

Commissioners:

J. Winston Krause,
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Jodie G. Baggett

Veronica Ann Edwards

Katie Dickie Stavinoha



TEXAS LOTTERY COMMISSION

Gary Grief, Executive Director

Sandra K. Joseph, Charitable Bingo Operations Director

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DEC 11 2013

OPINION COMMITTEE

FILE # ML-47478-13
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December 11, 2013

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

Via Certified Mail: 9171999991703085418448

RQ-1173-GA

Dear General Abbott:

Pursuant to section 402.042 of the Texas Government Code, I respectfully request an official opinion on whether the Texas Lottery Commission ("Commission") may deny or revoke a bingo-related license for a non-individual entity based on the criminal history of an individual associated with that entity, such as an officer or director of a corporation, for an offense that is not explicitly listed as a disqualifying offense in the Bingo Enabling Act ("BEA").¹ The Commission issues several types of bingo-related licenses under the BEA. See Tex. Occ. Code §§ 2001.101-.108 (bingo conductors), .151-.161 (commercial lessors), .201-.205 (manufacturers), .206-.209 (distributors). An applicant for a bingo-related license must submit the proper application and license fee to the Commission, along with any other supplemental information required under the BEA and Commission rules. Bingo-related licenses are often issued to entities, such as corporations or partnerships, rather than individuals. In particular, organizations that conduct bingo are necessarily licensed as legal entities. See *id.* § 2001.002(20) (defining "person"). In those instances, the entity is the applicant/licensee. However, when an entity applies for a bingo-related license, the entity's application must identify various individuals associated with the entity, such as officers, directors, and those with a financial interest in the entity. One of the primary purposes of identifying these individuals is so that the Commission may conduct criminal background checks on them. See, e.g., *id.* §§ 2001.102(b)(12), .105(b), .203(b)(6), .3025.

The Commission may not issue a bingo-related license to an entity when certain individuals associated with that entity have been convicted of gambling, a gambling-related offense, or criminal fraud. See *id.* §§ 2001.105(b), .154(a)(5), .202(9), .203(b)(6), .207(9), .208(b)(8). However, under the Commission's recently enacted sunset legislation,² the Commission is now

¹Tex. Occ. Code Ch. 2001.

² Prior to the enactment of the Commission's sunset legislation in the 83rd Legislature, disqualifying offenses included convictions for "a felony" or "a crime of moral turpitude if less than 10 years has elapsed since the termination of a sentence, parole, community supervision, or mandatory supervision served for the offense." See H.B. 2197, 83rd Leg., R.S. (2013) at §§ 21 (bingo conductors), 22 (commercial lessors), 24 (manufacturers), and 27 (distributors). H.B. 2197 removed the quoted language from the BEA.

also required to apply Chapter 53 of the Texas Occupations Code when issuing or renewing bingo-related licenses.³ *Id.* § 2001.0541. Under Chapter 53, a licensing agency such as the Commission may deny or revoke a “person’s” license if that “person” has been convicted of one or more of four particular classes of offenses. *Id.* § 53.021(a); *see also* Tex. Gov’t Code 2001.003(5) (defining “person” for purposes of Chapter 53).

QUESTION: The Commission seeks to determine whether, under Chapter 53, an *entity’s* license may be denied or revoked if an officer, director, shareholder, or other individual required to be listed in the entity’s application has been convicted of an offense listed in subsection 53.021(a)? Stated another way, is Chapter 53 review limited to the criminal history of the identified applicant/licensee, regardless of whether the applicant/licensee is an individual or non-individual entity?⁴

QUESTION: If Chapter 53 review is limited to the identified applicant/licensee, (1) does section 2001.0541 of the BEA independently authorize the Commission to apply Chapter 53 to individuals required to be listed in an entity’s application for a bingo-related license, or, in the alternative, (2) when reviewing the criminal history of individuals required to be listed in an entity’s license application and deciding whether to deny or revoke that entity’s license, does the Commission have the authority under the BEA (without regard to Chapter 53) to consider offenses other than convictions for gambling, gambling-related offenses, and criminal fraud?⁵

To highlight the issue, please consider the following hypothetical:

An individual has applied for a commercial lessor license in his own name, but the individual is also listed as an officer for a corporation that has applied for a bingo conductor license. The individual was recently charged with a gambling-related offense, but the individual was ultimately given deferred adjudication for the crime.

In this hypothetical, the Commission may not deny the individual’s commercial lessor license under section 2001.154(a)(1) of the Occupations Code or the corporation’s bingo conductor license under section 2001.105(b) of the Occupations Code because the individual was not

³Section 2001.0541 of the BEA, which was enacted in H.B. 2197, provides as follows:

The commission shall adopt rules and guidelines as necessary to comply with Chapter 53 when using criminal history record information under this chapter to issue or renew a bingo license or to list or renew the listing of an individual in the registry of approved bingo workers.

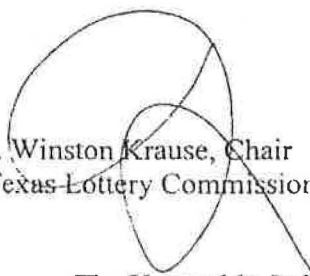
⁴This question was addressed, but not answered, in a law review article published in 2008. *See* Bradford Jay Bowman & Wendy M. Pellow, *The Impact of a Criminal Conviction on Obtaining and Retaining an Occupational License*, 10 Tex. Tech Admin. L.J., 215, 237 (2008) (addressing the application of Chapter 53 to companies).

⁵ For instance, under section 2001.301 of the BEA, “the Commission shall investigate the qualifications of each applicant and the merits of the application.” Further, section 2001.3025 of the BEA entitles the Commission to conduct investigations into the criminal history record of each applicant, person to be named in the license application, or an employee required by the BEA to submit to a background investigation.

convicted of the gambling-related offense. Therefore, we next turn to Chapter 53. Provided that the Commission makes the necessary determinations under section 53.021(a)(1) and (d)(2) of the Occupations Code, the Commission may deny the individual's commercial lessor license (based on the deferred adjudication) pursuant to Chapter 53. However, if Chapter 53 review is limited to the identified applicant, the Commission may not deny the corporation's bingo conductor license based on its officer's deferred adjudication. I question whether this outcome, where one license would be denied and the other would be approved, is a reasonable result of the application of section 2001.0541 of the BEA.

Please contact Bob Biard, the Commission's General Counsel, at 512-344-5127, should you need any additional information.

Respectfully submitted,



J. Winston Krause, Chair
Texas Lottery Commission

cc: The Honorable Jodie G. Baggett, Commissioner, Texas Lottery Commission
The Honorable Veronica Ann Edwards, Commissioner, Texas Lottery Commission
The Honorable Katie Dickie Stavinoha, Commissioner, Texas Lottery Commission
Gary Grief, Executive Director, Texas Lottery Commission
Sandra K. Joseph, Charitable Bingo Operations Director, Texas Lottery Commission
Bob Biard, General Counsel, Texas Lottery Commission