

Charitable Bingo Management Team

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Commission Adopts Rules – Other Games of Chance

The Texas Lottery Commission adopted Rule §402.211 – Other Games of Chance at its April 16, 2014 meeting. The purpose of the new rule is to implement §2001.416 of the Texas Occupations Code, which governs what games of chance may be conducted during a bingo occasion. The effective date for the new rule is May 6, 2014. At that time all licensees must comply with the provisions of the new rule.

For purposes of §402.211, a “game of chance” is defined as a “game or contest that awards a prize and whose outcome is determined, at least in part, by the element of chance or luck.” The two primary elements of a game of chance are: (1) the game awards a prize; and (2) that prize is awarded based wholly or partially on chance or luck. The following games of chance may be conducted or allowed at a bingo premises during a bingo occasion:

- (1) Charitable bingo conducted in compliance with the Bingo Enabling Act (Chapter 2001 of the Occupations Code);
- (2) Charitable raffles conducted in compliance with the Charitable Raffle Enabling Act (Chapter 2002 of the Occupations Code);
- (3) Door prize games conducted in compliance with section 2001.420(c) of the Bingo Enabling Act; and

(4) Amusement machines that are not gambling devices as defined in section 47.01 of the Penal Code.

No other games of chance may be conducted or allowed at a bingo premises during a bingo occasion.

It is a violation if, during a bingo occasion, a licensed authorized organization conducts or allows a bingo game that is not authorized under the Bingo Enabling Act, or a raffle that is not authorized under the Charitable Raffle Enabling Act. The Commission will pursue administrative violations, where appropriate.

Many conductors offer door prizes to their bingo patrons. Under §2001.420(c) of the Bingo Enabling Act, a door prize may not have a value of more than \$250. Further, no consideration may be required to participate in the door prize game and the licensed authorized organization or person conducting the door prize game may not accept any consideration from or for any participant in the game. In other words, a door prize game is illegal if any participant pays something of value in order to play. The Commission will pursue administrative violations, where appropriate.

Various types of gaming machines are also present at many bingo halls. The legality of these machines is often unclear. Only gaming machines that qualify as amusement machines – not gambling devices – are

permitted. Further, the machines must not award bingo equipment or entry into a bingo game as prizes. The Commission will generally rely on a local law authority or a court to first determine whether a particular machine is a gambling device before pursuing an administrative violation, unless the machine awards bingo equipment or entry into a bingo game as a prize, in which case the Commission may pursue an administrative violation on its own. If during an inspection, investigation, or audit Commission staff observes machines that appear to be gambling devices, the local prosecuting attorney(s) will be notified of the machines.

The following are examples of games of chance, along with an analysis of the games under §402.211. This analysis is specific to the facts in each example. The Commission will analyze all games of chance based on the facts of how each game is actually conducted.

Example 1 – Hot Ball/Bonus Ball Game

In this version of Hot Ball/Bonus Ball, which is conducted at each of the conductor's licensed bingo occasions, tickets are sold during a bingo occasion to patrons for \$1. Each ticket has a number that corresponds with one of the 75 bingo ball numbers. Three bingo balls are then drawn: one to determine the winner and two to determine the consolation winners. The consolation winners then purchase half pay bingo card packs at a discount. The winner picks another number that corresponds with one of the 75 bingo balls. The bingo games then commence and every time the Hot Ball/Bonus Ball winner's number is drawn, he/she receives a prize. The Hot Ball/Bonus Ball game is considered a game of chance because the game awards a prize and that prize is awarded based on chance. As such, the game must fall within one of the four categories of permissible games in §402.211 in order to be legally conducted at a bingo premises during a bingo occasion.

This particular game does not appear to qualify as charitable bingo (or a continuation bingo game) under the Bingo Enabling Act, nor does it appear to be a charitable raffle under the Charitable Raffle Enabling Act. Furthermore, it is not a legal door prize game because game tickets are purchased rather than given out at no charge. Finally, the game is not an amusement machine. Therefore, if this Hot Ball/Bonus Ball game is conducted at a bingo premises during a bingo occasion, the Commission may pursue an administrative violation under §402.211.

Example 2 – Sweepstakes Machines

Many sweepstakes machines resemble slot machines or 8-liners. Players generally pay something of value in order to play the machines, but there also may be alternative methods of entry for no charge. The machines award prizes based on chance. Therefore, the sweepstakes machines qualify as games of chance, and they may only be operated at a bingo premises during a bingo occasion if the machines are amusement machines that are not gambling devices (sweepstakes machines clearly do not fall within any of the three other categories of permissible games in §402.211).

If the machines award money or something of value, a violation of §402.211 may have occurred because the machines may qualify as gambling devices. The Commission may notify the district attorney's office or county attorney's office of the existence of such devices in their jurisdiction, and if they or a court determines that the machines are gambling devices, the Commission may pursue an administrative violation.

If the machines award bingo equipment or entry into a bingo game as prizes, however, a violation of §402.211 has occurred and the Commission may pursue an administrative violation without an initial determination from a local prosecuting attorney or court.

Example 3 – Bingo Game Awarding Raffle Tickets as Prizes

A bingo game (including a pull-tab game) must be conducted in compliance with the Bingo Enabling Act in order to be a legal game. According to Attorney General Opinion JC-480 (2002), the awarding of a raffle ticket as a bingo prize is not authorized under the Bingo Enabling Act. Therefore, a bingo game that awards raffle tickets as prizes is not conducted in compliance with the Bingo Enabling Act. If such a bingo game is conducted at a bingo premises during a bingo occasion, the Commission may pursue an administrative violation under §402.211.

*Please note that the awarding of a raffle ticket as a bingo prize may violate other administrative rules. Such conduct may also violate the Penal Code.

Example 4 – “Texas Hold’em” Poker Game

The standard “Texas Hold’em” poker game qualifies as a game of chance under §402.211 if the game awards a prize. While it is unclear whether poker is predominantly a game of skill or chance, the Office of the Attorney General has declared that at least some element of chance is present in the game of poker. Therefore, the outcome of a poker game is determined, at least in part, by the element of chance or luck. As such, the poker game is a game of chance for purposes of §402.211 and must fall within one of the four categories of permissible games under that rule in order to be legally conducted at a bingo premises during a bingo occasion. Poker games do not appear to fall within any of the four categories of permissible games under the rule. Therefore, if such a poker game is conducted at a bingo premises during a bingo occasion, the Commission may pursue an administrative violation under §402.211.

Customer Accounts on Card-minding System

At the August 12, 2014 open meeting the Texas Lottery Commission adopted amendments to 16 Tex. Admin. Code §§402.321 (Card-Minding Systems--Definitions), §402.322 (Card-Minding Systems--Site System Standards), §402.323 (Card-Minding Systems--Device Standards), and §402.325 (Card-Minding Systems--Licensed Authorized Organizations Requirements). The primary purpose of the amendments is to allow, but not require, patrons the opportunity to set up individual customer accounts and use their card-minding device to track account usage and to purchase electronic bingo cards during a bingo occasion. The customer account can be used to purchase other bingo products (i.e. card-minding devices, pull-tabs and disposable bingo cards) when the purchases are made at the cashier stand or with a worker outfitted with a mobile point of sale device.

Funds not redeemed by a patron prior to the end of a bingo occasion become the property of the licensed

authorized organization conducting the bingo occasion. These funds must be deposited into the bingo bank account and separately reported as “Other Income” on the occasion cash report and the Texas Bingo Quarterly Report submitted to the commission by conductors and accounting units. The funds must be used by the licensed authorized organization for authorized charitable purposes. These funds used for charitable purposes are in addition to the nets proceeds generated from the conduct of bingo games.

Look to see modifications to the Texas Bingo Quarterly Reports submitted by regular and non-annual Temporary license holders, and accounting units to allow license holders to report amounts left on customer accounts deposited to the bingo bank account as well as the use of these dollars for authorized charitable purposes.

U.S. Fifth Circuit Court of Appeals Says that Bingo Proceeds Can Be Used for Certain Political Activities

The United States Court of Appeals for the Fifth Circuit upholds District Court decision allowing organizations the opportunity to use net proceeds from bingo to support or oppose a measure submitted to a vote of the people or to influence or attempt to influence legislation.

In 2010, a lawsuit was filed challenging the legality of section 2001.456(2)-(3) of the Bingo Enabling Act, which prohibits licensed authorized organizations from using net proceeds from bingo to: (1) support or oppose a measure submitted to a vote of the people; or (2) influence or attempt to influence legislation.

On July 28, 2014, the United States Court of Appeals for the Fifth Circuit upheld that challenge. The court declared that those particular provisions in the Bingo Enabling Act were invalid and could not be enforced. Therefore, effective immediately, licensed authorized organizations are no longer absolutely prohibited from using net proceeds from the conduct of bingo and premises rental to lobby on legislation or to support or oppose a measure submitted to the vote of the people.

Important points to remember:

- Licensed authorized organizations are still prohibited from using net bingo proceeds to support or oppose a candidate or slate of candidates for public office. Section 2001.456 (1)
- A licensed authorized organization shall devote to the charitable purposes of the organization its net proceeds of bingo and any rental of premises. Section 2001.454. Measures submitted to public vote and lobbied legislation that are supported

by licensed authorized organizations must be for issues that allow, further, protect, or enhance the charitable purposes of the licensed authorized organization.

The following are examples of situations faced by licensed authorized organizations, along with an analysis of the situation in light of the Fifth Circuit Court's ruling and Section 2001.456. This analysis is specific to the facts in each example. The Commission will analyze all charitable distributions based on the specific fact related to each disbursement.

Example 1 – A volunteer fire department must decide whether to use bingo proceeds to support or oppose a public vote or lobby legislation related to casinos in Texas. Casinos have nothing to do with fighting fires, fire safety awareness, training firefighters, or acquiring and maintaining fire equipment and stations. Therefore, the Volunteer Fire Department would not be permitted to use bingo proceeds for this purpose.

Example 2 – A local Veterans of Foreign Wars post has been asked to support legislation to build affordable housing for veterans. One purpose of the group is to improve the quality of living for all veterans in the United States. Using bingo proceeds to support such legislation would be permissible.

Example 3 – A local association of realtors wants to send bingo proceeds to the state real estate political action committee which uses the funds to support candidates that support the positions of realtors on legislation and issues subject to public vote. One purpose of political action committees is to provide financial support to persons that are running for political office. Section 2001.456 (1) specifically states

that proceeds from bingo cannot be used to support a candidate or slate of candidates for political office. Therefore the local real estate association would not be permitted to donate bingo proceeds to the state real estate political action committee if the dollars will be used to support a candidate or slate of candidates for political office.

Look to see modifications to the Texas Bingo Quarterly Reports submitted by regular and non-annual temporary license holders, accounting units and association lessors to allow license holders to report charitable distributions used to support or oppose measures submitted for public votes or to lobby legislation.

Commission Interprets Lessor Rent Provision

A common question asked by new lessors and active lessors acquiring a new location is “How much can I charge for rent?” In 1989, the legislature modified statutes related to licensed commercial lessors requiring that lessors licensed after June 10, 1989, could only lease a bingo location to a single licensed authorized organization (lessee). The licensed authorized organization in turn can sub-lease the location to up to six other licensed authorized organizations (sub-lessees). An association of licensed authorized organizations with a license to lease bingo premises, a licensed authorized organization conducting bingo in a facility it owns, locations leased for the total and exclusive use of a single licensed authorized organization, and government owned facilities were excluded from this provision.

Section 2001.406 (a) of the Bingo Enabling Act states the following regarding rent charged by a licensed commercial lessor:

“The rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo may not exceed \$600 for each bingo occasion conducted on the lessor’s premises unless the organization subleases the premises to one or more other licensed authorized organizations to conduct bingo, in which event the rent charged by the licensed commercial lessor may not exceed \$600 for each day.”

Generally, a commercial lessor licensed on or before to June 10, 1989, a licensed authorized organization with a lessor’s license, an association of licensed authorized organizations and a government agency may lease directly to licensed authorized organizations (lessees) at a playing location. These lessors may charge a lessee organization up to \$600 rent for each bingo occasion conducted by the lessee organization(s). No more than seven licensed authorized organization may conduct bingo at single location.

As previously noted commercial lessors licensed after June 10, 1989 can only lease bingo premises to a single licensed authorized organization (lessee). To allow other licensed authorized organizations to conduct bingo games at the location, this lessee must obtain a lessor’s license. The Lessee may then sub-lease the location to a maximum of six other licensed authorized organizations (sub-lessees). In accordance with the statute, the lessor can charge the lessee up to \$600 for each bingo occasion conducted by the lessee. However, on a day that a sub-lessee conducts bingo the lessor can only charge the lessee up to \$600 per day. The lessee is allowed to charge the sub-lessees up to \$600 in rent for each bingo occasion they conduct on the premises.

Rent Payment to Commercial Lessors

(For illustration purposes only)

The illustrations below apply to commercial lessors licenses issued after June 10, 1989.

Assumption:

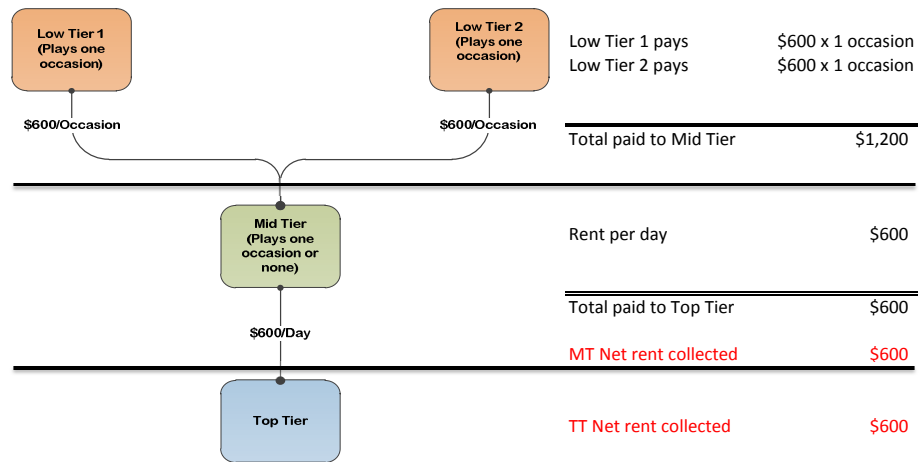
Low Tier (LT) 1 & 2 are conductors leasing at \$600 per occasion from the Mid Tier

Mid Tier (MT) is a conductor/lessor leasing at \$600 per day when there is occasion(s) at the low tier level or \$600 per occasion if there is no occasion(s) at the low tier level.

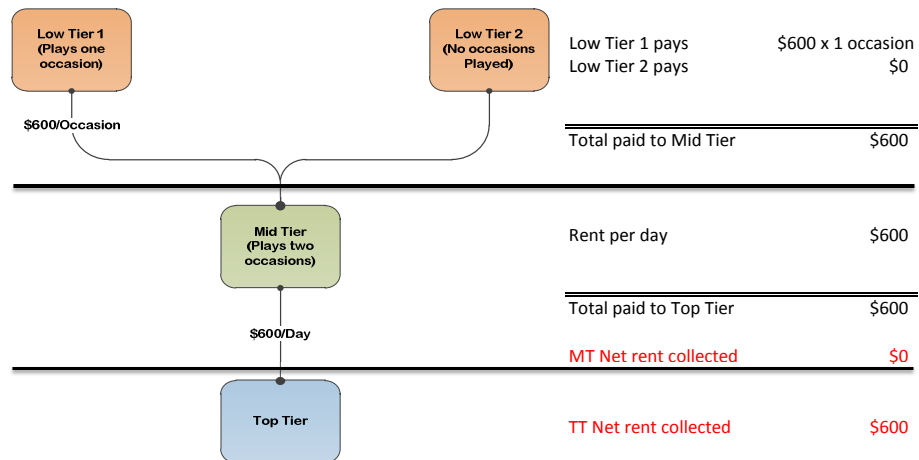
Top Tier (TT) is a commercial lessor leasing to a conductor/lessor

The maximum rent per occasion is \$600.

Example 1: Low Tier 1 & 2 both play one occasion each



Example 2: Low Tier 1 plays one occasion & Low Tier 2 does not play



Example 3: Low Tier 1 & 2 do not play

