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TEXAS LOTTERY COMMISSION

Anthony J. Sadberry, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

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RETURN RECEIPT REQUESTED

BAO # 2008-1213-0005

February 14, 2008

Billy W. Boone
Attorney at Law
104 Pine Street, Suite 705
Abilene, TX 79601

Re: Bingo Advisory Opinion No. 2008-1213-0005

Dear Mr. Boone:

This advisory opinion responds to your request received on December 13, 2007. Below are your questions followed by our answer.

1. Does Section 2001.416 of the Bingo Enabling Act (Tex. Occ. Code Ch. 2001) prohibit the sale, during a bingo occasion, of Snapple, Coke, Pepsi, Dr. Pepper, Snickers, and all other commercial products when they are conducting a sweepstakes to promote and advertise their products?
2. Does Section 2001.416 of the Bingo Enabling Act prohibit the use of debit or credit cards to purchase bingo products and snack bar products with a Visa, MasterCard or any other debit or credit card that provides an entry in their sweepstakes with each purchase?

ANSWER:

The Bingo Enabling Act (the Act) contains the following provision regarding games of chance conducted or allowed during a bingo occasion:

- (a) A game of chance other than bingo or a raffle conducted under Chapter 2002 may not be conducted or allowed during a bingo occasion.

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(b) A person authorized to conduct a raffle under this section must be a member of a licensed authorized organization as provided by Section 2001.411.

(c) The commission shall adopt rules for the implementation of this section.

(d) This section does not prohibit the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code.

Tex. Occ. Code §2001.416 generally prohibits games of chance other than bingo during a bingo occasion, regardless of whether the game of chance is itself prohibited under other Texas statutes. There are two exceptions to that general rule, one for raffles conducted in accordance with the Charitable Raffle Enabling Act, Gov't Code ch. 2002, and one for amusement machines that are not "gambling devices" under section 47.01 of the Penal Code.¹ Thus, the Act is quite clear in regard to when raffles may be conducted during a bingo occasion and when amusement machines may be available during a bingo occasion. The issue you raise, however, is not expressly addressed in the statute. Your questions have to do with the application of section 2001.416 to a circumstance in which a game of chance is temporarily "bundled" with another product or service offered during a bingo occasion by a licensed authorized organization or a licensed commercial lessor.

You cite the example of beverage packaging that, during a particular period of time, includes a form for entering a contest for a chance to win prizes. You also cite the example of a financial services company that treats each use of a credit or debit card during a particular time period as an entry in a contest for a chance to win prizes. In both of those examples, the product or service has a value that is independent of the associated game of chance. It is also likely that the licensed organization or licensed commercial lessor made the decision to offer the product or service without regard to the possibility of associated contests and also that the licensed organization or licensed commercial lessor intends to continue making the product or service available after the contest ends. If that is in fact the case, a licensed authorized organization would not violate section 2001.416 by continuing to make the product or service available during the time period when the associated contest is also available.

¹ Under section 47.01, the term "gambling device" does not include "any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less." Penal Code §47.01(4)(B).

SUMMARY

In the limited circumstances described in this opinion, Occupations Code section 2001.416 does not require a licensed authorized organization or a licensed commercial lessor to stop selling a food or beverage product or stop accepting a credit or debit card if, for a limited period of time, purchase of the product or use of the credit or debit card generates an opportunity to enter a contest for a chance to win prizes.

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, Director
Charitable Bingo Operations Division

cc: James A. Cox, Jr., Chairman
C. Tom Clowe, Jr., Commissioner
David J. Schenck, Commissioner
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel