



Office of the Attorney General
State of Texas

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August 16, 1994

Mr. Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

Open Records Decision No. 629

Re: Construction of sections 13c(d)
and 28 of the Bingo Enabling Act,
V.T.C.S. article 179d, and related
questions (RQ-641)

Dear Mr. Bailey:

The Texas Alcoholic Beverage Commission (the "commission") has received a request for information under the Texas Open Records Act (the "act"), Government Code chapter 552 (formerly V.T.C.S. article 6252-17a).¹ The requestor seeks information relating to an inspection of a licensed bingo equipment distributor (the "distributor"), specifically, "all information obtained by your agency from the inspection" of "Danny R. Moore d/b/a Moore Supplies and/or Daniel R. Moore, Inc. d/b/a Moore Supplies." Your predecessor in office submitted to us for review a document entitled "Internal Report/Location Inspection of a Newly Licensed Distributor." This report consists of a narrative summary of the inspection prepared by a commission auditor, a commission questionnaire completed by a commission employee during the course of an interview with an agent of the distributor, a letter from the distributor to the commission reporting a change of address, and various invoice records of the distributor. The commission claims that sections 552.101 and 552.103(a) of the act except the report from required public disclosure.

Section 552.101 excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." The commission claims that section 13c(d) of the Bingo Enabling Act, V.T.C.S. article 179d, makes the requested information confidential. Section 13c(d) provides as follows:

The commission may examine the books and records of an applicant for a license or of a licensee. Any information obtained shall not be disclosed except as necessary to carry out the provisions of this Act.

¹We note that the Seventy-third Legislature repealed V.T.C.S. article 6252-17a. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

V.T.C.S. art. 179d, § 13c(d).² Section 13c(d) was enacted by the Sixty-eighth Legislature as part of a substantial revision of the Bingo Enabling Act. Acts 1983, 68th Leg., ch. 575, § 11, at 3459. This revision included the addition of several provisions to the Bingo Enabling Act, the purpose of which was to license and regulate the sale and distribution of bingo equipment. *See id.* §§ 13a - 13d. Section 13c(d) simply permitted the Comptroller of Public Accounts (now the commission)³ to examine the books and records of persons licensed or seeking to be licensed under sections 13a and 13b and made information obtained from any books and records obtained under section 13c(d) confidential.

Another provision of the Bingo Enabling Act, section 28, provides as follows:

All applications, returns, reports, statements, and audits submitted to or conducted by the commission and the governing body are available for public inspection.

Section 28 was part of the Bingo Enabling Act as originally enacted. *See* Acts 1981, 67th Leg., 1st C.S., ch. 11, §§ 1 - 42, at 85. Section 28 is general in scope and applies to "applications, returns, reports, statements, and audits."

Ordinarily, when the language of a statute is unambiguous, it must be given effect without any attempt to construe it or interpret it. *See Lumberman's Underwriters v. State Bd. of Ins.*, 502 S.W.2d 217 (Tex. Civ. App.—Austin 1973, writ ref'd n.r.e.); *see also City of Van Alstyne v. State*, 246 S.W.2d 671 (Tex. Civ. App.—1952, writ ref'd n.r.e.). As noted above, section 13c(d) gives the commission authority to examine "books and records" and makes information obtained therefrom confidential. Section 28, on the other hand, specifically makes public "applications, reports, statements, and audits" that the commission receives or creates in the course of its regulatory functions. Although we found no legislative history evidencing the legislature's intent in enacting sections 13c(d) and 28, nor any language in the Bingo Enabling Act defining the terms "books and records" or "applications, reports, statements, and audits," we conclude that the plain language of section 28 clearly makes public the portion of the report entitled "Internal Report." The invoices, which are components of the report, however, appear to be "books and records" or information obtained from the "books and records" of the

²We presume for purposes of this decision that disclosure of the requested information is not "necessary to carry out the provisions" of the Bingo Enabling Act.

³The Seventy-first Legislature transferred regulatory authority over bingo from the Comptroller of Public Accounts to the Texas Alcoholic Beverage Commission. Acts 1989, 71st Leg., ch. 238, §§ 44-47, at 1129-30. Effective April 1, 1994, regulatory authority over bingo was transferred from the Texas Alcoholic Beverage Commission to the Texas Lottery Commission. Acts 1993, 73d Leg., ch. 286, § 28, at 1337-38.

distributor within the meaning of section 13c(d) and are therefore confidential.⁴ Consequently, there is a conflict between section 28, which makes the report in its entirety available for public inspection, and section 13c(d), which makes the invoices confidential.

When two statutes conflict and cannot be harmonized, the more specific statute prevails as an exception over the general provision, unless the general statute is the later enactment and the legislature intended the general provision to prevail. *See* Gov't Code § 311.026; *see also* *McMillan v. State*, 696 S.W.2d 584 (Tex. App.--Dallas 1984, no writ); *Lucario v. State*, 658 S.W.2d 835 (Tex. App.--Houston [1st Dist.] 1983, no writ). As noted above, section 13c(d) was added to the Bingo Enabling Act after section 28. Section 13c(d) was part of a revision to the Bingo Enabling Act that specified the commission's licensing and regulatory authority over the bingo industry. Section 28 is clearly the more general of the two provisions at issue here; it applies to *any* "applications, reports, statements, and audits" in the commission's possession. Section 13c(d), on the other hand, applies only to a narrow class of information collected pursuant to statutory authority for a limited purpose. We conclude, therefore, that section 13c(d) prevails over section 28 to the extent of conflict and that information obtained from "books and records" contained in a "report" conducted pursuant to section 13c(d) must be withheld from public disclosure.⁵ Accordingly, you must withhold the submitted invoices under section 552.101 of the act.

Your predecessor claims that section 552.103(a) (formerly section 3(a)(3)) excepts the requested information from required public disclosure. To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or administrative proceeding. Open Records Decision No. 551 (1990). As a general rule, however, the act's exceptions do not apply to information expressly made public by other statutes. *See, e.g.*, Open Records Decision Nos. 525 (1989) at 3 (holding that the act's exceptions do not apply to information made public by the statutory predecessor to section 2001.004(3) of the Government Code); 146 (1976) at 2 (holding that former V.T.C.S. art. 6252-17a section 3(a)(3) does not apply to election returns, applications for candidacy, and campaign expenditure reports made public by common-law and statute); 43 (1974) at 2 (holding that former V.T.C.S. art. 6252-17a section 3(a)(3) does not apply to traffic accident reports specifically made public by statute). The part of the report not made confidential by section 13c(d), *i.e.*, the narrative summary, questionnaire, and letter, is specifically made

⁴We note that the bingo equipment distributor at issue here is required to maintain these sale invoices. 16 T.A.C. § 55.553 (requiring licensed distributors and manufacturers to maintain sales invoices, credit memos, and a sales journal).

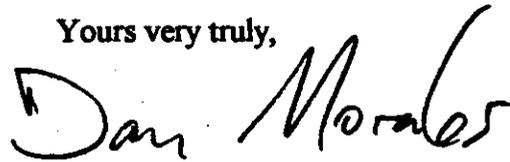
⁵We note that the narrative summary, questionnaire, and letter do not contain any information that is obtained or clearly derived from the invoices or any other books and records of the distributor.

public by section 28 of the Bingo Enabling Act.⁶ Accordingly, you may not withhold it from required public disclosure under section 552.103(a) of the act.

S U M M A R Y

Section 13c(d) of the Bingo Enabling Act, V.T.C.S. article 179d, prevails over section 28 of the Bingo Enabling Act to the extent of conflict. Information obtained from "books and records" obtained pursuant to section 13c(d) is confidential.

Yours very truly,



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⁶Assuming *arguendo* that the submitted questionnaire, letter and invoices are not part of the report and must be considered separately, we note that the result is the same. The submitted report would be public under section 28. The submitted invoices would be made confidential by section 13c(d). Section 552.103(a) would not apply to the letter and questionnaire because the opposing parties have had access to them. See Open Records Decision Nos. 349, 320 (1982) (absent special circumstances, once information has been made available to all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information). Accordingly, the report, questionnaire, and letter would be available under the act.