 provides the following:

Except as provided by Section 2001.4155,^[1] a licensed organization may not offer

or provide to a person the opportunity to play bingo without charge.

Based on the information you have provided, the Texas Association of School Boards, Inc. would need a license to play bingo for the purposes stated. Texas Occupations Code Section 2001.551(b) – (c) provides the following:

(b) A person conducting, promoting, or administering bingo commits an offense if the person conducts, promotes, or administers bingo other than:

(1) under a license issued under this chapter;

(2) within the confines of a home for purposes of amusement or recreation when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to

participate;

(B) participation in the game does not exceed 15

players; and

(C) the prizes awarded or to be awarded are

nominal;

(3) on behalf of an organization of individuals 60 years of age or over, a senior

citizens' association, a senior citizens' community center program operated or

funded by a governmental entity, the patients in a hospital or nursing home,

residents of a retirement home, or the patients in a Veteran's Administration

medical center or a military hospital, solely for the purpose of amusement and

recreation of its members, residents, or patients, when:

(A) no player or other person furnishes anything of more than nominal value for the opportunity to participate; and

(B) the prizes awarded or to be awarded are nominal; or

- (4) on behalf of a business conducting the game for promotional or advertising purposes if:
- (A) the game is conducted by or through a newspaper or a radio or television station;
 - (B) participation in the game is open to the general public and is not limited to customers of the business;
 - (C) playing materials are furnished without charge to a person on request; and
 - (D) no player is required to furnish anything of value for the opportunity to participate.
- (c) An offense under Subsection (b) is a felony of the third degree.

. . .

Because of the limitations imposed on organizations playing bingo in accordance with Texas Occupations Code Section 2001.551(b)(2), (3), and (4), a bingo activity as you describe would not be permissible under that section. However, Texas Occupations Code Section 2001.551(b)(1) allows a person to conduct bingo under a license and is not similarly limited.

Unless the Board is licensed to conduct charitable bingo, the Board may not conduct bingo in which prizes are given. If the Board obtained a license to conduct bingo, it could have a bingo activity with a nominal charge to play and incidental prizes. Texas Occupations Code Section 2001.101(a) provides that an authorized organization eligible for a license to conduct bingo is one of the following:

- (1) a religious society that has existed in this state for at least eight years;
- (2) a nonprofit organization:
 - (A) whose predominant activities are for the support of medical research or treatment programs; and
 - (B) that for at least three years:
 - (i) must have had a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; or
 - (ii) must have been affiliated with a state or national organization organized to perform the same purposes as the nonprofit organization;
- (3) a fraternal organization;
- (4) a veterans organization; or
- (5) a volunteer fire department.

SUMMARY

Consistent with Texas Occupations Code Section 2001.551 the Texas Association of School Boards, Inc. may not play bingo without obtaining a charitable bingo license when there is no charge to play and prizes are incidental. As an alternative, if the Board

applies and is licensed as an authorized organization under Texas Occupations Code Section 2001.101, the Board could conduct bingo consistent with the provisions of the Bingo Enabling Act.

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 2001.455. Gift Certificates.

(a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to play a bingo game, including instant bingo.

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