

C. Tom Clowe, Jr.
Chairman

James A. Cox, Jr.
Commissioner



TEXAS LOTTERY COMMISSION

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

RECEIVED

JUN 09 2006

OPINION COMMITTEE

CERTIFIED MAIL NO. 7004 0750 0001 3234 0572
RETURN RECEIPT REQUESTED

June 6, 2006

RQ-0499-GA

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

FILE # ML-44836-06
I.D. # 44836

Dear General Abbott:

As chairman of the Texas Lottery Commission (the commission), I am seeking your opinion about the meaning of Tex. Occ. Code §2001.458.¹ Although a simple reading of Tex. Occ. Code §2001.458 appears to prohibit a licensed authorized organization from paying or incurring an expense in connection with the conduct of bingo for providing dependent health care insurance or a health benefit for its employees, it can also be interpreted to mean that such an expense is allowable but distinct from the subsection (8) expenses to which it refers.

In considering this issue, you may find it helpful to have some background information. In 1983, the 68th Legislature amended Section 19(c) of the Bingo Enabling Act pertaining to allowable items of expense. The amended statute included fees “. . . in amounts authorized by the comptroller of public accounts for callers, cashiers, and ushers, janitorial services, and utility supplies and services. . . .” The amended Act did not include language similar to current §2001.458 (b) pertaining to the value of health insurance and benefits for workers at bingo occasions.

In 1983, the Comptroller of Public Accounts, which had responsibility for charitable bingo regulation, adopted Rule 3.549 capping the fee paid to bingo personnel at \$50 per occasion. When oversight of charitable bingo was transferred to the Texas Alcoholic Beverage Commission (TABC) in 1990, the rule capping fees continued in effect as Rule 55.549. This rule was in effect in 1993 when the 73rd Legislature added the following language:

The value of any health insurance or health benefit provided by a licensed authorized organization to an employee may not be included in the amount of a fee authorized by the commission. Acts 1993, 73rd Leg., ch. 286 § 11.

¹ Attachments A-C are requests for an advisory opinion pursuant to Section 2001.059 of the Bingo Enabling Act, Texas Government Code, Chapter 2001. Subsection (e) provides that the Commission may request an Attorney General Opinion on a matter that is the subject of an advisory opinion request.

The House Research Organization Bill Analysis for CSHB 2771, p. 3, April 19, 1993 stated that the bill “. . . would allow non-profit organizations to pay for health insurance or health benefits in addition to workers’ salaries.” TABC interpreted this new language to mean that the value of any health insurance or health benefit should be separate from fees paid to workers. TABC did not interpret the added language as being a prohibition on allowing the value of health insurance or benefit to be paid in connection with the conduct of bingo. When oversight of charitable bingo transferred to the Texas Lottery Commission (Commission) in 1994, the rule capping fees was not readopted. The Commission’s practice has been to allow reasonable charitable bingo fund expenditures for health insurance or health benefits provided to bingo workers, but not to bingo workers’ dependents.

Recodification of the BEA in 1999 may have caused a change in the meaning of the language which is now codified as Tex. Occ. Code §2001.458. The pertinent language was changed to the current language in §2001.458 (b) which is

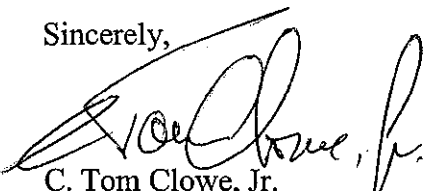
The value of health insurance or a health benefit provided by a licensed authorized organization to an employee is not included under Subsection (a)(8). Acts 1999, 76th Leg., ch. 388 § 1.

This language implies that the value of health insurance or a health benefit provided by a licensed authorized organization to a bingo employee is not an expense that is reasonable or necessary to conduct bingo.

My question is whether Tex. Occ. Code §2001.458(b) prohibits a licensed authorized organization from paying or incurring an expense in connection with the conduct of bingo for providing health care insurance or a health benefit for its bingo employees or their dependents.

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.

Attachments A-C

March 28, 2006

BTE # 2006 - 0403 - 0016;
Bnai Brith Mens Club

Mr. Billy Atkins
Texas Lottery Commission
Charitable Bingo Division
P.O. Box 16630
Austin, Texas

RE: Request for an Advisory Opinion on whether health insurance for dependents of charitable bingo employees is permitted under the rules governing charitable bingo in Texas.

Dear Mr. Atkins,

During the last audit of our charity, Bnai Brith Mens Club, the auditor disallowed all expenditures that were made for dependents health care insurance.

The rules do not adequately address the problem of dependent health care insurance. Under Section 2001.458(b) Items of Expense, the rules state:

“The value of health insurance or a health benefit provided by a licensed authorized organization to an employee is not included under Subsection (a)(8).”

Under any reading of the above mentioned rule, we do not see a prohibition of dependent health care insurance expenses, and in fact the term “or a health benefit” certainly implies that a benefit greater than health insurance could be given to an employee.

To further aggravate this situation, our charity has given dependent health care insurance to employees in the past, and this expenditure was never questioned in any previous audit by your auditors, or your organization. If we had prior knowledge that this expenditure was not allowed, we would not have continued the practice of providing dependent health care insurance for our employee’s families. The fact that this expenditure was not questioned in prior audits has caused our charity to assume that this was a legal expenditure and to continue to provide the benefit much to our detriment.

We are requesting an advisory opinion from your organization on the following questions:

1. What is the specific statutory prohibition under your rule 2001.458(b) that prohibit our charity from providing dependent health care insurance for our employees?
2. Under Section 2001.458(b) we would request that the term “health benefit” be fully defined as to what that term specifically means, as well as what items of health care expense are allowed under that term and which are excluded so that in the future we have clarification on this matter.

A

3. Are there any other charitable bingo organizations licensed to play bingo in the State of Texas that provided dependent health care insurance, and have there been any prior opinions issued on this matter.

As always our organization looks forward to working with you and your staff on all our bingo business.

Your help and advice on this matter are greatly appreciated.

Sincerely,

David Loren, Primary Operator
Bnai Brith Mens Club

enc.

- (d) In this section:
- (1) "Adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by an organization and prizes paid in the preceding quarter; and
 - (2) "Cost of goods purchased by an organization" means the cost of bingo paper or pull-tab bingo tickets purchased by the organization.

Sec. 2001.458. ITEMS OF EXPENSE.

- (a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:
- (1) advertising, including the cost of printing bingo gift certificates;
 - (2) security;
 - (3) repairs to premises and equipment;
 - (4) bingo supplies and equipment;
 - (5) prizes;
 - (6) stated rental or mortgage and insurance expenses;
 - (7) bookkeeping, legal, or accounting services related to bingo;
 - (8) fees for callers, cashiers, ushers, janitorial services, and utility supplies and services;
 - (9) license fees;
 - (10) attending a bingo seminar or convention required under Section 2001.107; and
 - (11) debit card transaction fees.
- (b) The value of health insurance or a health benefit provided by a licensed authorized organization to an employee is not included under Subsection (a)(8).

Sec. 2001.459. EXPENSES PAID FROM BINGO ACCOUNT.

- (a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:
- (1) advertising, including the cost of printing bingo gift certificates;

March 28, 2006

BAO # 2006-0403-0014
Lou Rosenberg Sch. Fund

Mr. Billy Atkins
Texas Lottery Commission
Charitable Bingo Division
P.O. Box 16630
Austin, Texas

RE: Request for an Advisory Opinion on whether health insurance for dependents of charitable bingo employees is permitted under the rules governing charitable bingo in Texas.

Dear Mr. Atkins,

During the last audit of our charity, Lou Rosenberg Scholarship Fund, the auditor disallowed all expenditures that were made for dependents health care insurance.

The rules do not adequately address the problem of dependent health care insurance. Under Section 2001.458(b) Items of Expense, the rules state:

“The value of health insurance or a health benefit provided by a licensed authorized organization to an employee is not included under Subsection (a)(8).”

Under any reading of the above mentioned rule, we do not see a prohibition of dependent health care insurance expenses, and in fact the term “or a health benefit” certainly implies that a benefit greater than health insurance could be given to an employee.

To further aggravate this situation, our charity has given dependent health care insurance to employees in the past, and this expenditure was never questioned in any previous audit by your auditors, or your organization. If we had prior knowledge that this expenditure was not allowed, we would not have continued the practice of providing dependent health care insurance for our employee’s families. The fact that this expenditure was not questioned in prior audits has caused our charity to assume that this was a legal expenditure and to continue to provide the benefit much to our detriment.

We are requesting an advisory opinion from your organization on the following questions:

1. What is the specific statutory prohibition under your rule 2001.458(b) that prohibit our charity from providing dependent health care insurance for our employees?
2. Under Section 2001.458(b) we would request that the term “health benefit” be fully defined as to what that term specifically means, as well as what items of health care expense are allowed under that term and which are excluded so that in the future we have clarification on this matter.

B

89-02

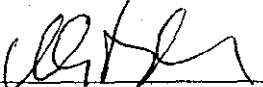
3. Are there any other charitable bingo organizations licensed to play bingo in the State of Texas that provided dependent health care insurance, and have there been any prior opinions issued on this matter.

As always our organization looks forward to working with you and your staff on all our bingo business.

Your help and advice on this matter are greatly appreciated.

Sincerely,

Miles Nelson

 Trustee for:

Lou Rosenberg Scholarship Fund

enc.

March 28, 2006

BAO# 2006-0403-0015;
Bnai Brith Youth Org.

Mr. Billy Atkins
Texas Lottery Commission
Charitable Bingo Division
P.O. Box 16630
Austin, Texas

2006 MAR -3 PM 2:06
COMMUNICATIONS SECTION

RE: Request for an Advisory Opinion on whether health insurance for dependents of charitable bingo employees is permitted under the rules governing charitable bingo in Texas.

Dear Mr. Atkins,

During the last audit of our charity, Bnai Brith Youth Organization, the auditor disallowed all expenditures that were made for dependents health care insurance.

The rules do not adequately address the problem of dependent health care insurance. Under Section 2001.458(b) Items of Expense, the rules state:

“The value of health insurance or a health benefit provided by a licensed authorized organization to an employee is not included under Subsection (a)(8).”

Under any reading of the above mentioned rule, we do not see a prohibition of dependent health care insurance expenses, and in fact the term “or a health benefit” certainly implies that a benefit greater than health insurance could be given to an employee.

To further aggravate this situation, our charity has given dependent health care insurance to employees in the past, and this expenditure was never questioned in any previous audit by your auditors, or your organization. If we had prior knowledge that this expenditure was not allowed, we would not have continued the practice of providing dependent health care insurance for our employee’s families. The fact that this expenditure was not questioned in prior audits has caused our charity to assume that this was a legal expenditure and to continue to provide the benefit much to our detriment.

We are requesting an advisory opinion from your organization on the following questions:

1. What is the specific statutory prohibition under your rule 2001.458(b) that prohibit our charity from providing dependent health care insurance for our employees?
2. Under Section 2001.458(b) we would request that the term “health benefit” be fully defined as to what that term specifically means, as well as what items of health care expense are allowed under that term and which are excluded so that in the future we have clarification on this matter.

C

3. Are there any other charitable bingo organizations licensed to play bingo in the State of Texas that provided dependent health care insurance, and have there been any prior opinions issued on this matter.

As always our organization looks forward to working with you and your staff on all our bingo business.

Your help and advice on this matter are greatly appreciated.

Sincerely,


Bnai Brith Youth Organization

enc.

- (d) In this section:
- (1) "Adjusted gross receipts" means gross receipts less the amount of cost of goods purchased by an organization and prizes paid in the preceding quarter; and
 - (2) "Cost of goods purchased by an organization" means the cost of bingo paper or pull-tab bingo tickets purchased by the organization.

Sec. 2001.458. ITEMS OF EXPENSE.

- (a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:
- (1) advertising, including the cost of printing bingo gift certificates;
 - (2) security;
 - (3) repairs to premises and equipment;
 - (4) bingo supplies and equipment;
 - (5) prizes;
 - (6) stated rental or mortgage and insurance expenses;
 - (7) bookkeeping, legal, or accounting services related to bingo;
 - (8) fees for callers, cashiers, ushers, janitorial services, and utility supplies and services;
 - (9) license fees;
 - (10) attending a bingo seminar or convention required under Section 2001.107; and
 - (11) debit card transaction fees.
- (b) The value of health insurance or a health benefit provided by a licensed authorized organization to an employee is not included under Subsection (a)(8).

Sec. 2001.459. EXPENSES PAID FROM BINGO ACCOUNT.

- (a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:
- (1) advertising, including the cost of printing bingo gift certificates;

Original Licenses Issued From November, 1998 Through March, 1999

Organization Name	License Type	Org. Location
Literacy Council of Bowie and Miller Counties, Inc.	Conductor	Texarkana
American Legion Post 639	Conductor	Everman
Amvets Post 45	Conductor	Dallas
VFW 2544 Aux C. I. Bridge Memorial	Conductor	Ft. Worth
American Legion Post 81	Conductor	Duncanville
Historic Brownsville Museum Association	Conductor	Brownsville
VFW Post 4146 Victoria	Conductor	Victoria
Pompeo Coppini Lodge Order Sons of Italy	Conductor	San Antonio
Sav-Baby	Conductor	San Antonio
Jewish Community Council of Corpus Christi	Conductor	Corpus Christi
Taylor 4-H FFA Booster Club	Conductor	Taylor
Victoria Preservation, Inc.	Conductor	Victoria
St. Gerard Catholic High School	Conductor	San Antonio
Holy Cross High School PTC	Conductor	San Antonio
Texas Police Institute	Conductor	Houston
Terra-Genesis of San Antonio	Conductor	San Antonio
Holy Cross High School	Conductor	San Antonio
Whitton Community Center Incorporated	Conductor	Canton
Westfest, Inc.	Conductor	West
Texas Friends of International Fencing	Conductor	Dallas
VFW Post 9171 Van Zandt	Conductor	Canton
Knights of Columbus 3204	Conductor	Ganado
Canton Volunteer Fire Department	Conductor	Canton
Whitton Rural Volunteer Fire Dept., Inc.	Conductor	Canton
Park Cities Lions Club	Conductor	Dallas
East Dallas Counseling Center, Inc.	Conductor	Dallas
District #1 Daughters of America State Council	Conductor	Ft. Worth
Elks Lodge 1188 Twilight Temple	Conductor	Ft. Worth
Son of Herman Lodge 174 Anton Wenzel	Conductor	San Antonio
Oddfellows Lodge 64	Conductor	Balch Springs
Knights of Columbus Council 6658	Conductor	Copperas Cove
Voiture Locale No. 1031	Lessor	Killeen
Joel Ingram	Lessor	Gisco
Amvets Post 42 Aux	Lessor	Dallas
Texas Police Institute	Lessor	Houston
Union Star LLC	Lessor	Houston
Hilltop Lakes Community Improvement Assoc.	Lessor	Hilltop Lakes
Hilltop Lakes Lions Club	Lessor	Hilltop Lakes
San Antonio Assn. Of Catholic High Schools	Lessor	San Antonio

Phil Sanderson Appointed Charitable Bingo Operations Assistant Director

Phil Sanderson was recently appointed Assistant Director of the Charitable Bingo Operations Division. He was initially hired April 1994, as the Houston Region Audit Supervisor. In February 1995 he was appointed Audit Coordinator in Austin and was promoted to Senior Audit Manager in January 1998. He worked for the Texas Alcoholic Beverage Commission from January 1981 to March 1994.

Phil was born in Amarillo and grew up in Waco. He graduated from Baylor University in 1979 with a B.B.A. in Quantitative Analysis. Phil is married and has one son and twin daughters. All of his children are active in sports. Phil enjoys attending his children's athletic events, coaching kids, working with youth programs and raising Dachshunds.

When asked what he looks forward to as Assistant Director of Charitable Bingo Phil said, "I look forward to ensuring the integrity and fairness of Charitable Bingo in Texas and to contributing to maintaining Charitable Bingo's status as a significant fund raising activity in Texas."

Texas Charitable Bingo - 1999 First Quarter Statistics

(As of 4-28-99)

1999 First Quarter	
Regular Receipts	\$101,980,253
Electronic Receipts	27,140,294
Instant Receipts	25,566,408
Total Receipts	\$154,686,955
Attendance	7,181,706
Regular/Electronic Prizes	\$ 89,292,500
Instant Prizes	17,774,173
Total Prizes	\$107,066,673
Distributions	\$ 10,583,771