

James A. Cox, Jr.  
*Chairman*

C. Tom Clowe, Jr.  
*Commissioner*



# TEXAS LOTTERY COMMISSION

Anthony J. Sadberry, *Executive Director*

Philip D. Sanderson, *Charitable Bingo Operations Director*

**CERTIFIED MAIL NO. 7004 1350 0000 5061 8778**  
**RETURN RECEIPT REQUESTED**

BAO # 2007-0802-0025

October 4, 2007

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

Re: Request for Bingo Advisory Opinion No. 2007-0802-0025

Dear Mr. Minch:

This advisory opinion responds to your request received on August 2, 2007. Specifically, you requested:

Scenario: A charity has approached a commercial lessor to enter into a charity lease to conduct bingo at the commercial lessor's bingo hall. The charity indicates that they have two "affiliated organizations" who would also like to conduct bingo. The commercial lessor has two bingo halls in the same market. The charity proposes to conduct bingo in both bingo halls by licensing the parent organization in one bingo hall and the two affiliated organizations in the other bingo hall. This would result in the organization having three entities conducting bingo in the same market in two different bingo halls.

During the course of the commercial lessor's due diligence on the charity, it is learned by the commercial lessor that the parent organization and the "affiliated organizations" all share the same members, have the same leadership, occupy the same building, have a single general fund account and pursue virtually identical charitable purposes. There is no evidence that the "affiliated organizations" undertake any governance formalities (e.g. periodic meetings, minutes, business planning, reports, etc.); and, there is much evidence that the organizations are really all one and the same. The same members, the same leadership, the same location, the same charitable purpose.

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The commercial lessor becomes concerned that the “affiliated organizations” are in fact simply the alter ego of the parent organization, are in reality just a creation on paper having a very limited purpose, are really just a nominal part of the parent organization and any distinction is being drawn solely to be able to play bingo in multiple locations.

The commercial lessor becomes concerned that this may be a violation of the provisions of Section 2001.402 SINGLE PREMISES (a) Bingo may not be conducted at more than one premises on property owned or leased by a licensed authorized organization.

Question #1: Does the commercial lessor have any duty to inquire into the character of a charity’s operations in order to determine if they are appropriately licensable?

Question #2: May a commercial lessor rely upon the issuance of a license by the Commission as definitive proof that a charity is authorized to play bingo.

Question #3: Does the commercial lessor have any duty to inform the TLC CBOD of its concerns? Should the commercial lessor conclude that the organizations are all one and the same and therefore in violation of the provisions of Sec 2001.402 (a) does the commercial lessor incur any liability for allowing them to play bingo?

Question #4: Can a charity create affiliated organizations for the primary purpose of conducting bingo in multiple locations?

Question #5: Is there any definition or policy pertaining to “affiliated organizations” contained in the enabling legislation or rules?

Discussion: In this instance, the commercial lessor is concerned that its license might be jeopardized by allowing a charity who may have obtained a license under false pretenses to conduct bingo. Further, the commercial lessor is concerned as to its duty, if any, to report an infraction of the licensing rules.

#### **ANSWER:**

Neither the Bingo Enabling Act (Act) nor the Charitable Bingo Administrative Rules (Rules) expressly impose a duty on a commercial lessor “to inquire into the character of a charity’s operations in order to determine if they are appropriately licensable.” Likewise, neither the Act nor the Rules expressly impose a duty on a commercial lessor to inform the Commission of its concerns about the eligibility of an organization to conduct charitable bingo.

The Texas Lottery Commission's (Commission) issuance of a license to conduct charitable bingo indicates that the Commission has determined that a charity is an authorized organization based upon examination of the information provided in the organization's application. For purposes of compliance with the Act and Rules, a commercial lessor may rely upon the Commission's issuance of a license to conduct bingo.

Although neither the Act nor the Rules expressly require a commercial lessor to inform the Commission of its concerns about the eligibility of an organization, such a duty may be implied by Tex. Occ. Code § 2001.555 that provides in part:

- (a) A person lawfully conducting or participating in bingo or permitting the conduct of bingo on premises owned or leased by the person under a license issued under this chapter is not subject to prosecution or conviction for a violation of a provision of the Penal Code or other law or ordinance to the extent that the person's action is specifically authorized by this chapter.
- (b) The immunity granted under this section does not extend to a person:
  - ...
  - (2) knowingly permitting the conduct of bingo on premises owned or leased by the person under a license known to the person to have been obtained by a false pretense or statement.
  - ...

Thus, although there is no express requirement for a commercial lessor to inform the Commission of concerns about the eligibility of an organization, doing so could reduce the possibility that the immunity granted by § 2001.555 would not apply.

Neither the Act nor the Rules prohibit a charity from creating affiliated organizations for the primary purpose of conducting bingo in multiple locations. However, in order to be licensed to conduct bingo, each affiliated organization must meet the requirements of § 2001.101 of the Act. Neither the Act nor the Rules contain a definition or policy pertaining solely to "affiliated organizations."

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## SUMMARY

Neither the Bingo Enabling Act (Act) nor the Charitable Bingo Administrative Rules (Rules) expressly impose a duty on a commercial lessor "to inquire into the character of a charity's operations in order to determine if they are appropriately licensable" or to inform the Commission of its concerns about the eligibility of an organization to conduct charitable bingo. For purposes of compliance with the Act and Rules, a commercial lessor may rely upon the Commission's issuance of a license to conduct bingo. Although neither the Act nor the Rules expressly require a commercial lessor to inform the Commission of its concerns about the eligibility of an organization, such a duty may be

implied by Tex. Occ. Code § 2001.555(b). Neither the Act nor the Rules prohibit a charity from creating affiliated organizations for the primary purpose of conducting bingo in multiple locations. However, in order to be licensed to conduct bingo, each affiliated organization must meet the requirements of § 2001.101 of the Act. Neither the Act nor the Rules contain a definition or policy pertaining solely to “affiliated organizations.”

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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,

A handwritten signature in dark ink, appearing to read "P. Sanderson", followed by a long horizontal line extending to the right.

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