

TEXAS HOUSE OF REPRESENTATIVES

State Capitol, Room GW.07
P.O. Box 2910
Austin, Texas 78768-2910
Phone (512) 463-0660
FAX (512) 463-9884
1-800-388-3359



District Office:
855 Uvalde Road
Houston, Texas 77015
Phone (713) 453-6336
FAX (713) 453-5013
E-mail: fred.bosse@house.state.tx.us

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FRED M. BOSSE

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RQ-0572-JC

OPINION COMMITTEE

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

FILE # ML-42692-02

I.D. # 42692

Re: Request for an Opinion regarding transfers of a bingo commercial lessor license.

Dear Attorney General Cornyn:

Please accept this letter as a formal request for an Opinion from your office on the following questions:

1. May a Texas Corporation that holds a bingo commercial lessor license convert to a Texas Limited Partnership pursuant to Article 5.17 of the Texas Business Corporation Act? Assuming the answer is affirmative, is it necessary for the Limited Partnership to apply for an amendment to the license?
2. May a Texas Corporation that holds a bingo commercial lessor license transfer the license to a Texas Limited Partnership under the same ownership and control, if the transferee otherwise meets the requirements of the Bingo Enabling Act?
3. Reversing the above, may the Limited Partnership convert, or transfer its license, to a Texas Corporation?

BACKGROUND

In 1980, the people of Texas amended the Texas Constitution to authorize bingo games conducted by certain nonprofit charities. The purpose of this amendment was to benefit the charities,



and therefore, the amendment stated that all proceeds from the games must be spent for the charitable purposes of those organizations. The amendment further required that all bingo games must be conducted "on property owned or leased" by the charity.

To help satisfy these requirements, the Legislature has inserted provisions into the Bingo Enabling Act, Texas Occupations Code Chapter 2001, to license and regulate bingo halls, and to fix the amount of rent that a charity can pay a lessor for use of a licensed hall. These commercial lessor licenses are themselves transferrable under certain conditions.

Holders of bingo lessor licenses (who may be corporations, partnerships, or individuals) have, for a variety of business reasons, found it necessary to transfer those licenses either to third parties or to affiliated entities. My office has received inquiries as to whether a Texas Corporation that owns a bingo lessor license may convert to a Texas Limited Partnership without voiding its existing license. A related question is, would it be permissible under the Bingo Enabling Act to simply transfer that license to affiliated Limited Partnership? Finally, if it is permissible for a corporation to convert or transfer its license to a limited partnership, are there any prohibitions on the reverse - i.e., on a limited partnership converting or transferring its license to a corporation?

ISSUE PRESENTED

At issue here is the Bingo Enabling Act, Chapter 2001, Texas Occupations Code (the "Act"). The opinion request assumes that each entity in question satisfies all requirements to be issued a new license pursuant to § 2001.159(a) - i.e., that the entity is eligible for a license, is the real party in interest, etc..

Section 2001.152 of the Act provides that to be eligible for a commercial lessor license, the applicant must meet certain criteria, and be either (1) a "licensed authorized organization" (i.e., a charity licensed to conduct bingo), or (2) a "person". The term "person" is defined as "an individual, partnership, corporation, or other group." Id. §2001.002(20). Thus so long as they meet the other requirements of the Act, both a domestic corporation and a limited partnership are legally entitled to hold a commercial lessor license.

Conversion

According to the Texas Business Corporation Act, Article 5.17, a domestic corporation may convert itself into any legal entity, in accordance with a plan of conversion. Article 5.20A(2) provides:

A. When a conversion of a converting entity takes effect:

* * *

(2) all rights, title, and interests to all real estate and other property owned by the converting entity shall continue to be owned by the converted entity in its new

organizational form without reversion or impairment, *without further act or deed, and without any transfer or assignment having occurred*, but subject to any existing liens or other encumbrances thereon;

(Emphasis added.)

Your office has previously been asked the question of whether a State-issued license is a form of "property owned by the converting entity" that would continue in ownership of the successor entity "without any transfer or assignment having occurred."

You replied as follows:

"Although state licenses are not specifically mentioned among those things that automatically make the transition, we think that the statute as a whole, viewed in light of its purpose, contemplates that a state license does not die upon a corporation's conversion, but continues with it. Accordingly, we conclude that, as a general rule, when a corporation converts to another type of business entity pursuant to article 5.17 of the Business Corporation Act, a license held by the converting corporation continues to be held by the converted entity in its new form."

"However, as your question implies, a specific licensing statute or regulation might conflict with this general rule by prohibiting the continuation of a license, by imposing conditions or requirements on its continuation, or by restricting the issuance of a license to certain types of business entities."

Op. Tex. Att'y Gen. No. JC-0126 (1999). Thus, it is apparent that under this general rule, a bingo license held by a corporation would automatically continue with the converted entity unless specifically prohibited by the Bingo Enabling Act.

The main provision of concern here is § 2001.160 of the Act, providing for transfer of a commercial lessor license. Relevant provisions read as follows:

§ 2001.160. Transfer of License (a) A licensed commercial lessor may not transfer a commercial lessor license except as provided by this section. (b) A transfer of a commercial lessor license under this section may be made only with the prior approval of the commission. The commission shall approve the transfer under this section if the person to whom the license will be transferred otherwise meets the requirements of this section. (c) A licensed commercial lessor may transfer a license held by the license holder to a corporation formed by the license holder or from one corporation owned by the license holder to another corporation owned by the license holder.

* * *

By its terms, § 2001.160 would not appear to apply to a conversion under Article 5.17 of the

Business Corporation Act. Under the Business Corporation Act, the effect of a conversion is that property continues under the successor entity "without any transfer or assignment having occurred". Because § 2001.160 is concerned solely with the *transfer* of a license, it seems that it would not prohibit the *continuation* of a license owned by a converted domestic corporation. I am not aware of any other provisions in the Bingo Enabling Act or other law that would otherwise prohibit this sort of conversion.

Assuming that a corporation *may* convert to a limited partnership, the related question is whether the new entity would need to apply for an amended license. Article 5.20 of the Business Corporation Act provides for the continuation of a license in the successor entity "without further deed or act". Nevertheless, in Opinion No. JC-0126, your office discussed certain licenses for which an application would be expressly required in order to effect a continuation of license under a new business entity. See 7 Tex. Admin. Code § 85.208(a) (pawnshop licenses); 16 Tex. Admin. Code § 13.67© (gas dealers).

Neither the Bingo Enabling Act, nor its rules, contain any equivalent provisions. However, § 2001.310 of the Act requires each license to be prominently displayed and to "contain the name and address of the license holder". It would seem, therefore, that a change in ownership from (for example) "ABC, Inc." to "ABC, L.P." would require an amendment to the license in accordance with the amendment provisions in § 2001.306(a) of the Act and 16 Tex. Admin. Code § 402.545(f).

Transfer

Next, it is possible that a corporation might prefer to avoid the conversion procedures in Article 5.17 *et seq.* of the Business Corporation Act, and simply transfer its license to a separate, newly created entity. If so, the question that remains is whether § 2001.160 of the Bingo Enabling Act would prohibit such a transfer if the transferee is a limited partnership.

Subsections (a) and ©), together, suggest that the only permissible forms of transfer by a corporation would be "to another corporation owned by the license holder." TEX. OCC. CODE § 2001.160©). However, the second sentence in subsection (b) provides that:

The commission *shall* approve the transfer under this section if the person to whom the license will be transferred otherwise meets the *requirements* of this section.

TEX. OCC. CODE § 2001.160(b). From this sentence, it seems that the relevant inquiry is to determine what are the "requirements" of § 2001.160. If the transferee is a "person" who meets those requirements, then a transfer should be approved as a matter of right.

Subsection ©), which allows that an individual or corporation "may" transfer a license to a wholly owned corporation, would not generally be considered a "requirement." See Tex. Gov't Code § 311.016(1): "'May' creates discretionary authority or grants permission or a power." There are no other requirements in § 2001.160 that apply to a corporation or limited partnership. Therefore,

since a limited partnership satisfies the Act's definition of a "person", it would appear to be entitled to approval of a license transfer under § 2001.160(b). This assumes that the entity is otherwise eligible under §§ 2001.152 - 2001.159.

Conversion or Transfer From Limited Partnership

Finally, does a limited partnership enjoy an equal right to convert or transfer its license to a Texas corporation?

Like the Business Corporation Act, the Texas Revised Limited Partnership Act permits a converted limited partnership to continue in effect all of its rights, title and interest to property, "without any transfer or assignment having occurred." V.T.C.S. Art. 6132a-1 §2.15(g)(2). Applying the reasoning in Opinion No. JC-0126, it would thus appear that a commercial lessor license held by a limited partnership would freely pass to whatever entity the limited partnership elected to convert into, including a corporation.

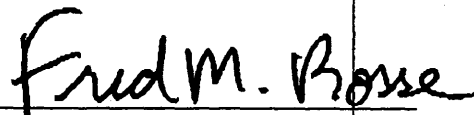
It would also seem, for the same reasons discussed in the second question, that a limited partnership could simply transfer its license to a new corporation, without undergoing the conversion process. Again, this assumes that the entity is otherwise eligible under §§ 2001.152 - 2001.159 of the Occupations Code. There is no published case law or previous attorney general opinion, however, directly on point.

CONCLUSION

As previously stated, it does not appear that current law prohibits a corporation that holds a commercial lessor's license from either (1) converting itself to a limited partnership, or (2) transferring its license to a separate limited partnership, if the limited partnership is otherwise qualified to hold a license. Nor does it appear that a limited partnership would be prohibited from doing the opposite. However, absent an attorney general opinion or amendment to the language of the law specifically authorizing such activity, a question remains.

I thank you in advance for your consideration of this matter. Please do not hesitate to contact me should you have any questions or require further information.

Sincerely,



Fred M. Bosse

FMB/cpc