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TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

February 2, 2011

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

Re: Bingo Advisory Opinion Request No. 2010-0409-0005

Dear Mr. Minch:

On April 9, 2010, the Texas Lottery Commission (Commission) received your request for a Bingo Advisory Opinion. On April 27, this office advised you that as a result of your request, the Commission had requested an Attorney General's Opinion on substantive issues involved in your request. On October 22, 2010 the attorney general provided his advice to the Commission and in accordance with that opinion and the Bingo Enabling Act, and the background facts you provided, we advise you, with the answers interlined below in bold, as follows:

Question No. 1

Does it violate the Bingo Enabling Act or Rules to exchange a "chit" or "gambling coupon" for bingo paper, electronic card minders or pull tabs as described above?

Answer: Yes. Only cash or cash equivalents, and pre-paid gifts certificates issued in accordance with the Act are valid payment for bingo products.

Question No. 2

A. Can bingo paper, electronic card minders or pull tabs be "purchased" for any other medium of exchange other than cash, a check, a debit card or a credit card?

Answer: Other than cash and the cash equivalents authorized by rule, and a properly recorded and issued gift certificate, which also must be paid for in cash or a cash equivalent, no other medium of payment is authorized.

B. Can bingo paper, electronic card minders or pull tabs be "purchased" or bartered in exchange for:

- a.) a bag of chickens of appropriate value? **Answer: No.**
- b.) Animal pelts? **Answer: No.**
- c.) Eggs? **Answer: No.**
- d.) A chit? **Answer: No.**

e.) A gambling coupon? **Answer: No.**

Question No. 3

If the 8-liner "amusement" machines are located inside the bingo hall and award a "chit" or "gambling coupon" as a prize are they in conformance with Section 47.01(4)(B) of the Penal Code and/or the Act or Rules as it pertains to the prohibition against a secondary game of chance in the bingo hall?

Answer: They might be in conformance with the Act or Rules if they were in operation at a time, other than the time of a bingo occasion; however, they would constitute a secondary game of chance if operated during a bingo occasion. The attorney general opined in GA-0812 that such machines offering "chits" or "gambling coupons" exchangeable for bingo products are illegal gambling devices and violative of the Penal Code. The bases for his opinion are as follows:

- 1. Texas courts have consistently concluded that an award for further play [specifically, future play in another game - bingo] does not fall within the statutory exception to gambling device. The attorney general concluded that an eight liner that awards bingo cards, card-minding devices and pull-tab bingo are awarding players with something of value other than "exclusively with noncash merchandise prizes, toys, or novelties" which the legislature has exempted from the definition of gambling.**
- 2. "In order to qualify for the gambling device exclusion in §47.01(4)(B), the eight liners at issue must be "designed, made and adapted solely for bona fide amusement purposes." Whether the machines were designed, made and adapted for [the purposes reflected in the §47.01(4)(B) exclusion] will be a fact question that [his] office cannot decide. [...] However, to the extent that the eight liners were designed, made and adapted for the purpose of encouraging participants to play other bingo games, they are not solely for amusement and thus are gambling devices.**
- 3. Amusement machines that award a "chit" or "coupon" redeemable for bingo products, or that award gift certificates for bingo products are not awarding noncash merchandise prize, toy, or novelty falling under the "fuzzy animal" exclusion of §47.01(4)(B), and therefore such machines are gambling devices.**
- 4. Lastly, the gift certificates issued as prizes by 8-liner "amusement" machines and redeemable only at bingo establishments, are analogous to the gift certificates addressed in Hardy¹ in that they are a medium of exchange and are redeemable for merchandise that would otherwise cost money. Like the gift certificates redeemable at other retail establishments, gift certificates used to purchase bingo cards, card-minding devices,**

¹ Hardy v. State, 102 S.W.3d 123, (Tex. 2003)

and pull-tab bingo do not constitute noncash merchandise prizes for lawful 8-liner "amusement" machines.

Furthermore, relying on the attorney general's opinion, an 8-liner machine awarding a "chit" or "gambling coupon" as a prize would constitute a secondary game of chance, if played during a bingo occasion.

Question No. 4

A. If the 8-liner "amusement" machines are found to be not in conformance with Section 47.01 (4) (B), does the charity violate the Bingo Enabling Act or Rules by participating in the illegal scheme or otherwise facilitating its operation by accepting a "chit" or "gambling coupon" in exchange for the purchase of bingo paper, electronic card minders or pull tabs at the point of sale during a bingo session?

Answer. A charity violates the Bingo Enabling Act by accepting a payment medium for bingo products that is not cash or a cash equivalent, or a properly issued and recorded gift certificate, which also must be paid for in cash or a cash equivalent.

B. If so, what penalty will be imposed on such a charity?

Answer: An appropriate administrative penalty, dependent upon the specific facts and circumstances, as provided by the Bingo Enabling Act and the rules of the Commission may be imposed.

C. Does this have any impact on the suitability of the commercial lessor or authorized organization to hold their respective licenses?

Answer: What impact, if any, on the suitability of the commercial lessor or authorized organization to hold their respective licenses would depend on the specific facts and circumstances.

Question No. 5

What is the proper way for an authorized organization to account for the receipt of a "chit" or "gambling coupon" and what is the proper manner in which to deposit these "chits" or "gambling coupons"?

Answer: Since a "chit" or "gambling coupon" is not an authorized medium of payment for bingo products, there is no proper way to account for them.

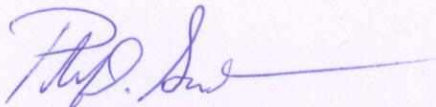
Summary

Only cash and the cash equivalents authorized by rule, and a properly recorded and issued gift certificate, which also must be paid for in cash or a cash equivalent, may be received as authorized payment for bingo products. The attorney general opined in GA-0812 that machines offering "chits" or "gambling coupons" exchangeable for bingo products are illegal gambling devices and violative of the Penal Code. If operated during a bingo occasion, 8-liner machines offering "chits" or "gambling coupons" would constitute a secondary game of chance operated during a bingo occasion and would be prohibited by the Bingo Enabling Act.

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