

STATE OF TEXAS
HOUSE OF REPRESENTATIVES



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Kenny Marchant
Chairman
Committee on State Affairs
DISTRICT 115

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OPINION COMMITTEE
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FILE # ML-43328-03
I.D. # 43328

RQ-0125-GA

November 3, 2003

Office of the Attorney General
209 West 14th Street
Austin, Texas 78701
Attention: Nancy Fuller, Opinion Committee Chair

Dear Mrs. Fuller,

This is a request for an opinion regarding the Bingo Enabling Act and the Texas Penal Code. William L. Atkins, Director of Charitable Bingo Division of the Texas Lottery Commission, renewed the Carrollton Senior Community Center exemption from the requirement of licensing pursuant to Section 2001.551(b)(3) of the Bingo Enabling Act and Charitable Bingo Administrative Rule 402.549 on April 24, 2002. Carrollton Assistant Attorney Lynn Nunns reviewed the Administrative Code section referred to in Mr. Atkins's letter, and called Mr. Atkins to discuss whether the exemptions he cited amounted to a defense to prosecution for a case filed under Chapter 47 of the Texas Penal Code. Mr. Atkins told Mr. Nunns that he could not give an opinion on that issue, as he is not a lawyer.

The issues to be resolved are, (1) whether it is a penal offense for the City of Carrollton to possess gambling paraphernalia unless authorized under specific state laws, including the Bingo Enabling Act, and, (2) if the exemption issued by Mr. Atkins amounts to a defense to prosecution under Chapter 47 of the Penal Code, whether the gambling paraphernalia used by the City to conduct legal bingo games is subject to state sales tax.

As Chairman of the House State Affairs Committee, I request that you issue an opinion regarding this matter at your earliest convenience.

If you need any additional information, please contact my office at (512) 463-0468. Thank you for your assistance with this matter.

Respectfully,

A handwritten signature in black ink, appearing to read "Kenny Marchant".

The Honorable Representative Kenny Marchant
Chair, House State Affairs Committee