

Commissioners:

J. Winston Krause,
Chairman

Jodie G. Baggett

Katie Dickie Stavinoha

John W. Townes, III

Mary Ann Williamson



TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Sandra K. Joseph, *Charitable Bingo Operations Director*

April 28, 2014

Kris Keller
7515 Shadylane Drive
San Antonio, TX 78209

Re: Bingo Advisory Opinion Request No. 2014-0227-0002

Dear Mr. Keller:

This Bingo Advisory Opinion is in response to your February 27, 2014 e-mail posing the following questions:

The Bingo Enabling Act does not address routing of computers from one bingo hall to another. But it does address premises. "Premises" defined by the TLC- "Premises" means the area subject to the direct control of and actual use by a licensed authorized organization or group of licensed authorized organizations to conduct bingo. The term includes a location or place. Here is the definition of "Public Property"- that which is dedicated to the use of the public and/or that over which the state has dominion and control. When a bingo hall transports their electronic units from one location to another location during this transport when and if the vehicle gets onto a public road the bingo equipment is no longer on the premises under the charities control. At this point only a distributor or manufacturer can reinstall these electronic units. HB1474 section 20 section 2001.313 (b) an individual listed in the registry may be involved in the conduct of bingo or act as an operator at any location at which bingo is lawfully conducted.

Questions?-

- 1.) Does all bingo equipment and supplies have to be under the direct control of the charities?
- 2.) Who is responsible for these units during transportation? Would it have to be a charity employee licensed by the TLC?
- 3.) Is it permissible for a unit to pay an employee of the unit from their bingo bank account for work performed by that individual off premise of the bingo hall?
- 4.) If during the routing process the bingo electronics become [compromised] (meaning being altered so that a unit can play more than 66 cards or tampered with in anyway) who would be held responsible?

ANSWER:

Subsection 2001.407(e) of the Bingo Enabling Act (“Act”) generally provides that a licensed authorized organization may not obtain by purchase or otherwise bingo equipment or supplies from a person other than a licensed distributor.¹ The Act does not, however, address the extent of control that a licensed authorized organization must exercise over bingo equipment or supplies it has obtained from a licensed distributor. The Texas Lottery Commission’s (“Commission”) administrative rules do provide that all bingo equipment is subject to inspection at any time by a representative of the Commission, and that a licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by that organization is in proper working condition. 16 Tex. Admin. Code § 402.200(b)(1). Therefore, a licensed authorized organization must maintain a sufficient level of control over all bingo equipment it uses to ensure that Commission representatives may inspect the equipment at any time and that the equipment is in proper working condition. Licensed authorized organizations that are members of a bingo accounting unit must maintain this same level of control over bingo equipment.

The Commission’s rules provide that particular card-minding devices may be used at multiple bingo premises. *See id.* § 402.326(c). But neither the Act nor the Commission’s rules directly address the transport of card-minding devices between bingo premises. In the absence of such direction in the Act or rules, it is our opinion that either the licensed authorized organization(s) that use the card-minding devices at either premises or the licensed distributor that leases the card-minding devices may transport the devices between bingo premises.² The licensed authorized organization(s) or distributor transporting the devices is responsible for the devices during transport and must ensure that the devices are in proper working condition.

A bingo accounting unit is “two or more licensed authorized organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operations.” Tex. Occ. Code § 2001.431(1). Section 2001.435 of the Act provides for the establishment and maintenance of a unit’s bingo account, and rule 402.203(i)(1) requires that a unit’s bingo account be maintained in compliance with the same provisions of the Act and rules applicable to a licensed authorized organization. Therefore, funds deposited into a unit’s bingo account generally may only be used for: (1) the payment of necessary or reasonable bona fide expenses, including compensation of personnel, incurred and paid in connection with the conduct of bingo; and (2) the distribution of funds to the accounts of the unit’s individual members. *See id.* § 2001.435(c). The Act permits a unit to pay an employee for work performed in connection with the conduct of bingo from the unit bank account. There is no statute or rule that requires such work to be performed on the bingo premises.

As previously stated, a licensed authorized organization has a continuing responsibility to ensure that all bingo equipment used by that organization is in proper working condition. If any bingo

¹ A licensed authorized organization may purchase bingo cards or used bingo flash boards or blowers from another licensed authorized organization, provided that the Commission consents to the sale. Tex. Occ. Code § 2001.407(f).

² Costs associated with the transport of the devices that are paid with bingo account funds must still qualify as “necessary or reasonable bona fide expenses . . . incurred and paid in connection with the conduct of bingo[.]” Tex. Occ. Code § 2001.453.

equipment, such as card-minding devices, becomes compromised (*e.g.* not in compliance with applicable statutes and rules) or is modified in an unauthorized fashion, that equipment would no longer be in proper working condition. The licensed authorized organization that uses the equipment may bear some responsibility in that situation. Other individuals or entities, including those transporting the equipment between premises, may also be held responsible, depending on the facts of a particular case. *See, e.g.*, 16 Tex. Admin. Code § 402.328(d) (delineating a manufacturer's, distributor's, and licensed authorized organization's responsibilities upon detecting or discovering any defect, malfunction, or problem with a card-minding system). Ultimately, the Commission would conduct an investigation to determine what individuals and entities are responsible for compromising, or making unauthorized modifications to, the bingo equipment.

SUMMARY

A licensed authorized organization must maintain a sufficient level of control over all bingo equipment it uses to ensure that Commission representatives may inspect the equipment at any time and that the equipment is in proper working condition. Licensed authorized organizations that are members of a bingo accounting unit must maintain the same level of control over bingo equipment.

It is our opinion that either the licensed authorized organization(s) that use the card-minding devices at either premises or the licensed distributor that leases the card-minding devices may transport the devices between bingo premises. The licensed authorized organization(s) or distributor transporting the devices is responsible for the devices during transport and must ensure that the devices are in proper working condition.

The Bingo Enabling Act permits a unit to pay an employee for work performed in connection with the conduct of bingo from the unit bank account. There is no statute or rule that requires such work to be performed on the bingo premises.

If bingo equipment is compromised or modified in an unauthorized fashion, the licensed authorized organization that uses that equipment may bear some responsibility. Other individuals or entities may also be held responsible, depending on the facts of a particular case.

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 "Sandra K. Joseph".

Sandra K. Joseph, Director
Charitable Bingo Operations Division

cc: J. Winston Krause, Chairman
Jodie G. Baggett, Commissioner
Katie Dickie Stavinoha, Commissioner
John W. Townes, III, Commissioner
Mary Ann Williamson, Commissioner
Gary Grief, Executive Director
Bob Biard, General Counsel