

BAO 2006-0808-0022	Date Issued: 10/06/2006	View Request RQ 2006-0808-0022
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Summary:	Reasonable and necessary is the standard to be applied for monies disbursed from a bingo account while reasonable or necessary is the standard to be applied for bingo related expenses to be paid for from other sources. Determination of whether or not a specific promotion, such as providing a meal, as an inducement to promote bingo player's attendance at a charitable bingo occasion is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure. A licensed authorized organization is required to maintain records to substantiate payments as necessary and reasonable expenses.
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CERTIFIED MAIL NO. 7000 0520 0025 5830 8728

BAO # 2006-0808-0022

October 6, 2006

Steve Bresnen
Steve Bresnen & Associates
5908 London
Austin, TX 78745

Re: Bingo Funds

Dear Mr. Bresnen:

This advisory opinion responds to your request which was received by the Texas Lottery Commission (Commission) on August 8, 2006. You requested an opinion about whether a charity may provide a meal, as a promotion intended to induce bingo players' attendance at a charitable bingo session, as a reasonable or necessary allowable expenditure of funds in the bingo account under Tex. Occ. Code §§2001.453 and 2001.458. You clarified that your question is about the type of expenditure and not the amount.

ANSWER:

Your question is based on the assumption that "reasonable or necessary" is the applicable standard for deciding whether an expenditure may be made from a bingo account. This threshold issue is addressed first.

Attorney General Opinion No.GA-0374(2005) provides the following summary of pertinent rules of statutory construction:

The cardinal rule of statutory construction is to ascertain legislative intent. *See In re Canales*, 52 S.W.3d 698, 702 (Tex. 2001). To do so, courts first look to the statute's words, attempting to ascertain their plain and common meaning. *See Tex. Gov't Code Ann. §§311.011(a)-(b)* (Vernon 2005) (Code Construction Act); *City of San Antonio v. City of Boerne*, 111 S.W.3d 22, 25 (Tex. 2003). Courts construe provisions in context, considering the statute as a whole. *See Tex. Gov't Code Ann. §311.011(a)* (Vernon 2005)

(words and phrases to be read in context); *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001) ("[W]e must always consider the statute as a whole rather than its isolated provisions. We should not give one provision a meaning out of harmony or inconsistent with other provisions, although it might be susceptible to such a construction standing alone."). . . .

Regardless of whether a statute is considered ambiguous on its face, the Code Construction Act allows a reviewing court to consider, among other things, the object sought to be obtained, any legislative history, and the consequences of a particular statutory construction. *See* Tex. Gov't Code Ann. §311.023 (Vernon 2005); *Fleming Foods of Tex., Inc. v. Rylander*, 6 S.W.3d 278, 283 (Tex. 1999); *R.R. Comm'n of Tex. v. Mote Res.*, 645 S.W.2d 639, 643 (Tex. App.—Austin 1983, no writ) ("Nevertheless, in reading a statute, whether or not the statute is considered ambiguous on its face, a court may consider the circumstances under which the statute was enacted and the underlying legislative history of the enactment."). An ambiguous statute must be construed consistent with the legislative intent, which can be ascertained by looking beyond the terms of the statute. *See In re K.L.V.*, 109 S.W.3d 61, 65 (Tex. App.—Fort Worth 2003, pet. denied). "‘Ambiguity exists when a statute is capable of being understood by reasonably well informed persons in two or more different senses.’" *Teleprofits of Tex., Inc., v. Sharp*, 875 S.W.2d 748, 750 (Tex. App.—Austin 1994, no writ) (citation omitted).

Statutes should also be construed in harmony with other statutes unless a contrary intention is clearly manifest. Where two statutes seem to be inconsistent, a construction will be sought to harmonize them and leave both in concurrent operation, if it is possible fairly to reconcile them. *See Fortenberry v. State*, 283 S.W. 146, 148 (Tex. Comm'n App. 1926, judgm't adopted). Texas courts do not favor implied repeals. *See Standard v. Sadler*, 383 S.W.2d 391, 395 (Tex. 1964). Statutes are presumed to be enacted by the legislature with full knowledge of the existing state of the law and with reference to it. *See McBride v. Clayton*, 166 S.W.2d 125, 128 (Tex. 1942). When a new statute is passed dealing with a subject covered by an old law, if there is no express repeal, the presumption is that in enacting a new law the legislature intended the old statute to remain in operation. *See State v. Humble Oil and Refining Co.*, 187 S.W.2d 93, 100 (Tex. Civ. App.—Waco 1945, writ ref'd w.o.m.).

Tex. Occ. Code §2001.453. Authorized Uses of Bingo Account provides:

(a) A licensed authorized organization may draw a check on its bingo account only for:

the payment of necessary and reasonable bona fide expenses . . . as permitted under Section 2001.458 incurred and paid in connection with the conduct of bingo;

. . .

The §2001.453 standard for use of funds in a licensed authorized organization's bingo account is that they are both reasonable and necessary. This standard is different from that contained in Tex. Occ. Code §2001.458 that applies to items of expense. Tex. Occ. Code §2001.458 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:

...

The §2001.458 standard for items of bingo expense is that the expense is either reasonable or necessary.

This difference in criteria might appear to present a conflict between the two statutes and bring into question which standard applies. A plain reading of only §2001.453 presents no ambiguity. However, when §2001.453 is read alongside §2001.458, the difference in use of the conjunctive “and” and disjunctive “or” connector between the words “reasonable” and “necessary” may appear to present a conflict. A possible interpretation is that the amendment to §2001.458 in 2003 was intended to change the standard for purposes of all expenditures, regardless of source.^[1] Review of available legislative history of HB 2519 sheds no light on legislative intent in regard to this language.

If possible, statutes are to be construed in harmony. Sections 2001.453 and 2001.458 can be harmonized by recognizing that §2001.453 applies to expenditure of funds from the bingo account while §2001.458 applies to all bingo related expenses. Section 2001.459 identifies certain expenditures that can only be paid from a bingo account, thereby implying that other expenditures may be paid from other accounts. Some bingo expenses may be paid from other sources.

Therefore, because §2001.458 is plain on its face, no legislative history on the language has been found, and §§2001.453 and 2001.458 can be harmonized, we conclude that reasonable and necessary is the standard to be applied for monies disbursed from a bingo account. Reasonable or necessary is the standard to be applied for bingo related expenses to be paid for from other sources.

Promotions are reasonable as an item of expense. A licensed authorized organization may exercise its judgment as to the types of promotions conducted. Determination of whether or not a specific promotion, such as providing a meal, as an inducement to promote bingo player’s attendance at a charitable bingo occasion is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure. Reasonableness of the expenditure would include consideration of cost compared to intended benefit. The necessity of the expenditure would include consideration of the anticipated consequences of not making the expenditure. A licensed authorized organization is required to maintain records to substantiate payments as necessary and reasonable expenses.

SUMMARY

Reasonable and necessary is the standard to be applied for monies disbursed from a bingo account while reasonable or necessary is the standard to be applied for bingo related expenses to be paid for from other sources. Determination of whether or not a specific promotion, such as providing a meal, as an inducement to promote bingo player's attendance at a charitable bingo occasion is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure. A licensed authorized organization is required to maintain records to substantiate payments as necessary and reasonable expenses.

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
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel

[\[1\]](#) HB 2519 amended Tex. Occ. §2001.458 in 2003. The revised language was included in the bill as Introduced, and made the following change to the introductory paragraph for Section 2001.458(a):

Section 2001.458(a), Occupations Code, is amended to read as follows:

(a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is ~~[those expenses that are]~~

reasonable or necessary to conduct bingo, including an expense ~~[and necessarily expended]~~ for:

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