

Mary Ann Williamson
Chairman

David J. Schenk
Commissioner

J. Winston Krause
Commissioner



TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

CERTIFIED MAIL NO. 7004 0750 0001 3238 3135
RETURN RECEIPT REQUESTED

June 7, 2010

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

Re: Bingo Advisory Opinion Request No. 2010-0409-0006

Dear Mr. Minch:

This advisory opinion responds to your request for a bingo advisory opinion received on April 9, 2010. Specifically, you stated in your request:

Littlefield Charitable Bingo Management Consulting, Inc., [LCBMCI] a wholly owned corporate subsidiary of Littlefield Corporation and a sister company to other wholly owned corporate subsidiaries of Littlefield Corporation which hold commercial lessors' licenses, requests a Bingo Advisory Opinion on the following policy and regulatory questions.

LCBMCI is not a licensed entity under the Bingo Enabling Act.

LCBMCI desires to form a purchasing cooperative [Purchasing Coop] which would concentrate the buying power of a large number of authorized organizations in order to achieve the lowest possible pricing on the acquisition of electronic card minding equipment and services.

1. LCBMCI will solicit membership in the Purchasing Coop by direct solicitation of authorized organizations.
2. LCBMCI will communicate the existence of the Purchasing Coop to all electronic card minding equipment suppliers (licensed distributors).

3. LCBMCI will fashion bid specifications, bid analysis forms, sample contracts and other standardized documents for the use by the Purchasing Coop members to contract for the supply of electronic card minding equipment and services.
4. LCBMCI will solicit bids on behalf of the Purchasing Coop members.
5. LCBMCI will analyze bids received on behalf of the Purchasing Coop members.
6. LCBMCI will develop standardized contract forms for use by the Purchasing Coop members.
7. Authorized organizations and distributors of electronic card minding equipment and services will enter into contracts to provide equipment and services. LCBMCI will not be a signatory to any such contracts.

Question No. 1

Is there any provision of the Bingo Enabling Act or the Administrative Rules which would preclude the formation and operation of the Purchasing Coop contemplated above?

Question No. 2

Is there any provision of the Bingo Enabling Act or the Administrative Rules which would preclude LCBMCI being compensated for its services by the Purchasing Coop?

Question No. 3

Is there any provision of the Bingo Enabling Act or the Administrative Rules which would preclude authorized organizations from joining the Purchasing Coop?

Question No. 4

Is there any provision of the Bingo Enabling Act or the Administrative Rules which would preclude authorized organizations from charging any costs pertaining to the Purchasing Coop from their bingo account as a reasonable and necessary expense?

ANSWERS:

Neither the Bingo Enabling Act nor the Bingo Administrative rules preclude the actions presented in questions 1-3 based on the facts provided in your request. Item 7 in your request indicates that transactions would be in accordance with §2001.407(b) of the Bingo Enabling Act that provides that “[a] licensed distributor may not furnish by sale, lease, or otherwise, bingo

equipment or supplies to a person other than a licensed authorized organization, another licensed distributor, or a person authorized to conduct bingo under Section 2001.551(b)(3) or (4).”

In response to your 4th question, in general, costs related to participation in the Purchasing Coop may be reasonable as items of expense. However, determination of whether or not a specific cost is an allowable expense would depend on evaluation of specific facts relating to the expenditure. Section 402.505 provides the following guidance on the determination of a permissible expense.

...

(b) The Commission will consider the following in determining the reasonableness of an expense:

(1) Whether the amount of the expense incurred exceeds that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs;

(2) Whether the individuals authorizing the amount of the expense acted with prudence in the circumstances, considering their responsibilities to the organization;

(3) Whether there was significant deviation from the established practices of the organization which unjustifiably increased the amount of the expense incurred; and

(4) Whether the licensed authorized organization engaged in arms-length transactions and generally accepted sound business practices.

(c) The Commission will consider the following in determining the necessity of an expense:

(1) Whether the goods or services provided were justifiably required to support the conduct of bingo;

(2) Whether the expense was of a type generally recognized as an expense for the conduct of bingo; and

(3) Whether the expense might contribute to an increase in the proceeds available for charitable distribution.

...

In addition §402.505 (e) provides:

The licensed authorized organization is responsible for maintaining documentation to substantiate the permissibility of expenses incurred for the conduct; administration and operation of bingo. Detailed records, including receipts or copies of invoices that fully document and substantiate the bingo expenses must be complete, true, and accurate, and be maintained for 4 years.

SUMMARY

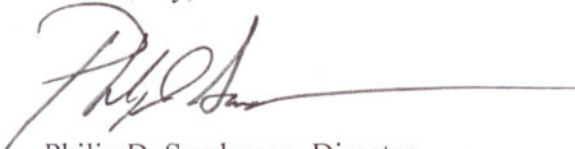
Neither the Bingo Enabling Act nor the Bingo Administrative rules preclude the actions presented in questions 1-3. With regard to question 4, in general, expenses related to participation in a Purchasing Coop may be reasonable as items of Expense. However, determination of whether or not a specific expense is an allowable expenditure of funds would depend on evaluation of specific facts relating to the expenditure. Section 402.505 provides guidance on the determination of a permissible expense and on the requirement that an organization maintain documentation to substantiate the permissibility of expenses.

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
David J. Schenck, Commissioner
J. Winston Krause, Commissioner
Gary Grief, Executive Director
Kimberly L. Kiplin, General Counsel