

**CERTIFIED MAIL NO. 7004 0750 0001 3234 0701
RETURN RECEIPT REQUESTED**

BAO # 2007-0109-0010

March 8, 2007

Isiah Payne
309 SE 13th Unit A
Grand Prairie, TX 75051

Re: Bingo Expense

Dear Mr. Payne:

This advisory opinion responds to your request that the Texas Lottery Commission (Commission) received on January 23, 2007. Your request states that you are “. . . interested in starting a firm that will work with charities to advertise their charitable bingo events” and asked the following:

Am I permitted to contract with a charity to offer marketing services as an ongoing cost of doing business with increase in attendance as a goal.

Since the law does not address what reasonable charges can be paid for this type of service, any help would be appreciated to define what type of fees are permissible to be paid from the charities bingo operating accounts.

ANSWER:

Neither the Bingo Enabling Act (Tex. Occ. Code ch. 2001) nor the Charitable Bingo Administrative Rules (16 TAC ch. 402) prohibit a charity from entering into a contract with a person for marketing services.

Tex. Occ. Code § 2001.459 provides that advertising expense, incurred or paid in connection with the conduct of bingo, must be paid from an organization’s bingo account. Tex. Occ. Code § 2001.453 provides

- (a) A licensed authorized organization may draw a check on its bingo account only for:
 - (1) 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.

Marketing services are reasonable as an item of expense. A licensed authorized organization may exercise its judgment as to the types of marketing services provided. Determination of whether or not payment pursuant to a specific contract for marketing services is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure, including information on anticipated and actual attendance and amount spent by players. 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.

The Commission has proposed for adoption a new rule 16 TAC § 402.505 relating to permissible expense. A copy of the proposed rule is attached.

SUMMARY

Neither the Bingo Enabling Act (Tex. Occ. Code ch. 2001) nor the Charitable Bingo Administrative Rules (16 TAC ch. 402) prohibit a charity from entering into a contract with a person for marketing services.

Determination of whether or not payment pursuant to a specific contract for marketing services is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure, including information on anticipated and actual attendance and amount spent by players. 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,

Philip D. Sanderson, Assistant Director
Charitable Bingo Operations Division

cc: James A. Cox, Jr., Chairman
C. Tom Clowe, Jr., Commissioner
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel