



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 458-2500

Jeannene Fox, Acting Administrator

November 8, 1993

The Honorable Dan Morales
Attorney General of the State of Texas
Post Office Box 12548
Austin, Texas 78711

Dear General Morales:

The Texas Alcoholic Beverage Commission has received a request from William G. Kellen & Associates that the Commission allow use of their PowerBingo System on a trial basis for use by disabled persons.

The PowerBingo System uses a keypad unit. The number of cards sold to the player are entered into the unit by the cashier. That number of cards sold and the numbers on the cards are stored in the unit's memory. The player enters the numbers called on the keypad and the unit signals the player when he or she has a bingo on one of the cards. The disabled person would pay a small fee for the use of the machine.

Section 11(u) of the Bingo Enabling Act, TEX. REV. CIV. STAT. ANN. art. 179d (Vernon Supp. 1993), provides:

A licensed authorized organization may not conduct a bingo game in which any player uses or is assisted by a computerized or electronic device that is used instead of or in conjunction with the player's traditional paper or nondisposable bingo card.

I am enclosing copies of our staff's correspondence with Mr. Kellen. Mr. Kellen has contended that the provisions of The Americans With Disabilities Act, 42 U.S.C. § 1201 et seq. (1990) overrides that restriction and authorizes the Commission to allow use of the device by handicapped persons. Mr. Kellen also contends that this device is not prohibited by Section 11(u) of the Bingo Enabling Act. Mr. Kellen's contentions and the response of the Commission's staff are set forth in detail in the attached correspondence and are adopted by reference for the purposes of this opinion request.

I ask the following questions:

- 1.) Is the device proposed for use prohibited by Section 11(u) of the Bingo Enabling Act?
- 2.) If it is so prohibited, does the Americans With Disabilities Act require the Commission to allow use of the device by disabled persons without first exhausting the possibility of using other aids that would not violate Section 11(u)?

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ID# 23472
RD-638

RQ-638

General Morales
November 8, 1993
Page 2 of 2

- 3.) If the device were approved for that limited use, would Section 36.301(c) of the Equal Employment Opportunity Commission Rules prohibit charging a disabled person a fee for use of the device?

If you have any questions concerning this matter, please contact Robert C. Falls, Staff Services Officer in our Bingo Division at (512) 206-3280.

Sincerely,



Jeannene Fox
Acting Administrator
Texas Alcoholic Beverage Commission

JF/rmr