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TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

June 21, 2011

Jeffrey L. Minch
President, CEO
Littlefield Corporation
2501 N. Lamar Blvd.
Austin, TX 78705

Re: Bingo Advisory Opinion Request No. 2011-0422-0005

Dear Mr. Minch:

On April 22, 2011, the Texas Lottery Commission (Commission) received your letter requesting a bingo advisory opinion based on the following scenario and questions.

Scenario:

An authorized organization --- operating through an accounting unit --- is suspected of having conducted (or directly benefited from) illegal gambling in, adjacent to or in close proximity to its bingo hall.

This is the same type of gambling which was discussed in the recent Attorney General's Opinion GA-0812 and for which bingo merchandise was awarded as prizes.

If true, the allegations against this entity would likely/potentially include:

1. Promoting gambling (Tx Penal Code Sec 47.03);
2. Keeping a Gambling Place (Tx Penal Code Sec 47.04);
3. Communicating Gambling Information (Tx Penal Code Sec 47.05); and,
4. Owning or Possessing a Gambling Device (Tx Penal Code Sec 47.06).

The controversy may also become a civil legal matter resulting in a lawsuit against the authorized conductors, the association lessor organization, the charity bingo representatives and the bingo hall manager, for damages incurred by other bingo halls in the area because of potentially criminal conduct.

Questions:

1. Can the authorized organizations or accounting unit use "bingo funds" --- funds held in the bingo account of either the accounting unit or the authorized organization --- to pay legal fees incurred in connection with any of the above described legal action for any of the following:
 1. The bingo hall manager;
 2. The individual charity bingo representatives;
 3. The authorized organizations; or
 4. The accounting unit.
2. Can the authorized organizations or accounting unit distribute "bingo funds" to their respective charity general fund accounts with the objective of using those funds to pay legal fees incurred in connection with any of the above described legal action for any of the following:
 1. The bingo hall manager;
 2. The individual charity bingo representatives;
 3. The authorized organizations; or
 4. The accounting unit.
3. Can the authorized organizations or accounting unit use "bingo funds" --- funds held in the bingo account of either the accounting unit or the authorized organization --- to pay legal fees incurred in connection with any of the above described legal action for any employees of the bingo hall, including the bingo hall manager?

Answer:

Texas Occupations Code § 2001.453(a) provides that a licensed authorized organization (organization) may withdraw funds from the Bingo Account only for (1) payment of necessary or reasonable expenses incurred and paid in connection with the conduct of bingo or (2) charitable purposes. The first issue is whether the proposed uses of bingo funds would qualify as necessary or reasonable expenses incurred and paid in connection with the conduct of bingo or as disbursements for charitable purposes. Assuming for purposes of this opinion that the conduct you describe is illegal gambling, the expenditures as described in your request would not be related to the conduct of bingo, but rather to illegal gambling, and therefore, would not qualify as 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.

If the organization can prove that the expenses 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(19) definition of non-profit organization, then those costs may be recognized as a charitable distribution and therefore an allowable use of funds derived from the conduct of bingo. 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.

Furthermore, 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 an 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. Additionally, the organization should maintain records to demonstrate the reasonableness of the expenses.

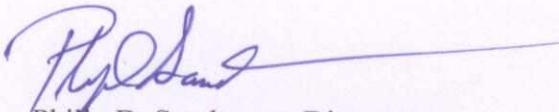
Texas Occupations Code § 2001.002(19) (A) provides that an authorized organization "may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services" Moreover, the organization may not distribute any of its income to its members as beneficiaries of a charitable purpose. Bingo Administrative Rule 16 TAC § 16 TAC 402.501. . .

SUMMARY

Expenditures pertaining to illegal gambling are not related to the conduct of bingo, and, therefore, would not qualify as permissible bingo expenses. An organization may use funds derived from the conduct of bingo to pay for legal expenses for a non-member if it is consistent

with the purposes and objectives for which the organization qualifies as an authorized organization under § 2001.002, and it maintains records to identify its charitable purpose and to substantiate its charitable distributions. An organization may not distribute any of its bingo proceeds to a member except as reasonable compensation for services in accordance with Texas Occupations Code § 2001.002(19) (A).

Yours truly,

A handwritten signature in blue ink, appearing to read "Philip D. Sanderson", with a long horizontal line extending to the right.

Philip D. Sanderson, Director
Charitable Bingo Operations Division

cc: Mary Ann Williamson, Chairman
J. Winston Krause, Commissioner
Gary Grief, Executive Director
Kimberly L. Kiplin, General Counsel