

BAO 2004-1216-0037	Date Issued: 01/28/2005	View Request <a href="#">RQ 2004-1216-0037</a>
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Summary:	Consistent with Texas Occupations Code §2001.453, an organization may use funds derived from the conduct of bingo to pay for expenses so long as the costs are reasonable and necessary to the conduct of bingo, and the costs are paid out of the Bingo Account. The net proceeds derived from bingo may be considered dedicated to charitable purposes of the organization only if they are used consistent with the organization's federal tax exemption obtained under 26 U.S.C. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. Further, Section 2001.455 of the Act requires the organization to ensure that the recipient of the proceeds uses the proceeds for a charitable purpose. A use of net proceeds that inures to the benefit of any private shareholder, individual, officer, governing body or member except as reasonable compensation for services rendered would not be considered as dedicated to the charitable purposes of the organization. The organization must maintain records necessary to substantiate that the use of funds was for necessary and reasonable expenses incurred and paid in connection with the conduct of bingo or for charitable purposes consistent with the federal tax exemption of the organization, Section 2001.002 of the Act, and Commission rule 402.598.
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CERTIFIED MAIL NO. 7001 2510 0001 4202 4586  
RETURN RECEIPT REQUESTED

BAO # 2004-1216-0037

January 28, 2005

Ms. Mary Lee, Member  
American Legion Auxiliary, Unit 208  
704 Smokey Mountain Drive  
Kerrville, Texas 78028

Re: Use of bingo funds

Dear Ms. Lee:

On December 16, 2004, the Texas Lottery Commission (the "Commission") received your email requesting an advisory opinion related to the use of bingo funds. Below is your question followed by the Commission's response.

At the meeting of the auxiliary last week, they discussed helping members – giving them Christmas baskets and giving scholarships to member's children and grandchildren. I told them they could not use funds derived from bingo [to] help members. They argued with me saying that was the purpose of the funds – to help needy veterans and their families, especially members of the local unit. Also, I thought bingo funds could not be used for reimbursing members who attend conventions not related to bingo.

Have I missed something or have the rules changed?

**ANSWER:**

Texas Occupations Code §2001.453(a) provides that an organization may withdraw funds from the Bingo Account only for (1) payment of necessary and reasonable expenses incurred and paid in connection with the conduct of bingo, (2) charitable purposes, or (3) deposit into a bingo savings account pending disbursement to a charitable purpose. Therefore, the issue is whether the proposed uses of bingo funds would be for necessary and reasonable expenses incurred and paid in connection with the conduct of bingo or whether they would qualify as disbursements for charitable purposes.

Texas Occupations Code §2001.458(a) provides:

(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:

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security;
- (3) repairs to premises and equipment;
- (4) bingo supplies and equipment;
- (5) prizes;
- (6) stated rental or mortgage and insurance expenses;
- (7) bookkeeping, legal, or accounting services related to bingo;
- (8) fees for callers, cashiers, ushers, janitorial services, and utility supplies and services;
- (9) license fees;
- (10) attending a bingo seminar or convention required under Section 2001.107;<sup>[\[1\]](#)</sup> and
- (11) debit card transaction fees.

(b) The value of health insurance or a health benefit provided by a licensed authorized organization to an employee is not included under Subsection (a)(8).

The Bingo Enabling Act provisions relating to the distribution of charitable proceeds were revised during the 78<sup>th</sup> 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 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. Section 2001.002(19) provides as follows:

‘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:

(A) **may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;** and

(B) must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.

(Emphasis added).

Sec.2001.455 states:

A person given bingo proceeds for a charitable purpose may not use the donation:

(1) to pay for services rendered or materials purchased in connection with the conduct of bingo by the donor organization; or

(2) for a purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.

Subsequent to the amendment of Texas Occupations Code, Section 2001.454, the Commission promulgated a new rule relating to the charitable use of proceeds derived from the conduct of bingo. 16 TAC 402.598 was adopted by the Commission on May 27, 2004 and became effective on June 16, 2004. The rule describes the type of information an organization must maintain to identify its charitable purpose and to substantiate its charitable distributions. In addition, subsection (e) of the rule provides in pertinent part:

(e) A use of net proceeds, which would not be considered as a cause, deed, or activity dedicated to the charitable purposes of the organization and not consistent with the 26 U.S.C. Section 501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization, are any use of proceeds which:

(1) inures to the benefit of any private shareholder, individual, officers, governing body or member other than as reasonable compensation for services rendered;

(2) has no documentation to substantiate the use of net proceeds; or

(3) does not further the organization's cause, deed or activity consistent with the federal tax exempt application or other written purposes furnished to the commission that are consistent with the organization's tax exemption.

Thus, if the distribution of bingo proceeds inured to the benefit of an individual listed in subsection (e) (1), if the organization was unable to maintain records to substantiate the use of proceeds, or if the distribution did not further the organization’s cause, deed or activity consistent with its tax exempt purpose, then the distribution would not be an

allowable charitable distribution of proceeds derived from the conduct of bingo.

If the organization can prove that the expenses 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 **and** are consistent with the Section 2001.002 definition of non-profit organization, 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. To meet the Section 2001.002 definition of non-profit organization, the organization may not distribute income to its own members except for reasonable compensation for services. Furthermore, Rule 402.598 provides that a use of net proceeds that inures to the benefit of any private shareholder, individual, officer, governing body or member except as reasonable compensation for services rendered would not be considered as dedicated to the charitable purposes of the organization.

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## SUMMARY

Consistent with Texas Occupations Code §2001.453, an organization may use funds derived from the conduct of bingo to pay for expenses so long as the costs are reasonable and necessary to the conduct of bingo, and the costs are paid out of the Bingo Account. The net proceeds derived from bingo may be considered dedicated to charitable purposes of the organization only if they are used consistent with the organization's federal tax exemption obtained under 26 U.S.C. Section 501 and under which the organization qualifies as a nonprofit organization as defined by Section 2001.002. Further, Section 2001.455 of the Act requires the organization to ensure that the recipient of the proceeds uses the proceeds for a charitable purpose. A use of net proceeds that inures to the benefit of any private shareholder, individual, officer, governing body or member except as reasonable compensation for services rendered would not be considered as dedicated to the charitable purposes of the organization. The organization must maintain records necessary to substantiate that the use of funds was for necessary and reasonable expenses incurred and paid in connection with the conduct of bingo or for charitable purposes consistent with the federal tax exemption of the organization, Section 2001.002 of the Act, and Commission rule 402.598.

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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

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[\[1\]](#) §2001.107 requires that certain persons complete an eight hour, commission-approved training program related to conducting and promoting bingo. You indicate that the events you are asking about would not offer such training. If not, the expenses for attending would not be permissible as reasonable and necessary expenses.