



# Texas Lottery Commission

Commissioners:

Robert G. Rivera, Chairman

Cindy Fields • Mark A. Franz • Erik C. Saenz • Jamey Steen



LaDonna Castañuela  
Director

## **CERTIFIED MAIL NO. 9214 8901 9403 8387 0230 90 RETURN RECEIPT REQUESTED**

August 22, 2022

Jimmy Gaskin  
Bingo Chairperson  
Red Men Tribe 14 Tonkawa  
P.O. Box 154037  
Waco, Texas 76715

Re: Bingo Advisory Opinion Request No. 2022-0608-0001

Dear Mr. Gaskin:

This opinion responds to your request for a bingo advisory opinion (Request) received on June 22, 2022, in which you asked four questions. The Request describes a type of bingo game in which a player may purchase any number of duplicate bingo cards in either paper or electronic form and receive a \$50 prize for each winning card based on a single “bingo.” The Request gives the following example:

“...a player purchases one card each for 20 games (20 identical cards), the player “bingo’s”, and the prize amount for each game is \$50. The player received \$1,000 (\$950 after the 5% prize fee is deducted for each of the 20 winning cards).”

Below are your questions and our responses.

### Question 1:

“Do the Bingo Enabling Act and Charitable Bingo Administrative Rules authorize the bingo games as described herein?”

### Answer:

No. A game that awards multiple prizes or more than \$750 per game based on duplicate bingo cards is unauthorized because it violates the Bingo Enabling Act (BEA) and the Texas Charitable Bingo Administrative Rules (Rules).

As described in response to Question 2, duplicate winning bingo cards constitute a single “game” with a single “prize” that is subject to the \$750 single game prize limit and may qualify as an “individual prize of \$50 or less” for the purposes of the \$2,500 single occasion prize limit. A game offering multiple prizes or a prize of more than \$750 per game for a “bingo” on duplicate winning bingo cards violates the law.

BEA §2001.051(b) provides that “The commission has broad authority and shall exercise strict control and close supervision over all bingo conducted in this state so that bingo is fairly conducted....” Rule §402.200(a) states that “A bingo occasion that is fairly conducted by a licensed organization is one that is...honest....” Offering duplicate bingo cards does not increase a player’s potential prize or their odds of winning despite the promise or appearance that it does. The only purpose of offering duplicate bingo cards is to attempt to subvert the prize limits of the BEA. Therefore, a game that uses duplicate bingo cards is not an honest, authorized form of bingo.

Question 2:

“If these bingo games are authorized, how is the prize amount determined?”

Answer:

A “bingo” on duplicate winning bingo cards as described in the Request constitutes a single “game” with a single “prize” that is subject to the \$750 single game prize limit and may qualify as an “individual prize of \$50 or less” for the purposes of the \$2,500 single occasion prize limit. Any other interpretation would be contrary to the Legislature’s intent to limit prize values.

The relevant section of the BEA is §2001.420, titled “Prizes”, which provides:

- (a) A bingo prize may not have a value of more than \$750 for a single game.
  - (b) A person may not offer or award on a single bingo occasion prizes with an aggregate value of more than \$2,500 for all bingo games other than:
    - (1) Pull-tab bingo; or
    - (2) Bingo games that award individual prizes of \$50 or less.
- ...

The Request implicates the single game and single occasion prize limits and requires interpretation of the terms “game(s)” and “prize(s)” and the phrase “individual prizes of \$50 or less,” none of which are specifically defined in the BEA.<sup>1</sup> Bingo Advisory Opinion No. 2017-0306-0002 (Opinion) addressed similar issues in the context of a “one ball draw” game using duplicate bingo cards that awarded multiple \$50 prizes and concluded that:

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<sup>1</sup> “Bingo” and “game” are defined generally in BEA §2001.002(4) as “a specific game of chance, commonly known as bingo or lotto, in which prizes are awarded on the basis of designated numbers or symbols conforming to randomly selected numbers or symbols.” “Prize” is not defined by the BEA, despite appearing 83 times. The modified term “individual prizes” only appears once, in BEA §2001.420(b)(2).

“A bingo game where one ball draw causes one player to win \$50 many times over based on duplicate bingo cards is not a bingo game that is awarding individual prizes of \$50 or less as contemplated by the BEA. Such a game would guarantee that the winner will receive more than \$50 as a bingo prize. Even if the cards are technically separated, for that bingo game, the prizes were all won based on identical cards and must count together as an “individual prize” for purposes of the statute.

Therefore, these game prizes could not qualify for the exception outlined in Section 2001.420(b)(2). Allowing such a game to avoid the statutory limitations would be contrary to both the plain text and the spirit of the statute. That type of bingo game would be subject to the prize limitations outlined above; namely, that the prize in the game would be subject to the \$750 prize limit and count towards the \$2,500 limit for that bingo occasion.”<sup>2</sup>

To be clear, there have been no changes in the laws, rules, or agency policies on this matter since the Opinion was issued. The Opinion correctly concluded that a game awarding multiple \$50 prizes based on duplicate bingo cards was contrary to both the plain text and the spirit of the BEA. That said, the Opinion appears to treat duplicate bingo cards as distinct “games” with distinct “prizes” for the purpose of determining the prize amount, but as a single “game” with a single “prize” for the purpose of prize limits. It cannot be both.

In the event of a “bingo” on duplicate bingo cards with a prize of \$50, there are at least two reasonable interpretations: either each duplicate bingo card is a distinct “game” with a distinct “prize” that qualifies as an “individual prize of \$50 or less,” or all duplicate bingo cards constitute a single “game” with a single “prize” that qualifies as an “individual prize of \$50 or less.”<sup>3</sup> The first interpretation would allow for unlimited prizes – for example, a “bingo” on 10,000 duplicate bingo cards would be treated as 10,000 distinct “games” with 10,000 distinct “individual prizes of \$50 or less,” and the player would receive \$500,000 without violating the \$750 single game prize limit or the \$2,500 single occasion prize limit. Under the second interpretation, the 10,000 duplicate cards would be treated as a single “game” that won a single “prize” of \$50 that qualified as an “individual prize of \$50 or less,” and neither the single game nor single occasion prize limits would be triggered.

Statutory language is ambiguous when a term could be subject to multiple interpretations. *R.R. Comm’n of Tex. v. Texas Citizens for a Safe Future and Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011). When statutory language is ambiguous, deferring to an agency’s construction is appropriate. *Sw. Royalties, Inc. v. Hegar*, 500 S.W.3d 400, 404-05 (Tex. 2016). Texas courts “will generally uphold an agency’s interpretation of a statute it is charged by the Legislature with enforcing, so long as the construction is reasonable and does not contradict the plain language of the statute.”

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<sup>2</sup> Bingo Advisory Opinion No. 2017-0306-0002, available at [https://www.texaslottery.com/export/sites/lottery/Documents/legal/Bingo\\_Advisory\\_Opinions/2017-0306-0002.pdf](https://www.texaslottery.com/export/sites/lottery/Documents/legal/Bingo_Advisory_Opinions/2017-0306-0002.pdf)

<sup>3</sup> There are at least two other *unreasonable* interpretations: (1) duplicate bingo cards are a single “game” with multiple “prizes” or (2) duplicate bingo cards are distinct “games” with a single “prize.” In either case, it is impossible to determine compliance with the single game prize limit in BEA §2001.420(a). Because that law refers to both “game” and “prize” in the singular, there must be a 1:1 ratio of games to prizes.

*First Am. Title Ins. Co. v. Combs*, 258 S.W.3d 627, 632 (Tex. 2008). A basic principal of statutory interpretation is “to ascertain and give effect to the Legislature’s intent.” *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). Statutes are analyzed “as a cohesive, contextual whole, accepting that lawmaker-authors chose their words carefully, both in what they included and in what they excluded.” *Sommers v. Sandcastle Homes, Inc.*, 521 S.W.3d 749, 754 (Tex. 2017).

In the context of the game described by the Request, the terms “game(s)” and “prize(s)” and the phrase “individual prizes of \$50 or less” in BEA §2001.420 are subject to multiple interpretations and are therefore ambiguous. The Commission is charged with enforcing the BEA and cannot interpret the statute in a manner that is unreasonable or would contradict the plain language of the statute. In interpreting what a “game,” a “prize,” and an “individual prizes of \$50 or less” are in the context of the Request, we must ascertain and give effect to the Legislature’s intent by analyzing the statute as a whole. To properly address the Request, we must apply the two reasonable interpretations to the plain language and overall context of the statute and choose the interpretation that best reflects the Legislative intent. The statute clearly creates (1) a \$750 prize limit for a single game and (2) a \$2,500 prize limit for a single occasion, not including “games that award individual prizes of \$50 or less.”

Interpreting each duplicate bingo card as a distinct “game” with a distinct “prize” would undermine the Legislature’s clear intent to have a \$750 prize limit for a single game. The Legislature could not have intended to prohibit players from winning more than \$750 in a single game while allowing them to win an unlimited amount by simply dividing it into smaller prizes via duplicate bingo cards on the same “bingo.” Our interpretation must give effect to the Legislature’s clear intent to have a \$750 single game prize limit. The most reasonable interpretation is that duplicate bingo cards constitute a single “game” with a single “prize” that is subject to the single game prize limit.

Addressing the \$2,500 single occasion limit is more difficult, because the Legislature clearly intended to allow for more than \$2,500 in prizes per occasion so long as any excess could be attributed to “individual prizes of \$50 or less.” Critics of the bill creating the “individual prizes of \$50 or less” exception noted: “Prize amounts, no matter how small, should not be exempted from the aggregate cap on prizes. When this happens, the cap no longer functions as the upper limit on prizes.”<sup>4</sup> Indeed, it appears that there is no limit to the aggregate value of prizes that may be awarded during an occasion under this exception. But when the Legislature created the “individual prizes of \$50 or less” exception, they did not remove either the single game or the single occasion prize limits, which indicates that they intended to maintain at least *some* limitation on prizes. Treating duplicate bingo cards as distinct “games” with distinct “individual prizes of \$50 or less” would render the BEA’s prize limits *completely* ineffective – there would be no limit whatsoever to the number of duplicate bingo cards played and the number of “individual prizes of \$50 or less” awarded based on a single “bingo.” That cannot be what the Legislature intended when they created the prize limits. The agency’s interpretation of the BEA must give effect to the Legislature’s intent to have *some* limit on prizes. The most reasonable interpretation is that duplicate winning bingo cards constitute a single “game” that awards a single “prize,” which may qualify as “individual prize of \$50 or less” for the purposes of the single occasion prize limit.

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<sup>4</sup> House Research Organization Bill Analysis for HB 394, 83<sup>rd</sup> Texas Legislature. Available at: <https://www.lrl.texas.gov/scanned/hroBillAnalyses/83-0/HB394.PDF>

As applied to the game described in the Request, a “bingo” on any number of duplicate bingo cards may only be awarded a single prize of \$50, which is under the \$750 single game limit and qualifies as “individual prize of \$50 or less” that is exempt from the \$2,500 single occasion prize limit.

Question 3:

“If the prize amount for each game is \$50, is the total prize amount for the multiple games exempt from the cap of \$2,500 for the total aggregate amount of prizes that may be awarded for regular bingo games during a single bingo occasion?”

Answer:

As discussed above in response to Question 2, a “bingo” on duplicate bingo cards constitutes a single “game” with a single “prize.” In the example provided in the Request, the player with 20 duplicate winning bingo cards would win a single prize of \$50, which would not count towards the \$2,500 single occasion prize limit.

Question 4:

“If the prize amount for each game is \$50, is the bingo prize amount for each game exempt from the cap of \$750 for a single bingo game?”

Answer:

As discussed above in response to Question 2, a “bingo” on duplicate bingo cards constitutes a single “game” with a single “prize.” In the example provided in the Request, the player with 20 duplicate winning bingo cards would win a single prize of \$50, which would not violate the single game prize limit of \$750.

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SUMMARY

A “bingo” on duplicate winning bingo cards is a single “game” with a single “prize” that is subject to the prize limits of BEA §2001.420. This issue was previously addressed in Bingo Advisory Opinion No. 2017-0306-0002. Because the only purpose of offering duplicate bingo cards is to attempt to subvert the prize limits of the BEA, it is an unauthorized form of bingo.

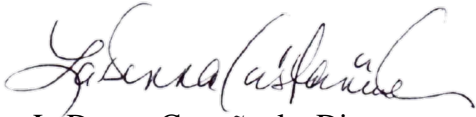
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This advisory opinion cannot be construed as a tax ruling or otherwise interpretative of the Internal Revenue Code. The information provided is completely limited to the context of the BEA and the Charitable Bingo Administrative Rules.

This advisory opinion is based on the laws, rules, and regulations in effect at the time of issuance. All the information provided herein is subject to changes in law.

This opinion is purely advisory in nature and is limited to the particular questions at issue at the time of the facts presented in the Request. Therefore, this opinion must not be relied upon as a pre-determination regarding any conduct which is not substantially consistent with the opinion and the facts stated in the Request.

Sincerely,

A handwritten signature in cursive script, appearing to read 'LaDonna Castañuela'.

LaDonna Castañuela, Director  
Charitable Bingo Operations Division

cc: Robert G. Rivera, Chairman  
Cindy Fields, Commissioner  
Mark A. Franz, Commissioner  
Erik C. Saenz, Commissioner  
Jamey Steen, Commissioner  
Gary Grief, Executive Director  
Bob Biard, General Counsel  
Kim Kiplin, Attorney for Requestor