

BAO 2006-1201-0004	Date Issued: 01/30/2006	View Request RQ 2006-1201-0004
Summary:	A charitable organization may not play a form of keno during intermissions or between games of bingo during a bingo occasion.	

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BAO # 2006-1201-0004

January 30, 2006

Gary Capshaw
Senior Vice Commander
VFW Post 2773
P.O. Box 171
Denison, Texas 75021

Re: Bingo Activities

Dear Mr. Capshaw:

This advisory opinion responds to your request which was received by the Texas Lottery Commission (Commission) on December 1, 2005. Below are your questions followed by the Commission's answer.

1. May a charitable organization play a form of keno (using the bingo ball machine to draw numbers) during intermissions or between games of bingo during a regularly scheduled event as long as:

- A. It is conducted entirely in-house among customers only,
- B. The payout, plus the bingo payout, does not exceed the maximum,
- C. The payout per game does not exceed 10 times the amount it costs customers to play the game.

2. If cash prizes are illegal, could keno be played for non-cash prizes and could those prizes be purchased from the bingo account.

ANSWER:

Texas Occupations Code §2001.416(a) provides that “[a] game of chance other than bingo or a raffle . . . may not be conducted or allowed during a bingo occasion.” Thus,

response to your questions requires consideration of the following issues.

1. Is keno a game of chance other than bingo or a raffle?
2. What is a bingo occasion?

First, keno is a game of chance other than bingo or a raffle. Texas Occupations Code §2001.551(a) defines “bingo” as a specific game of chance . . . in which prizes are awarded on the basis of designated numbers or symbols on a card conforming to numbers or symbols selected at random

The Charitable Raffle Enabling Act §2002.002 (6) defines a raffle as the award of one or more prizes by chance at a single occasion among a single pool or group of persons who have paid or promised a thing of value for a ticket that represents a chance to win a prize. The statutes do not define “keno.” When a statute does not define a term, the term’s ordinary meaning is applied. Tex. Att’y Gen. Op. No. JC-0480 (2002). Merriam Webster Online defines “keno” as “a game resembling bingo.”^[1] According to common understanding, keno is like bingo in that it is a game utilizing numbers. Unlike bingo, the keno player picks the numbers for his or her ticket. The amount of numbers the player originally picked that match winning numbers of a particular drawing will determine if the player wins any money. Thus, keno is a game of chance that is distinct from bingo or a raffle. The Attorney General concluded in Attorney General Opinion JC-0449 that §2001.416 prohibits all “games of chance” except bingo, a raffle, and “an amusement machine that is not a gambling device” during a bingo occasion. Tex. Att’y Gen. Op. No. JC-0449 (2002).

Second, Texas Occupations Code §2001.002(6) provides the following definition:

"Bingo occasion" means all activities incident to the conduct of a series of bingo games by a licensed authorized organization, including the organization's licensed times and any preparatory or concluding activities incident to the conduct of bingo.

Furthermore, the Attorney General has addressed the meaning of “bingo occasion.” “Bingo occasion” “. . . means a gathering for the purpose of playing bingo. The time of a bingo occasion includes times before, during, between, and after bingo games.” Tex. Att’y Gen. Op. No. JM-844 (1988). These definitions encompass the fact scenario presented in your question.

Therefore, the first question you present falls within the prohibition of Texas Occupations Code §2001.416(a). An organization’s playing keno during intermissions or between games of bingo during a regularly scheduled event is prohibited by Texas Occupations Code §2001.416(a).^[2] Because the response to your first question is negative, the second question is not addressed.

SUMMARY

A charitable organization may not play a form of keno during intermissions or between games of bingo during a bingo occasion.

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

^[1] m-w.com/dictionary/keno

^[2] Moreover, the activity you describe could violate Texas Penal Code § 47.03 pertaining to Gambling Promotion.