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Commissioner



TEXAS LOTTERY COMMISSION

Gary Grief, Executive Director

Philip D. Sanderson, Charitable Bingo Operations Director

CERTIFIED MAIL NO. 7006 3450 0002 9009 1189
RETURN RECEIPT REQUESTED

BAO #2013-1002-0001

October 12, 2012

Mr. Kevin Du Pree, Treasurer
Knights of Columbus Council 1003
1801 Waterall Street
Texarkana, TX 75501

Re: Use of Bingo Funds

Dear Mr. Du Pree:

This advisory opinion responds to your request, which was received by the Texas Lottery Commission (Commission) on October 2, 2012. In sum, you ask for "... clarification regarding the wording in Article 3 Section 47 of the Constitutional Amendment as it relates to the funds being spent in Texas, or any other statutes which may be relevant regarding when we have satisfied our requirement that bingo funds must be used only in Texas."

ANSWER:

Bingo Advisory Opinion (BAO) # 2007-0921-0001 issued on November 28, 2006 addresses a similar question. The question was whether donations from bingo funds could be made to the Elks National Foundation. The opinion states the following:

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 ...

You next ask if donations from bingo funds may be made to the Elks National Foundation. Although we do not know the particular nature of the National

Foundation, it is possible that bingo funds could be donated to the Foundation as a charitable distribution if the following criteria are met:

- (1) the licensed authorized organization can prove that the expenses are directed to a cause, deed or activity that is consistent with the federal tax exemption the licensed authorized organization obtained under 26 U.S.C. Section 501;
- (2) the expenses are consistent with the Section 2001.002 definition of non-profit organization; and
- (3) the licensed authorized organization can document that the National Foundation distributes funds in an amount equal or greater to the amount of funds donated from bingo proceeds for its charitable purposes in Texas.

As noted above, the licensed authorized organization must maintain records necessary to substantiate (1) that the use of funds is directed to a cause, deed or activity that is consistent with the federal tax exemption of the licensed authorized organization, and (2) that the proceeds are ultimately used for its charitable purposes in Texas.

The same criteria discussed in BAO # 2007-0921-0001 apply to any out of state distribution. Determination of whether a specific distribution is allowable would depend on evaluation of specific facts relating to the distribution.

SUMMARY

If the licensed authorized organization can prove that the use of bingo funds is directed to a cause, deed or activity that is consistent with the federal tax exemption the licensed authorized organization obtained under 26 U.S.C. §501, is consistent with the Texas Occupations Code §2001.002 definition of non-profit organization, and can document that the recipient distributes funds in an amount equal or greater to the amount of funds donated from bingo proceeds for its charitable purposes in Texas, the licensed authorized organization may make an out of state distribution. The licensed authorized organization must maintain records necessary to substantiate 1) that the use of funds was for charitable purposes consistent with the federal tax exemption of the licensed authorized organization, and (2) that the proceeds were ultimately used to support the licensed authorized organization's charitable purposes in Texas. Tex. Const. art. III, §47(b)(1); Tex. Occ. Code §2001.002(19); Charitable Bingo Administrative Rule 402.502.

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,

A handwritten signature in cursive script that reads "Bruce Miner".

Bruce A. Miner, Acting Director
Charitable Bingo Operations Division

cc: Mary Ann Williamson, Chairman
J. Winston Krause, Commissioner
Cynthia Tauss Delgado, Commissioner
Gary Grief, Executive Director
Bob Biard, General Counsel