

Mary Ann Williamson
Chairman

David J. Schenck
Commissioner

J. Winston Krause
Commissioner



TEXAS LOTTERY COMMISSION

Gary Grief, Executive Director

Philip D. Sanderson, Charitable Bingo Operations Director

RECEIVED

RQ-0884-GA

APR 27 2010

OPINION COMMITTEE

FILE # ML-46449-10
I.D. # 46449

April 27, 2010

The Honorable Greg Abbott
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

Re: Request for Opinion

Dear General Abbott:

As chairman of the Texas Lottery Commission, I am seeking your opinion about whether bingo cards or paper, electronic or mechanical card-minding devices, and pull-tab bingo used in accordance with the Bingo Enabling Act (BEA) (Tex. Occ. Code ch. 2001) are considered "noncash merchandise prizes, toys or novelties" under Tex. Pen. Code §47.01(4)(B). In defining "gambling device" §47.01(4)(B) provides the following:

(4) . . . The term:

...
(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with **noncash merchandise prizes, toys, or novelties**, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

(Emphasis added.)

I am also seeking your opinion about whether a gift certificate issued by an organization licensed to conduct bingo that is redeemable for bingo cards or paper, electronic or mechanical card-minding devices, and/or pull-tab bingo used in accordance with the BEA is considered "non cash merchandise prizes, toys, or novelties" under §47.01(4)(B). Section 2001.4155 of the BEA provides:

- (a) Nothing in this chapter prohibits a licensed authorized organization from selling or redeeming a gift certificate that entitles the bearer of the certificate to play a bingo game, including instant bingo.

P.O. Box 16630 • Austin, Texas 78761-6630

Phone (512) 344-5000 • FAX (512) 478-3682 • Bingo FAX (512) 344-5142

www.txlottery.org • www.txbingo.org

- (b) A licensed authorized organization that sells or redeems a gift certificate must keep adequate records relating to the gift certificate as provided by commission rule.

The Commission has adopted 16 TAC §402.503 pertaining to requirements for bingo gift certificate printing, use, recordkeeping and reporting. (See Attachment A.)

Some eight-liner machines award as prizes "a representation of value" in the form of coupons, tickets, etc. that are redeemable only for the bingo items or bingo gift certificate described above. The answer to the questions presented is critical in determining whether such eight-liner machines constitute prohibited games of chance under §2001.416 of the BEA. Section 2001.416 provides in pertinent part:

- (a) A game of chance other than bingo or a raffle conducted under Chapter 2002 may not be conducted or allowed during a bingo occasion.
- ...
- (d) This section does not prohibit the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code.

Please contact Kimberly L. Kiplin, General Counsel of the Texas Lottery Commission, at 344-5105, should you need any additional information.

Respectfully submitted,



Mary Ann Williamson, Chair
Texas Lottery Commission

cc: The Honorable David J. Schenck, Commissioner, Texas Lottery Commission
The Honorable J. Winston Krause, Commissioner, Texas Lottery Commission
Mr. Gary Grief, Executive Director, Texas Lottery Commission
Mr. Phil Sanderson, Director, Charitable Bingo Division, Texas Lottery Commission
Ms. Kimberly L. Kiplin, General Counsel, Texas Lottery Commission

Texas Administrative Code

TITLE 16 ECONOMIC REGULATION

PART 9 TEXAS LOTTERY COMMISSION

CHAPTER 402 CHARITABLE BINGO ADMINISTRATIVE RULES

SUBCHAPTER E BOOKS AND RECORDS

RULE §402.503 Bingo Gift Certificates

(a) A bingo gift certificate may be sold, issued, or redeemed for bingo paper, pull-tab bingo or card-minding devices provided that the licensed authorized organization or unit, as defined in Occupations Code, §2001.431(1), maintains adequate records relating to the gift certificate as provided in this section.

(b) A licensed authorized organization's cost of printing the bingo gift certificate is an allowable bingo expense and shall be paid out of the bingo checking account. In order to maintain adequate records relating to gift certificates, all gift certificates shall be pre-numbered and consecutively issued.

(c) A bingo gift certificate may not be awarded as a prize for bingo unless the value of the certificate is paid for by the licensed authorized organization, recorded as a bingo prize on the daily schedule of prizes for the bingo occasion, and five percent of the value of the prize is withheld as a prize fee.

(d) A bingo gift certificate may not be awarded as a door prize unless the value of the certificate is paid for before it is awarded as a door prize and funds other than bingo proceeds are used to obtain the gift certificate.

(e) Each bingo gift certificate shall be:

(1) imprinted with the name and address of the licensed location(s) where the gift certificate may be redeemed for bingo paper, pull-tab bingo or card-minding devices;

(2) imprinted with the monetary value of the certificate;

(3) imprinted with the name of the licensed authorized organization(s) authorized to accept the bingo gift certificate at the licensed location;

(4) imprinted with the expiration date or a blank space for the licensed authorized organization or unit to fill in an expiration date; and

(5) paid for by the customer in full at the time it is issued by the licensed authorized organization or unit.

(f) A licensed authorized organization may not accept a gift certificate in exchange for bingo paper, pull-tab bingo or card-minding devices if the licensed authorized organization is not licensed to conduct bingo at the licensed location(s) imprinted on the gift certificate.

(g) Reporting Requirements:

(1) Funds from the sale of the gift certificate shall be maintained separately from the bingo funds. Such funds are not considered bingo funds until the gift certificate is redeemed for a bingo card, pull-tab bingo, or a card-minding device.

(2) Funds remaining from an expired or unredeemed gift certificate shall be disbursed equally among the participating licensed authorized organizations and deposited into each of their respective general fund accounts.

(3) When a gift certificate is redeemed, the sale of bingo paper, card-minding device, or pull-tab bingo shall be reported for that occasion. The gift certificate, when redeemed, shall be exchanged for cash from the gift certificate funds and deposited into the bingo account by the end of the next business day as required by Occupations Code, §2001.451.

(4) At the end of each month, the licensed authorized organizations collectively shall reconcile the gift certificates purchased, sold, expired, redeemed, or remaining during the month to the cash on hand.

(h) Records Retention. The purchase invoice or receipt from the printing of a gift certificate and the reconciliation documents relating to the sale or redemption of gift certificates must be maintained and available for inspection by the Commission for a period of four years.

(i) Gift Certificate Log. A gift certificate log shall be maintained collectively by the participating licensed authorized organizations at the location(s) and shall include the following for each gift certificate:

- (1) certificate number;
- (2) certificate value;
- (3) date of issue;
- (4) expiration date;
- (5) date of redemption; and
- (6) if awarded as a bingo or door prize, the date of the bingo occasion and the date the prize is awarded.

TEXAS HOUSE OF REPRESENTATIVES

RECEIVED

SENFRONIA THOMPSON
CHAIR

JUL 08 2010

OPINION COMMITTEE



FILE # ML-46505-10 BYRON COOK
VICE-CHAIR
I.D. # 46505

July 7, 2010 COMMITTEE ON LOCAL & CONSENT CALENDARS

RQ-0898-GA

The Honorable Greg Abbott
Attorney General of Texas
P.O. Box 12548
Austin, Texas 78711-2548

sent via fax to 512.472.6538

Combined with
RQ-0884-GA

Dear General Abbott:

This is a request for an Attorney General's Opinion regarding whether certain business practices described below, which may be used by charities that conduct bingo to maximize their net proceeds, comply with Chapter 2001, Occupations Code, and other applicable law.

The Business Practices

The practice used by many charitable bingo organizations is to redeem prize winnings from amusement machines with bingo merchandise. A person who plays the amusement machine and wins is awarded a representation of value in the form of a ticket or token. Each ticket or token represents no more than \$5 or ten times the amount the player pays for one play of the amusement machine, whichever is less. No cash is paid to a player of the machine who wins.

Instead, the player takes the tickets or tokens to the bingo cashier, who provides the player with bingo merchandise. The bingo merchandise is approved by the Texas Lottery Commission and includes bingo paper, bingo pull-tabs or bingo cardminders that are used by the customer to play bingo. The bingo merchandise used for redemption is withdrawn and sold from the charities' regulated inventories and the use of the merchandise is documented in the normal course of business as required by Commission rules.

The tickets serve as a way to keep track the players' receipt of the bingo merchandise and can only be redeemed for the merchandise at the bingo location (i.e., on site). Based on the number of tickets turned into the cashier, the operator of the amusement machine pays the charity for the bingo merchandise that has been dispensed to players who presented the tickets. The form of this payment is by cash, debit card or check, all of which are authorized forms of payment for bingo merchandise. The payments for this merchandise are all registered and reported as required by Commission rules as sales of the bingo merchandise. The proceeds from the payments are deposited into the charities' bank accounts in the manner required by the Commission and state law for all sales of bingo merchandise.

P.O. Box 2910 ☆ AUSTIN, TEXAS 78768-2910 ☆ 512-463-0800 ☆ F2.166

MEMBERS:

RAFAEL ANCHIA ☆ DWAYNE BOHAC ☆ VALINDA BOLTON ☆ ROLAND GUTIERREZ ☆ JOIE LAUDENBERG
TREV MARTINEZ FISCHER ☆ TOMMY MERRITT ☆ GEANIE MORRISON ☆ ROB ORR
MILDA MORA, CHIEF CLERK ☆ COLLEEN TRAN, ASSISTANT CLERK

page 2 (cont'd)
July 7, 2010

Interest of the Charities


This practice has come to contribute an important part of many charitable bingo organizations' net proceeds from bingo. These organizations have been careful to establish processes intended to comply with the "\$5 or ten-times rule" of Texas Penal Code Section 47.01(4)(B). They are also redeeming only for non-cash merchandise prizes in the form of state-approved bingo inventory. This merchandise is manufactured by licensed bingo manufacturers, boxed and shipped to licensed bingo distributors and then sold and shipped by the distributors to the bingo charities. Since the amusement machines have a relatively high percentage payout, the winnings redeemed by these charities are a considerable portion of the amounts paid to play the amusement machines and contribute substantially to the charities' sales and bottom lines.

In addition, if there is a game room near the charitable bingo location that is using gambling devices paying cash, without redemption for bingo merchandise these charities have no way to compete against those who are breaking the law.

For these reasons, compliance with the Penal Code in the manner described above is vital to these charities. Accordingly, I request your affirmative opinion regarding whether the practices as described are in compliance with state law. While I understand that the Texas Lottery Commission has asked for your opinion regarding some related matters, I request that you fully consider the complete description of the charities' business practices above in reaching your conclusions regarding my questions.

Thank you for your prompt attention to this matter. If you should have any further questions please contact my committee clerk, Milda Mora, at 463-0720.

Sincerely,


Senfonia Thompson
Chair