

<b>BAO 2006-1128-0002</b>	<b>Date Issued: 01/24/2006</b>	<b>View Request <a href="#">RO 2006-1128-0002</a></b>
<b>Summary:</b>	<b>Bingo funds may not be utilized to pay a bingo operator for vacation time.</b>	

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BAO # 2006-1128-0002

January 24, 2006

Rogelio I. Rabago, Trustee  
Knights of Columbus, Council # 5967  
8527 Adirondack Trail  
Austin, Texas 78759-7918

Re: Bingo Expenses

Dear Mr. Rabago:

This advisory opinion responds to your request which was received by the Texas Lottery Commission on November 28, 2005, regarding bingo expenses. Below is your question followed by the Commission's answer.

Can the "Primary Operator" and the other Bingo Operators be paid for "Vacation Time" days?

ANSWER:

Bingo funds may not be utilized to pay a bingo operator for vacation time days. 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. Because your question does not relate to a distribution for charitable purposes, the issue is whether the proposed use of bingo funds would be for necessary and reasonable expenses incurred and paid in connection with the conduct of bingo.

Neither the Bingo Enabling Act (BEA) nor the Bingo Administrative Rules directly address whether a bingo operator may be paid for vacation time or

otherwise. Read as whole, however, the BEA indicates a legislative intent that payments to an operator are not necessary and reasonable expenses that may be paid from an organization's bingo account.

Texas Occupations Code §2001.002 (19) addresses payments to members.<sup>[1]</sup> In defining "nonprofit organization," it provides as follows:

. . . The organization:

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

. . .

Thus, the section provides the general principle that an organization may not distribute income to its members and then provides an exception for "reasonable compensation for services." The exception raises the question of what is meant by "services."

The BEA does not define "services." However, Tex. Occ. Code § 2001.453(a)(1) provides:

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

(1) the payment of necessary and reasonable bona fide expenses, including **compensation of personnel, as permitted under Section 2001.458** incurred and paid in connection with the conduct of bingo;

. . .

(Emphasis added)

Thus, § 2001.453(a)(1) points to § 2001.458 for further guidance on compensation of personnel. § 2001.458 (a) provides the following:

(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; and  
(11) debit card transaction fees.  
. . . .

Notably, the listing does not include expenses for operators. Although § 2001.458 does not limit reasonable or necessary expenses to only those it includes, the omission indicates statutory intent. Certainly, the Legislature was aware that organizations might designate members to perform as operators. In fact, Tex. Occ. Code § 2001.411 pertaining to Persons Operating or Conducting Bingo provides the following:

- (a) Except as provided by this section, a person other than a bona fide member of a licensed authorized organization may not conduct, promote, or administer, or assist in conducting, promoting, or administering bingo.

A reasonable interpretation of the BEA as a whole leads to the conclusion that bingo funds may not be utilized to pay a bingo operator for vacation time.

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#### SUMMARY

Bingo funds may not be utilized to pay a bingo operator for vacation time.

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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  
Kimberly L. Kiplin, General Counsel

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[\[1\]](#) This opinion does not address the question of whether bingo funds may be used to pay vacation time for personnel other than operators.