

Chairman
James A. Cox, Jr.
Commissioner



TEXAS LOTTERY COMMISSION

Anthony J. Sadberry, Acting Executive Director William E. Atkins, Director, Charitable Bingo Operations

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OPERATION COMMITTEE

July 5, 2006

FILE # ML44879-04

I.D. # 44879

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

RQ-0506-GA

Dear General Abbott:

As chairman of the Texas Lottery Commission (the commission), I am seeking your opinion about the meaning of Tex. Occ. Code §2001.160(c) which provides

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.

Although one interpretation of Tex. Occ. Code §2001.160(c) appears to place a limitation on the transfer of a commercial lessor license, it might also be viewed as a non-restrictive example of one type of permissible transfer.¹

In considering this issue, you may find it helpful to have some background information. Prior to 1997, the Bingo Enabling Act section 13 (j) provided

A licensed commercial lessor may transfer a license held by the licensee to a corporation formed by the licensee or from one corporation owned by the licensee to another corporation owned by the licensee.

In 1997, the legislature amended the Act by adding section 13(j)(1) which provided

(j) A license may not be transferred by a licensee except as provided by this subsection.

(1) A commercial license to lease bingo premises may be transferred to another person with the prior approval of the commission.

¹ AGO GA-0007 (2003) addressed whether a corporation that holds a bingo commercial lessor license may convert to a limited partnership.

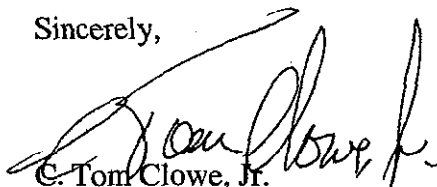
As a result of this amendment, the commission began approving transfers from any commercial lessor licensee to any person (individual, partnership, corporation, LLC, etc.) that qualified for the license. Previously, the commission had not approved such transfers other than to a corporation formed by the licensee or from one corporation owned by the licensee to another corporation owned by the licensee.

In 1999, the legislature recodified the Act with the express intent that the recodification was non-substantive.² As a result of recodification, Section 13(j) became Section 2001.160(c), which continues in effect. Subsequent to the recodification, the commission has continued to interpret the section as having the same meaning as the 1997 statute and has approved approximately sixty-eight transfers from a commercial lessor licensee to any person (individual, partnership, corporation, LLC etc.) that otherwise qualified for the license.

In *Fleming Foods of Texas, Inc. v. Rylander*, 6 S.W.3d 278 (Tex. 1999), the Texas Supreme court concluded “. . . that when specific provisions of a ‘nonsubstantive’ codification and the code as a whole are direct, unambiguous, and cannot be reconciled with prior law, the codification rather than the prior, repealed statute must be given effect.” In light of *Fleming*, is Tex. Occ. Code §2001.160 (c) a restriction on the transfer of a commercial lessor license or is it an example of one type of permissible transfer? If it is a restriction, what would be the status of licenses for which the Commission previously approved transfers under the broader interpretation?

Thank you for your attention to this matter. If you need additional information, please contact Sandra Joseph at (512) 344-5109.

Sincerely,



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

cc: Commissioner James A. Cox, Jr.
Executive Director Anthony Sadberry
William L. Atkins, Director, Charitable Bingo Operations Division

² H.B. 3155, 76th Leg., R.S. (Tex. 1999) An act relating to the adoption of a nonsubstantive revision of statutes relating to the licensing and regulation of certain professions and non business practices, including conforming amendments, repeals, and penalties.