



INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

To: J. Winston Krause, Chairman
Carmen Arrieta-Candelaria, Commissioner
Peggy A. Heeg, Commissioner
Doug Lowe, Commissioner
Robert Rivera, Commissioner

From: Bob Biard, General Counsel *RB*

Date: February 4, 2016

Re: Consideration of the Status and Possible Approval of Orders in Enforcement Cases

The Commission staff recommends approval of each of the proposed orders in the enforcement cases presented under this item, subject to the Commission's guidance on the following items:

- Tabs I.-K. are three proposed Agreed Orders based on common facts involving the East Plano Bingo Hall. Tab I. was presented at the December 10, 2015 Commission meeting and the Commission voted to deny the staff recommendation. Tabs J. and K. will be presented for the first time at the February 4 meeting. These three cases will be presented together to seek further guidance.

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EXECUTIVE ADMIN.
LOTTERY

Commission Order No. 16-0018

Date: FEBRUARY 4, 2016

DOCKET NO. 362-16-0605 *et al.*

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
THE REVOCATION OF CERTAIN	§	
LOTTERY RETAILER LICENSES	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

During open meeting at Austin, Texas, the Texas Lottery Commission finds that after proper and timely notice was given, the above-styled cases were heard by Administrative Law Judges who made and filed Proposals for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposals for Decision were properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas Lottery Commission, after review and due consideration of the Proposals for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judges as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that the licenses for the Lottery Retailers listed on Attachment A, which is incorporated into this Order for all purposes, are hereby revoked.

Commission Order No. 16-0018

Date: FEBRUARY 4, 2016

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 4TH day of FEBRUARY, 2016.

Entered this 4TH day of FEBRUARY, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Commission Order No. 16-0018

Date: FEBRUARY 4, 2016

ATTACHMENT A

Tab NO.	SOAH DOCKET NO.	LOTTERY RETAILER	LOTTERY LICENSE NO.
A.	362-16-0605	Arturo Luna D/B/A Novedades Aryle	177567
B.	362-16-0606	786 BK LLC D/B/A Fast Stop Grocery	178696

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 23, 2015

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LOCAL SERVICES
GENERAL COUNSEL
VIA E-MAIL

Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th Street
Austin, Texas 78701

RE: Docket No. 362-16-0605; *Texas Lottery Commission v. Arturo Luna, Agent, d/b/a Novedades Aryle, License No. 177567*

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <www.soah.state.tx.us>.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. Elkins".

Gary W. Elkins
Administrative Law Judge
State Office of Administrative Hearings

ALJ/admin

cc: James Person, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - VIA E-MAIL
Arturo Luna, Agent, 300 S. Main Street, Henderson, Tx 75654 - VIA REGULAR MAIL

SOAH DOCKET NO. 362-16-0605

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	
ARTURO LUNA, AGENT D/B/A	§	OF
NOVEDADES ARYLE	§	
	§	
SALES AGENT LICENSE NO. 177567	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Lottery Commission (Staff) requested the revocation of a lottery sales agent's license held by Arturo Luna, Agent d/b/a Novedades Aryle (Licensee) on the grounds that Licensee failed to have sufficient funds available to cover electronic funds transfers to the account of the Texas Lottery Commission (the Commission). The Administrative Law Judge (ALJ) recommends revocation of the license.

On October 29, 2015, in Austin, Texas, ALJ Gary Elkins conducted a hearing to consider Staff's allegations. James Person, Assistant General Counsel, represented the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

I. FINDINGS OF FACT

1. Arturo Luna, Agent d/b/a Novedades Aryle (Licensee), Henderson, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 177567.
2. On October 8, 2015, staff of the Commission (Staff) sent notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing. The notice was sent by certified mail, return receipt requested, to Licensee's address as it appears in the Commission's records.


3. The notice of hearing informed Licensee in 12-point, bold face type that failure to appear at the hearing would result in the factual allegations in the notice of hearing being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on October 29, 2015, at the State Office of Administrative Hearings, located in the William P. Clements Building at 300 West 15th Street, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On **September 16, 2015**, Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commissioner's account and owed the Commission **\$475.00** for the sale of lottery tickets.

II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Texas Government Code § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, as provided by Texas Government Code ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Arturo Luna, Agent d/b/a Novedades Aryle (Licensee) pursuant to the Administrative Procedure Act, Texas Government Code §§ 2001.051-2001.052; § 466.155(b) of the Act; and 16 Texas Administrative Code § 401.205(4).
4. Based upon Findings of Fact Nos. 2 through 5 and Conclusion of Law No. 3, a default should be entered against Licensee, pursuant to 1 Texas Administrative Code § 155.501.
5. Based upon Finding of Fact No. 6, Licensee violated § 466.351 of the Act and 16 Texas Administrative Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Finding of Fact No. 6, Licensee violated 16 Texas Administrative Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to § 466.155 of the Act and 16 Texas Administrative Code §§ 401.158 and 401.352(a), the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Findings of Fact and Conclusions of Law.

8. Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License No. 177567, issued to Arturo Luna, Agent d/b/a Novedades Aryle of Henderson, Texas.

SIGNED November 18, 2015.



GARY W. BELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

November 18, 2015

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GENERAL COUNSEL

Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th Street
Austin, Texas 78701

VIA E-MAIL

**RE: Docket No. 362-16-0606; Texas Lottery Commission v. 786 BK LLC,
Agent, d/b/a Fast Stop Grocery, License No. 178696**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <www.soah.state.tx.us>.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. Elkins".

Gary W. Elkins
Administrative Law Judge
State Office of Administrative Hearings

ALJ/admin

cc: James Person, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - VIA E-MAIL
786 BK LLC, Agent, 1153 Redcloud Dr., Fort Worth, Tx 76120 - VIA REGULAR MAIL

300 W. 15th Street, Suite 502, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)
www.soah.state.tx.us

2016 - 159 00
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SOAH DOCKET NO. 362-16-0606

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
V.	§	
	§	
786 BK, LLC, AGENT D/B/A	§	OF
FAST STOP GROCERY	§	
	§	
SALES AGENT LICENSE NO. 178696	§	
	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Lottery Commission (Staff) requested the revocation of a lottery sales agent's license held by 786 BK, LLC, Agent d/b/a Fast Stop Grocery (Licensee) on the grounds that Licensee failed to have sufficient funds available to cover electronic funds transfers to the account of the Texas Lottery Commission (the Commission). The Administrative Law Judge (ALJ) recommends revocation of the license.

On October 29, 2015, in Austin, Texas, ALJ Gary Elkins conducted a hearing to consider Staff's allegations. James Person, Assistant General Counsel, represented the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

I. FINDINGS OF FACT

1. 786 BK, LLC, Agent d/b/a Fast Stop Grocery (Licensee), Fort Worth, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 178696.
2. On October 8, 2015, staff of the Commission (Staff) sent notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended

to prove at the hearing. The notice was sent by certified mail, return receipt requested, to Licensee's address as it appears in the Commission's records.


3. The notice of hearing informed Licensee in 12-point, bold face type that failure to appear at the hearing would result in the factual allegations in the notice of hearing being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on October 29, 2015, at the State Office of Administrative Hearings, located in the William P. Clements Building at 300 West 15th Street, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On **September 2, 2015**, Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commissioner's account and owed the Commission **\$1,820.25** for the sale of lottery tickets.

II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Texas Government Code § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, as provided by Texas Government Code ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon 786 BK, LLC, Agent d/b/a Fast Stop Grocery (Licensee) pursuant to the Administrative Procedure Act, Texas Government Code §§ 2001.051-2001.052; § 466.155(b) of the Act; and 16 Texas Administrative Code § 401.205(4).
4. Based upon Findings of Fact Nos. 2 through 5 and Conclusion of Law No. 3, a default should be entered against Licensee, pursuant to 1 Texas Administrative Code § 155.501.
5. Based upon Finding of Fact No. 6, Licensee violated § 466.351 of the Act and 16 Texas Administrative Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Finding of Fact No. 6, Licensee violated 16 Texas Administrative Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.

7. Pursuant to § 466.155 of the Act and 16 Texas Administrative Code §§ 401.158 and 401.352(a), the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Findings of Fact and Conclusions of Law.
8. Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License No. 178696, issued to 786 BK, LLC, Agent d/b/a Fast Stop Grocery of Fort Worth, Texas.

SIGNED November 18, 2015.



GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Commission Order No. 16-0021

Date: FEBRUARY 4, 2016

DOCKET NO. 362-15-5367.B

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
HOUSTON SPRING BRANCH	§	
LIONS CLUB	§	
	§	
TAXPAYER NO. 17460549557	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Robert Johnson, III
Gardere Wynn Sewell, LLP
600 Congress Ave., Suite 3000
Austin, TX 78701

During open meeting at Austin, Texas, the Texas Lottery Commission finds that, after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a Proposal for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposal for Decision was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas Lottery Commission, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that the license to conduct bingo issued to the Houston Spring Branch Lions Club, of Houston, Texas is hereby revoked.

Commission Order No. 16-0021

Date: FEBRUARY 4, 2016

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 4TH day of FEBRUARY, 2016.

Entered this 4TH day of FEBRUARY, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

CASE SUMMARY

PARTY NAME: Texas Lottery Commission Staff
DOCKET NO./CASE NAME: 362-15-5367.B; Houston Spring Branch Lions Club

ISSUE(S): Did the Bingo Division properly deny the Respondent's request for a waiver of the net proceeds requirement, and therefore properly deny Respondent's license renewal application?

KEY FACTS: Respondent failed to generate net proceeds for the four quarters preceding its license expiration date, thereby violating the Bingo Enabling Act's (BEA) net proceeds requirement. Respondent requested a waiver of the requirement pursuant to the BEA and Commission rules. To support the waiver, Respondent submitted a business plan. The Bingo Director determined that the plan was not a credible plan to generate net proceeds over the next license period and notified Respondent of his intent to deny a waiver and Respondent's license renewal. Respondent requested a hearing at the State Office of Administrative Hearings (SOAH).

Respondent's handwritten plan included the following items:

- Cut back on "cardminders," resulting in savings of roughly \$31,000 per year;
- Stop advertising in the Bingo Bugle, resulting in savings of \$4,740 per year;
- Stop advertising in the Bingo Newslite, resulting in savings of \$2,310 per year;
- Reduce the number of employees by not refilling three positions; and
- Negotiate an agreement whereby the lessor of the bingo hall would reduce the "per session" charge to Lions Club from \$500 to \$100.

The SOAH Judge found several reasons why the Division reasonably concluded the business plan was not credible. The Division asked for copies of the new lease agreement and for more details regarding the business plan's savings by not refilling certain employee positions. Respondent was unable to provide a lease agreement. The plan itself raised additional questions, including whether a decrease in advertising may cause a decrease in business. Testimony also indicated that Respondent is now, "shorthanded a lot of times", thus raising issues regarding reducing the number of employees.

LEGAL PRINCIPLES INVOLVED:

- BEA §2001.451(g)(1) states in part: "The bingo operations of a licensed authorized organization must: (1) result in net proceeds over the organization's license period...."
- 16 TEX. ADMIN. CODE §402.452(a) states: "Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period...."
- BEA §2001.451(k)(2) provides that a licensed organization may apply for a waiver of the net proceeds requirement. "The commission may grant the waiver on a showing of good cause by the organization.... An organization ... establishes good cause by providing ... a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes."
- 16 TEX. ADMIN. CODE §402.452(e) states: "A licensed authorized organization may apply for a waiver from the net proceeds requirement by showing good cause that compliance is detrimental to the organization's existing or planned charitable purposes. Waiver applications must be submitted in accordance with §402.450 of this chapter (relating to Request for Waiver)."

ACTION REQUESTED: Approve the Proposal for Decision and deny Respondent's license renewal application.

**Arguments by Houston Spring Branch Lions Club in Docket No. 32-15-5367.B;
Texas Lottery Commission v. Houston Spring Branch Lions Club
January 25, 2016**

- This case is about qualifications for a license as opposed to violations of the Bingo Enabling Act. The only qualification raised by the Commission was whether the net proceeds generated by the Unit Trust were positive.
- Lions and the other Unit Members began uncovering evidence of gross negligence and mismanagement activities on the part of the bingo hall manager in the 3rd quarter of 2015. It took some time for details to come together in order to terminate the manager, seek alternatives for running the bingo hall and to hire a new manager.
- Once the causes of our predicament were fully determined and identified we were able to quickly turn around our financial results and show positive net proceeds (see ATTACHMENT A).
- Sufficient detail was not available in time for the hearing and our total response did not come to fruition until after the hearing. By that time it was too late for us to formally modify our waiver request. Additional detail became available to the Unit Members about a month later on December 3, 2015 during the Commission's audit feedback at our bingo hall location. But the docket record was closed on November 24, 2015.
- The Commission's audit feedback made it clear that the bingo hall manager was mishandling the operations of the bingo hall and abusing his position and authority to his own benefit in the form of exorbitant salary compensation and perhaps falsifying expense reimbursements. His actions lead to a depletion of the funds in the Unit Trust checking account.
- The bingo hall manager was terminated on November 30, 2015 and a new management team was engaged on December 1, 2015.
- Lions and other Unit Members are exploring opportunities, including any legal remedies, to recoup any funds paid to the past manager that were not legitimate.
- The new management team has made an immediate impact by reducing expenses, increasing revenue, improving financial reporting to the Unit Members and taking care of past and present liabilities created by the previous manager. All transactions are now shared with all of the Unit Members and reports are made available to the Members on a regular basis.
- Quarterly Net Proceeds for the 4th quarter 2015 were \$70,579 (the highest result since January, 2013—see ATTACHMENT A) and is primarily attributed to the new management team and its performance in December. We are very proud of this very positive result. The new management team not only generated a tremendous revenue stream but also paid liabilities of nearly \$25,000 in December. Other liabilities that were paid with insufficient fund checks were taken care of and past payroll liabilities incurred in November were paid in full.
- With the Charitable Bingo Division's guidance and the leadership of our proven and well respected management team all the pieces of a well-run bingo hall are now in place. An operational business plan for first quarter, 2016 has been developed establishing guidelines to pay our remaining liabilities while continuing to generate positive new proceeds for future months. The plan includes acquisition of a new bond in order to comply with Commission requirements.

ATTACHMENT A**NET PROCEEDS FOR VFW 8790 BINGO UNIT TRUST**

QUARTER	QUARTERLY NET PROCEEDS	ROLLING 4 QUARTERS NET PROCEEDS
20131	\$57,224	0
20132	\$7830	0
20133	(\$28,271)	0
20134	\$27,577	\$64,360
20141	\$28,402	\$35,538
20142	\$4,110	\$31,818
20143	(\$59,179)	\$910
20144	(\$22,365)	(\$49,032)
20151	\$60,314	(\$17,120)
20152	(\$9,480)	(\$30,710)
20153	(\$13,838)	\$14,631
20154	\$70,579	\$107,575

SOAH DOCKET NO. 362-15-5367.B

TEXAS LOTTERY COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	
	§	
HOUSTON SPRING BRANCH LIONS	§	OF
CLUB,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

In this case, the staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) proposes to deny the application of the Houston Spring Branch Lions Club (Lions Club) to renew its license to conduct charitable bingo operations. Staff proposes to deny the application because Lions Club failed to have positive net proceeds during its previous license year, in violation of the Bingo Enabling Act (the Act)¹ and a Commission rule.² The Administrative Judge Law Judge (ALJ) concludes Lions Club failed to prove it was entitled to have its application granted and recommends that the Commission deny the application.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to Texas Occupations Code ch. 2001. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code ch. 2003. Because it is the applicant seeking affirmative relief, in the form of a renewed license, Lions Club has the burden of proof in this proceeding, pursuant to 1 Texas Administrative Code § 155.427.

¹ Tex. Occ. Code ch. 2001.

² Staff's notice of hearing in the matter also asserts that the application should be denied for two additional reasons. At the hearing, however, Staff acknowledged that they were dropping the other two allegations and only pursuing the allegation that Lions Club failed to have positive net proceeds. Tr. at 87-88.

On June 30, 2015, Staff sent a letter notifying Lions Club that it was proposing to deny the club's renewal application.³ On July 6, 2015, Lions Club appealed the proposed denial and requested a hearing.⁴ After the parties were unable to resolve the matter, a notice of the hearing was sent to Lions Club on August 24, 2015.⁵ The adequacy of the notice is not in dispute.

The hearing was convened before ALJ Hunter Burkhalter on November 13, 2015. Kristen Guthrie represented Staff; Robert Johnson represented Lions Club. The hearing was adjourned the same day. The record closed on November 24, 2015, with the filing of the hearing transcript.

II. APPLICABLE LAW

When an "authorized organization," such as a fraternal organization, wishes to conduct charitable bingo operations in Texas, it must first apply for and obtain a license from the Commission.⁶ The application must be on a form prescribed by the Commission.⁷ Licenses are generally effective for one year, requiring the holder to annually apply for renewal.⁸ The Commission may deny a license renewal application if the applicant has violated any provision of the Act or any Commission rules adopted pursuant to the Act.⁹

Among many other requirements, the bingo operations of a licensed authorized organization must result in "net proceeds [as opposed to net losses] over the organization's license period" (the Net Proceeds Requirement).¹⁰ The net proceeds of a license holder with a 1-year license must be

³ Staff Ex. 1.

⁴ Staff Ex. 2.

⁵ Staff Ex. 3.

⁶ Tex. Occ. Code § 2001.101(a).

⁷ Tex. Occ. Code § 2001.102(a).

⁸ Tex. Occ. Code § 2001.105(c).

⁹ Tex. Occ. Code § 2001.353(a).

¹⁰ Tex. Occ. Code § 2001.451(g)(1).

calculated based on the license holder's quarterly reports for the four calendar quarters immediately preceding the license expiration date.¹¹

A licensed authorized organization may apply to the Commission for a waiver of various requirements, including a waiver of the Net Proceeds Requirement.¹² The Commission "may" grant such a waiver if the applicant shows "good cause . . . that compliance with [the requirement for which a waiver is sought] is detrimental to the organization's existing or planned charitable purposes."¹³ Good cause may be proved by providing to the Commission:

- (1) credible evidence of circumstances beyond the control of the organization, including force majeure; or
- (2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.¹⁴

The Commission has adopted a rule specifying detailed and extensive requirements for a waiver application.¹⁵

III. EVIDENCE PRESENTED

Lions Club is a fraternal organization that has, since at least 2006, held an annually renewed license to conduct charitable bingo in Houston, Texas. Its current license became effective on January 7, 2014, and was to expire on January 6, 2015.¹⁶ Lions Club timely applied to renew its license prior to the expiration of its current license.¹⁷

¹¹ 16 Tex. Admin. Code § 402.452(b).

¹² Tex. Occ. Code § 2001.451(k); 16 Tex. Admin. Code § 402.450(b).

¹³ Tex. Occ. Code § 2001.451(k).

¹⁴ Tex. Occ. Code § 2001.451(k).

¹⁵ 16 Tex. Admin. Code § 402.450(b).

¹⁶ Staff Ex. 11. The license remains in effect, due to the pendency of this appeal.

¹⁷ Staff Ex. 4.

Ronald Landers testified at the hearing. He is the bingo chairman, and past president and secretary treasurer of Lions Club. He testified that the club currently consists of 18 members, primarily senior citizens. Bingo is the club's primary source of revenue. The only other revenue-raising activity that the club engages in is a sale of hams and briskets at Christmas time. Mr. Landers estimated that, in the quarters in which the bingo operation has net proceeds, the club typically receives bingo revenue of about \$3,000, which it can then distribute to charities. However, it gets no distributions in quarters with net losses. He also testified that the club received no revenue from bingo during the year 2012. The sale of hams and brisket raises only about \$1,100 per year for the club. Mr. Landers described a number of charitable causes, primarily related to children, to which the club donates out of its bingo proceeds. He testified that if the club loses its bingo license, then it would have to slash its charitable giving.

Lee Hillman Jr., the "unit manager" for the bingo hall where Lions Club operates, testified at the hearing. He explained that Lions Club is one of five charitable organizations that have banded together as a "unit trust" to operate charitable bingo out of a single location, known as VFW Bingo. Mr. Hillman essentially acts as the manager of bingo operations for all five organizations. Net proceeds from VFW Bingo are distributed equally among the five charitable organizations. Thus, for example, if a total of \$15,000 is distributed for charitable uses in a quarter, Lions Club's share will be \$3,000.¹⁸

VFW Bingo is required to submit quarterly accounting reports to the Commission. According to the quarterly reports for the year 2014, the bingo hall's net proceeds were as follows:

2014 Q1	\$28,402
2014 Q2	\$4,110
2014 Q3	(\$59,179)
2014 Q4	(\$22,365)
Annual Total	(\$49,032)¹⁹

¹⁸ Tr. at 62-65.

¹⁹ Staff Ex. 10.

As a member of the unit trust, Lions Club receives a percentage of the net proceeds (or bears a percentage of the net losses). In other words, based on the quarterly reports for the four calendar quarters immediately preceding the license expiration date, Lions Club did not have net proceeds but, rather, had net losses, therefore failing the Net Proceeds Requirement.

In February 2015, Staff notified Lions Club that it was proposing to deny its renewal application because the club did not meet the Net Proceeds Requirement.²⁰ In early March 2015, VFW Bingo applied for a waiver from the Net Proceeds Requirement on behalf of Lions Club and the other members of the unit trust.²¹ The waiver request explained why compliance with the Net Proceeds Requirement would be detrimental as follows:

The compliance to be waived . . . is detrimental to [Lions Club] because they have no other means of support for their organizational needs + other types of expenses – Helping the Poor + Homeless²²

The entire waiver application, which includes a “business plan,” is short, handwritten, difficult to read, written in a very cursory style that lacks proper grammar and complete sentences, and lacks a great deal of detail. As best the ALJ can discern, VFW Bingo explained in the business plan that it would:

- cut back on “cardminders,”²³ resulting in savings of roughly \$31,000 per year;
- stop advertising in the Bingo Bugle, resulting in savings of \$4,740 per year;
- stop advertising in the Bingo Newslane, resulting in savings of \$2,310 per year;
- reduce the number of employees, by not refilling three positions that were soon to be vacated by retirements; and

²⁰ Staff Exs. 5-6.

²¹ Staff Ex. 7.

²² Staff Ex. 7.

²³ Apparently, cardminders are a type of “computer” used by the bingo hall. Tr. at 53.

- negotiate an agreement whereby the lessor of the bingo hall would reduce the “per session” charge to Lions Club from \$500 to \$100.²⁴

The business plan also pointed out that receipts in the months of January and February 2015 had been “very good.”

On March 19, 2015, Staff asked the unit trust for more details. Specifically, Staff asked VFW Bingo (on behalf of Lions Club) to:

- identify the amount of annual savings generated by not refilling the three positions that would soon be vacated through retirements; and
- provide a copy of the new lease agreement whereby the lessor agreed to lower the per session rent from \$500 to \$100.²⁵

The bingo hall provided a response in which it stated that \$25,440 would be saved in 2015 by not refilling the three positions. As to the issue of the rent, the hall wrote, confusingly: “We have no contract at this time. I still need 9400/mo for rent. So I’ll charge them 14,000 +3400 for rent each month.” The response is also handwritten and hard to decipher. In May 2015, Staff notified the Lions Club of its conclusion that the club had failed to show good cause and that the waiver request should be denied.²⁶

At the hearing, VFW Bingo submitted its quarterly accounting reports for the first three quarters of 2015, which indicate that the hall’s net proceeds were as follow:

2015 Q1	\$60,314
2015 Q2	(\$9,480)
<u>2015 Q3</u>	<u>(\$13,839)</u>
Total (3 Qs)	\$36,995²⁷

²⁴ Staff Ex. 7.

²⁵ Staff Ex. 8.

²⁶ Staff Ex. 9

²⁷ Ex. R1.

The hall also submitted data summarizing its quarterly and annual returns for the years 2012, 2013, and 2014, and the first three quarters of 2015. That data shows:

- In 2012, the unit trust had positive returns in Qs 1, 3, and 4; a negative return in Q2; and positive overall returns of \$35,829 for the year;
- In 2013, the unit trust had positive returns in Qs 1, 2, and 4; a negative return in Q3; and positive overall returns of \$64,411 for the year;
- In 2014, the unit trust had positive returns in Qs 1 and 2; negative returns in Qs 3 and 4; and negative overall returns of (\$49,032) for the year;
- In 2015, the unit trust had a positive return in Q 1 and negative returns in Qs 2 and 3.²⁸

Mr. Hillman is the person who prepared the waiver application. He explained the most profitable quarter for bingo operations is typically the first quarter of the year, largely because many customers receive their federal tax return refunds at that time and have that extra money to spend on gambling at bingo halls.

As to the proposed items in the business plan, Mr. Hillman's testimony about the rent was confusing. He denied that the lessor of the bingo hall was reducing the "per session" charge to Lions Club from \$500 to \$100. Rather, he explained that he used his discretion to charge the Lions Club no more than \$500 but no less than \$100 per bingo session. Later, he said he might occasionally charge Lions Club \$50, or \$10, or \$0 per session.²⁹ As to the rent paid to the owner of the bingo hall, Mr. Hillman testified that the owner had wanted to increase the monthly rent from \$9,400 to \$10,400. When Mr. Hillman protested, the owner relented and agreed to keep the rent at \$9,400, with the proviso that the lease is now on a month-to-month basis, meaning that the owner can terminate the lease on 30-days' notice if he finds a tenant who is willing to pay a higher rent.³⁰

²⁸ Ex. R2.

²⁹ Tr. at 60.

³⁰ Tr. at 50.

Another item in the business plan involved reducing the workforce through retirements. Mr. Hill testified that, in addition to the three employees who retired that were mentioned in the plan, he fired an additional two employees to further reduce the payroll. However, he also acknowledged that the bingo hall is now “shorthanded a lot of times.”³¹ Mr. Landers acknowledged that having fewer employees slows down customer service and that the bingo hall had received complaints about slow service.³² In an effort to improve the bingo hall’s bottom line, Mr. Hillman has also, in recent months, lowered operating costs by not opening for business on Saturdays.

During the hearing, it was clear that counsel for Lions Club was attempting to prove that revenues at VFW Bingo were unusually low during the year 2014 due to unusual rainfall events. However, the testimony provided by the witnesses did not support that theory. For example, when Mr. Hillman was asked why revenues in the first quarter of 2014 were significantly lower than revenues in previous first quarters, he replied: “We *probably* had rainouts in the first quarter. Three or four of them easy, maybe five. *That’s usually when we have our rainouts is in the first quarter.*”³³ This testimony does not support the notion that rain in 2014 was worse than in any other year. The testimony also suggests that Mr. Hillman was guessing, rather than testifying based on personal knowledge. Similarly, when asked why revenues were low in quarters three and four of 2014, Mr. Hillman did not blame the weather, he simply blamed low attendance.³⁴ With Mr. Landers, the following exchange took place:

Q: And in terms of the latter half of 2014, when the numbers were so bad, did y’all encounter a number of weather events during that time period?

A: That’s a year and a half ago. I really can’t remember.³⁵

³¹ Tr. at 54.

³² Tr. at 23.

³³ Tr. at 47 (emphasis added).

³⁴ Tr. at 48.

³⁵ Tr. at 14.

Mr. Hillman did not express optimism about the bingo hall's prospects going forward. He described October 2015 as "a bad month," stated that the Commission needs to understand that "business is down,"³⁶ and that "business has gone down quite a bit."³⁷ When asked about the long-term prospects for the bingo hall, Mr. Landers testified as follows:

Q: . . . [I]s it your opinion that the bingo hall can be successful in that location?

A: We've been there a long time and I think so. It's just in the area there was three or four more new bingo halls out in Katy area that has taken some of the people.³⁸

Mr. Hillman testified that, "lately . . . we've had more and more [illegal] gaming rooms open up" in the area that are competing with the bingo hall.³⁹

Mr. Hillman and his wife both work at the bingo hall. He estimated that he earns roughly \$110,000 per year and she earns between \$60,000 and \$75,000 per year from the bingo hall.

Mr. Landers testified about patterns of attendance at bingo halls. He explained that customers are generally more inclined to play early in the month, rather than later in the month when their money supplies are lower, and more likely to play when the weather is nice, whereas any inclement weather will keep them at home. According to Mr. Landers, the Houston area experienced several flooding events in 2015, including on Memorial Day and Halloween weekend. He suggested that this fact might help explain why Lions Club had negative net proceeds in the second and third quarters of 2015.

Knowles Cornwell testified on behalf of Lions Club. He works for a distributor of bingo supplies and VFW Bingo is one of his customers. He described the bingo hall as "competitive,"

³⁶ Tr. at 57.

³⁷ Tr. at 54.

³⁸ Tr. at 16.

³⁹ Tr. at 34-35.

relatively small, with a predominantly older clientele that play mostly in the daytime.⁴⁰ Mr. Cornwell prepared a chart showing the net annual returns of six bingo halls, including VFW Bingo, for the years 2011-14. According to Mr. Cornwell, the six represent all licensed bingo halls in Houston, Texas. Mr. Cornwell explained that his chart demonstrates that “all halls have tremendous variances and fluctuations in net proceeds from year to year.”⁴¹ From the chart, Mr. Cornwell argued that bingo halls should not be expected to prove their profitability each and every year.

Mr. Cornwell’s chart does indicate that the amount of net proceeds at a given hall can vary quite a bit from year to year. However, the only hall on the chart with net losses for a whole year is VFW Bingo.⁴² Moreover, unlike several of the other halls on the chart, VFW Bingo’s net proceeds have generally been on a rather steady downward slope since 2011.⁴³

Joy Bishop, the accounting services coordinator for the Commission, testified at the hearing. She explained that Staff believes the waiver application should be denied because the business plan failed to provide sufficient assurance that VFW Bingo could turn its operations around and have positive returns going forward. For example, Ms. Bishop noted that cutting back on advertising not only reduces costs but also can reduce revenues. Similarly, by not filling employee positions vacated by retirements, the bingo hall might reduce the level of customer service, thereby harming revenues in the long run. As to the issue of rents, Ms. Bishop testified that VFW Bingo failed to prove that any meaningful and reliable costs saving had been achieved in the business plan. Ms. Bishop testified that, over the years, VFW Bingo has generally experienced a downward trend in net proceeds, which reinforces the notion that the bingo hall is not likely to turn its prospects around.

⁴⁰ Tr. at 71.

⁴¹ Tr. at 73.

⁴² There is one other hall showing losses for the year 2011. However, Mr. Cornwell explained that the hall began operations in 2011, so that entry is not applicable because it does not reflect a whole year. Tr. at 76, 78.

⁴³ Ex. R3.

IV. ANALYSIS

There is no dispute that, based on Lions Club's quarterly reports for the four calendar quarters immediately preceding the license expiration date, the club failed to have net proceeds over its license period, thereby violating the Net Proceeds Requirement set forth in the Act and the Commission's rules.⁴⁴ For this reason, the Commission is entitled to deny the club's license renewal application.⁴⁵

The only question is whether the club proved it was entitled to a waiver of the Net Proceeds Requirement. The statute provides that the Commission "may" grant a waiver if good cause is shown. The use of the word "may" indicates that the Commission may also choose *not* to grant a waiver even if good cause is shown. Stated differently, the statute gives the Commission a substantial amount of discretion in its decisions on waiver applications.⁴⁶ The question to be answered when evaluating Lions Club's waiver application is whether the club has shown good cause "that compliance with [the Net Proceeds Requirement] is detrimental to the organization's existing or planned charitable purposes."⁴⁷ The club simply argued that, because bingo is essentially its only source of funds, loss of its license would eliminate its ability to raise money for charity. The ALJ notes that a failure to have net proceeds also eliminates the club's ability to raise funds. Moreover, the club's good cause argument is essentially an argument for a blanket exception to the Net Proceeds Requirement.

The waiver statute provides that good cause may be proved by one of two methods. First, a waiver applicant can offer "credible evidence of circumstances beyond the control of the organization, including force majeure" (a Force Majeure Waiver).⁴⁸ At the hearing, Lions Club's counsel seemed to hint that a Force Majeure Waiver was appropriate, by suggesting that flooding

⁴⁴ Tex. Occ. Code § 2001.451(g)(1); 16 Tex. Admin. Code § 402.452(a).

⁴⁵ Tex. Occ. Code § 2001.353(a).

⁴⁶ Tex. Gov't. Code § 311.015(1).

⁴⁷ Tex. Occ. Code § 2001.451(k).

⁴⁸ Tex. Occ. Code § 2001.451(k)(1).

caused the net losses in 2014. However, as discussed above, the evidence offered by the club did not really support this argument. Moreover, the Lions Club's waiver application does not ask for a Force Majeure Waiver.

Instead, the club's waiver application was based on the second method, whereby an applicant can seek a waiver by providing "a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes" (a Credible Business Plan Waiver).⁴⁹ There are a number of reasons why the Commission reasonably concluded that the business plan offered by Lions Club was not credible and did not provide a sufficient level of assurance that the bingo hall would turn its prospects around. The plan itself was an unimpressive piece of work, written in an often unintelligible manner. The plan consisted solely of cost-cutting measures by the hall. However, the cost-cutting measures proposed raised as many questions as they answered.

For example, although it may have saved roughly \$31,000 per year to reduce the number of "cardminders," there is nothing in the record by which the ALJ can determine specifically what cardminders are used for, and whether a substantial reduction in their usage might cause more harm than the savings justify, by reducing the quality of customer service and thereby reducing attendance and revenues at the bingo hall. Similarly, the bingo hall's decision to slash its advertising budget could easily be viewed as more harmful than helpful to the bottom line. The decision to reduce the number of employees seems rather dangerous, especially because Mr. Hillman acknowledged that the hall is now "shorthanded a lot of times," and Mr. Landers admitted receiving complaints about slow service.

The club's claim that the "per session" charge would be reduced was confusing, and it is impossible to determine if it would result in any real savings. Mr. Hillman claimed that he would use his discretion to charge the Lions Club no more than \$500 and no less than \$100 per bingo session. There is nothing in the record to clarify what the previous per session charge structure was,

⁴⁹ Tex. Occ. Code § 2001.451(k)(2).

or whether the new structure is any cheaper over the long run. Moreover, because it relies on Mr. Hillman's discretion, it is not a provision that Lions Club has the power to enforce.

The club's claims about the rent paid to the lessor were equally troubling. Mr. Hillman was apparently able to prevent the owner of the bingo hall from raising the rent. This victory came, however, at a high cost. VFW Bingo's lease is now on a month-to-month basis, meaning that the owner can terminate the lease on 30-days' notice. It is safe to assume that loss of the business location would be devastating to the hall's prospects of having net proceeds. Moreover, preventing the rent from going up does not really lessen the Lions Club's problems, it merely prevents the problems from becoming more acute.

At the hearing, Lions Club argued that the "proof is in the pudding." That is, the club argued that its net proceeds in quarter 1 of 2015 were especially strong, thereby demonstrating that its cost-cutting measures were proving to be a success. It is true that the net proceeds in that quarter were much higher than the bingo hall's net proceeds in Q1 of 2014. This fact, however, is not dispositive. By statute, a waiver application is to be judged by the merits of the application and accompanying business plan, not by subsequent facts.⁵⁰

For all of these reasons, the ALJ concludes the Commission acted reasonably when it: (1) concluded that the business plan submitted by Lions Club was not credible; (2) concluded that the waiver application did not establish good cause for excusing compliance with the Net Proceeds Requirement; and (3) proposed to deny the club's renewal application.

V. FINDINGS OF FACT

1. The Houston Spring Branch Lions Club (Lions Club) is a fraternal organization that has, since at least 2006, held an annually-renewed license to conduct charitable bingo in Houston, Texas.

⁵⁰ The ALJ also notes that the business plan submitted by the club was prepared near the end of Q1 of 2015, suggesting that the effects of the plan would not be felt in Q1; net proceeds in Q2 of 2015 were worse than net proceeds in Q2 of 2014; net proceeds in Q3 of 2015 remained negative; and Mr. Hillman's projections for Q4 of 2015 were not optimistic.

2. The license held by Lions Club is issued by the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission).
3. Lions Club's current license became effective on January 7, 2014, and was to expire on January 6, 2015.
4. Lions Club timely applied to renew its license prior to the expiration of its current license.
5. Bingo is the Lions Club's primary source of revenue, which is then used for charitable purposes.
6. Lions Club is one of five charitable organizations that have banded together as a "unit trust" to operate charitable bingo out of a single location, known as VFW Bingo.
7. Net proceeds from VFW Bingo are distributed equally among the five charitable organizations.
8. VFW Bingo (and, by extension, the Lions Club) did not have net proceeds but, rather, had net losses for the calendar year immediately preceding January 6, 2015 (the expiration date of Lions Club's current license).
9. In February 2015, the staff (Staff) of the Commission notified Lions Club that it was proposing to deny its renewal license application because the club did not have net proceeds in 2014.
10. In March 2015, VFW Bingo applied for a waiver from the net proceeds requirement on behalf of Lions Club and the other members of the unit trust.
11. The waiver application did not establish good cause why compliance with the net proceeds requirement should be waived.
12. The business plan submitted with the waiver application was not credible and did not provide a sufficient level of assurance that the bingo hall would turn its prospects around.
13. Staff acted reasonably when it: (1) concluded that the business plan submitted by Lions Club was not credible; (2) concluded that the waiver application did not establish good cause for excusing compliance with the net proceeds requirement; and (3) proposed to deny the club's license renewal application.
14. On June 30, 2015, Staff notified Lions Club that it was proposing to deny the club's application.
15. On July 6, 2015, Lions Club appealed the proposed denial and requested a hearing.

16. A Notice of Hearing was sent to Lions Club on August 24, 2015. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
17. The hearing was held before ALJ Hunter Burkhalter on November 13, 2015. Kristen Guthrie represented Staff; Robert Johnson represented Lions Club. The hearing ended the same day. The record closed on November 24, 2015, with the filing of the hearing transcript.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex Occ. Code ch. 2001.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. As the permit applicant, Lions Club has the burden of proof in this proceeding. 1 Tex. Admin. Code § 155.427.
4. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
5. By failing to have net proceeds in 2014, Lions Club violated Tex. Occ. Code § 2001.451(g)(1) and 16 Tex. Admin. Code § 402.452(a).
6. Lions Club failed to prove that it was entitled to a waiver of the requirement in Tex. Occ. Code § 2001.451(g)(1) and 16 Tex. Admin. Code § 402.452(a).
7. Lions Club's renewal application should be denied.

SIGNED December 8, 2015.



HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Commission Order No. 16-0022

Date: FEBRUARY 4, 2016

DOCKET NO. 362-15-3088.B

TEXAS LOTTERY COMMISSION,	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
VS.	§	
	§	
AMERICAN LEGION POST 271	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Robert Douglass
American Legion Post 271
P.O. Box 814
Rosenberg, TX 77471-0814

Mr. Robert Rohan
American Legion Post 271
P.O. Box 814
Rosenberg, TX 77471-0814

During open meeting at Austin, Texas, the Texas Lottery Commission considered the *Motion for Rehearing* filed December 29, 2015, by American Legion Post 271, Respondent in the above-styled case, and the *Texas Lottery Commission's Reply to Respondent's Motion for Rehearing*. After review and due consideration of the foregoing:

NOW, THEREFORE, IT IS ORDERED that American Legion Post 271's *Motion for Rehearing* is DENIED.

Commission Order No. 16-0022

Date: FEBRUARY 4, 2016

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 4TH day of FEBRUARY, 2016.

Entered this 4TH day of FEBRUARY, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

December 29, 2015

TEXAS LOTTERY COMMISSION ATTN: GENERAL COUNSEL
P.O. BOX 16630
AUSTIN, TEXAS 78761-6630

RE: COMMISSION ORDER NO. 16-011
DOCKET NO. 362-15-3088.B
AMERICAN LEGION POST 271
P.O. BOX 814
ROSENBERG, TEXAS 77471-0814

We would like to request a MOTION FOR REHEARING:
Due to circumstances that occurred, we were not informed of the previous hearing until the date had gone by. Mr. Joe Abudula resigned from our organization, and Mr. Bob Douglas has been out of town. Mr. Douglas is our Bingo Chairman, and he will be back after February 1, 2016.

We are working to get all previous reports corrected to be able to straighten out this matter.

Sincerely,



Robert Rohan
Commander

RECEIVED
2015 DEC 30 AM 7:40
GENERAL COUNSEL

SOAH DOCKET NO. 362-15-3088.B

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
AMERICAN LEGION POST 271 Respondent		

**TEXAS LOTTERY COMMISSION'S REPLY
TO RESPONDENT'S MOTION FOR REHEARING**

COMES NOW the Texas Lottery Commission (the Commission), by and through its attorney of record, Kristen Guthrie, and pursuant to TEX. GOV'T CODE ANN. § 2001.146 files this *Reply to Respondent's Motion for Rehearing*.

I. Background

On December 10, 2015, the Commission adopted the State Office of Administrative Hearings (SOAH) proposed Findings of Fact, Conclusions of Law, and recommendation of Administrative Law Judge (ALJ) Catherine C. Egan in this proceeding, and issued an Order revoking Respondent's license.

II. Respondent's Motion for Rehearing is Legally Insufficient.

The Commander for Respondent, Robert Rohan, claims that he did not know about the hearing held on September 15, 2015. However, the Notice of Hearing was sent to Bingo Chairperson Robert Douglass on June 9, 2015, by both certified and regular mail to the address provided by the Respondent pursuant to TEX. OCC. CODE ANN. § 2001.316. Additionally, although not required by either statute or rule, a copy of the Notice of Hearing was mailed to another Officer at the time, Joseph Abbondola, by both certified and regular mail. The Commission received confirmation that the certified letter addressed to Mr. Douglass was

received and signed for by Mr. Rohan. Respondent was given more than the requisite notice of 20 days. Respondent was notified of the initial revocation hearing by mail on April 8, 2015. Respondent was then notified by SOAH on July 6, 2015, of Order No. 1 Granting Motion for Continuance and Resetting Hearing on the Merits, resetting the case from July 8, 2015 to September 15, 2015. Mr. Rohan claims that the Respondent was not informed of the hearing because the Bingo Chairperson, Mr. Douglass has been out of town, and will not return until after February 1, 2016, and Mr. Abbondola had resigned. Respondent failed to timely notify the Commission that Mr. Abbondola resigned; and, as stated above, notice to Mr. Abbondola was not required by law. The ALJ mailed a copy of the Proposal for Decision (PFD) to Respondent. Respondent failed to file any Exceptions to the PFD. The Commission meeting was posted publicly as required by the notice requirements of the Texas Open Meetings Act § 551.041.

The purpose of a motion for rehearing is to give the agency notice of the error alleged by the party seeking review so that the agency has the opportunity to either correct the error or prepare to defend it. A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. TEX. GOV'T CODE ANN. § 2001.146(g). The motion must also state the legal and factual basis for the claimed error.

Respondent's Motion for Rehearing does not complain of any finding of fact or conclusion of law and fails to identify any erroneous evidentiary or legal ruling regarding the PFD or the Commission's order; and, therefore, is legally insufficient.

III. The Commission Should Deny the Motion for Rehearing.

The record evidence in this case clearly shows proper and timely notice of the hearing was provided to Respondent. Because Respondent's Motion for Rehearing does not complain of any finding of fact or conclusion of law or allege any erroneous evidentiary or legal ruling, as

required by law, the Commission staff respectfully requests that the Commission deny Respondent's Motion for Rehearing.

Respectfully submitted,



KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin TX 78761
512-344-5475 (Tel.)
512-344-5189 (Fax.)

CERTIFICATE OF SERVICE

I certify that on January 19, 2016, a true and correct copy of the *Commission's Reply to Respondent's Request for Rehearing* was served on the following individuals at the location and in the manner indicated below, pursuant to TEX. R. CIV. P. 21(a).

Via Certified Mail 91 7199 9991 7030 5677 8366 and First Class Mail

Mr. Robert Douglass
American Legion Post 271
P.O. Box 814
Rosenberg, TX 77471-0814

Via Certified Mail 91 7199 9991 7030 5677 8373 and First Class Mail

Mr. Robert Rohan
6439 Kamas Ln.
Needville, TX 77461-9076



KRISTEN GUTHRIE



Texas Lottery Commission

Commissioners:

J. Winston Krause, Chairman • Carmen Arrieta-Candelaria

Peggy A. Heeg • Doug Lowe • Robert Rivera



Alfonso D. Royal III
Director

January 13, 2016

Mr. Robert Rohan
American Legion Post 271
P.O. Box 814
Rosenberg, TX 77471-0814

(Certified Mail 91 7199 9991 7030 8541 9179
and First Class U. S. Mail)

Mr. Robert Douglass
American Legion Post 271
P.O. Box 814
Rosenberg, TX 77471-0814

(Certified Mail 91 7199 9991 7030 8541 9377
and First Class U. S. Mail)

Ms. Kristen Guthrie
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

**RE: SOAH DOCKET NO. 362-15-3088.B; TEXAS LOTTERY COMMISSION v.
AMERICAN LEGION POST 271; ORDER EXTENDING TIME FOR AGENCY
ACTION ON MOTION FOR REHEARING**

To the Parties:

Respondent, American Legion Post 271 (hereinafter Respondent), filed a Motion for Rehearing in the above-referenced docket by fax on December 29, 2015. If the Texas Lottery Commission (Commission) does not act on the Motion for Rehearing on or before February 3, 2016 (the 55th day after the date the Order was entered by the Commission adopting the Proposal for Decision on December 10, 2015), the Motion for Rehearing will be overruled by operation of law. The next regularly scheduled meeting of the Commission is anticipated to be after February 3.

Therefore, pursuant to 16 TEX. ADMIN. CODE § 401.220, in order to allow the Commission sufficient time to rule on the Motion for Rehearing, the time for the Commission to act on Respondent's Motion for Rehearing is extended for an additional 45 days, for a total of 100 days after December 10, 2015, the date on which the Order was entered.


ALFONSO D. ROYAL III

Director

Charitable Bingo Operations Division

cc: State Office of Administrative Hearings
Charitable Bingo Operations Division
Legal Services Division

Commission Order No. 16-0011

Date: DECEMBER 10, 2015

DOCKET NO. 362-15-3088.B

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
AMERICAN LEGION POST 271	§	
	§	
TAXPAYER NO. 17460912375	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Robert Douglas
American Legion Post 271
P.O. Box 814
Rosenberg, TX 77471-0814

During open meeting at Austin, Texas, the Texas Lottery Commission finds that, after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a Proposal for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposal for Decision was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas Lottery Commission, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

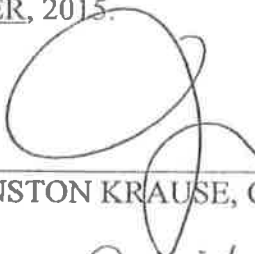
NOW, THEREFORE, IT IS ORDERED that the license to conduct bingo issued to the American Legion Post 271, of Rosenberg, Texas is hereby revoked.

Commission Order No. 16-0011


Date: DECEMBER 10, 2015

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 10TH day of DECEMBER, 2015.

Entered this 10TH day of DECEMBER, 2015.



J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

SOAH DOCKET NO. 362-15-3088.B

TEXAS LOTTERY COMMISSION,
Petitioner

v.

AMERICAN LEGION POST 271,
Respondent

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) seeks to revoke the license to conduct bingo issued to American Legion Post 271 (Respondent). Staff alleges that Respondent violated the Charitable Bingo Enabling Act by failing to file with the Commission the supplemental information requested by Staff on November 26, 2014, including a properly amended Texas Bingo Quarterly Report for the quarter ending September 30, 2014, and justification for the reported irregularities.

Administrative Law Judge (ALJ) Catherine C. Egan convened the hearing in this matter on September 15, 2015, in Austin, Texas. Staff appeared and was represented by Kristen Guthrie, Assistant General Counsel. Respondent failed to appear despite being provided adequate notice of the hearing. Staff presented documentary evidence and the testimony of Robin Trevino, a Commission accounts examiner, to support its allegations.

After a hearing, the Commission may suspend or revoke a license for a licensee's failure to comply with the Bingo Enabling Act¹ or a Commission rule.² According to Texas Occupations Code § 2001.302(a), a license holder must submit any supplemental information requested by the Commission. If a license holder fails to submit the requested supplemental information when required, the Commission may revoke the license.³ Based on the evidence, the ALJ recommends that Respondent's license to conduct bingo be revoked.

¹ Tex. Occ. Code chapter 2001.

² Tex. Occ. Code § 2001.353.

³ Tex. Occ. Code § 2001.302(b).

I. FINDINGS OF FACT

1. The staff (Staff) of the Charitable Bingo Division of the Texas Lottery Commission (Commission) seeks to revoke the license to conduct bingo of American Legion Post 271 (Respondent).
2. In a letter dated November 26, 2014, Staff notified Respondent that it had found the following reporting irregularities on Respondent's Texas Bingo Quarterly Report for the third quarter of 2014, ending September 30, 2014:
 - The amount reported (\$1,868.00) on Line 28 of the Texas Bingo Quarterly Report entitled "Prize Fee-Paid" was not the amount the Bingo Division's records showed was paid in prize fees, penalties, and interest during this quarter. The correct amount was \$1,860.50.
 - The amount reported (\$13,905.00) on Line 35 of the Texas Bingo Quarterly Report entitled "Bingo Funds per Book Balance" did not match the amount reported on Line 42 Bingo Funds per Book Balance of \$12,062.34.
3. In the November 26, 2014 letter, Staff instructed Respondent to address and resolve by December 10, 2014, the irregularities, including filing an amended Texas Bingo Quarterly Report for the third quarter of 2014 to show \$1,860.50 on Line 28 for the prize fees paid and to verify the accuracy of all amounts after Line 28.
4. Respondent did not respond to Staff's November 26, 2014 letter.
5. On December 19, 2014, Staff sent a Notice of Opportunity to Show Compliance to Respondent at Respondent's address of record.
6. Respondent did not respond to Staff's December 19, 2014 letter.
7. On April 8, 2015, Staff issued a notice of hearing in this matter.
8. The notice of hearing informed Respondent of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters asserted.
9. On September 15, 2015, Administrative Law Judge Catherine Egan convened the hearing on the merits in Austin, Texas. Staff appeared and was represented by Kristen Guthrie, Assistant General Counsel. Respondent did not appear and was not represented at the hearing.
10. Respondent failed to respond to or submit the supplemental information requested by the Commission in the November 26, 2014 letter by failing to file an amended Texas Bingo Quarterly Report for the quarter ending September 30, 2014, as requested by the Commission and failing to file a report with the Commission justifying the reported irregularities as requested by the Commission.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding. Tex. Occ. Code ch. 2001.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided to Respondent in accordance with the Administrative Procedure Act, Texas Government Code ch. 2001.
4. Respondent violated Texas Occupations Code § 2001.302 by failing to submit to the Commission the supplemental information requested in its November 26, 2014 letter, including a properly amended Texas Bingo Quarterly Report for the quarter ending September 30, 2014, and justification for the reported irregularities.
5. Respondent's license to conduct bingo should be revoked. Tex. Occ. Code §§ 2001.302, .353.

SIGNED October 8, 2015.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Commission Order No. 16-0023

Date: FEBRUARY 4, 2016

DOCKET NO. 362-15-4136.B

TEXAS LOTTERY COMMISSION,	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
VS.	§	
	§	
VFW POST 4146 VICTORIA	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Matthew D. Offe
VFW Post 4146 Victoria
P.O. Box 1426
Victoria, TX 77902-1426

During open meeting at Austin, Texas, the Texas Lottery Commission considered the *Motion for Rehearing* filed December 29, 2015, by VFW Post 4146 Victoria, Respondent in the above-styled case, and the *Texas Lottery Commission's Reply to Respondent's Motion for Rehearing*. After review and due consideration of the foregoing:

NOW, THEREFORE, IT IS ORDERED that VFW Post 4146 Victoria's *Motion for Rehearing* is DENIED.

Commission Order No. 16-0023

Date: FEBRUARY 4, 2016

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 4TH day of FEBRUARY, 2016.

Entered this 4TH day of FEBRUARY, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

FAX

From: Mathew Offe – BINGO CHAIRMAN
VFW POST 4146 – Victoria Texas
BINGO LICENSE NUMBER: 1382

To: AMY JENSEN

Subj: REQUEST FOR REHEARING

As BINGO CHAIRMAN of our VFW POST, I would like to take this time to request a rehearing for the suspension of our BINGO LICENSE. Docket #: 362154136.B

Please consider the following extenuating circumstances which influence my request. I assumed the role as bingo chairman when the previous chairman, BUTCH ROELL fell ill and was unable to meet of his duties. He had the job and title for over 32 years! Very recently, Butch died and left little in way of resources, copies and guidance to do the job effectively. Since his demise, it has been a mishmash of personnel who have tried to do his job properly and it came to a head when an error on line 28 of the 4th quarter report was not corrected.

Needless to say, phone calls were made and letters sent but the problem remains. It was not until the certified letter of 11 December from Charitable Bingo was brought to my attention a few days ago did I know the extent of the "damage".

To this day, I have not seen the contents of the letter which is held by our quartermaster (treasurer) who is ill himself and frequents the VA and several clinics in our town.

I have asked on multiple occasions that other members of the Post come forward to take the job as Bingo Chairman as I work full time as a solo anesthesia provider at a very busy clinic here in Victoria. So far, no one has stepped up to take the online course, complete the exam and assume to position.

If you allow this Post another chance, I will do my BEST to attend the hearing and request an appeal of the license suspension and continue to perform the job as Bingo Chairman until another can be found.

Sincerely,

Mat Offe
(361) 827-3494

RECEIVED
2015 DEC 30 AM 7:40
LEONARD J. JENSEN
GENERAL COUNSEL

SOAH DOCKET NO. 362-15-4136.B

TEXAS LOTTERY COMMISSION
Petitioner

v.

VFW POST 4146 VICTORIA
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION'S REPLY
TO RESPONDENT'S MOTION FOR REHEARING

COMES NOW the Texas Lottery Commission (the Commission), by and through its attorney of record, Kristen Guthrie, and pursuant to TEX. GOV'T CODE ANN. § 2001.146 files this *Reply to Respondent's Motion for Rehearing*.

I. Background

On December 10, 2015, the Commission adopted the State Office of Administrative Hearings (SOAH) proposed Findings of Fact, Conclusions of Law, and recommendation of Administrative Law Judge (ALJ) Catherine C. Egan in this proceeding, and issued an Order revoking Respondent's license.

II. Respondent's Motion for Rehearing is Legally Insufficient.

The Bingo Chairperson for Respondent, Matt Offe, claims that he did not know about the hearing held on September 15, 2015. However, the Notice of the September 15 hearing was sent to Mr. Offe on June 9, 2015, by both certified and regular mail to the address provided by the Respondent pursuant to TEX. OCC. CODE ANN. § 2001.316. Additionally, although not required by either statute or rule, a copy of the Notice of Hearing was mailed to another Officer at the time, Humberto Benavidez, by both certified and regular mail. The Commission received confirmation that the certified letter addressed to Mr. Offe was received. Respondent was given

more than the requisite notice of 20 days. Mr. Offe claims that he recently assumed the position of Bingo Chairperson when the previous Chairperson, Butch Roell, passed away. However, Mr. Offe was the Bingo Chairperson at the time all notices were mailed; and, therefore, all notices were properly sent to Mr. Offe. The ALJ mailed a copy of the Proposal for Decision (PFD) to Respondent. Respondent failed to file any Exceptions to the PFD. The Commission meeting was posted publicly as required by the notice requirements of the Texas Open Meetings Act § 551.041.

The purpose of a motion for rehearing is to give the agency notice of the error alleged by the party seeking review so that the agency has the opportunity to either correct the error or prepare to defend it. A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. TEX. GOV'T CODE ANN. § 2001.146(g). The motion must also state the legal and factual basis for the claimed error.

Respondent's Motion for Rehearing does not complain of any finding of fact or conclusion of law and fails to identify any erroneous evidentiary or legal ruling regarding the PFD or the Commission's order; and, therefore, is legally insufficient.

III. The Commission Should Deny the Motion for Rehearing.

The record evidence in this case clearly shows proper and timely notice of the hearing was provided to Respondent. Because Respondent's Motion for Rehearing does not complain of any finding of fact or conclusion of law or allege any erroneous evidentiary or legal ruling, as required by law, the Commission staff respectfully requests that the Commission deny Respondent's Motion for Rehearing.

Respectfully submitted,



KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin TX 78761
512-344-5475 (Tel.)
512-344-5189 (Fax.)

CERTIFICATE OF SERVICE

I certify that on January 19, 2016, a true and correct copy of the *Commission's Reply to Respondent's Request for Rehearing* was served on the following individuals at the location and in the manner indicated below, pursuant to TEX. R. CIV. P. 21(a).

Via Certified Mail 91 7199 9991 7030 8541 9278 and First Class Mail

Mr. Matthew D. Offe
VFW Post 4146 Victoria
P.O. Box 1426
Victoria, TX 77902-1426



KRISTEN GUTHRIE



Texas Lottery Commission

Commissioners:

J. Winston Krause, Chairman • Carmen Arrieta-Candelaria

Peggy A. Heeg • Doug Lowe • Robert Rivera



Alfonso D. Royal III
Director

January 13, 2016

Mr. Matthew D. Offe
VFW Post 4146 Victoria
P.O. Box 1426
Victoria, TX 77902-1426

(Certified Mail 91 7199 9991 7030 8541 9292
and First Class U. S. Mail)

Ms. Kristen Guthrie
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

**RE: SOAH DOCKET NO. 362-15-4136.B; TEXAS LOTTERY COMMISSION v. VFW
POST 4146 VICTORIA; ORDER EXTENDING TIME FOR AGENCY ACTION
ON MOTION FOR REHEARING**

To the Parties:

Respondent, VFW Post 4146 Victoria (hereinafter Respondent), filed a Motion for Rehearing in the above-referenced docket by fax on December 29, 2015. If the Texas Lottery Commission (Commission) does not act on the Motion for Rehearing on or before February 3, 2016 (the 55th day after the date the Order was entered by the Commission adopting the Proposal for Decision on December 10, 2015), the Motion for Rehearing will be overruled by operation of law. The next regularly scheduled meeting of the Commission is anticipated to be after February 3.

Therefore, pursuant to 16 TEX. ADMIN. CODE § 401.220, in order to allow the Commission sufficient time to rule on the Motion for Rehearing, the time for the Commission to act on Respondent's Motion for Rehearing is extended for an additional 45 days, for a total of 100 days after December 10, 2015, the date on which the Order was entered.



ALFONSO D. ROYAL III

Director

Charitable Bingo Operations Division

cc: State Office of Administrative Hearings
Charitable Bingo Operations Division
Legal Services Division

Commission Order No. 16-0012

Date: DECEMBER 10, 2015

DOCKET NO. 362-15-4136.B

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
VFW POST 4146 VICTORIA	§	
	§	
TAXPAYER NO. 17410407617	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Matthew D. Offe
VFW Post 4146 Victoria
P.O. Box 1426
Victoria, TX 77902-1426

During open meeting at Austin, Texas, the Texas Lottery Commission finds that, after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a Proposal for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposal for Decision was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas Lottery Commission, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

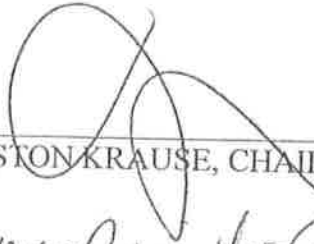
NOW, THEREFORE, IT IS ORDERED that the license to conduct bingo issued to the VFW Post 4146 Victoria, of Victoria, Texas is hereby revoked.

Commission Order No. 16-0012

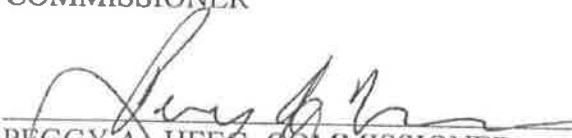
Date: DECEMBER 10, 2015

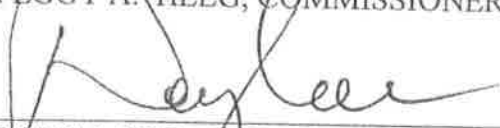
Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 10TH day of DECEMBER, 2015.

Entered this 10TH day of DECEMBER, 2015.



J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

SOAH DOCKET NO. 362-15-4136.B

TEXAS LOTTERY COMMISSION,
Petitioner

v.

VFW POST 4146 VICTORIA,
CONDUCTOR
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) seeks to revoke the license to conduct bingo held by VFW Post 4146 Victoria, Conductor (Respondent). Staff alleges that Respondent violated the Charitable Bingo Enabling Act¹ by failing to submit supplemental information requested by the Commission, specifically failing to file an amended Texas Bingo Quarterly Report for the quarter ending December 31, 2014 (the quarterly report), and/or a report justifying the reported irregularities.

Administrative Law Judge (ALJ) Catherine C. Egan convened the hearing in this matter on September 15, 2015, in Austin, Texas. Staff appeared and was represented by Kristen Guthrie, Assistant General Counsel. Respondent failed to appear despite being provided adequate notice of the hearing. Staff presented documentary evidence and the testimony of Robin Trevino, a Commission accounts examiner, to support its allegations.

After a hearing, the Commission may suspend or revoke a license for a licensee's failure to comply with the Charitable Bingo Enabling Act or a Commission rule.² According to Texas Occupations Code § 2001.302(a), a license holder must submit any supplemental information requested by the Commission. If a license holder fails to submit the requested supplemental information when required, the Commission may revoke the license.³ In addition, a license holder conducting bingo must submit to the Commission sworn quarterly reports regarding expenses stating, among other things, the amount of gross receipts from bingo, each expense incurred or paid, the net proceeds derived from bingo, and a list of prizes offered and given and

¹ Tex. Occ. Code ch. 2001.

² Tex. Occ. Code § 2001.353.

³ Tex. Occ. Code § 2001.302(b).

their respective value.⁴ Based on the evidence, the ALJ recommends that Respondent's license to conduct bingo be revoked.

1. FINDINGS OF FACT

1. The staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) seeks to revoke the license to conduct bingo of VFW Post 4146 Victoria, Conductor (Respondent).
2. In a letter dated February 7, 2015, Staff notified Respondent that it had found the following reporting irregularities on Respondent's Texas Bingo Quarterly Report for the fourth quarter of 2014 (the quarterly report):
 - The amount reported (\$2,111) on Line 28 of the Report entitled Prize Fee-Paid was not the amount the Commission Bingo Division's records show was paid by Respondent in prize fees, penalties, and interest during the quarter. The correct amount was \$2,231.45.
 - The prizes awarded over \$50 for regular bingo reported on line 3 of the quarterly report exceeded the \$2,500 limit on prizes that could be awarded in a single bingo contest.
3. In the February 7, 2015 letter, Staff instructed Respondent to address and resolve the reported irregularities, and file an amended quarterly report correcting the report by February 21, 2015. If Respondent disputed that it made any errors in the quarterly report, Respondent had to file a written statement explaining the irregularity.
4. On February 15, 2015, Respondent filed an amended quarterly report that neither corrected the irregularities nor provided a written statement explaining the reported irregularities.
5. On April 2, 2015, Staff sent a Notice of Opportunity to Show Compliance to Respondent at Respondent's address of record.
6. The Notice of Opportunity to Show Compliance notified Respondent that the Commission intended to initiate disciplinary action against Respondent for failing to provide the supplemental information requested by Staff in the February 7, 2015 letter, including an amended quarterly report, and for failing to provide written justification for the reported irregularities.
7. Respondent did not respond to the April 2, 2015 Notice of Opportunity to Show Compliance.
8. On June 9, 2015, Staff issued a Notice of Hearing in this matter that Respondent received on June 11, 2015.

⁴ Tex. Occ. Code § 2001.505(a).

9. The Notice of Hearing informed Respondent of the date, time, and location of the hearing; the matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters asserted.
10. On September 15, 2015, Administrative Law Judge Catherine Egan convened the hearing on the merits at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff appeared and was represented by Kristen Guthrie, Assistant General Counsel. Respondent did not appear and was not represented at the hearing.
11. Respondent failed to submit the supplemental information Staff requested for the fourth quarter ending December 31, 2014, by failing to file a properly amended quarterly report.
12. Respondent failed to provide written report justifying the reported irregularities as Staff requested.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding. Tex. Occ. Code ch. 2001.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Proper and timely notice of the hearing was provided to Respondent. Tex. Gov't Code §§ 2001.051 and .052.
4. Respondent violated Texas Occupations Code § 2001.302(a) by failing to submit the supplemental information requested by the Commission.
5. Respondent violated Texas Occupations Code § 2001.505(a) by failed to file a statement with the Commission justifying the reported irregularities in the quarterly report.
6. Respondent's license to conduct bingo should be revoked. Tex. Occ. Code § 2001.353.

SIGNED October 13, 2015.



**CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

