

## INTEROFFICE MEMO

*Gary Grief, Executive Director*

*Alfonso D. Royal III, Charitable Bingo Operations Director*

**To:** J. Winston Krause, Chairman  
Carmen Arrieta-Candelaria, Commissioner  
Doug Lowe, Commissioner  
Robert Rivera, Commissioner

**From:** Bob Biard, General Counsel

A handwritten signature in black ink, appearing to be "RGS", is written over the text "General Counsel".

**Date:** April 12, 2018

**Re:** Consideration of and possible discussion and/or action on Request for Opinion RQ-0199-KP to the Office of the Attorney General, regarding transferability of rights a grandfathered bingo commercial lessor holds under a commercial lessor license.

---

This item was added to the Commission meeting agenda at Commissioner Rivera's request. The Commission's December 7, 2017 opinion request letter and the Attorney General's acknowledgement letter are attached.

*Commissioners:*

J. Winston Krause,  
*Chairman*

Carmen Arrieta-Candelaria

Doug Lowe

Robert Rivera



# TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Alfonso D. Royal III, *Charitable Bingo Operations Director*

**RECEIVED**

DEC 07 2017

December 7, 2017

**OPINION COMMITTEE**

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

RQ-0199-KP

ML-48262-17  
48262

Dear General Paxton:

Pursuant to Texas Government Code section 402.042, Texas Lottery Commission (Commission) Chairman Winston Krause respectfully requests an official opinion on whether the rights that a "grandfathered" bingo commercial lessor (Grandfathered Lessor) holds under a commercial lessor license that was in effect on June 10, 1989, can be transferred to another entity pursuant to the license transfer provisions of the Bingo Enabling Act (BEA).<sup>1</sup> The undersigned Commissioners voted in open meeting on December 7, 2017, to request an opinion concerning the five questions set forth below which affect the public interest and the official duties of the Commission.

Background. The concept of Grandfathered Lessors originated with H.B. 2260, enacted during the regular session of the 71<sup>st</sup> Texas Legislature in 1989. At that time, the Texas Comptroller of Public Accounts (CPA) administered the charitable bingo regulatory program. H.B. 2260 transferred the bingo program to the Texas Alcoholic Beverage Commission (TABC), effective January 1, 1990; and, among other things, amended the BEA to provide that newly-licensed commercial lessors may directly lease to only one bingo conductor organization. According to the CPA, H.B. 2260 mandated "An end to licensing new for-profit commercial lessors." See Attachment A, Notice to Bingo Licensees, issued by the CPA in June 1989 (hereinafter, "CPA Notice"), at page 1. "As a result of the Bingo Reform Bill no new for-profit commercial lessors will be licensed after June 10, 1989." CPA Notice at 2. However, the CPA noted, "Grandfathered lessors licensed on or before June 10, 1989, who keep their licenses in continuous effect, may ... Keep the same number of organizations at their location that were licensed to conduct bingo there on June 10, 1989." CPA Notice at page 2.<sup>2</sup>

<sup>1</sup> Tex. Occ. Code ch. 2001 (Bingo).

<sup>2</sup> The pertinent provisions of H.B. 2260 stated:

(o) Notwithstanding Subsection (n) of this section [restricting newly-licensed lessors], a person who was licensed as a commercial lessor on June 10, 1989, whose license has been kept in effect since that date, and who is otherwise eligible for the license may renew the license as a commercial lessor of bingo premises according to the terms of the license as those terms existed on June 10, 1989.

(p) A commercial lessor covered by Subsection (o) of this section may renew the license to provide for not more than the same number of licensed authorized organizations to conduct bingo on the premises as was provided by the license on June 10, 1989, without regard to whether those organizations are the same as the organizations covered by the license on that date...."

H.B. 2260, section 8 (adding new Sections 13(o) and (p) to the 1989 version of the BEA).

In 1993, in the legislation that transferred the bingo program from the TABC to the Commission, the Legislature further amended the BEA commercial lessor provisions to repeal the language that prevented Grandfathered Lessors from leasing to more organizations than they were leasing to on June 10, 1989.<sup>3</sup> In 1995, the Legislature again amended the BEA, this time to provide that “No more than seven licensed authorized organizations may conduct bingo at any bingo premises.”<sup>4</sup> The current version of this provision appears at BEA § 2001.402(c), and reads: “No more than seven licensed authorized organizations may conduct bingo at the same premises.”

Accordingly, today a Grandfathered Lessor (*i.e.*, “a person who was a licensed commercial lessor on June 10, 1989, whose license has been in effect continuously since that date”)<sup>5</sup> may lease directly to (and collect up to \$600 rent per bingo occasion from)<sup>6</sup> up to seven licensed bingo conductor organizations, in contrast to a non-grandfathered commercial lessor licensee who may lease directly only to one such organization.<sup>7</sup> At the current time, there are approximately 199 commercial lessor licenses in this category. It is our understanding that, because the potential to collect more rent makes licenses held by Grandfathered Lessors more valuable than other lessor licenses, these licenses sometimes are sold in private transactions.

The BEA provides that, “On approval by the commission, a licensed commercial lessor may transfer a commercial lessor license if the person to whom the license will be transferred otherwise meets the requirements of” BEA Subchapter D. (Commercial Lessor License).<sup>8</sup> The act of Commission approval of a transfer does not reference whether a transferor is a Grandfathered Lessor, nor whether the rights of a Grandfathered Lessor under the license transfer with the license.

However, when a Grandfathered Lessor transfers their lessor license to another person, the historical practice of the Commission’s Charitable Bingo Operations Division (CBOD) has been to consider that the grandfathered right to lease directly to up to seven organizations transferred with the license to the new licensee, and to allow such leasing activity to occur. This practice primarily benefitted individual (human) persons who are Grandfathered Lessors, because a legal entity commercial lessor (*e.g.*, a corporation, partnership) can change ownership of the entity without transferring the license and without CBOD approval. The CBOD’s historical practice is not set forth in a Commission rule.

Commission staff’s review of the pertinent BEA provisions has raised questions about whether the CBOD’s historical practice is consistent with the BEA; that is, whether the grandfathered rights

---

<sup>3</sup> H.B. 2771, 73<sup>rd</sup> Legislature, Regular Session. This bill deleted the language in BEA Section 13(o) that read “according to the terms of the license as those terms existed on June 10, 1989”, and repealed Section 13(p).

<sup>4</sup> H.B. 3021, 74<sup>th</sup> Legislature, Regular Session.

<sup>5</sup> See BEA § 2001.152(b) (“Notwithstanding Subsection (a), a person who was a licensed commercial lessor on June 10, 1989, whose license has been in effect continuously since that date, and who is otherwise eligible for the license may renew the license.”).

<sup>6</sup> See BEA § 2001.406(a).

<sup>7</sup> See BEA § 2001.152(a)(2) and (3). We note, however, that if a lessor is also an organization that is licensed to conduct bingo, or an association of licensed bingo conductor organizations, it may lease to more than one organization. BEA § 2001.152(a)(1). This Opinion request is directed to lessors that do not fall in that category.

<sup>8</sup> BEA § 2001.160(a) licensed commercial lessor may transfer a commercial lessor license if the person to whom the license will be transferred otherwise meets the requirements of this subchapter.”).

attach to the license and thus can be transferred to a new licensee, or whether the rights attach only to the lessor who held the license on June 10, 1989, and thus cannot be transferred to a different licensee.

Questions. Our questions are as follows:

1. Transfer of license to unaffiliated third party. If a Grandfathered Lessor transfers their commercial lessor license that has been in effect continuously since June 10, 1989, to an unaffiliated third party, and the Commission approves the transfer, do the grandfathered rights (including the right to lease directly to up to seven licensed bingo conductor organizations) transfer to the unaffiliated third-party licensee?
2. Transfer of license from an individual licensee to wholly-owned legal entity. If an individual Grandfathered Lessor (as opposed to a legal entity, such as a corporation or partnership) transfers their commercial lessor license that has been in effect continuously since June 10, 1989, to a legal entity that is wholly owned by that individual, and the Commission approves the transfer, do the grandfathered rights transfer with the license to the legal entity licensee?<sup>9</sup>
3. Transfer of license from one wholly-owned legal entity to a different wholly-owned legal entity. If a legal entity Grandfathered Lessor that is wholly-owned by one individual transfers its commercial lessor license that has been in effect continuously since June 10, 1989, to a different legal entity that is wholly-owned by the same individual, do the grandfathered rights transfer with the license to the second legal entity licensee (transferee)?<sup>10</sup>
4. Effect on Past Approved Transfers. If the Attorney General determines that grandfathered rights under a commercial lessor license that has been in effect continuously since June 10, 1989, cannot be transferred to another licensee, what effect does this determination have on past transfers approved under the CBOD's historical practice (where the CBOD considered that the grandfathered rights transferred with the license to the new licensee)?
5. Change in Commission Practice. As noted above, the CBOD's historical practice is not set forth in a Commission rule. If the Attorney General determines that the grandfathered rights under a commercial lessor license cannot be transferred to another licensee, may the Commission change the CBOD's historical practice to conform to the pertinent BEA provisions without conducting an administrative rulemaking proceeding and adopting a rule describing the changed practice?

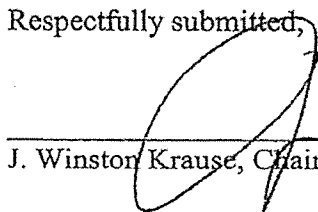
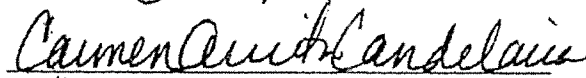
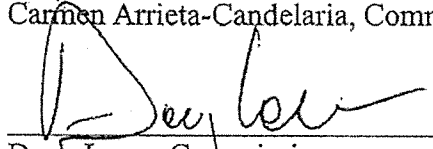
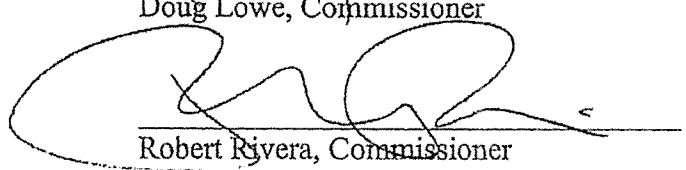
---

<sup>9</sup> Prior to October 1, 2009, BEA § 2001.160(c) read as follows: "A licensed commercial lessor may transfer a license held by the license holder to a corporation formed by the license holder or from one corporation owned by the license holder to another corporation owned by the license holder." The Texas Legislature repealed § 2001.160(c) as part of its enactment of H.B. 1474 during the regular session of the 81<sup>st</sup> Legislature in 2009.

<sup>10</sup> See prior footnote.

Should you need any additional information regarding this request, please contact Bob Biard, the Commission's General Counsel, at 512.344.5127.

Respectfully submitted,

  
\_\_\_\_\_  
J. Winston Krause, Chairman  
\_\_\_\_\_  
Carmen Arrieta-Candelaria, Commissioner  
\_\_\_\_\_  
Doug Lowe, Commissioner  
\_\_\_\_\_  
Robert Rivera, Commissioner

Attachment

cc: Gary Grief, Executive Director, Texas Lottery Commission  
Alfonso D. Royal III, Charitable Bingo Operations Division Director, Texas Lottery Commission  
Bob Biard, General Counsel, Texas Lottery Commission  
Steve Bresnen, Bingo Interest Group  
Steve Fenoglio, Texas Charity Advocates  
Will Martin, Conservative Texans for Charitable Bingo  
Kim Kiplin

# NOTICE TO BINGO LICENSEES

Volume 3, Issue 6  
June 1989

## BINGO REGULATION REVIEW

### *Included in this issue:*

- Legislative Changes in Bingo Laws
- Disposable Cards Without Manufacturer's Name or Trademark Prohibited
- Notices Sent to Licensees

### LEGISLATIVE CHANGES IN BINGO LAWS

Texas lawmakers have made many changes in bingo laws with the passage of HB 2260 during the Regular Session of the 71st Legislature.

Many of the changes will not go into effect until January 1, 1989. Those changes will be detailed in future editions of *Bingo Regulation Review* as rules are written and filed to implement the new laws and changes in existing laws.

However, several of the changes in bingo laws have already taken effect:

- Restrictions on rent.
- An end to licensing of new for-profit commercial lessors.
- Adding gambling and gambling-related offenses as disqualifying convictions for commercial lessors.
- Statutory prohibitions against lessors loaning money, extending credit, paying or providing payment of license fees for conductors.
- Prohibitions against commercial lessors from also being distributors or manufacturers.

### RENT CAP

Lease agreements, extensions of existing lease agreements or renewals of existing lease agreements filed with the Comptroller after May 31, 1989 are subject to the following restrictions:

- \$600 per day limit on rent charged to a licensed organization that is subleasing to other licensed organizations.
- \$600 per occasion limit on rent charged to licensed organizations that are not subleasing to other licensed organization.
- Rent must be a lump-sum amount that includes all authorized expenses charged by the lessor for the use of the premises.

Regulatory Taxes Division: 1-800-252-5555

512/463-4880



BOB BULLOCK • TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

# NOTICE TO BINGO LICENSEES

Volume 3 Issue 6

June 1989

Page 2

## NO NEW FOR-PROFIT COMMERCIAL LESSORS

As a result of the Bingo Reform Bill no new for-profit commercial lessors will be licensed after June 10, 1989.

However, this change in the law does not effect the ability of licensed organizations wishing to lease a facility to conduct bingo.

Licensed organizations needing a place to play bingo may lease space from any of the following categories of lessors:

- A licensed organization that owns or leases that location at which it plays bingo, and will sublease to other licensed organizations.
- A grandfathered lessor who has had a licensed organization leave their location.

Also, licensed organizations may become lessors by leasing a location and then subleasing to other licensed organizations. In addition, an organization may lease a location that serves the dual purpose of being the organization's primary headquarters and bingo location. However, no other organization may sublease this location to conduct bingo.

## FOR-PROFIT LESSORS GRANDFATHERED

Grandfathered lessors licensed on or before June 10, 1989, who keep their license in continuous effect, may:

- Renew their licenses annually.
- Keep the same **number** of organizations at their location that were licensed to conduct bingo there on June 10, 1989.
- Change their location **only** if the original location becomes unavailable because of conditions or reasons beyond their control.

## GAMBLING-RELATED OFFENSES

Gambling and gambling-related offenses were added to the existing list of criminal convictions that will disqualify an applicant from holding a commercial lessors license. Disqualifying convictions already include felonies, criminal fraud and crimes of moral turpitude.

The Legislature also added language that will allow an individual with a disqualifying conviction to be licensed if 10 years has elapsed since the end of the sentence, parole, mandatory supervision or probation served for the disqualifying conviction. This became effective for lessors on June 10, but will apply to all licensees on January 1, 1990.

Regulatory Taxes Division: 1-800-252-5555

512/463-4880



BOB BULLOCK • TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



# NOTICE TO BINGO LICENSEES

Volume 3 Issue 6

June 1989

Page 3

## LESSOR LOANS PROHIBITED

Lessors are now prohibited by statute from loaning money, extending credit or paying for an authorized organization's license fees. This type of lessor involvement was already prohibited by Rule 3.548.

## LESSORS PROHIBITED FROM MANUFACTURING AND DISTRIBUTING EQUIPMENT

Commercial lessors are prohibited from being distributors or manufacturers of bingo equipment. This is only a clarification and not a substantive change since manufacturers and distributors are already prohibited from being lessors.

## SALE OR PURCHASE OF DISPOSABLE CARDS WITHOUT MANUFACTURER'S NAME OR TRADEMARK PROHIBITED

It is now **prohibited** for licensed manufacturers to sell or for licensed distributors to **purchase** disposable cards not bearing the name, trade name or trademark of the original manufacturer on the face of the card.

Rule 3.558, **Seal Required on Disposable Bingo Cards**, also prohibits licensed distributors from selling and licensed authorized organizations from purchasing disposable cards that do not bear the name, trade name or trademark.

The final step of the implementation schedule will prohibit licensees from using disposable cards that do not have the name, trade name or trademark of the original manufacturer on the face of the card after December 31, 1989.

## RECENT NOTICES TO LICENSEES

During the past month special notices have been sent to licensees, bringing frequent violations to their attention:

- All licensed organizations must have at least one active member of their organization listed on the signature card of their bingo account. Rule 3.547(B) requires that only active members of an organization, except for one bookkeeper or accountant who is not a member, may be included on the signature card.

Regardless of who signs the checks, the licensee remains responsible for making sure that all checks are written for only authorized bingo expenses or charitable purposes. Unauthorized expenditures could lead to administrative action against the licensee.

- An authorized licensed organization's bingo occasion must be managed by that organization's designated primary operator or operators who must have been bonafide members of the organization for at least one year. The lessor, his agents, employees or family may not manage the bingo occasions.

An organization may not hire an agent, manager or consultant to manage its bingo operation. This is a violation of the Bingo Enabling Act and could lead to the revocation or suspension of the organization's bingo license.

Regulatory Taxes Division: 1-800-252-5555

512/463-4880



BOB BULLOCK • TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

# NOTICE TO BINGO LICENSEES

*Volume 3 Issue 6*

*June 1989*

*Page 4*

## NOTICE TO LESSORS

Commercial lessors were notified of the filing of Rule 3.565 to specify under what conditions their license may be amended to change the form of ownership, and the documents that must be submitted.

July 1, 1989 is the deadline for a sole proprietor or a partnership to submit all necessary documents to change its form of organization to a corporation. The required documents are:

- A commercial lessor's application (form AP-119-Rev. 6-87/4) with items 1,2,3,4,6,7,10 and 19 completed and a \$25 amendment fee.
- The Articles of Incorporation stamped as having been filed with the Secretary of State or a Certificate of Incorporation.
- Assignment of leases with organizations by the sole proprietor or partnership to the corporation.
- Copies of notice from the lessor to the affected organizations informing them that the leases have been assigned.

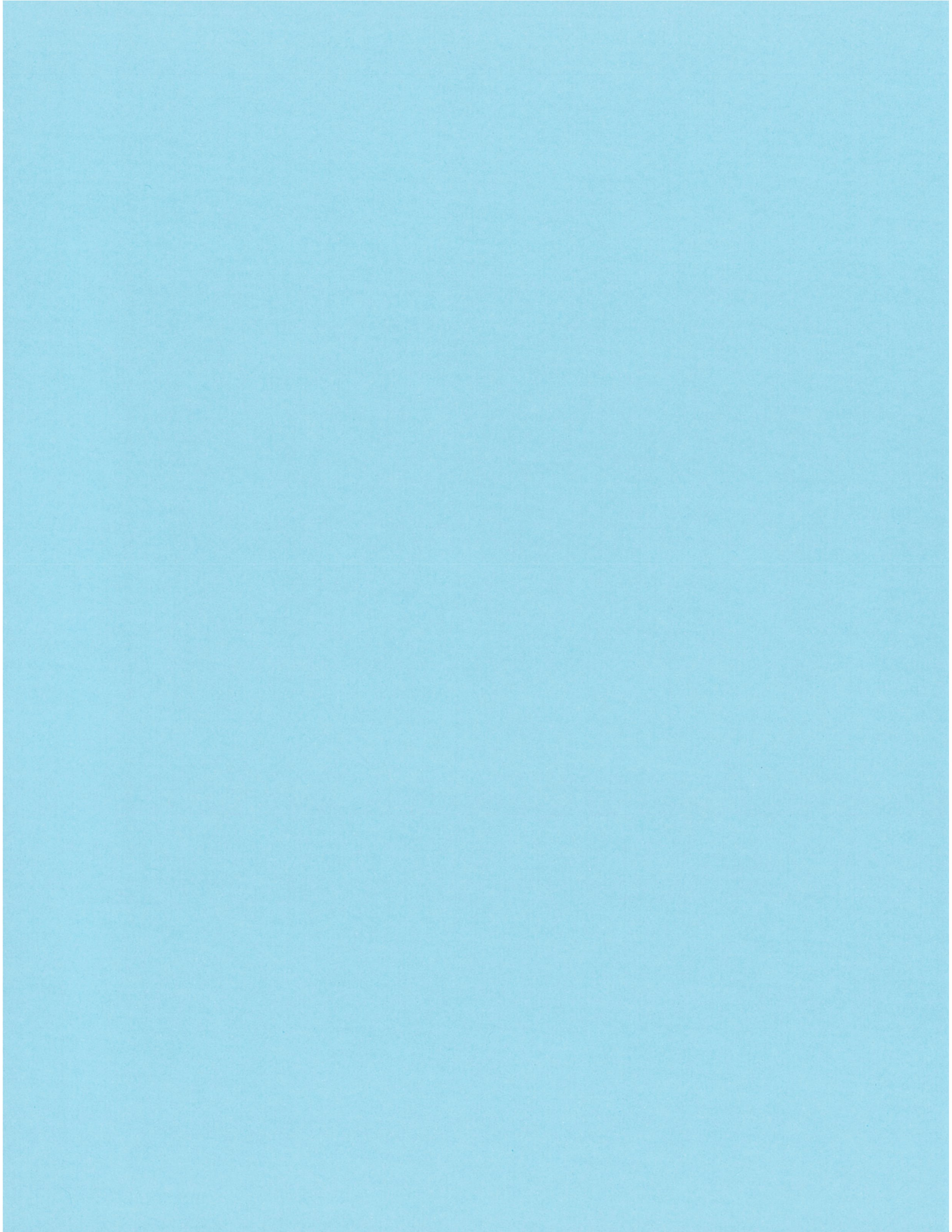
It is important to remember that the rule expires on July 31, 1989 and allows amendment to lessors licenses only where the form of the organization is changed from sole proprietorship or partnership to a corporation, the person or persons having an ownership interest are the same, and the leased premises are the same.

Regulatory Taxes Division: 1-800-252-5555

512/463-4880



BOB BULLOCK • TEXAS COMPTROLLER OF PUBLIC ACCOUNTS



**Biard, Bob**

From AG  
12.11.17

**From:** OPINIONCOMMITTEE <Opinion.Committee024@oag.texas.gov>  
**Sent:** Monday, December 11, 2017 10:58 AM  
**To:** winston@krause-assoc.com  
**Cc:** Jamieson, Debbie; Biard, Bob  
**Subject:** Request for Opinion (RQ-0199-KP)  
**Attachments:** RQ-0199-KP.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Chairman Krause:

Please find attached our letter acknowledging receipt of your request for an attorney general opinion dated December 7, 2017 and soliciting briefs from parties who may have an interest in this request.

Opinion Committee  
Office of the Attorney General of Texas  
(512) 463-2110





**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

December 11, 2017

Mr. J. Winston Krause  
Chairman  
Texas Lottery Commission  
Post Office Box 16630  
Austin, Texas 78761-6630

**Via E-Mail**

Re: Whether the rights that a grandfathered bingo commercial lessor holds under a commercial lessor license may be transferred to another entity under the license transfer provisions of the Bingo Enabling Act (RQ-0199-KP)

Dear Chairman Krause:

We received your request for an attorney general opinion and have designated it as Request No. 0199-KP. Section 402.042 of the Government Code provides that the Attorney General shall issue an opinion not later than the 180<sup>th</sup> day after the date that an opinion request is received, unless before that date the Attorney General notifies the requesting person in writing that the opinion will be delayed. TEX. GOV'T CODE § 402.042(c)(2). We received your request on December 7, 2017, setting a due date for your opinion of June 5, 2018.

By copy of this letter we are notifying those listed below of your request and asking them to submit briefing on your questions if they have a special interest or expertise in the subject matter. If you are aware of other interested parties, please forward this request for briefing to them or let us know, so that we may notify them as soon as possible. We ask that the briefs be submitted by January 11, 2018, to ensure that this office will have adequate time to review and consider arguments relevant to the request from all interested parties. Briefs may be submitted by e-mail to [opinion.committee@oag.texas.gov](mailto:opinion.committee@oag.texas.gov). Please note that briefs and other correspondence are subject to the Public Information Act.

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Virginia K. Hoelscher".

Virginia K. Hoelscher  
Chair, Opinion Committee

VKH/mma

Attachment: Request No. 0199-KP

cc: Mr. Steve Bresnen, Bingo Interest Group  
Mr. Steve Fenoglio, Secretary, Texas Charity Advocates  
Mr. Will Martin, Jr., Director, Conservative Texans for Charitable Bingo  
Mr. Dustin Matocha, Executive Vice President, Empower Texans  
Mr. Tony McDonald, General Counsel, Empower Texans  
Ms. Johanna Hopkins, General Counsel Division, Office of the Governor