

**Date: DECEMBER 13, 2018**

**No. 2019-28**

<b>IN THE MATTER OF THE</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>APPLICATION OF</b>	<b>§</b>	
	<b>§</b>	
<b>SAMUEL D. MACKLIN</b>	<b>§</b>	
	<b>§</b>	
<b>TO BE LISTED ON THE REGISTRY</b>	<b>§</b>	
	<b>§</b>	
<b>OF BINGO WORKERS</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The parties, the Texas Lottery Commission, Charitable Bingo Operations Division (Commission), and Samuel D. Macklin, Bingo Worker Applicant, make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement and enter into this Consent Order (Order).

**AGREED FINDINGS OF FACT**

1. Samuel D. Macklin submitted an application (Application) to be listed on the Registry of Approved Bingo Workers (Registry) on August 14, 2018. On October 12, 2018 the Commission sent Mr. Macklin a Notice of Denial of Bingo Registry Application based on his criminal history, set forth below.

2. On November 21, 2016, in the 21<sup>st</sup> District Court, Bastrop County, Texas, in Cause No. 15926, Samuel Macklin was convicted of endangering a child, a state jail felony, and placed on Community Supervision for a period of five (5) years. The date of the offense was May 11, 2015.

3. Mr. Macklin has provided the Commission letters of recommendation, including letters from Michael McKenna, an officer/operator for VFW Post 1309 George Jones where he intends to work, and a personal reference from Anita Barnett, a regular bingo player where he intends to work if his Application is approved.

### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to the Bingo Enabling Act, TEX. OCC. CODE ANN., Chapter 2001; TEX. GOV'T CODE ANN., Chapter 467; and 16 TEX. ADMIN. CODE, Chapter 402.

2. TEX. OCC. CODE ANN. § 2001.0541 provides that the Commission shall adopt rules and guidelines as necessary to comply with Occupations Code Chapter 53 when using criminal history record information under the Bingo Enabling Act to issue or renew a bingo license or to list or renew the listing of an individual on the Registry.

3. TEX. OCC. CODE ANN. § 53.021(a) states:

A licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

- (1) an offense that directly relates to the duties and responsibilities of the licensed occupation;
- (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;
- (3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or
- (4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

4. TEX. OCC. CODE ANN. § 53.021(d) states:

A licensing authority may consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged as described by Subsection (c) if: (1) the person was charged with: (A) any offense described by Article 62.001(5), Code of Criminal Procedure; or (B) an offense other than an offense described by Paragraph (A) if:

(i) the person has not completed the period of supervision or the person completed the period of supervision less than five years before the date the person applied for the license; or (ii) a conviction for the offense would make the person ineligible for the license by operation of law; and (2) after consideration of the factors described by Sections 53.022 and 53.023(a), the licensing authority determines that: (A) the person may pose a continued threat to public safety; or (B) employment of the person in the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

5. TEX. OCC. CODE ANN. § 53.022 states:

In determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;
- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

6. TEX. OCC. CODE ANN. § 53.023 states:

(a) In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:

- (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
- (B) the sheriff or chief of police in the community where the person resides; and
- (C) any other person in contact with the convicted person.



(b) The applicant has the responsibility, to the extent possible, to obtain and provide to the licensing authority the recommendations of the prosecution, law enforcement, and correctional authorities as required by Subsection (a)(6).

(c) In addition to fulfilling the requirements of Subsection (b), the applicant shall furnish proof in the form required by the licensing authority that the applicant has:

- (1) maintained a record of steady employment;
- (2) supported the applicant's dependents;
- (3) maintained a record of good conduct; and
- (4) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

7. In accordance with TEX. OCC. CODE ANN. §§ 53.021, 53.022 and 53.023, the Commission has discretionary authority to approve or deny Mr. Macklin's Application to be listed on the Registry.

#### **MEMORANDUM OF AGREEMENT**

1. By signing this Memorandum of Agreement, Samuel D. Macklin agrees to its terms, acknowledges his understanding of it, and waives his right to all procedural requirements for the entry of the Order, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing and any right to seek judicial review of this Order.

2. The effective date of this Order shall be the date it is signed by the Commission.

3. Mr. Macklin agrees to not act as a bingo chairperson, manager, operator, bookkeeper, cashier or designated agent for any licensed bingo conductor organization for a period of three (3) years following the effective date of this Order.

4. The Commission agrees to add Mr. Macklin to the Registry subject to the agreed restriction in paragraph 3 above.

5. Mr. Macklin agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against him by the Commission.

6. Mr. Macklin acknowledges and agrees that if, after a hearing conducted in accordance with TEX. GOV'T CODE ANN. Chapter 2001 on the sole issue of compliance with the Order, it is found that Mr. Macklin has failed to comply with the terms of the Order, the Commission may seek any and all available sanctions and remedies, including the removal of Mr. Macklin from the Registry and administrative monetary penalties.

AGREED AS TO FORM AND SUBSTANCE:

SAMUEL D. MACKLIN

TEXAS LOTTERY COMMISSION,  
CHARITABLE BINGO OPERATIONS  
DIVISION

By:

  
Samuel D. Macklin

By:

  
Michael P. Farrell, Director  
Charitable Bingo Operations Division

Date:

11-05-18

Date:

11/8/18

**Commission Order No. 19-0020**

**Date: DECEMBER 13, 2018**

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**CONSENT ORDER**

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of denying the Application of Samuel D. Macklin to be listed on the Registry of Approved Bingo Workers (Registry), his Application shall be approved with the following restriction: Mr. Macklin shall not act as a bingo chairperson, manager, operator, bookkeeper, cashier or designated agent for any licensed bingo conductor for a period of three (3) years following the date this Consent Order is signed by the Commission.

(2) IT IS FURTHER ORDERED by the Commission that if, after a hearing on the sole issue of compliance with this Consent Order, it is found that Mr. Macklin has failed to comply with the terms of the Consent Order, the Commission may seek removal of Mr. Macklin from the Registry, together with administrative monetary penalties and any other remedies and sanctions authorized by law.

**Commission Order No. 19-0020**

**Date: DECEMBER 13, 2018**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 13<sup>TH</sup> day of DECEMBER 2018.

Entered this 13<sup>TH</sup> day of DECEMBER 2018.

  
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J. WINSTON KRAUSE, CHAIRMAN  
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CARMEN ARRIETA-CANDELARIA, COMMISSIONER  
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DOUG LOWE, COMMISSIONER  
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ROBERT RIVERA, COMMISSIONER