

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE  
TEXAS LOTTERY COMMISSION

BINGO ADVISORY COMMITTEE MEETING  
Wednesday, June 23, 2021

Proceedings of the Bingo Advisory Committee Meeting  
of the Texas Lottery Commission, 611 East 6th Street,  
Austin, Texas 78701, reported by computerized stenotype  
machine by Janis Simon, Certified Shorthand Reporter, at  
10:04 a.m.

## APPEARANCES

## COMMITTEE MEMBERS:

Mr. William T. Smith, III (Trace) - Chairman

Mr. Emile Bourgoyne

Mr. Tommy Duncan

Ms. Melodye Green

Mr. Will Martin

Ms. Kim Rogers

Ms. Veronica Uriegas

## AGENCY STAFF:

Mr. Tyler Vance - Acting Charitable Bingo Operations  
Director

Ms. Cindy Fields - Commissioner

## PUBLIC MEMBERS:

Mr. Steve Bresnen

Mr. Stephen Fenoglio

Ms. Kimberly L. Kiplin

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P R O C E E D I N G S

Wednesday, June 23, 2021

(10:04 a.m.)

AGENDA ITEM NO. 1

MR. SMITH: All right. Today is June 23rd. It is a couple minutes after 10:00 a.m. I'm going to call the Bingo Advisory Committee at the Texas Lottery Commission to order.

AGENDA ITEM NOS. 2 & 3

MR. SMITH: As usual, we usually start out with our American Pledge and our Texas Pledge.

And, Mr. Will Martin, would you be kind enough to lead us, sir?

MR. MARTIN: Yes, sir.

(American Pledge and Texas Pledge recited)

MR. SMITH: All right. Thank you, Will.

AGENDA ITEM NO. 4

MR. SMITH: Going on to roll call.

Veronica Uriegas.

MS. URIEGAS: Here.

MR. SMITH: Oh, wait.

Do we have somebody to take notes today since Kim is not here?

MR. VANCE: Kim is on the phone.

MS. ROGERS: Yes, I am taking notes.

1 MR. SMITH: Oh, you are. God bless you,  
2 Kim.

3 (Laughter)

4 MR. SMITH: That's all I can say.  
5 Right, Melodye?

6 MS. GREEN: That's all right.

7 (Laughter)

8 MR. SMITH: Okay. All right. We'll go  
9 ahead and take roll. Veronica is here. Melodye is  
10 here. Will Martin is here. Tyler Vance is in  
11 attendance, Tommy Duncan, and Emile Bourgoyne.

12 MR. VANCE: And, Trace, if I could, on the  
13 phone we also have Commissioner Cindy Fields and Lauren  
14 Callahan, the Media Director for the Lottery Commission.

15 MR. SMITH: Awesome.

16 MR. VANCE: LaDonna, if you're listening,  
17 chirp up. It's going to be LaDonna Castañuela, the new  
18 director.

19 MR. SMITH: Excellent. Excellent.

20 Commissioner Fields, we'd like to say  
21 thank you for joining us. We greatly appreciate that.

22 All right. So, we're missing Jason Pohl,  
23 and we are missing Corey Harris.

24 AGENDA ITEM NO. 5

25 MR. SMITH: All right. Meeting minutes

1 from May 12th of 2021. Is there any public comment on  
2 those meetings that were posted online -- or on those  
3 minutes?

4 (No response)

5 MR. SMITH: All right. If not, call for  
6 approval of the meeting minutes from May 12th, 2021.  
7 All in favor, say, "Aye."

8 (All those voting in favor so responded)

9 MR. SMITH: Any opposed?

10 (No response)

11 MR. SMITH: All right. The meeting  
12 minutes from the 12th are good.

13 AGENDA ITEM NO. 6

14 MR. SMITH: Okay. The report on Texas  
15 Lottery Commission meeting on June the 10th. I gave  
16 that report. There was not a lot in the report because  
17 we were right in the middle of the legislative session.

18 The only main thing on the agenda was to  
19 ask their permission to meet in person for this meeting,  
20 which they graciously granted. So, we want to say thank  
21 you to the Commissioners and the staff for allowing us  
22 to do that. I think we get a lot more done when we have  
23 an in-person meeting.

24 AGENDA ITEM NO. 7

25 MR. SMITH: All right. Old business. Is

1 there any other old business that anyone would like to  
2 address at this point?

3 (No response)

4 MR. SMITH: Okay. Any public comment on  
5 old business?

6 (No response)

7 MR. SMITH: All right. No action will be  
8 taken.

9 MS. KIPLIN: Mr. Chairman, I just didn't  
10 know when you were going to be taking up the discussion  
11 on electronic gift cards.

12 MR. SMITH: That's going to go under new  
13 business.

14 MS. KIPLIN: Thank you, sir.

15 MR. SMITH: Even though it's old business,  
16 we're going to -- since there's a lot more developments,  
17 we're fixing to take that up under the new business,  
18 since we've got some new developments.

19 So, no action to be taken on old business.

20 AGENDA ITEM NO. 8

21 MR. SMITH: No. 8: There's a couple of  
22 issues under new business that we do need to address  
23 today. The first one is the electronic gift card issue  
24 that we've dealt with over the past few months. There  
25 was some opposition from the Kickapoo Tribes of Texas on



1 the language that we had proposed that I think pretty  
2 much most of the industry had agreed with. I know  
3 there's several people here today that want to speak on  
4 that.

5 And is there anybody that would like to  
6 speak about this on the Bingo Advisory Committee or the  
7 staff first to lead into this?

8 All right. Tyler.

9 MR. VANCE: Sure. Do you want me to give  
10 a background on it --

11 MR. SMITH: By all means.

12 MR. VANCE: -- just for everybody's  
13 edification?

14 So, we proposed this rule initially last  
15 October with the rule review, along with a bunch of  
16 other rules, and the Kickapoo commented that they had  
17 concerns with it, that it could lead to credits on a  
18 gaming device, on an electronic device. So, we pulled  
19 that rule back. We've redrafted the rule to make it  
20 more clear that it was meant to be on a card that was  
21 only -- you could only turn in at a cash register. It  
22 couldn't create credits on a card minder or anything  
23 like that.

24 You guys all discussed that rule, that  
25 draft rule, and approved it. So, we sent a copy of that

1 over to the Kickapoo. And then their most recent  
2 response was that they were okay with that, but they  
3 also wanted to add a prohibition against awarding an  
4 electronic gift card as a bingo prize altogether. So,  
5 that was the last language that I sent you guys a couple  
6 of weeks ago, and as I've run by a few of you guys,  
7 that's just the Kickapoo's suggestion. That's not our  
8 official position.

9                   We're not saying that's how it has to be.  
10 But we asked them what they would like, and that's what  
11 they said. You guys are free to recommend the same  
12 thing or something different.

13                   MR. SMITH: Absolutely. And, Tyler, I  
14 know you've done a lot of work on this and the staff  
15 has, too. So, we really appreciate the back and forth  
16 that you do. We know that's not easy being in the  
17 middle of two different groups. So, we definitely  
18 appreciate you.

19                   Any public comment? I'm sure we'll have  
20 several, so --

21                   MR. MARTIN: I want to have you explain  
22 that part that they want to stick in there. Run that by  
23 me again.

24                   MR. VANCE: So, the last time we submitted  
25 it to the Kickapoo for their comments, they added a

1 provision in there that would prohibit awarding an  
2 electronic gift card as a bingo prize just altogether.  
3 Initially, the rule clearly prohibits awarding a gift  
4 card as a credit on a card minder, but then they added  
5 an extra prohibition on there just awarding it  
6 altogether so that you couldn't award a gift card as a  
7 bingo prize during a normal bingo occasion at all.

8 MR. SMITH: And I'm assuming that this  
9 gift card would be for product, not a cash prize,  
10 correct, or either?

11 MR. VANCE: Either. It could be used for  
12 any bingo product. This is the same as the paper gift  
13 certificate.

14 MR. SMITH: And it still falls under the  
15 limits of the prize tabs. Correct?

16 MR. VANCE: Correct.

17 MR. SMITH: So, basically, it's just  
18 another form of cash money.

19 MS. URIEGAS: It's something we're already  
20 doing or could be doing with the paper, but --

21 MR. SMITH: Yes.

22 MS. URIEGAS: -- it's just an electronic  
23 version, and they just don't want the electronic  
24 version?

25 MR. SMITH: That's correct. That's

1 correct.

2 I think we've got a couple members from  
3 the public who would like to speak on this --

4 MR. FENOGLIO: Yes.

5 MR. SMITH: -- Steve Fenoglio and Kim  
6 Kiplin.

7 MR. FENOGLIO: Stephen Fenoglio for Texas  
8 Charity Advocates, for River City Bingo, and about 800  
9 other charities and lessors and distributors involved.  
10 What the Kickapoos want is for us to go back to the 1990  
11 era and just paper.

12 The beauty of the electronic version is  
13 it's, A, easier to track. It's easier to keep up with.  
14 It's easier for a customer to maintain because if they  
15 lose the paper certificate, it's done.

16 If it's incorporated into the point of  
17 sale system, then there's a way to retrieve that, and so  
18 it's more customer friendly. We're not talking about  
19 some sort of slot machine with credits added and  
20 subtracted. I think everyone understands that. I don't  
21 know what the Kickapoos are thinking or drinking or  
22 smoking.

23 The other thing is they're 180 miles away  
24 from any bingo hall. So, this is not going to affect  
25 them. I guess they believe they should have the right

1 to do -- and, by the way, they're doing this on their  
2 systems. They don't want anyone else to do it.

3 So, this would be good for charitable  
4 bingo. It would be good because it's good for  
5 charitable bingo. It would be good for employees. It  
6 would be good for the State when it gets prize fee money  
7 from bingo, and the cities and counties, also. So, we  
8 support what has been drafted and oppose what the  
9 Kickapoos have drafted.

10 I'd be happy to answer any questions.

11 MR. BOURGOYNE: Steve, did you say the  
12 Kickapoos are using electronic gift cards?

13 MR. FENOGLIO: Well, yeah, they have the  
14 electronic versions of awards. Sure.

15 MR. DUNCAN: Players card or --

16 MR. FENOGLIO: Yeah.

17 MR. BOURGOYNE: Thank you.

18 MR. SMITH: Is that it, Stephen?

19 MR. FENOGLIO: That's it, yes.

20 MR. SMITH: Kim Kiplin, I think you've got  
21 quite a bit to say about this, as well.

22 MS. KIPLIN: Good morning. For the  
23 record, my name is Kimberly Kiplin. I'm an attorney  
24 here in Austin. I'm actually here today on behalf of  
25 the Department of Texas Veterans of Foreign Wars, and

1 with me is Mitch Fuller, who is the Legislative Director  
2 for the Texas Department of VFW.

3 I just kind of want to reiterate what  
4 Tyler said. This was a proposed rulemaking I believe  
5 back in August, and the Kickapoo did submit comment,  
6 11th hour comment, which jammed up the staff, which had  
7 caused the staff to have to withdraw the rule. And the  
8 Bingo Advisory Committee I think understood that, and so  
9 we fast forward. The staff was trying to address the  
10 comments that were provided by the Kickapoo.

11 And I reread the comment that they  
12 submitted back on September 20th, and a lot of it is:  
13 The proposed rule runs the risk of opening the door for  
14 devices to allow credits to be accumulated and replayed  
15 like a slot machine. It's running the risk, imposing  
16 restrictions that could -- does not impose restrictions  
17 that, in fact, might allow accumulating credits and  
18 replaying like a slot machine. They had a concern  
19 regarding the use of the term otherwise.

20 So, the staff took a huge effort in trying  
21 to address the Kickapoo's comments and presented to the  
22 Bingo Advisory Committee at its March 25th committee  
23 meeting proposed language, and at that time the Bingo  
24 Advisory Committee approved that language. And that's  
25 what caused the staff to send that to the Kickapoo, and

1 what they did was to make it very clear in the language  
2 that the electronic bingo gift certificate could not be  
3 used to award any kind of forms of credits on an  
4 electronic device. It could be used on a point of sale  
5 but not on an electronic device, which I think we all  
6 thought was very, very reasonable in terms of trying to  
7 address the Kickapoo's 11th hour comment, which jammed  
8 up the staff and the Commission on the process.

9               So, now the Kickapoo wants to add the  
10 phrase -- I'm going to just read the last sentence, and  
11 you-all have received that -- the licensed authorized  
12 organization may not issue or award a bingo gift  
13 certificate electronically. And this is what they want  
14 to insert, as a prize for bingo or, and then in the form  
15 of credits. So, the electronic gift certificate is just  
16 a different medium than paper. The paper gift  
17 certificate has been approved.

18               It is very clear in the draft language  
19 that the electronic gift certificate is not going to be  
20 used in any other form beyond how a paper gift  
21 certificate is used, and certainly, the staff is the  
22 regulator. And if there's somebody who is using this  
23 electronic gift certificate that's not in compliance  
24 with the rule, the staff can take action. And frankly,  
25 the staff monitors the point of sale system like on the

1 customer accounts, and so they know whether there's  
2 going to be a problem or not.

3               So, on behalf of the VFW we are requesting  
4 that the Bingo Advisory Committee oppose the proposed  
5 language by the Kickapoo Traditional Tribe of Texas and  
6 continue to support the language the staff drafted and  
7 that the Committee approved at its March 25th committee  
8 meeting. I don't think that we ought to be operating in  
9 terms of speculative running the risk of something  
10 that's going to happen, and I use this as an analogy.  
11 You know, well, we're all sitting in this room. You  
12 know, we're running the risk that there's a tornado  
13 that's going to come through this room, but how likely  
14 is that. It's not.

15               So, I think good government and good  
16 rulemaking is you stick with what you have, and you  
17 don't speculate beyond the context of the rule. And you  
18 address violators, and I'll be happy to answer any  
19 questions.

20               MS. GREEN: I have a question. The gift  
21 card now, if somebody comes into the bingo hall and  
22 says, I want to buy \$100 dollars worth of gift cards for  
23 presents, is there a rule now that will not allow me to  
24 have one of those credit card things, swipe it and put  
25 \$100 on there?



1 MR. VANCE: Yes. Currently, the rule  
2 requires that they be on a piece of paper, literally on  
3 a paper gift certificate, and the paper has certain  
4 requirements. It needs the person's name, the date it  
5 was awarded, the amount, some kind of identification of  
6 the hall that issued it. So, it is required to be on a  
7 piece of paper right now.

8 MS. GREEN: Thank you.

9 (Simultaneous discussion)

10 MR. MARTIN: -- that piece of paper --

11 MS. GREEN: I'm not doing that either, but  
12 I'm just saying I couldn't imagine why there would be a  
13 rule saying we can't do it. My other question is: Why  
14 is the Kickapoo telling us what to do?

15 MR. SMITH: Well, before we answer that  
16 question, just for general record purpose, I did reach  
17 out to the lobbyists for the Kickapoo nation, and I did  
18 not receive an email or a call back.

19 Is there anybody from the Kickapoo nation  
20 here today that would like to speak?

21 (No response)

22 MR. SMITH: Nobody is here for them.

23 MR. MARTIN: (Indiscernible)

24 MR. SMITH: Sir?

25 MR. MARTIN: I said maybe they just don't

1 want to admit to being here.

2 (Laughter)

3 MR. SMITH: All right.

4 Yes, Emile Bourgoyne, go ahead.

5 MR. BOURGOYNE: I'd like to move that we  
6 go ahead and approve the language we approved the last  
7 time and move forward with it.

8 MR. MARTIN: I second that.

9 MR. SMITH: Hold on just one moment.  
10 We've got a comment on this real quick from the general  
11 public.

12 Steve Bresnen.

13 MR. BRESNEN: Thank you, Mr. Chairman. My  
14 name is Steve Bresnen. I'm here on behalf of the Bingo  
15 Interest Group, and I'm hoping I can add something new  
16 to the discussion. Two new things: I'm sometimes  
17 accused of being too blunt, but I'm never accused of  
18 people not knowing where I stand and the people on whose  
19 behalf I speak stand.

20 I think it's very important for us to  
21 differentiate between the Kickapoo nation and the  
22 representatives of the Kickapoo nation. I've dealt with  
23 representatives of the Kickapoo nation for a decade now.  
24 They are overreaching. They are monopolists, and  
25 they're acting in the way monopolists act. And,

1 frequently, a monopoly mentality influences someone's  
2 communication and actions in a way that makes no damn  
3 sense at all. Is that clear?

4 MR. SMITH: Crystal.

5 MR. BRESNEN: Turning to matters of the  
6 greater importance to the agency, a few years ago in  
7 response to the North Carolina Dental Board case, that  
8 was an antitrust case brought against the North Carolina  
9 Dental Board. And it provided that when an agency is  
10 dominated by market participants, it's subject to the  
11 antitrust laws of Sherman Federal Antitrust Laws, unless  
12 there's state supervision above that agency of the  
13 agency's rulemaking, the object being to have a guard  
14 against the use of an agency to engage in any  
15 competitive conduct.

16 This agency does not fit that description.  
17 That was dentists who dominated the dental board trying  
18 to keep people from doing things in the mouth that had  
19 nothing to do with practicing dentistry, but the  
20 Legislature, nonetheless, enacted a statute. It's in  
21 Chapter 57 of the Occupations Code, and it requires  
22 state agencies to present to the Governor's office  
23 proposed rules with the expressed purpose of defeating  
24 anticompetitive conduct carried out by the State of  
25 Texas. So, it would be a violation, in my opinion, of

1 state policy for the Kickapoos to prevail, their  
2 representatives to prevail in trying to put this into a  
3 statute that the agency has full authority to adopt.

4 Monopolists do what monopolists do, and  
5 that's to try to stifle competition, real or imagined.  
6 There's a thousand charities that are something like  
7 17 million customer visits. There's \$750 million in  
8 gross revenue in charitable bingo. There is nothing  
9 about this rule that would impede the monopolist  
10 representatives of the Kickapoos in the Kickapoo's  
11 operation, which in this state is a monopoly.

12 Just to make sure that there's a complete  
13 record here, I'd like to read. Normally, I wouldn't  
14 read to people in giving testimony, but I think it's  
15 important. Section 57.105(a) of the Occupations Code  
16 requires an agency to submit to a division in the  
17 Governor's office for review the proposed rule before  
18 it's adopted or implemented.

19 So, they submit for review. And here's  
20 what the agency is to review on the basis of, and this  
21 is in Section 57.106(a) of the Occupations Code: The  
22 division shall conduct a thorough, independent review of  
23 each proposed rule submitted under the other section to  
24 determine if, one, the effect of the proposed rule on  
25 market competition is consistent with state policy as

1 established by the applicable state agency's governing  
2 statute. Nobody disputes, to my knowledge, even the  
3 Kickapoos, the representatives of the Kickapoos, that  
4 the agency has the authority to adopt this rule.

5 And we're very appreciative to the staff  
6 for taking on the task and recognizing the importance of  
7 it and sticking with it.

8 Tyler, I really appreciate y'all, Bob,  
9 everybody that's worked on this.

10 The second thing that the Governor's  
11 division is to consider is whether the proposed rule  
12 promotes a clearly articulated and affirmatively  
13 expressed policy as established by the Legislature to  
14 displace competition with government action. There is  
15 no policy established by the Legislature that requires  
16 or even nudges or hints at this agency to displace  
17 competition by this rule. So, assuming arguendo, as the  
18 real lawyers say, the real lawyers, that this rule would  
19 somehow affect the operation of the Kickapoo nation in  
20 Eagle Pass, Texas along the Texas border, then this  
21 agency has not been asked, directed, or hinted to by the  
22 Legislature to the limit that competition by rule placed  
23 on charitable bingo.

24 I don't know how many members of the  
25 Kickapoo nation there are, but if you're familiar with

1 their history, they were living under a bridge in the  
2 worst possible circumstances that human beings can live  
3 under. It makes the homeless situation in Austin, Texas  
4 look like child's play. And because they were able to  
5 engage in casino gambling and have an operation down  
6 there, many people have been lifted out of poverty.  
7 That is why it's extremely important that we distinguish  
8 between the Kickapoo nation and the overreaching,  
9 monopolistic representatives of the Kickapoo nation who  
10 look for every opportunity to bill them, the lawyers in  
11 Arizona, by the hour.

12 I think they're in Arizona, aren't they,  
13 Mr. Fenoglio?

14 And their lobbyists here. And, frankly,  
15 I'm about sick of them sticking their nose in it where  
16 they have no legitimate concern. Their concern is not a  
17 moral concern on behalf of the people of Texas. It's  
18 not a legal concern expressed in any way by the  
19 Legislature to limit competition in this field, assuming  
20 there would be.

21 It is monopolists doing what monopolists  
22 do, and that's to hold other people down. And if there  
23 are any questions -- I'm kind of doubting it -- but if  
24 there are any questions, I'd be happy to answer them.

25 MR. SMITH: Any questions for Mr. Bresnen?

1 MR. MARTIN: No, I'd like to applaud him.

2 (Applause)

3 MR. SMITH: Steve, I do want to thank you  
4 for making that very particular distinction between the  
5 actual Kickapoo nation and their representatives.  
6 That's a very good point that you made there. Thank  
7 you.

8 MR. BRESNEN: Yes, sir. Thank you.

9 MR. SMITH: Okay. So, we have a motion by  
10 Emile that we accept the gift card language as it was  
11 proposed at our last meeting before the Kickapoo had  
12 their issue with it, and this would include the awarding  
13 of the gift card for a noncash merchandise prize or  
14 bingo product.

15 MR. MARTIN: That was the language from  
16 March 25th?

17 MR. SMITH: That's correct, sir.

18 MR. MARTIN: Okay.

19 MR. SMITH: Yes, sir.

20 We have a motion on the table. Do we have  
21 a second?

22 MR. MARTIN: I second that.

23 MR. SMITH: Will seconds that.

24 All right. All in favor.

25 (All those voting in favor so responded)

1 MR. SMITH: Any opposed?

2 (No response)

3 MR. SMITH: All right. The motion  
4 carries.

5 All right. I think the next issue that we  
6 probably want to talk about are pull-tabs and the  
7 shortage thereof.

8 And, Will Martin, I think you've got a  
9 letter that you have written that you want to talk about  
10 and see about getting some support for.

11 MR. MARTIN: Yeah, I have a --

12 MR. SMITH: I think there's going to be  
13 two parts to this. I think there's going to be -- that  
14 Will is going to want to talk about, and then there's  
15 also going to be the part that deals with the online or  
16 Facebook pull-tab stuff. I think that's become part of  
17 the major problem that we're having an issue with  
18 pull-tabs in the first place.

19 But, Will, if you will, sir, say your  
20 piece.

21 MR. MARTIN: This is a draft paper I put  
22 together yesterday, as a matter of fact, and there are  
23 two places in here where I'll -- one, I'll add a word,  
24 and the other one, we're not sure of what it means.  
25 It's called problem - Supply Chain Temporary Disruption



1 of Pull-Tabs.

2           The importance of pull-tabs or event tabs  
3 to all licensed bingo charities in the State of Texas  
4 cannot be understated. The money raised from sales  
5 accounts for 90 percent plus of all revenue in most  
6 halls of Texas. Consequently, our charities are  
7 dependent on these revenues.

8           The problem we are faced with today is  
9 there is a supply shortage that was caused by several  
10 factors that relate back to the beginning of the  
11 COVID-19 pandemic lockdown. In very short and simple  
12 terms, we have reached a critical point with tab supply  
13 in the bingo industry. Manufacturers are currently  
14 working two shifts and are unable to keep up with  
15 current demand.

16           The background cause: From March of 2020  
17 until May of 2020 bingo halls were shut down.  
18 Manufacturers or printers of tabs shut down also around  
19 April of 2020 and did not open up until late in the year  
20 of 2020. When bingo halls did open up, sales of tabs  
21 skyrocketed by approximately 73 percent due to the  
22 stimulus checks sent out by the government and just  
23 pent-up demand.

24           So, for approximately seven months the  
25 manufacturers and distributors and charities were

1 selling off inventory without being able to replace it.  
2 When states like New York and California opened back up,  
3 it really made the shortage worse. Other matters, such  
4 as finding employees, has caused a problem with  
5 manufacturers being able to obtain raw materials used in  
6 their manufacturing process.

7           Even though manufacturers are running at  
8 100 percent, there is no doubt that charities will reach  
9 a point in 2021 where they will not be able to obtain  
10 tabs, and this will be a crushing blow for charities,  
11 cities, counties, and the State of Texas, who all  
12 receive revenue from the sale of tabs. Also, on the  
13 negative side for charities is that the cost of tabs  
14 have increased from 10 to 18 percent.

15           The current supply situation: Right now,  
16 if you submit an order for tabs at the end of June, you  
17 will not receive them until the third or fourth week in  
18 January of 2022. Also, the manufacturers are  
19 selectively printing only certain tabs. This  
20 industry-wide condition will affect all halls but could  
21 mean certain closure for smaller halls, like the  
22 American Legion and VFW post. I do not have to tell you  
23 all the great things that revenue from charitable bingo  
24 does and will be lost forever, and thousands of jobs of  
25 bingo workers would be at risk.

1           There is a solution to this problem: The  
2 solution is electronic tabs, which are played on  
3 hand-held devices that we already use as card minding  
4 devices while playing bingo. There are several  
5 states -- and I've been told that these states weren't  
6 wrong -- that have enacted temporary rule changes to  
7 help their charities survive this industry condition.  
8 They have changed the rules with the option of looking  
9 at the situation in 12 to 14 months.

10           We were asking you to align with us for a  
11 temporary waiver and/or permission to utilize electronic  
12 machines in place of physical paper pull-tabs until  
13 manufacturers can once again keep up with this  
14 unprecedented demand. If the Director of Bingo and/or  
15 the Lottery Commission requires a live demonstration of  
16 how this electronic equipment will work, that can most  
17 certainly be arranged. It would show that nothing in  
18 the game has changed. It is about the same as doing  
19 multiplication with a pencil and paper versus doing it  
20 on a calculator. You get the same answer.

21           We hope that the Bingo Advisory Committee  
22 would vote on this request of temporary consideration  
23 here today, June 21st, 2021. Thank you.

24           MR. SMITH: Thank you, Will.

25           (Brief pause)

1                   MR. SMITH: Thank you, Will. Sorry about  
2 that. After receiving your letter, I did kind of some  
3 basic research, and I believe that this is not a rule  
4 issue but a legislative issue in order to -- I think  
5 your rule -- I mean, I think your letter is asking for  
6 the staff and the Lottery Commissioners to allow us to  
7 have electronic pull-tabs on our current card minder  
8 devices. Is that correct?

9                   MR. MARTIN: Yes.

10                  MR. SMITH: I don't think we can do that  
11 by rule process. I think that has to be done through a  
12 legislative process.

13                  Tyler, is that --

14                  MR. VANCE: Sure. Tyler Vance, Acting  
15 Director. With the caveat that nothing is specific in  
16 front of me to make a legal determination on, in  
17 general, my understanding is that there's an Attorney  
18 General opinion out there that says that this would  
19 require a constitutional action for electronic  
20 pull-tabs, specifically.

21                  MR. SMITH: Okay. I think that kind of,  
22 unfortunately, pokes a hole in some things, Will. I  
23 like where you're going with this. I think we do need  
24 to do something.

25                  Emile, would you like to --

1 MR. BOURGOYNE: Yeah, I'd like to go on  
2 the record saying that the manufacturers support  
3 electronic pull-tabs under certain conditions, which  
4 we'd be happy to share with you when the time comes, but  
5 I don't think this is the time. If it requires a  
6 constitutional amendment and a legislative act, from  
7 what I understand what you're saying, I don't understand  
8 why we should ask the Commission to do something that  
9 they can't do.

10 I'd also like to point out that the three  
11 states he mentioned did not legalize electronic  
12 pull-tabs with some temporary rule change. They were  
13 all enacted by legislation pre-COVID. So, I'm not aware  
14 of any state that's done a rule change to allow  
15 electronic pull-tabs.

16 Now, that said, there is some things that  
17 Texas could do rule-wise that might open the door for  
18 some product that's available. There's some preprinted  
19 pull-tab ticket dispensers that can display them on a  
20 screen that's available that would require minor rule  
21 changes but not pure electronic pull-tabs on a card  
22 minding device, in my opinion.

23 MR. SMITH: Right.

24 I think one of the other things that I  
25 heard other people talking about, if you put it on a

1 card minder, you've got to have a credit-based system,  
2 and that's a whole nother can of worms there that I  
3 don't know enough about to give an opinion on.

4 I think we have a member from the public  
5 wanting to speak first here. Veronica.

6 MS. URIEGAS: So, I don't know how I feel  
7 about this topic one way or the other. I don't know how  
8 it will affect us, but I do have a question. It is like  
9 when we were having trouble here in Texas with the  
10 liquor, the restaurants were allowed to take liquor to  
11 go. And now it's just been changed permanently. So,  
12 they did a temporary thing. So, I don't know how that  
13 was done with us.

14 I don't know anything about that. So, it  
15 was just a thought, is if they did it with restaurants,  
16 I was allowed to sell liquor to go, even though I didn't  
17 have a carrier permit. So, just a thought.

18 MR. SMITH: That's above my pay grade.

19 MS. URIEGAS: Yeah, I don't know. I  
20 just --

21 MR. SMITH: I don't know how all that  
22 works. (Laughter) Sorry, that's above my pay grade.  
23 Maybe one of the attorneys would be able to answer that.

24 I think, Steve Fenoglio and Kim Kiplin,  
25 y'all want to get in line to talk on this subject?

1 MR. FENOGLIO: Sure, Mr. Chairman, and for  
2 the record, Stephen Fenoglio again. And I wanted to  
3 hear from Emile because I know there are states that  
4 have a version of, what I call, a video confirmation of  
5 pull-tabs. I know Virginia and New Hampshire have laws  
6 for that.

7 And the AG opinion that I think you were  
8 referring to, GA-0591, issued by then Attorney General  
9 Abbott, who is now in the Governor's office, indicated  
10 that a video confirmation would be acceptable under  
11 current statute, the rules would have to be permitted.

12 Years ago the VFW, in connection with some  
13 of their supporters, demonstrated here I believe a video  
14 product that also dispensed the paper pull-tab with it,  
15 and that is something that has, I think, some  
16 attraction. The tab itself -- I mean, there's a  
17 shortage of paper. There's a shortage of pull-tabs.

18 MR. BOURGOYNE: There's not a shortage of  
19 paper. Okay? There's a shortage of manufacturers of  
20 pull-tabs.

21 MR. FENOGLIO: I was --

22 (Simultaneous discussion)

23 MR. BOURGOYNE: Well, actually, there's  
24 not even a shortage. We're producing pre-COVID -- we're  
25 producing above pre-COVID levels. The demand is through

1 the roof. That's the issue.

2 MR. FENOGLIO: Right. Well, I was told by  
3 one of the distributors that there is a shortage of  
4 paper for the pull-tab manufacturers, but maybe he was  
5 wrong about that.

6 But in any event, there's a shortage of  
7 product, and I think we all know that. And so with the  
8 product that I've seen, it can shrink the size of the  
9 tab, but you would still have, under current law under  
10 the definition of pull-tab under the Bingo Enabling Act,  
11 you would still have a paper -- or a product with  
12 perforated -- et cetera. And that's what I have seen,  
13 what the VFW, I believe it was, displayed here, and then  
14 I'm aware of at least one other manufacturer who is  
15 doing that in New Hampshire.

16 So, to Will's point, I don't think you can  
17 get to where I understand you would go, which is  
18 forgetting any paper product at all, just have video,  
19 and that's going to require a statutory change, at a  
20 minimum. But to confirm the video confirmation portion  
21 of it, I think it can occur, and we were close to that  
22 at one point. So, whether that solves the problem of  
23 product availability I think there would have to be a  
24 discussion with the manufacturers about this.

25 But, again, I've seen the product, and the



1 paper product itself is smaller than a traditional  
2 pull-tab. And you know, if you think about it, I'm  
3 wearing these cheater glasses, most of our customer base  
4 in a bingo hall are the same way. They need a tab of a  
5 certain size so they can actually see what's going on.  
6 Well, you could shrink that significantly, save paper,  
7 lower the cost, because there's less paper involved.  
8 There's less cost to ship, et cetera, but you'd still  
9 have the full display on the video screen.

10 I'd be happy to answer any questions.

11 MR. SMITH: Kim.

12 MS. KIPLIN: For the record, Kimberly  
13 Kiplin, and I'm here for the Department of Texas  
14 Veterans of Foreign Wars.

15 So, just a little trip down memory lane.  
16 In 2014 the VFW and K&B Sales filed a rulemaking  
17 petition, and it was a two-pronged rulemaking petition.  
18 One part was customer accounts, to allow customer  
19 accounts on card monitors limited functionality but to  
20 at least allow that, and the other one was to amend the  
21 pull-tab rule to allow for video confirmation on all  
22 pull-tabs, not just event tabs. The rule already  
23 authorized video confirmation in an entertaining way  
24 for an event, but it was to allow for all instant bingo.

25 The Commission actually did publish the

1 rulemaking for public comment, and there was some  
2 pushback -- not legal, there was no legal pushback --  
3 but there was pushback, maybe a perception which caused  
4 the Commission, in my view, to go ahead and withdraw  
5 that particular rulemaking. Now, having said that, when  
6 the Commission proposed that rule, part of the preamble  
7 requires that the Commission certify that it has the  
8 legal authority to adopt that rulemaking. And so for  
9 that purpose, in expanding the video confirmation for  
10 all instant pull-tabs, the Commission has said that it  
11 has that authority.

12               To Mr. Martin's point and what he wants,  
13 there is AG opinion on that. Of course, it always comes  
14 down to the devil is in the details. You have to  
15 actually look at the product, what the product is doing,  
16 how is it functioning: To be able to determine does it  
17 go beyond not just the statutory authority, but also the  
18 constitutional authority. And so I think if there's  
19 something specific that people want to look at, that's  
20 one thing, but just, in general, that video pull-tab, I  
21 think the Attorney General has answered that in that  
22 particular specific format.

23               I'd be happy to answer any questions.

24               MR. SMITH: Emile.

25               MR. BOURGOYNE: Just for the record, one

1 of the Pollard companies, Diamond Games, makes a product  
2 that dispenses a paper pull-tab and displays it on a  
3 screen, and we'd be happy to demonstrate it to the BAC  
4 if they wanted to see such a product.

5 MR. SMITH: Well, I think it sounds like  
6 we're definitely headed down that road. I think there's  
7 quite a bit of interest in the electronic pull-tabs, and  
8 I think a case could definitely be made that an  
9 electronic pull-tab may solve part, if not most of the  
10 pull-tab shortage or lack of product, if you will, in  
11 the State of Texas.

12 I think maybe what we may need to do is --  
13 Steve Bresnen, do you want to --

14 MR. BOURGOYNE: And I would also make that  
15 same invite to any of the other manufacturers that are  
16 licensed here in Texas.

17 MR. SMITH: Absolutely.

18 MR. BRESNEN: Steve Bresnen on behalf of  
19 the Bingo Interest Group again, just a couple of  
20 thoughts.

21 With regard to your comment, Ms. Uriegas,  
22 under Chapter 418 of the Government Code, the Governor  
23 has wide authority in a declared disaster to basically  
24 rewrite the law. In Texas, we can't rewrite the  
25 Constitution but can rewrite statutes. So, to the

1 extent there was any statutory impediment, as long as  
2 that declaration is in effect, then the Governor could  
3 have some impact on that were he of a mind to do so.

4           On the other hand, my guess is, if we took  
5 a poll of everybody in this room, they would 100 percent  
6 agree that we just assume that the COVID disaster  
7 declaration go away and that we all remember that 2020  
8 took a year and a half to get over with. So, I don't  
9 think we could rely on that change for very long, if the  
10 Governor were of a mind and if there is even a need in  
11 the statute to give some relief in that regard.

12           The second thing is, we know from our  
13 distributor friends, manufacturer friends and from  
14 people in the marketplace that something bad is going on  
15 in the marketplace. I don't know that we have done  
16 sufficient fact finding. Maybe we have. I might be the  
17 ignorant person in the room here, but I think if the  
18 Commission is going to be asked to do anything by way of  
19 giving relief, that we need a much more fact-based  
20 documented basis for the nature of the problem, the  
21 extent of the problem.

22           As Emile said, there's unprecedented  
23 demand, but manufacturers are producing even above  
24 pre-pandemic levels, if I understood correctly. But if  
25 there's unprecedented demand, that would be great for

1 bingo if that demand can be met. So, I would like to  
2 see the BAC recommend or seek out request from the  
3 staff, from people, participants in the bingo world to  
4 quantify, identify, get some people on record regarding  
5 the nature of the problem, any estimated timeframe that  
6 the problem would last, and that sort of thing. So,  
7 when we're going to the Commissioners, we're not just  
8 speaking anecdotally. I think it's very important for  
9 them to have a factual basis, particularly that might  
10 underline any future rulemaking, be beneficial to the  
11 agency to be able to justify what it's doing on that  
12 basis.

13                   And also I think one of the things this  
14 conversation has shown is that it's kind of like your  
15 baby being the best looking baby on the planet. It's  
16 kind of in the eye of the beholder, and we keep talking  
17 about E-tabs. And we've already determined in this  
18 conversation that there's a wide variety of what people  
19 might consider to be E-tabs.

20                   So, I think some concrete explanation  
21 about what's in and what's out would need to be on paper  
22 with the proper citation to AG opinions, board opinions,  
23 statutory provisions, et cetera. So, I think the BAC  
24 could request that from the industry, assistance from  
25 the staff, get everybody on the same page about that so

1 if something were to go to the Commissioners, then they  
2 could rely on that and have a sound legal basis for  
3 doing that.

4 In short, I think we have some work to be  
5 done before we endorse any particular solution and put  
6 the Commissioners in a position of saluting a flag  
7 that's not fully designed at this point in time. With  
8 regard to demonstrations or anything like that, I  
9 wouldn't have any opposition to that at all with the  
10 understanding -- and may I call upon our conversation  
11 earlier?

12 It probably ought to be a request from the  
13 agency or, at a minimum, the BAC, and it ought to be to  
14 multiple parties who might have something to show so  
15 we're in compliance with the Bingo Enabling Act making  
16 it clear nothing is being offered for sale in that  
17 context and that it's something that we have the  
18 umbrella shield of the agency for purposes of the  
19 Federal Jobs Act. I'm hoping, in summary, that my  
20 suggestions are to be very methodical and professional  
21 about what we do in order to give the Commission the  
22 soundest possible basis to respond to a request from the  
23 industry.

24 I'd be happy to answer any questions about  
25 that. Thanks.

1 MR. SMITH: Thank you, Steve.

2 Well, I think Steve took the words right  
3 out of my mouth that I was fixing to get to.

4 So, thank you for doing that, Steve.

5 (Laughter)

6 MR. SMITH: I think probably what we do,  
7 typically, in a case like this is create a subcommittee  
8 to establish the facts, to determine what actually the  
9 problem is in the industry, whether it's not enough  
10 product or the demand is too high, to get some basis of  
11 what the problem is, to determine what we think will fix  
12 the problem, and a timeframe on getting the problem  
13 fixed and then, as Steve so eloquently said, figure out  
14 the statutory and the rule requirements to define that.  
15 Is there anyone that would like to chair that  
16 subcommittee?

17 MR. DUNCAN: I think Emile should chair  
18 it, but I think all the distributors in Texas -- Roy  
19 Bingo, GTAG, Moore Supplies, and LSG -- should be a part  
20 of that committee. I think it should be driven by the  
21 distributors.

22 MR. SMITH: Okay. Thank you.

23 Will.

24 MS. ROGERS: Can y'all let me know who  
25 that was speaking? I'm sorry.

1 MR. DUNCAN: That's Tommy Duncan, sorry.

2 MS. ROGERS: Thank you.

3 MR. SMITH: Will, you wanted to add  
4 something?

5 MR. MARTIN: Yeah, I would like to be  
6 involved in that, also.

7 MR. SMITH: I think you should. I think  
8 this was your idea, and I think you should be on this.  
9 Absolutely. Good idea, by the way.

10 MR. DUNCAN: I think you should be on it,  
11 too, so you know firsthand whether we even need to bring  
12 it back here, what the course of action is.

13 MR. SMITH: Absolutely. All right.

14 MR. MARTIN: Can I volun-told somebody  
15 else?

16 MR. SMITH: Sir?

17 (Laughter)

18 MS. URIEGAS: He volunteered Melodye.

19 MS. GREEN: He volunteered me. I'll do  
20 it.

21 MR. SMITH: Are you sure?

22 MS. GREEN: Yeah.

23 MR. SMITH: Okay. All right.

24 So, Emile --

25 MS. GREEN: We need lawyers.



1 (Simultaneous discussion)

2 MS. URIEGAS: Yeah, I'll volunteer, as  
3 well, since you're pointing at me.

4 MR. SMITH: Okay.

5 MS. URIEGAS: I agree, lawyers.

6 MS. GREEN: We need lawyers.

7 MR. SMITH: So, I think we should probably  
8 have some members from the general public, as well --

9 MS. URIEGAS: Legal, as well.

10 (Simultaneous discussion)

11 MR. SMITH: -- not just the -- pardon?

12 MS. URIEGAS: Legal.

13 MR. SMITH: Legal. Yes, absolutely.

14 Steve Fenoglio, Kim Kiplin, would y'all  
15 like to help on that, as well?

16 MR. FENOGLIO: Yes.

17 MS. KIPLIN: Kim Kiplin, for the record,  
18 yes.

19 MR. SMITH: Wonderful.

20 MR. FENOGLIO: And Fenoglio for the  
21 record, yes.

22 MR. SMITH: All right. Wonderful.

23 So, Tommy, do you want to take that?

24 MR. DUNCAN: Yeah, I'll be on it, but like  
25 I said, we need to get the distributors that are part

1 of --

2 (Simultaneous discussion)

3 MR. SMITH: I agree.

4 Who wants to chair this subcommittee? I  
5 do not want to chair this subcommittee. I just want the  
6 reports.

7 MR. DUNCAN: He knows all the information  
8 on it. I think he should chair it.

9 MR. SMITH: Emile?

10 MR. DUNCAN: I mean, he's doing it --

11 (Simultaneous discussion)

12 MR. SMITH: Would you like to do that,  
13 sir?

14 MR. BOURGOYNE: I'll be happy to.

15 MR. SMITH: Since you got volun-told?

16 (Laughter)

17 MR. SMITH: There's a lot of that going on  
18 around here today.

19 MR. BOURGOYNE: Do we want to even open  
20 this can of worms and talk about the Facebook issue?

21 MR. SMITH: Yeah, I think that's next,  
22 after we do this, because I think that's a lot bigger  
23 issue --

24 MR. BOURGOYNE: It's probably a big part  
25 of the demand issue that we're unaware of, in my

1 opinion.

2 MR. DUNCAN: Yeah, unintended  
3 consequences.

4 MR. SMITH: So, before we move on to that,  
5 before we make this subcommittee, let me make sure who  
6 we --

7 MR. BOURGOYNE: Send me the list of who  
8 all is on it so I know.

9 MR. SMITH: All right. We're going to do  
10 that in a minute. So, Emile, you're going to be the  
11 chair on that. Correct?

12 MR. BOURGOYNE: Yes.

13 MR. SMITH: Emile, Tommy, Will, Melodye,  
14 Veronica --

15 MS. URIEGAS: Kim Kiplin.

16 MR. SMITH: Kim Kiplin.

17 MS. URIEGAS: Steve Fenoglio.

18 MR. SMITH: Steve Fenoglio, Tyler --

19 (Laughter)

20 MR. SMITH: -- I just hadn't got to you  
21 yet. I'm sorry. I'm trying to write as fast as I can.  
22 Is there somebody from the staff that you would like for  
23 us to coordinate with? Is it through you, or --

24 MR. VANCE: You know, I just don't know  
25 that a staff member should be involved in a subcommittee

1 of the BAC.

2 MR. BOURGOYNE: Good punt.

3 (Laughter)

4 MR. VANCE: I don't know. Somebody can  
5 correct me if not. We'd be happy to work with you guys  
6 once the BAC gets something more formalized at the BAC  
7 level, but I think --

8 (Simultaneous discussion)

9 MR. SMITH: I guess maybe I should  
10 rephrase that a little better. Is there a certain staff  
11 member that you want us to liaise with?

12 MR. VANCE: I'm not sure. I think we  
13 should run this through the director at this point. I  
14 think Marshall does a lot of products. Veronica does a  
15 lot of pull-tabs, but I think you should keep it at the  
16 director level on this. And she'll decide who she wants  
17 to pass that on down to.

18 MR. SMITH: Excellent. That will work.

19 Okay. And did our new director ever get  
20 to call in?

21 MR. VANCE: Not that I know of.

22 MR. SMITH: Okay. All right. I just  
23 wanted to make sure we said hello and welcome --

24 MR. VANCE: I don't know.

25 LaDonna, are you there, by any chance?

1 (No response)

2 MR. VANCE: I never heard a ping. So, it  
3 doesn't seem so.

4 MR. SMITH: Tommy, who did you say from  
5 the distributors?

6 MR. DUNCAN: I think Danny Moore would  
7 probably be on. I don't want to speak for Van Myers,  
8 but per our conversation prior to this meeting, I think  
9 he would probably want to be a part of that. David  
10 Isbell.

11 MR. SMITH: All right.

12 Okay. So, I have Emile as the chair. I  
13 have Tommy, Will, Melodye, Veronica, Kim Kiplin, Steve  
14 Fenoglio, Danny Moore, Van, and David Isbell. Is there  
15 anybody that we're missing here?

16 MR. DUNCAN: This is Tommy Duncan. I'd  
17 like to add, too, any demonstration should involve all  
18 the BAC members.

19 MR. SMITH: I think, yes. Absolutely.

20 MR. DUNCAN: Not just the subcommittee.

21 MR. SMITH: I think as Steve was saying, I  
22 think any demonstration need to be coordinated through  
23 staff to make sure that we're doing it properly and not  
24 violating any articles of the Bingo Enabling Act or a  
25 portion --

1 (Simultaneous discussion)

2 MR. DUNCAN: I think three or four should  
3 be involved, not just one.

4 MR. SMITH: Yes. That's one of the things  
5 that -- maybe just a little history here. Back a few  
6 years back when we got the card minders, there was one  
7 particular group that had the product that worked, and  
8 they pretty much had a monopoly in the State of Texas on  
9 card minders. Their prices were exorbitantly high. And  
10 it kind of left a lesson that we all learned to make  
11 sure that there's multiple products from multiple  
12 different avenues so that there is viable competition  
13 between the group, because any time that you don't get  
14 that, the charities are the ones that wind up suffering.  
15 I think we're all in agreeance, and our purpose here is  
16 to benefit the charities in every way that we can.

17 MR. BOURGOYNE: Could you specifically  
18 state what this subcommittee is titled to do?

19 MR. SMITH: This is a subcommittee on I  
20 guess electronic pull-tabs, and we want to find out the  
21 facts of how bad the industry is on the pull-tab side,  
22 what the nature of the problem is, what can be done to  
23 fix it, how long it will take to fix it, and any  
24 statutory requirements or rule changes that would need  
25 to be made to make it affordable and solve the problem.

1 MR. BOURGOYNE: So, solving the world's  
2 problems overnight.

3 MR. DUNCAN: Yeah, that's it.

4 (Laughter)

5 MR. DUNCAN: Yeah, this Tommy Duncan  
6 again. I want to expound on what Mr. Fenoglio said  
7 about the paper. There's not necessarily a paper  
8 shortage, but what's happening are these  
9 manufacturers -- is the people with the paper -- they're  
10 telling these folks, hey, we have paper, but we're not  
11 going to sell you any more than we sold to you in 2019.  
12 So, they are constraining them a little bit because 2021  
13 is going to require more paper than 2019, and that was a  
14 good year.

15 MR. SMITH: Melodye.

16 MS. GREEN: You say there's no shortage on  
17 paper, but my paper prices are going up 18 to 20 percent  
18 next month. So, if there's no shortage, why are they  
19 going up?

20 MR. DUNCAN: Well, it's the hand collated  
21 paper. This is Tommy Duncan again. You know, it  
22 requires several people to put the paper together and  
23 glue it. So, if you want it and they have to hire those  
24 seven people that they may have somewhere else in the  
25 plant or slowed down -- this is what they're coming to

1 us. We have no control over what the manufacturers  
2 bring to us.

3 MS. GREEN: Well, I've bought the same  
4 paper for 20 years.

5 MR. DUNCAN: We have, too.

6 MS. GREEN: You say there's no shortage,  
7 but the pricing shows there's a shortage and the  
8 delivery is coming. And I do have to change, and I  
9 cannot buy what I used to buy. It's not offered  
10 anymore.

11 MR. SMITH: So, is that --

12 MR. DUNCAN: It may be oddball collations.  
13 You know, they want to do all standard. They want to  
14 use a press line that requires no people to put it  
15 together. You don't get an 18 percent increase on that  
16 paper, but it doesn't allow anything other than  
17 standard.

18 MR. SMITH: So, your standard rotation  
19 paper is not going up in price. It's the --

20 MR. DUNCAN: Well, it's going up a little  
21 bit. It's not going up 18 percent. It may go up  
22 6 percent, but they only want you to use blue, orange,  
23 green, yellow, pink, gray, or brown. They don't want --  
24 no screen, no pattern. They're dummifying down. They're  
25 not making jumbo tickets anymore.



1                   So, if you play Tic Tac and you know what  
2 T329 is, they're not making it anymore. They have to  
3 resize it to a 5 window size. So, they've knocked out a  
4 lot of product in Texas, unless it's resized and in the  
5 country, not just in Texas.

6                   MR. BOURGOYNE: Not just Texas.

7                   MR. DUNCAN: Not just Texas, in the  
8 country.

9                   MR. SMITH: I guess the next part about  
10 the electronic pull-tabs that I think we need to  
11 probably delve into -- and maybe we can fit this into  
12 your group, as well, Emile -- but the issue of -- well,  
13 since you've got everybody together, right --

14                  MR. BOURGOYNE: Yep.

15                  MR. SMITH: -- everybody around the  
16 campfire -- Mr. Bresnen, did you need to speak again?

17                  MR. BRESNEN: If we're talking Facebook.

18                  MR. SMITH: That's exactly what we're  
19 fixing to get into.

20                  MR. BRESNEN: I will, but go ahead. I'll  
21 wait until you --

22                  MR. SMITH: Okay.

23                  All right. The issue about Facebook is,  
24 from what I'm understanding and being told from people  
25 in the industry is, that it is getting to a point where

1 it's definitely negatively impacting more halls than  
2 not. I think in the beginning it was isolated to a few  
3 areas. I think it is definitely statewide. I've seen  
4 it in as far reached up as Texarkana, which is not good.

5 I've heard stories of people being on the  
6 telephone calling out the numbers to people in another  
7 location. The problem has gotten definitely out of  
8 hand. I'm sure everybody has had an instance with it.  
9 If you haven't had one, you will soon.

10 I think we need to find a way to isolate  
11 the problem and figure out how we can help staff  
12 prosecute or bring to justice, if you will, the people  
13 that are hosting this, number one, and, number two,  
14 definitely doing the actual Facebook pull-tabs. I know  
15 there's lot of distributors involved, especially from  
16 other states, specifically from other states. I'm not  
17 aware of any distributors here that are trying to help  
18 them do that. I would certainly hope not. I think  
19 they're trying their best to clean up the problem, at  
20 least I know our conversations with Tommy have been that  
21 way. So, that's kind of an overview of it.

22 Steve, do you want to add something now?

23 MR. BRESNEN: Unless somebody else on the  
24 BAC wants to discuss it first.

25 MR. BOURGOYNE: I'd like to say something.

1 MR. SMITH: Yeah, Emile.

2 MR. BOURGOYNE: First of all, our position  
3 is it's not a Texas problem. It's a problem in North  
4 America. It's a huge problem.

5 We can't put a number on it, but I can  
6 guarantee you, whatever you think it is, it's larger  
7 than that. It's a very significant problem. We've got  
8 problems in Alaska. We've got problems out east. We've  
9 got problems from all over. We get complaints from  
10 every single state just about.

11 We've done our part as far as going on  
12 Facebook Live and tracking serial numbers to certain  
13 distributors, and we've addressed those issues with  
14 those distributors as best we can. We're not the police  
15 of distributors. The regulatory agency that licensed  
16 them is the police, and we've filed complaints with each  
17 of those distributors' regulators.

18 It's now to a point where they're selling  
19 product to legitimate purchasers, clubs or charities,  
20 and they're putting the product on eBay or selling it  
21 outside the charity. Again, that's a regulator problem.  
22 They have to go to that distributor, find out who they  
23 sold it to, and then go to that club or licensed charity  
24 and make sure it went through the proper channels and  
25 they reported it as charitable income and not sold it on

1 eBay or something.

2 That's where the real problem is. We  
3 can't police that. The regulators have to do their job.

4 I met with regulators in Kentucky last  
5 week at the North American Gaming Regulators  
6 Association, and we had a charitable gaming roundtable  
7 discussion. And I brought these issues up to them, and  
8 I pointed out to certain states -- Indiana and  
9 New Jersey specifically -- where these problems are  
10 coming from and told them what they needed to do to help  
11 solve the problems.

12 I don't know what else we can do at this  
13 point, but again, a lot of people think we should just  
14 stop and quit selling to distributors. Well, we can't.  
15 There's certain states that have -- all the rules. If  
16 they're licensed, we have to sell to them.

17 MR. SMITH: Right.

18 MR. BOURGOYNE: We can't just  
19 indiscriminately quit selling to a distributor because  
20 we think they're putting some product on eBay. We don't  
21 have that authority. That's not our job. That's the  
22 regulators' job to do that.

23 And Facebook now -- I get complaints on  
24 our NAGRA web page, and I sit in the -- pretty much that  
25 thing that Tommy had done and put out about Facebook's

1 policies and all that stuff. Facebook is now responding  
2 to those saying it's not against their policy. So,  
3 Facebook has turned a blind eye to this.

4 I don't know how they could stop it. I  
5 mean, they could put their fact checkers on it like they  
6 do on everything else and make it go away over night,  
7 but I don't know how we get their attention, unless we  
8 get the attorney generals involved and U.S. attorneys  
9 involved some kind of way. But I can tell you it's a  
10 big problem.

11 MR. SMITH: Emile, I heard you say  
12 something that really caught my or peaked my interest.  
13 You said that in other jurisdictions, charities and/or  
14 operators will do the tabs on Facebook Live themselves  
15 and report the money themselves?

16 MR. BOURGOYNE: Not reporting. They're  
17 not reporting.

18 MR. SMITH: They're not reporting. So --

19 MR. BOURGOYNE: It's outside the licensing  
20 scheme of charitable gaming, if you will. The  
21 distributor sells to a licensed charity, but that person  
22 who has authority to buy through that charity isn't  
23 putting the product into bingo. He's taking it home and  
24 doing it on Facebook and keeping the money himself.

25 MR. SMITH: So, let's say that you did do

1 it properly and you did report the income, is that  
2 something that a charitable operator could do here in  
3 Texas?

4 MR. BOURGOYNE: Not without  
5 authorization --

6 (Simultaneous discussion)

7 MR. VANCE: You have to have a physical  
8 location. You can only play bingo at a physical  
9 location that's indicated on your license.

10 MR. BOURGOYNE: There were several states  
11 that filed legislation this year to permit this type of  
12 activity, specifically with raffles, but some even tried  
13 to do it with bingo and pull-tabs. I don't think the  
14 legislation passed in any of those states, but they  
15 tried to use COVID as an argument for that.

16 MR. SMITH: Okay.

17 MR. BOURGOYNE: I don't have a solution.  
18 I don't think there is one. We have been getting  
19 complaints recently, the last five complaints I've got  
20 off our NAGRA web page, where people who weren't being  
21 paid for their winners of pull-tabs on Facebook Live.  
22 And hopefully, there will be more of that, and there  
23 will be less players.

24 MR. SMITH: Sure. Have you tried to --  
25 you, as a group, have you tried to contact Facebook

1 through their lobbyists?

2 MR. BOURGOYNE: There's no email  
3 communication with Facebook. It's snail mail, and we  
4 sent a letter to them almost a year ago and have not got  
5 a response officially from them.

6 MR. SMITH: I'm sure that they have  
7 lobbyists here in Texas, I would assume. Maybe that  
8 would be one of the ways we could reach out and -- just  
9 my opinion, I don't understand how -- this may be my  
10 small-town mentality sometimes. I don't see how, if  
11 Facebook is allowing this, allowing an illegal activity,  
12 I don't know how it doesn't make Facebook Live. That's  
13 just my small-town mentality, but it would seem to me  
14 that maybe some sort of litigation needs to be --

15 MR. BOURGOYNE: Well, there have been  
16 several successful criminal prosecutions in Florida and  
17 Alaska. We've got one in Mississippi. We've got an  
18 ongoing investigation in Louisiana right now, and we  
19 hope to publicize those as they're adjudicated --

20 (Simultaneous discussion)

21 MR. SMITH: Now, is that against Facebook,  
22 or is it against --

23 MR. BOURGOYNE: No, it's against the  
24 individuals doing it.

25 MR. SMITH: Okay.

1 Tyler, would you like to give us maybe a  
2 small update, if you can, on kind of how things are  
3 going for the staff and --

4 MR. VANCE: Sure, related to Facebook?

5 When I first started back in late  
6 January/February, we'd get about a complaint a week, and  
7 we would forward that onto Facebook. We've got a  
8 contact there. They're super responsive within a day or  
9 two. They would get back to us and say we've taken it  
10 down.

11 But, frankly, in the last month or two, I  
12 haven't gotten any complaints. They've stopped coming  
13 in, and we're, of course, still taking them. So, if  
14 somebody wants to send one in, we'll forward it to  
15 Facebook and get it handled, but the complaints have  
16 stopped --

17 (Simultaneous discussion)

18 MR. BOURGOYNE: Is your contact  
19 Texas-specific? Because we could sure use that contact.

20 MR. VANCE: Yeah, I'm not sure that she  
21 is. I'd have to talk to Nelda about that.

22 MR. SMITH: Steve Bresnen.

23 MR. BRESNEN: Well, thinking out loud is  
24 sometimes dangerous, but this problem has been going on  
25 for a while.



1           I respect your limitations, Tyler, and the  
2 agency's limitations on it.

3           So, here's an idea: It has been announced  
4 within the last two days that Governor Abbott is going  
5 to add something about regulation of social media to the  
6 special session that -- either the first one that begins  
7 July 8th or a subsequent one. That might be an  
8 excellent vehicle to include an amendment that would  
9 cauterize either of the people doing it.

10           I think I'm speaking over my own head  
11 here, but my guess is under federal law, they can't be  
12 on civilly-liable Facebook or any others for this  
13 conduct. But they also don't advertise cocaine on  
14 Facebook for a reason. So, I think what we probably  
15 ought to do is develop something appropriate.

16           Emile, if you would provide me with  
17 documentation of the instances in Florida and other  
18 places where people have been held criminally liable for  
19 doing that, a sufficient criminal penalty might dissuade  
20 people from engaging in misconduct via any social media.  
21 There are a half a dozen lobbyists registered. I looked  
22 at this earlier on the Ethics Commission's website.

23           Ironically, and I say ironically with the  
24 greatest amount of disdain that I could generate on a  
25 Wednesday in June, two of those lobbyists are the

1 lobbyists for the Kickapoo nation.

2 (Laughter)

3 MR. SMITH: Surprise, surprise.

4 MR. BRESNEN: So, working with our  
5 colleagues in the industry, we'll see if we can gin up  
6 something and send it over to the Governor's office and  
7 ask that it be included in the legislation to send a  
8 message out there to these people that are doing this.

9 MR. SMITH: I'm assuming it would help you  
10 politically if we could come up with maybe -- working  
11 with Emile and with the rest of the distributors, if we  
12 could come up with a possible number that is detrimental  
13 to the charities in Texas.

14 MR. BRESNEN: Well, that's -- in this  
15 case, anecdotal information would be sufficient for the  
16 purpose, whether we can get something passed or whether  
17 the Governor would pick up the mantle or not. I don't  
18 know, but I do know that I'm highly motivated because of  
19 the representation of Facebook in Texas to making an  
20 issue out of it. I think I'll talk to those folks  
21 later today.

22 MR. SMITH: Good luck with that.

23 MS. URIEGAS: Can I say something?

24 MR. SMITH: Yes, ma'am.

25 MS. URIEGAS: I just want to make sure

1 that it's not only the event tickets that are  
2 (indiscernible-phone ringing). It's also the races. If  
3 have you seen them do those? They're just -- they're  
4 done -- I don't even know they're doing them.

5 MR. SMITH: Yeah, I think we're just  
6 lumping all of that into one big bucket.

7 (Simultaneous discussion)

8 MS. URIEGAS: Okay. I mean, because it's  
9 not pull-tabs --

10 MR. BOURGOYNE: It's not just pull-tabs.

11 MR. DUNCAN: They don't require tabs to  
12 run the races --

13 MS. URIEGAS: Right. It's just on horse  
14 races, and I actually found a notebook, a spiral  
15 notebook like this in my ladies bathroom one day full of  
16 races. So, one of my customers is doing it, and I'm  
17 trying to figure out who it is. But I know she wants  
18 that little -- I know she wants that binder back, and  
19 I've got it tucked away waiting to have a little chat.  
20 So, I just want to make sure that that's included.

21 MR. BOURGOYNE: It's not just pull-tabs  
22 because they're paying 10 cents a ticket for some of  
23 these products, and they're paying outrageous prices for  
24 it --

25 MS. URIEGAS: Right.

1 MR. BOURGOYNE: -- but it's very  
2 profitable for them, still.

3 MS. URIEGAS: Right.

4 (Simultaneous discussion)

5 MS. URIEGAS: I mean, I just want to make  
6 sure that the free one that they're not paying for is  
7 also included because there is so much money generated  
8 on those horse races.

9 MR. BOURGOYNE: Online gaming is online  
10 gaming.

11 MR. BRESNEN: Mr. Chairman, I have to step  
12 out. I have another engagement. I appreciate it. If I  
13 overstepped my bounds or got too dramatic today,  
14 please --

15 MR. SMITH: Not on a Wednesday.

16 (Laughter)

17 MR. BRESNEN: -- please forgive me. Thank  
18 you.

19 MR. SMITH: Okay. So, do you want to try  
20 to develop a strategy and get with Mr. Bresnen and  
21 Mr. Fenoglio and try to get something up and maybe  
22 through your Facebook gaming group that we could help  
23 them with some anecdotal information?

24 MR. BOURGOYNE: I'll do what I can.

25 MR. SMITH: I understand that it's not

1 going to be an exact --

2 (Simultaneous discussion)

3 MR. BOURGOYNE: There's no exact science  
4 to this, yeah.

5 MR. SMITH: -- figure, but I think between  
6 everybody on the committee that we can probably come up  
7 with an estimate, possibly. I think that would  
8 definitely help. Typically, our lawmakers, when  
9 charities tend to start to losing a bunch of money, they  
10 tend to perk their ears up and pay attention.

11 MR. BOURGOYNE: I can tell you I've seen  
12 some pictures of some of the warehouses that were  
13 raided, and they had more inventory than some of our  
14 distributors.

15 MR. DUNCAN: And in some states the  
16 charities themselves are selling it out the door because  
17 they're getting 10-20 cents a ticket for it, so why even  
18 mess with selling the tab, if I can sell the deal --

19 MR. SMITH: Wow.

20 MR. DUNCAN: -- you know --

21 MR. SMITH: -- that's incredible.

22 MR. DUNCAN: -- for five times more than  
23 you would --

24 (Simultaneous discussion)

25 MR. BOURGOYNE: Right.

1 MR. SMITH: Okay.

2 MS. GREEN: Trace.

3 MR. SMITH: So, is there -- yes?

4 MS. GREEN: All this information that  
5 we've been talking about today, the Facebook online, we  
6 have people calling the numbers out over the phone  
7 because they play their own bingo game. This tells us,  
8 bingo, as a group, I know we can't do it this minute,  
9 but we need to move towards some sort of a -- I can put  
10 all of my video cards in my iPhone. I mean, we need to  
11 move towards something more virtual, more interactive  
12 for our customers, or we're going to lose on this. This  
13 will be a fighting battle. They don't even use  
14 pull-tabs to play -- they don't use them.

15 MR. BOURGOYNE: But the players are at  
16 home. They don't even have to go in the halls. They're  
17 sitting at home.

18 MS. GREEN: Well, I'll take their money,  
19 too. We've got to figure some way to get their money,  
20 too. So, anyway, in our committee we need to talk about  
21 going more virtual somehow.

22 MR. SMITH: Okay. Excellent.

23 Okay. Is there any other -- Tyler, do you  
24 have anything else to add on this, or is there a staff  
25 member that wants to speak on this?

1 MR. VANCE: I don't believe so, no.

2 MR. SMITH: Okay.

3 Is there any member from the public that  
4 wants to add anything to this?

5 (No response)

6 MR. SMITH: Okay.

7 All right. Well, we've got our  
8 subcommittee and marching orders, and is there any other  
9 new business that anyone would like to bring up or  
10 discuss?

11 (No response)

12 MR. SMITH: Any member of the public?

13 (No response)

14 MS. FIELDS: This is Cindy. I've got  
15 something.

16 MR. VANCE: Yes, ma'am. Go ahead.

17 MS. FIELDS: Every year the Texas Lottery  
18 Commission needs to reinstate, before August 31st, the  
19 Bingo Advisory Commission. And, so, in the August  
20 meeting we'll propose that BAC be continued for another  
21 year and, hopefully, with the same members because y'all  
22 are engaged and you-all do a good job and hopefully  
23 nobody is tired of that. (Laughter) So, as part of  
24 that, the Commission has to approve a BAC work plan, and  
25 the BAC can propose items for the plan. But the

1 Commission needs to decide what's actually in it.

2           So, I'm hoping that you guys can submit  
3 any items that you like for the Fiscal Year 2022 Work  
4 Plan, and we'll compile a draft work plan for the August  
5 Lottery Commission meeting. Does that sound okay?

6           MR. SMITH: Absolutely.

7           So, it's the August meeting that we have  
8 the work plan ready for, and then y'all decide to  
9 continue the BAC or adopt the work plan. Is that  
10 correct?

11           MS. FIELDS: Yes.

12           MR. SMITH: Okay.

13           MS. FIELDS: Did I get that right, Tyler?

14           MR. VANCE: Yeah, more or less.

15           So, by September 1 of every year they have  
16 to reappoint the BAC, either to decide to continue it or  
17 discontinue it, and as part of that, they also have to  
18 assign a work plan. Each year has to have a specific  
19 plan laid out at the time that they decide to continue  
20 the BAC. So, she's asking you guys to help her out with  
21 things that y'all think you need to work on for the next  
22 year so that they have something ready when they decide  
23 to continue the BAC at the August meeting so they can  
24 give you the direction of a formal work plan for the  
25 next year.



1 MR. SMITH: And typically --

2 MS. ROGERS: Hold on. This is Kim Rogers.  
3 Trace, you and I did that last year, and I will  
4 volunteer to put something together similar to what we  
5 did last year with your help. And I'll contact the BAC  
6 members, et cetera, so we can have that prepared.

7 MR. SMITH: God bless you is all I can  
8 tell you.

9 (Laughter)

10 MR. SMITH: So, typically, the August  
11 meeting is when we basically give a report to the  
12 Commissioners stating that we've met our work plan  
13 agenda items and that we've superseded them and done way  
14 more than what we planned on. So, Kim and I will get  
15 together, and we will get that done.

16 And we certainly appreciate you attending  
17 our meeting. It's definitely a breath of fresh air to  
18 have somebody from the Commission really pay attention,  
19 and the attention from the staff is also amazing, as  
20 well. We're definitely super happy with the way things  
21 are working and working together on everything.

22 MS. FIELDS: Great. Thanks.

23 MR. SMITH: Absolutely.

24 If there's no other new business, any  
25 public members, staff?

1 (No response)

2 MR. SMITH: BAC members?

3 MR. DUNCAN: I think we should thank Tyler  
4 for filling in as director.

5 MR. SMITH: Absolutely.

6 Tyler, I will go ahead and speak first and  
7 tell you, God bless you, brother. Thank you. We have  
8 enjoyed your tenure.

9 MR. DUNCAN: His apprenticeship.

10 (Laughter)

11 MR. SMITH: It's hard to see you go, but  
12 we're -- yeah, we're definitely happy that you're still  
13 going to be here, and you're not leaving. So, thank  
14 you.

15 MR. VANCE: Thank y'all. Thank y'all for  
16 going easy on me.

17 (Laughter)

18 MR. SMITH: Well, you found a replacement  
19 at the right time.

20 (Laughter)

21 MR. VANCE: Perfect timing.

22 MR. SMITH: We're definitely happy to have  
23 our new director and can't wait to start meeting with  
24 the new director and getting to know her and trying to  
25 help her out if we can and extend our olive branch. So,

1    yeah, it's a good thing.    Good thing.

2                                    AGENDA ITEM NO. 9

3                    MR. SMITH:    So, we've got to set the date  
4    for the next meeting.    The next Commission meeting is on  
5    the 12th.

6                    Do we need to meet, Kim, or do you want it  
7    just to be you and I?

8                    Or better yet, Tyler, do you have any  
9    advice or input on this?    Should we meet again before  
10   the next Commission meeting to approve our agenda?

11                   MR. VANCE:    No.    I mean, I think you and  
12   Kim can coordinate and provide Commissioner Fields with  
13   your annual agenda.    You've already had the motion for  
14   the draft rule proposal.    So, we can handle that  
15   individually.    So, you don't have to do anything else  
16   anymore with that.    So, no, I can't think of anything,  
17   unless there's something y'all want to discuss before  
18   the August meeting so that you can present it at the  
19   August meeting, but there's nothing I'm aware of that  
20   would necessitate a meeting before that Commission  
21   meeting.

22                   MR. SMITH:    I think we've got a lot of  
23   work to be done between now and then.

24                   Do you think your subcommittee will need  
25   to meet again before the August 12th --

1 MR. BOURGOYNE: Yes, we'll meet online.

2 MR. SMITH: No, I mean, do you want the  
3 full BAC to meet before the next August 12th meeting?

4 MR. BOURGOYNE: That's up to y'all, but  
5 I'll get the subcommittee together sometime in July at  
6 least once or twice.

7 MR. SMITH: Okay. All right.

8 MR. BOURGOYNE: But it will be online. It  
9 won't be in person.

10 MR. SMITH: That will be fine.

11 Okay. Melodye, do you have any input on  
12 this?

13 MS. GREEN: (Shaking head)

14 MR. SMITH: No.

15 Will?

16 MR. MARTIN: (Shaking head)

17 MR. SMITH: Tommy?

18 MR. DUNCAN: (Shaking head)

19 MR. SMITH: Anybody?

20 (No response)

21 MR. SMITH: Okay. I'm of the opinion that  
22 we should probably try to meet maybe on the 13th, the  
23 day after the Commission meeting. That would kind of  
24 set the rotation. It's a lot better for me, just simply  
25 because I have to be here for both. I know we had

1 talked about doing it the day before the Commission  
2 meetings, but that won't give the Commissioners enough  
3 time to get our product and understand it and make a  
4 vote on it when we do have things to actually vote on.

5 Does anybody have a problem with August  
6 the 13th, Friday?

7 (No response)

8 MR. SMITH: All good?

9 Tyler?

10 MR. VANCE: That's fine with me.

11 MR. SMITH: Okay.

12 All right. The next BAC meeting will be  
13 August the 13th at 10:00 a.m. right here at the Texas  
14 Lottery Commission.

15 Tyler, thank you very much. We appreciate  
16 you and the staff paying attention to us. We feel like  
17 it's definitely a new era. So, we're enjoying the heck  
18 out of it.

19 MR. VANCE: Good to hear.

20 MR. SMITH: I'd like to thank all the BAC  
21 members for showing up in person today, except for Kim,  
22 but --

23 MS. ROGERS: Sorry.

24 MR. SMITH: -- it's quite all right, dear.  
25 I'm just teasing you.

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AGENDA ITEM NO. 10

MR. SMITH: All right. Well, the meeting  
is adjourned. Have a wonderful day.

(Meeting adjourned: 11:27 a.m.)

## C E R T I F I C A T E

STATE OF TEXAS )

COUNTY OF TRAVIS )

I, Janis Simon, Certified Shorthand Reporter in  
and for the State of Texas, do hereby certify that the  
above-mentioned matter occurred as hereinbefore set out.

I further certify that I am neither counsel  
for, related to, nor employed by any of the parties or  
attorneys in the action in which this proceeding was  
taken, and further that I am not financially or  
otherwise interested in the outcome of the action.

Certified to by me this 1st day of July 2021.



Janis Simon  
Certified Shorthand Reporter  
CSR No. 7076 - Expires 7/31/22

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