

**CERTIFIED MAIL NO. 7004 1350 0000 5061 8723**  
**RETURN RECEIPT REQUESTED**

BAO # 2007-0126-0011

March 27, 2007

Angela Garcia  
Lulac #649  
1416 Callaghan Rd.  
San Antonio, TX 78228

Re: Use of Bingo Funds

Dear Ms. Garcia:

This advisory opinion responds to your request, which was received by the Texas Lottery Commission (Commission) on January 26, 2007. Below are your questions, followed by the Commission's response.

1. May annual registration dues be paid out of the bingo account to Lulac National, Lulac State, and Lulac District?
2. Lulac Councils represent less fortunate individuals in other cities/counties. Are mileage (transportation) and food an allowable expense and may it be treated as a charitable contribution?
3. Are expenses to Convention allowable expenses from the bingo account?
  - a. The Lulac National Convention sets the guidelines for all Lulac Councils where workshops are held. Can these expenses, including registration, airfare, hotel and transportation, be covered as charitable contributions? If so, are all members allowed to be paid for or 4 delegates?
  - b. The State Convention and Women's Convention take place once a year. Guidelines at each convention are set forth along with workshops.
4. Under § 2001.402 Single Premises (b), the Commission may not license more than two affiliated organizations to conduct bingo at the same premises. Does the

Texas Lottery Commission consider Lulac Councils affiliated? Each is their own entity with their individual EIN and falls under Lulac National's umbrella.

**ANSWER:**

Texas Occupations Code § 2001.453(a) provides that a licensed 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. The issue presented by your first three questions is whether the proposed uses of bingo funds would qualify as necessary and reasonable expenses incurred and paid in connection with the conduct of bingo or as disbursements for charitable purposes.

Determination of whether paying annual registration dues, mileage, food, convention registration, airfare, hotel and transportation costs is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditures. Tex. Occ. Code § 2001.453 provides that an organization may draw a check on its bingo account only for necessary and reasonable expenses paid in connection with the conduct of bingo. A licensed authorized organization is required to maintain records to substantiate payments as necessary and/or reasonable expenses. The expenditures described in your request are not related to the conduct of bingo and therefore would not qualify as a permissible bingo expenses.

In regards to disbursement for charitable purposes, Texas Occupations Code § 2001.454 provides:

- (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. § 501 and under which the organization qualifies as a nonprofit organization as defined by § 2001.002. If the organization is not required to obtain a federal tax exemption under 26 U.S.C. § 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 § 2001.002.

A licensed authorized organization may 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 licensed authorized organization and under which the licensed authorized organization qualifies as a nonprofit organization as defined by Texas Occupations Code

§ 2001.002(19).<sup>1</sup> Under this definition, 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 § 501(c), Internal Revenue Code of 1986.

The Texas Constitution requires that all proceeds from bingo be spent in Texas for the charitable purposes of the organization. Tex. Const. art. III, § 47(b)(1). Additionally, a person given bingo proceeds for a charitable purpose may not use the donation “for a purpose that would not constitute a charitable purpose if the activity were conducted by the donor organization.” Tex. Occ. Code § 2001.455. Charitable Bingo Administrative Rule 16 TAC § 402.502 describes the type of information a licensed authorized organization must maintain to identify its charitable purpose and to substantiate its charitable distributions. The rule further clarifies the uses of proceeds that would not be considered dedicated to charitable purposes.

You first ask whether annual registration dues may be paid out of the bingo account to Lulac National, Lulac State, and Lulac District. In accordance with Texas Occupations Code § 2001.002(19) (A) which provides that the organization “may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services,” personal registration dues for members may not be treated as a charitable contribution.

In regards to your second question of whether mileage and food are allowable expenses that may be treated as a charitable contribution, you provided additional information that you are asking about such expenses incurred by members of Lulac. Reimbursement for mileage expenses incurred by members in furtherance of the organization’s charitable purposes may be treated as a charitable contribution. However, reimbursement for mileage expenses should not exceed the amount specified by the Internal Revenue Service under the federal income tax regulations or documented actual expense. In accordance with Texas Occupations Code § 2001.002(19) (A) which provides that the organization “may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services . . .”, personal food expenses of members may not be treated as a charitable contribution.

Third, you ask whether expenses of attending Lulac conventions, including registration, hotel and transportation may be paid from the bingo account as charitable contributions. If the organization can prove that the convention expenses associated with non-bingo activities are reasonable and are directed to a cause, deed or activity that is consistent with the federal tax exemption the organization obtained under 26 U.S.C. § 501 and the Tex. Occ. Code § 2001.002 definition of non-profit organization, then those costs may be recognized as a charitable

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<sup>1</sup> § 2001.002(19) defines “nonprofit organization” to mean “an unincorporated association” or “a corporation that is incorporated or holds a certificate of authority under the Texas Non-profit Corporation Act.” The provisions of that act have been recodified in the Texas Business Organization Code.

distribution and therefore an allowable use of funds derived from the conduct of bingo. The organization should maintain records to demonstrate the reasonableness of the expenses. The reasonableness of the number of members paid for depends on specific facts and circumstances pertaining to convention activities and costs.

Again, the organization must maintain records necessary to substantiate the lawful use of funds. Charitable Bingo Administrative Rule § 402.502 pertaining to use of charitable proceeds addresses record keeping for travel expenses as follows:

(f) Reimbursement or direct payment for member or employee travel expenses. Reimbursement or direct payment for member or employee travel expenses will only be considered a cause, deed, or activity dedicated to the charitable purposes and 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 if the following records are provided to the commission upon request:

- (1) the itinerary of the seminar, convention, or retreat showing that the purpose of the seminar, convention, or retreat was primarily to discuss the charitable functions and purposes consistent with the 26 U.S.C. § 501 tax exemption of the organization or the purposes or objective for which the organization qualifies as an authorized organization; and
- (2) the original receipts and cancelled checks, or true and correct copies of the same, showing the date and amount of the contribution for actual out-of-pocket reasonable and necessary expenses such as hotel, airline tickets, meals, etc. and the corresponding request for payment or reimbursement maintained by the organization.

If a licensed authorized organization wishes to claim charitable distributions for registration and travel expenses incurred by members to attend conventions, then the organization must maintain records and documentation required by 16 TAC § 402.502 and make that information available to the Commission upon request.

Finally, you ask whether the Commission considers Lulac Councils affiliated. Tex. Occ. Code § 2001.402 (b) provides that the “commission may not license more than two affiliated organizations to conduct bingo at the same premises.” “Affiliated” is not defined in the Bingo Enabling Act or in the Bingo Administrative Rules. The Code Construction Act, Tex. Gov’t Code § 311, provides

§ 311.011. COMMON AND TECHNICAL USAGE OF WORDS.

- (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

- (b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

In accordance with this statute, the Attorney General has stated

A statute's words and phrases are to be read in context and given their common meaning unless they have acquired a technical or particular meaning by definition or otherwise. *See Sanchez v. State*, 995 S.W.2d 677, 683 (Tex. Crim. App. 1999) . . . If a statute's language is clear and unambiguous the statute is construed according to its plain meaning. *Getts*, 155 S.W.3d at 155. Certain "extra-textual factors" such as legislative history may be considered only when a statute is ambiguous or when a literal interpretation would lead to absurd results. *See id.* at 155; *Ex parte Spann*, 132 S.W.3d 390, 393 (Tex. Crim. App. 2004).<sup>2</sup>

Because "affiliated" has not been specifically defined by the legislature or the agency, it is appropriate to refer to the common meaning of the term and to consider the context of its use. "Affiliated" is defined by Webster's On-line Dictionary as "being in close formal or informal association; related."<sup>3</sup>

In determining whether organizations are affiliated, the Commission may consider factors pertaining to organizations such as the following:

1. level or status - for example, state, national, local, affiliate, or auxiliary
2. identity or similarity of purposes
3. use of common facilities or offices
4. same chief executive officer or other officer
5. same or many of the same members
6. degree of control by higher level of organization;
7. operation under the same IRS 501(c) exemption, the same articles of incorporation or by-laws
8. degree of self-government as shown by the local organization's articles of incorporation or by-laws.
9. distribution of proceeds to the same purpose

Determination of whether Lulac organizations are affiliated for purposes of Tex. Occ. Code § 2001.402 (b) would require review of pertinent information pertaining to specific Lulac organizations.

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<sup>2</sup> Tex. Atty. Gen. Op. No. GA-0354 (2005)

<sup>3</sup> [www.webster.com/dictionary](http://www.webster.com/dictionary)

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## SUMMARY

Personal registration dues, mileage, food costs, and convention related expenses may not be paid from the bingo account as reasonable and necessary expenses in connection with the conduct of bingo. Furthermore, in accordance with Texas Occupations Code § 2001.002(19) (A) which provides that the organization “may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services,” personal registration dues and food expenses of members may not be treated as charitable distributions. However, an organization may use funds derived from the conduct of bingo to pay for mileage and convention expenses if it can show that the funds are directed to a cause, deed or activity that is consistent with the federal tax exemption of the licensed authorized organization and under which the licensed authorized organization qualifies as a nonprofit organization as defined by Texas Occupations Code § 2001.002(19) and in accordance with 16 TAC § 402.502 Charitable Use of Proceeds.

Determination of whether Lulac organizations are affiliated for purposes of Tex. Occ. Code § 2001.402 (b) would require review of pertinent information pertaining to specific Lulac organizations.

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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,

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