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BAO # 2007-1117-0005

February 14, 2007

Mr. Jeffrey L. Minch
President, CEO
Littlefield Corporation
2501 North Lamar Blvd.
Austin, Texas 78705

Re: Use of Bingo Funds

Dear Mr. Minch:

This advisory opinion responds to your request that was received on November 17, 2006. Additional information was received on December 20, 2006. The following summarizes your request:

1. Can a bingo hall manager earn and be paid compensation when not physically in the bingo hall?
2. Does the bingo hall manager breach her duty or her fiduciary responsibility to the charities by accepting compensation not earned in accordance with the agreement?
3. Can the proceeds of bingo knowingly be diverted to pay for service not rendered?

ANSWER:

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, including compensation of personnel, 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

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:

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.

Employee compensation is reasonable as an item of expense. Determination of whether providing compensation to a bingo hall manager not present in the bingo hall or for services not rendered 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/or reasonable expenses.

Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules address fiduciary duty or responsibility.

SUMMARY

Determination of whether providing compensation to a bingo hall manager not present in the bingo hall or compensation for services not rendered 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/or reasonable expenses.

Neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules address fiduciary duty or responsibility.

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