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BAO # 2007-0723-0020

September 5, 2007

Mr. Jeffrey L. Minch
President, CEO
Littlefield Corporation
2501 North Lamar Blvd.
Austin, TX 78705

Re: Bingo Advisory Opinion No. 2007-0723-0020; Leasing Replacement Tables and Chairs

Dear Mr. Minch:

This advisory opinion responds to your request received on July 23, 2007, regarding leasing replacement tables and chairs. Specifically, you requested:

Scenario: A Unit composed of five (5) duly licensed and authorized charities desires to outfit their bingo hall with new tables and chairs to replace some functionally obsolete tables and chairs currently owned by the Unit.

Question: Can the Unit enter into a lease with their Commercial Lessor to lease or lease/purchase the replacement table and chairs?

ANSWER:

Neither the Bingo Enabling Act (Act) nor the Charitable Bingo Administrative Rules specifically addresses a lease between a licensed authorized organization and a commercial lessor pertaining to the lease or lease/purchase of replacement tables and chairs. However, the Act does address rent, permissible expense, and restrictions on the source of funds used by a person seeking a commercial lessor license to provide premises with furniture.

Tex. Occ. Code §2001.406 provides that rent paid by the licensed authorized organization to the lessor must include all expenses authorized by Tex. Occ. Code §2001.458, may not exceed \$600 for each bingo occasion, and must be paid in a lump sum. §2001.458 (a) is a non-exclusive list of items of expense that may be reasonable or necessary to conduct bingo. Although not listed in §2001.458, tables and chairs are reasonable or necessary items of expense to conduct bingo.

In addition, Tex. Occ. Code §2001.153 provides in part:

- (a) The commission may not issue a commercial lessor license to a person unless the commission receives evidence the commission considers adequate that funds used by the person seeking the license to . . . provide the premises with furniture . . . are:
 - (1) the person's own funds; or
 - (2) the funds of another person, including loan proceeds, that:
 - (A) were obtained in an arms-length transaction that was commercially reasonable under the circumstances; and
 - (B) were not obtained under an expectation or obligation that the person from whom the funds were obtained would directly participate in, or have a legal interest in, rents obtained under the license or revenues or profits from the conduct of bingo on the premises.

. . .

Accordingly, the Commission may not issue a commercial lessor license to a person who has received funds to provide furniture for the premises from another person who “. . . would directly participate in, or have a legal interest in . . . revenues or profits from the conduct of bingo on the premises.” Clearly, a licensed authorized organization would directly participate and have a legal interest in revenues or profits from the conduct of bingo on the premises. Therefore, the statute prohibits issuance of a commercial lessor license to a person who has received funds from a licensed authorized organization to provide furniture.

SUMMARY

Although neither the Bingo Enabling Act nor the Charitable Bingo Administrative Rules directly prohibits a unit from entering into a lease with their commercial lessor to lease or lease/purchase tables and chairs, Tex. Occ. Code §2001.406 requires that the expense must be included in the rent not to exceed \$600 per occasion and must be paid in a lump sum. Furthermore, Tex. Occ. Code §2001.153 prohibits the Commission from issuing a commercial lessor license to a person who has received funds from a licensed authorized organization to provide the premises with furniture.

This advisory opinion cannot be construed as a tax ruling or otherwise interpretive of the Internal Revenue Code. The information provided is completely limited to the context of the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

This advisory opinion is based on the laws, rules and regulations in effect at the time of its issuance. All of the information provided herein is subject to change in law.

This opinion is purely advisory in nature and is limited to the particular questions at issue and to the facts presented in the request. Therefore, this opinion must not be relied upon as a previous determination regarding any conduct which is not substantially consistent with the opinions and facts stated in the request.

Yours truly,

Philip D. Sanderson, Director
Charitable Bingo Operations Division

cc: James A. Cox, Jr., Chairman
C. Tom Clowe, Jr., Commissioner
Anthony J. Sadberry, Executive Director
Kimberly L. Kiplin, General Counsel