



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 8, 1988

Honorable Bob Bullock
Comptroller of Public Accounts
L.B.J. State Office Building
Austin, Texas 78774

LO-88-39

Dear Mr. Bullock:

You have asked whether nonprofit affiliates of a statewide organization which are licensed to conduct bingo in this state may donate money from their bingo proceeds to an individual for use in his campaign for a statewide office within the nonprofit organization. Bingo is regulated by article 179d, V.T.C.S. (the Bingo Enabling Act). Definitions relevant to your inquiry are found in section 2 of the act as follows:

. . . .

(3) 'Nonprofit organization' means an unincorporated association or society or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act, as amended (Article 1369-1.01 et seq., Vernon's Texas Civil Statutes), that:

(A) does not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services;

(B) for at least three years:

(i) has had a governing body or officers elected by a vote of members or by a vote of delegates elected by the members; or

(ii) has been affiliated with a state or national organization organized to perform the same purposes; and

(C) has obtained a 501(c) exemption from the Internal Revenue Service.

. . . .

(10) 'Net proceeds' means:

(A) in relation to the gross receipts from one or more occasions of bingo, the amount that remains after deducting the reasonable sums necessarily and actually expended for advertising, security, repairs to premises and equipment, bingo supplies and equipment, prizes, stated rental, or mortgage and insurance expenses, if any, bookkeeping or accounting services, fees for personnel as permitted under Subsection (c) of Section 19 of this Act, janitorial services and utility supplies and services, if any, license fees, and the gross receipts tax; and

(B) in relation to the gross rent or other consideration received by an organization licensed to conduct bingo for the use of its premises, fixtures, or equipment by another licensee, the amount that remains after deducting the reasonable sums necessarily and actually expended for janitorial services and utility supplies directly attributable to the use of the premises, fixtures, or equipment, if any.

(9) 'Charitable purposes' means one or more of the following causes, deeds, or activities to which the net proceeds derived from the playing of bingo are dedicated:

(A) those that benefit needy or deserving persons in this state, indefinite in number, by enhancing their opportunity for religious or educational advancement, by relieving them from disease, suffering, or distress, or by contributing to their physical well-being, by assisting them in establishing themselves in life as worthy and useful citizens, or by increasing their comprehension of and devotion to the principles on which this nation was founded

and enhancing their loyalty to their government;

(B) those that initiate, perform, or foster worthy public works in this state or enable or further the erection or maintenance of public structures in this state. . . .

Section 16 of the Bingo Enabling Act vests broad authority in the comptroller of public accounts to supervise and control bingo in this state. You tell us that you have adopted a more detailed definition of "charitable purposes" pursuant to your grant of authority under section 16. Bingo Regulation and Tax Rule 3.544 adds several items to the statutory definition of "charitable purposes" quoted above. The rule provides in pertinent part:

Charitable purposes -- One or more of the following activities:

. . . .

(C) Those that maintain, improve, add to, repair, or retire the debt on existing buildings and real property used for purposes enumerated in paragraph (A) and (B); or

(D) those organizational and administrative activities that assist the licensed authorized organization in furthering the purposes listed in paragraphs (A), (B), and (C).

(i) The activity must relate to a purpose which is consistent with the stated purposes of the organization.

(ii) No expenditure related to the activity may directly benefit individual members of the organization.

(iii) Expenditures for services rendered and materials purchased for the conduct of bingo by the organization are not considered distributions for charitable purposes. See §3.549 of this title (relating to Allowable Expenditures of Receipts from Bingo) for

guidelines on the treatment of expenditures of this type.

(E) Some examples of charitable purposes include the following:

(i) Charitable. Donations to recognized organizations such as Cerebral Palsy, Muscular Dystrophy, the Heart Fund, American Cancer Society, and other nationally or locally recognized charities in Texas;

(ii) Educational. Contributions for open scholarships in Texas, when recipients are not limited to children of the licensee or commercial lessor; contributions for teachers salaries, exchange student funds, books for libraries and equipment for schools;

(iii) Religious. Contributions or expenditures for religious purposes and activities in Texas; for example, clerics' salaries, maintenance of religious buildings and purchase of religious supplies.

(iv) Patriotic Activities. Contributions toward patriotic activities or projects in Texas, such as purchasing flags to give away, Veteran's Day activities, Memorial and Independence Day Activities, and contributions to support activities of a veteran's state organization. . . .

Restrictions on the conduct of bingo games are found in section 11 of the Bingo Enabling Act. Subsection (d) of section 11 provides:

The net proceeds of any game of bingo and of any rental of premises for bingo shall be exclusively devoted to the charitable purposes of the organization permitted to conduct the game. . . .

The deposit, transfer, and accounting of bingo proceeds is regulated by section 19a of the act. Funds derived from the conduct of bingo, less cash prizes, are required to be deposited in a "bingo account." Sec. 19a(a). Disbursements from this account are governed by subsections (c) through (e) of section 19a as follows:

(c) Checks drawn on the bingo account must be for one or more of the following purposes:

(1) the payment of necessary and reasonable bona fide expenses permitted under Subsection (c) of Section 19 of this Act incurred and paid in connection with the conduct of bingo;

(2) the payment of necessary and reasonable compensation incurred and paid in connection with the conduct of bingo for personnel permitted under Subsection (c) of Section 19 of this Act;

(3) the disbursement of net proceeds derived from the conduct of bingo to charitable purposes; and

(4) the transfer of net proceeds derived from the conduct of bingo to the bingo savings account pending a disbursement to a charitable purpose.

(d) The disbursement of net proceeds on deposit in the bingo savings account to a charitable purpose must be made by transferring the intended disbursement back into the bingo account and then withdrawing the amount by a check drawn on that account as prescribed in this section.

(e) Proceeds given to a person or an organization for a charitable purpose may not be used by the donee:

(1) to pay for services rendered or materials purchased in connection with the conducting of bingo by the donor organization; or

(2) for a cause, a deed, or an activity that would not constitute a charitable purpose if the activity were conducted by the donor organization.

You ask about the disbursement of bingo proceeds to assist a person's campaign for statewide office within a

nonprofit organization. Because this disbursement does not come within either the definition of "charitable purposes" for which disbursement of the net proceeds of a bingo game are authorized pursuant to section 11 of the act or the more detailed definition adopted under your rulemaking authority, this use of bingo proceeds is not permitted.

The net proceeds of a bingo game must be used for charitable purposes. The donation of bingo proceeds to an individual for use in his campaign for a statewide office within a nonprofit organization does not come within the definition of "charitable purposes" under the Bingo Enabling Act.

Yours very truly,



Rick Gilpin, Chairman
Opinion Committee

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