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Chairman

James A. Cox, Jr.  
Commissioner

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Commissioner



# TEXAS LOTTERY COMMISSION

Reagan E. Greer, Executive Director

William L. Atkins, Director Charitable Bingo Operations

**RQ-0135-GA**

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OPINION COMMITTEE

November 24, 2003

The Honorable Greg Abbott  
Office of the Attorney General  
PO Box 12548  
Austin, TX 78711-2548

Via Certified Mail: 7001 0360 0003 1357 8439  
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FILE # ML-43349-0  
I.D. # 43349

Dear General Abbott:

This is a request for an Attorney General's Opinion regarding the application and meaning of Chapter 2001 of the Texas Occupations Code ("Chapter 2001") in connection with the Texas Lottery Commission's duty to exercise strict control and close supervision over bingo conducted in this state. Specifically, the Commission requests an opinion on whether Chapter 2001 prohibits concurrent ownership between and among bingo manufacturers, bingo distributors, and bingo commercial lessors under ownership circumstances as described herein.

## BACKGROUND AND LEGISLATIVE HISTORY

The Bingo Enabling Act contains express prohibitions on shared ownership of bingo-related organizations. See TEX. OCC. CODE §§2001.154-156, 2001.202-203, 2001.207-208. Under these statutes, a manufacturer and distributors of bingo equipment, and the lessors of bingo premises, are ineligible for a license if they have certain other disqualifying interests. Copies of the statutes are attached.

These statutes were previously found in Article 179d, Sections 13(q), 13a(c), and 13b(c) of the Civil Statutes. They transferred over essentially unchanged when the Bingo Enabling Act was codified under Chapter 2001 in 1999.

## QUESTIONS PRESENTED

Specifically, the Commission's question is as follows:

Under what circumstances does the Bingo Act prohibit a corporation from being eligible for a bingo manufacturer or distributor's license:

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- (1) if an individual shareholder owns ten percent (or less) stock in a bingo manufacturer or distributor and also concurrently owns<sup>1</sup> ten percent (or less) stock interest in another licensed bingo distributor or manufacturer;
- (2) if an individual shareholder owns ten percent (or less) stock in a bingo manufacturer or distributor and also concurrently owns greater than a ten percent stock interest in another licensed bingo distributor or manufacturer;
- (3) if an individual shareholder owns ten percent (or less) stock in a bingo manufacturer or distributor and also concurrently each of his two adult children own ten percent (or less) stock interest in another licensed bingo distributor or manufacturer;
- (4) if an individual shareholder owns ten percent (or less) stock in a bingo manufacturer or distributor and also concurrently has transferred, as the corpus of a trust, his greater than a ten percent stock interest in another licensed bingo distributor or manufacturer, of which he is not a trustee, with his children named as beneficiaries;
- (5) if an individual shareholder owns ten percent (or less) stock in a bingo manufacturer or distributor and also concurrently his adult child owns greater than ten percent stock in a commercial lessor.

#### **FACTUAL BACKGROUND:**

Question subpart (1) involves a corporation that has applied for a Texas Bingo Manufacturer's License. The corporation has disclosed that a limited partnership has acquired a 100% proprietary, equitable, or credit interest in a Bingo Manufacturer applicant. A background security investigation reveals that a particular limited partner owns an 8% shareholder interest in the limited partnership and also concurrently, this same limited partner discloses that he owns an 8.4% proprietary, equitable, or credit interest in a Texas licensed bingo distributor.

Question subpart (2) involves a corporation that has applied for a Texas bingo manufacturer's license. The corporation has disclosed by letter to the Charitable Bingo Operations Division that two married shareholders jointly own a 9.5% proprietary, equitable, or credit interest in the Bingo Manufacturer applicant but also these same two married shareholders jointly own a 47% proprietary, equitable, or credit interest in a Texas licensed bingo distributor.

Question subpart (3) involves a corporation applying for a Texas bingo manufacturer's license. The corporation has disclosed that a limited partnership has acquired a one hundred percent proprietary, equitable, or credit interest in a Bingo Manufacturer applicant. A background security investigation reveals that a particular limited partner owns an 8% shareholder interest in the limited partnership. However, concurrently, this same limited partner has disclosed that he owns an 8.4% proprietary, equitable, or credit interest in a Texas licensed bingo distributor and

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<sup>1</sup> TEX.OCC.CODE § 2001.102 (9) (A) provides for proprietary, equitable, or credit interest ownership

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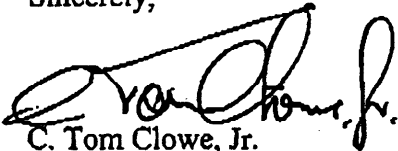
each one of his three adult children own a 7.2% in the distributor for a total combined ownership in the distributor of 30%.

Question subpart (4) involves a corporation that has applied for a Texas bingo manufacturer's license. The corporation has disclosed by letter to the Charitable Bingo Operations Division that two married shareholders jointly own in the aggregate a 9.5% proprietary, equitable, or credit interest in the Bingo Manufacturer applicant and but also these two married shareholders concurrently jointly own a 47% proprietary, equitable, or credit interest in a Texas licensed bingo distributor. The shareholders propose to transfer the jointly owned 47% bingo distributor ownership interest as the corpus of a revocable trust for the benefit of the married shareholder's three children and neither shareholder would serve as a trustee.

Question subpart (5) involves a corporation applying for a Texas bingo manufacturer's license. The corporation has disclosed that a limited partnership has acquired a 100 % proprietary, equitable, or credit interest in a Bingo Manufacturer applicant. A background security investigation reveals that a particular limited partner owns an 8% shareholder interest in the limited partnership. However, concurrently, this same limited partner has disclosed that he owns an 8.4% proprietary, equitable, or credit interest in a Texas licensed bingo distributor and each one of his three adult children own a 7.2% in the distributor for a total combined ownership in the distributor of 30%. One of the adult children, who owns a 7.2 % interest in the bingo distributor, has acquired a 100% ownership interest in a licensed Texas Bingo Commercial Lessor.

Thank you in advance for your thoughts and consideration in this matter. Please contact the Commission's General Counsel, Kimberly L. Kiplin, at 512.344.5105 should you have any questions.

Sincerely,



C. Tom Clowe, Jr.  
Chair, Texas Lottery Commission

cc: Commissioner James A. Cox, Jr.  
Commissioner Rolando Olvera  
William L. Atkins, Director, Charitable Bingo Operations Division