



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 29, 1996

Ms. Nora A. Linares
Executive Director
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630

Letter Opinion No. 96-024

Re: Whether, under section 11a(a) of the Bingo Enabling Act, V.T.C.S. article 179d, a licensed commercial lessor may charge a licensed authorized organization that subleases the leased premises \$600 per day or \$600 per day on which a bingo occasion occurs (ID# 36386)

Dear Ms. Linares:

You have asked us to construe section 11a(a) of the Bingo Enabling Act, V.T.C.S. article 179d. Section 11a places restrictions on rent for the lease of bingo premises. Subsection (a) provides as follows:

The rent charged by a licensed authorized commercial lessor¹ to a licensed authorized organization² to conduct bingo³ may not exceed \$600 for each bingo occasion conducted on the premises, unless the lessee licensed authorized organization subleases the premises to one or more other licensed authorized organizations to conduct bingo, in which event the rent charged by the authorized commercial lessor may not exceed \$600 for each day. [Footnotes added.]

In particular, you ask whether the closing phrase of the subsection, "\$600 for each day," means \$600 for each day that the lessee authorized organization conducts bingo, \$600 for

¹Section 2(12) of the Bingo Enabling Act, V.T.C.S. article 179d, defines "authorized commercial lessor" as "a person eligible for a commercial license to lease bingo premises under" article 179d, section 13.

²Section 2(11), article 179d, V.T.C.S., defines "authorized organization" as "a religious society [see V.T.C.S. art. 179d, § 2(5)], a nonprofit organization [see *id.* § 2(3)] . . . whose predominant activities are for the support of medical research or treatment programs, a fraternal or veterans organization [see *id.* § 2(4), (6)], or a volunteer fire department [see *id.* § 2(8)]."

³For purposes of the Bingo Enabling Act, V.T.C.S. article 179d, "bingo" is "a specific game of chance . . . in which prizes are awarded on the basis of designated numbers or symbols conforming to numbers or symbols selected at random." *Id.* § 2(2).

each day that the sublessee or sublessees conduct bingo, or \$600 for each day in which the lease or sublease is in effect.

Section 11a(a) expressly permits a licensed authorized commercial lessor to exact from the lessee licensed authorized organization \$600 for each bingo occasion the lessee conducts on the premises. A "bingo occasion" includes "all activities incident to the conduct of a series of bingo games by a licensed authorized organization. A bingo occasion begins when the bingo premises are opened to the public and includes not only the organization's licensed times but also those preparatory and concluding activities incident to the conduct of bingo games." V.T.C.S. art. 179d, § 2(23).

No more than two licensed authorized organizations may conduct bingo in one place on one day. *Id.* § 18. If two organizations are licensed to conduct bingo at the same place on the same day, the bingo occasion of one organization may overlap with the bingo occasion of the other organization, but their bingo games must be separated by a ten-minute intermission. *See id.* §§ 2(23), 18.

In contrast to the situation in which the lessee licensed authorized organization conducts a bingo occasion on the leased premises is the situation in which the lessee subleases the premises to one or more licensed authorized organizations for their use in conducting bingo occasions. In such a circumstance, section 11a(a) directs the licensed authorized commercial lessor to charge no more than \$600 per "day." The Bingo Enabling Act does not define the word "day." *See id.* § 2.

In general, we are to construe the words of a statute consistently with their ordinary meaning. *See* Gov't Code § 312.002(a). The word "day" commonly refers to a twenty-four hour period, demarcated on either side by midnight. *See* WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 326 (1990). We note that the legislature has used the word "day" elsewhere in article 179d consistently with the word's ordinary meaning. *See, e.g.,* V.T.C.S. art. 179d, §§ 12(d), 13(b), 16(g), 18.

To conclude that the legislature intended to authorize a licensed authorized commercial lessor to collect \$600 for each day the lease is in effect from a lessee licensed authorized organization that subleases the property leaves us with an anomalous result, however. Under such a conclusion, if the lessee licensed authorized organization subleases the property, a licensed authorized commercial lessor may collect \$600 per day for days on which no bingo occasions are conducted on the premises. On the other hand, if the lessee licensed authorized organization does not sublease the property, the licensed authorized commercial lessor may collect \$600 per day only on those days on which a bingo occasion is conducted on the premises. The lessor may not collect any money for any day on which no bingo occasion is conducted.

The effects of the two conclusions may be illustrated by an example. Suppose that a lessor and lessee executed a one-month lease, and the lessee, a licensed authorized commercial organization, planned to conduct bingo occasions on ten days at the premises

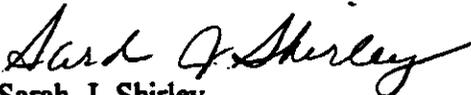
throughout the course of the month. In such a situation, the lessor may collect \$600 for each of the ten days on which the lessee conducts a bingo occasion, or \$6,000 for the month. Once the lease is executed, the lessee subleases the premises to another licensed authorized organization, which plans to conduct bingo occasions on ten additional days throughout the month. If we conclude that the lessor may collect \$600 for each day in which the sublease is in effect, then the lessor may collect \$600 for each of thirty days, or \$18,000 in all. If we conclude that the lessor may collect \$600 only for each day on which bingo occasions are conducted on the premises, then the lessor may collect \$600 per day for each of the ten days the sublessor conducts bingo occasions on the premises, as well as \$600 per day for each of the ten days the lessee-sublessor conducts bingo occasions on the premises, or \$12,000.

We find it difficult to believe the legislature intended a licensed authorized commercial lessor to collect \$600 for a day on which the lessor's premises are not being used to conduct a bingo occasion. We may not interpret a statute in such a way as to reach an absurd result. 2A NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION § 46.07, at 126 (5th ed. 1992). We accordingly decline to interpret section 11a(a) to permit a license authorized commercial lessor to collect \$600 for each day a sublease is in effect. Instead, we believe the legislature intended to provide that, on those days on which the lessee-sublessor subleases the property to an organization that conducts a bingo occasion, the lessor may collect \$600, the same amount the lessor would collect if the lessee were conducting the bingo occasion. If two bingo occasions are conducted on the premises on the same day, the lessor may collect \$600 for the day, and the lessee-sublessor may keep \$600 for the day. We therefore read section 11a(a) of the Bingo Enabling Act to permit an authorized commercial lessor to charge a lessee licensed authorized organization that subleases the property \$600 for each day of the sublease term on which a bingo occasion is conducted on the property.

S U M M A R Y

Section 11a(a) of the Bingo Enabling Act, V.T.C.S. article 179d, authorizes a licensed authorized commercial lessor to charge rent, in an amount not to exceed \$600 for each day of the sublease term on which a bingo occasion is conducted on the property, of a licensed authorized organization that subleases the premises to other licensed authorized organizations to conduct bingo.

Yours very truly,


Sarah J. Shirley
Chair, Opinion Committee