



Office of the Attorney General

State of Texas

November 11, 1993

DAN MORALES
ATTORNEY GENERAL

Ms. Jeannene Fox
Acting Administrator
Texas Alcoholic Beverage Commission
P.O. Box 13127
Austin, Texas 78711-3127

Letter Opinion No. 93-99

Re: Whether the Bingo Enabling Act, V.T.C.S. article 179d, requires a person to hold a commercial lessor's license if the person leases premises to an authorized organization licensed to conduct bingo (RQ-603)

Dear Ms. Fox:

In June 1993 your predecessor in office wrote to ask for an interpretation of the Bingo Enabling Act (the "act"), V.T.C.S. article 179d, in light of the following three questions:

- (1) Is [an authorized commercial lessor] who leases premises to [a licensed] authorized organization for its sole use and total control required to hold a commercial lessor's license?
- (2) Is [an authorized commercial lessor] who leases premises to [a licensed] authorized organization for it to conduct bingo on the premises and for it to also sublease to one or more other organizations to conduct bingo there required to hold a commercial lessor's license?
- (3) Is [an authorized commercial lessor] who leases premises to a licensed authorized organization conducting bingo at another location who subleases the rented premises to another authorized organization to conduct bingo required to hold a commercial lessor's license?

At the time your predecessor in office wrote, the Texas Alcoholic Beverage Commission was authorized to enforce the act. Beginning September 1, 1993, however, that authority passed to the Texas Lottery Commission. See Acts 1993, 73d Leg., ch. 286, § 1, at 1327 (amending V.T.C.S. art. 179d, § 2(20), to define "commission" as "the Texas Lottery Commission"). Consequently, we will answer your question with regard to the authority of the Texas Lottery Commission (the "commission") to enforce the act.

For purposes of the act, an "authorized commercial lessor" is "a person¹ eligible for a commercial license to lease bingo premises under Section 13 of this Act." (Footnote added.) Section 13 of the act currently provides in pertinent part as follows:

....

(f) A person who leases premises on which bingo is conducted is not required to be a licensed commercial lessor unless the person leases directly to a licensed authorized organization.

(g) The commission shall issue a license permitting a commercial lessor applicant to lease premises for the conduct of bingo to an authorized organization² or organizations specified in the application³ during the period specified in the application or such shorter period as the commission determines, but not to exceed one year,⁴ on

¹Section 2(7) of the act, V.T.C.S. article 179d, defines "person" to mean "an individual, partnership, corporation, or other group, however organized."

²Section 2(11) of the act defines "authorized organization" as "a religious society, a nonprofit organization (other than an organization whose membership is predominantly veterans or their dependents organized to advance the interests of veterans, active duty personnel, or their dependents) whose predominant activities are for the support of medical research or treatment programs, a fraternal or veterans organization, or a volunteer fire department."

³Section 12(b) of the act requires an applicant for a license to act as an authorized commercial lessor to file with the commission a verified written application on a form the commission has prescribed, which must include:

- (1) the name and address of the applicant and of all other persons who have a financial interest in or who are in any capacity a real party in interest in the applicant's business as pertains to this Act;
- (2) a designation and address of the premises intended to be covered by the license sought;
- (3) the lawful capacity for public assembly purposes;
- (4) a statement that a copy of the application has been sent to the appropriate governing body; and
- (5) a statement that the applicant complies with the conditions for eligibility for the license prescribed by Section 13 of this Act.

Section 12(c) authorizes the commission, the governing body of the county, justice precinct, or municipality in which a commercial lessor proposes to lease or lease premises for the conduct of bingo, or the attorney general may request in writing that the commercial lessor disclose certain additional information.

⁴A license to either conduct bingo or to lease bingo premises may not be effective for more than one year. V.T.C.S. art. 197d, § 13(h).

payment of a license fee⁵ . . . if the commission determines that [the applicant satisfies certain prerequisites listed in subsection (g)].

. . . .

(n) A commercial license to lease bingo premises to a licensed authorized organization may be issued only to:

(1) an authorized organization licensed to conduct bingo that owns or leases premises on which bingo is or will be conducted or an association of authorized organizations licensed to conduct bingo that jointly own or lease premises on which bingo is or will be conducted and that the organization or association leases or offers for lease to one or more other authorized organizations to conduct bingo;⁶

(2) a person who leases premises to a single licensed authorized organization that subleases or will sublease the premises to one or more other licensed authorized organizations to conduct bingo on the premises; or

(3) a person who leases premises for the total control and exclusive use of only one licensed organization as that organization's primary business office. [Footnotes added.]

The legislature enacted the Bingo Enabling Act in 1981. *See* Acts 1981, 67th Leg., 1st C.S., ch. 11, at 85. Section 13(d) of the original act required the comptroller⁷ to issue a commercial lessor's license to an applicant "to lease premises for the conduct of bingo to an authorized organization or organizations during the period . . . specified [in the license] . . . on payment of a \$10 license fee," provided that the comptroller found that the applicant met the listed criteria. In 1989 the legislature added subsection (n) to section 13 of the act. *See supra* (quoting current version of subsection (n)). The current version of subsection (n) is, for our purposes here, essentially the same as that which the legislature enacted in 1989. Reading section 13(n) by itself, the section requires a commercial lessor to be licensed to lease not only to the licensed authorized organization that is going to conduct bingo on the premises, but also to lease to a licensed authorized organization that is going to sublease to other licensed authorized organizations. The

⁵*See id.* § 13(d)(2) (listing maximum fees for commercial licenses to lease bingo premises).

⁶The legislature amended subsection (n) in 1993 to allow associations of charities to co-own or co-lease premises on which bingo games are conducted. *See* Acts 1993, 73d Leg., ch. 286, § 4; Hearings on H.B. 2771 Before the Senate Comm. on State Affairs, 73d Leg. (May 3, 1993) (statement of Brad Reynolds) (tape available from Senate Staff Services).

⁷The legislature amended the act in 1989 to transfer most, if not all, of the comptroller's responsibilities under the act to the commission. *See* Acts 1989, 71st Leg., ch. 238, at 1107.

effect of the enactment of subsection (n) is the licensing of bingo halls under what your predecessor in office termed "the tier system," in which the commission issues a license to an authorized commercial lessor to lease premises to an authorized organization, which holds licenses to conduct bingo on the premises and to sublease to other authorized organizations.

The legislature amended subsection (f) in 1993. *See* Acts 1993, 73d Leg., ch. 286, § 4. Prior to amendment, subsection (f) prohibited the commission from licensing to conduct bingo games on the premises of a commercial lessor an applicant already licensed to conduct bingo at another location unless the applicant could prove that its existing facilities are inadequate. We found no legislative history indicating the intent underlying this amendment.

Your predecessor in office stated that two new situations have arisen in the last year, prior to the recent amendment of section 13(f) and described the situations as follows:

In the first . . . , we have received sets of applications where hall B is rented without a commercial lessor's license to a licensed authorized organization which is conducting bingo at hall A. That organization then applies for a lessor's license to sublease to several organizations for those organizations to conduct bingo at hall B, while the sublessor continues to conduct bingo at hall A. . . .

In the second situation, a licensed commercial lessor leasing under the tier system has failed to renew his lessor's license to lease to a lessor/conductor which is conducting bingo at those leased premises, arguing that the [act] . . . does not require that he hold a commercial lessor's license.

The three questions your predecessor in office asked arise out of these situations.

Section 13(f) expressly requires that a person who leases premises on which bingo is conducted must be licensed as a commercial lessor if the person leases directly to an authorized organization licensed to conduct bingo. When an authorized organization applies for a license to conduct bingo, it must specify the location at which it "intends to conduct bingo under the license." V.T.C.S. art. 179d, § 12(a)(2). The license "is valid for only the one location,⁸ . . . , indicated on the face of its license." 16 T.A.C. § 55.545(a)(3)(B). (Footnote added.) In other words, an authorized organization's license to conduct bingo is site-specific. In our opinion, therefore, an authorized organization is a *licensed* authorized organization only in reference to the location indicated on the face of its license. In any other location, the authorized organization is

⁸Section 55.544, title 16 of the Texas Administrative Code, defines "location" as "[a]ll the area under the exterior roof of any building and/or structure."

not a *licensed* authorized organization, and, pursuant to section 13(f), a lessor that leases to such an organization need not be licensed as a commercial lessor.

In answer to the first question, therefore, we conclude that an authorized commercial lessor that leases premises to a licensed authorized organization for its sole use and total control must hold a commercial lessor's license if the lessee is conducting bingo on the premises. In answer to the second question, we conclude that an authorized commercial lessor that leases premises to a licensed authorized organization which conducts bingo on the premises as well as subleases the premises to one or more other licensed authorized organizations to conduct bingo, must hold a commercial lessor's license. Finally, in answer to the third question, we conclude that a person that leases premises to an authorized organization which is licensed to conduct bingo at another location and subleases the rented premises to another licensed authorized organization to conduct bingo need not hold a commercial lessor's license. The lessee--the authorized organization licensed to conduct bingo elsewhere--must, of course, obtain a commercial lessor's license before leasing to a licensed authorized organization to conduct bingo on the premises.

S U M M A R Y

Section 13(f) of the Bingo Enabling Act, V.T.C.S. article 179d, requires an authorized commercial lessor to be licensed as a commercial lessor only if the lessor leases directly to a licensed authorized organization. An authorized organization that is not licensed to conduct bingo on the leased premises is not a *licensed* authorized organization for purposes of section 13(f). Thus, an authorized commercial lessor that leases premises to a licensed authorized organization for its sole use and total control must hold a commercial lessor's license. Additionally, an authorized commercial lessor that leases premises to a licensed authorized organization which conducts bingo on the premises as well as subleases the premises to one or more other licensed authorized organizations to conduct bingo must hold a commercial lessor's license. However, a person need not be licensed as a commercial lessor if the lessor leases premises to an authorized organization which conducts bingo at another location and subleases the rented premises to another authorized organization to conduct bingo on the premises.

Yours very truly,



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**cc: Ms. Nora Linares
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