



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

July 6, 1988

Honorable Bob Bullock  
Comptroller of Public Accounts  
LBJ State Office Building  
Austin, Texas 78774

LO-88-78

Dear Mr. Bullock:

You ask seven questions regarding the eligibility for licensure to conduct bingo games under V.T.C.S. article 179d, the Bingo Enabling Act [the Act]. Your questions all relate to an organization's eligibility for licensure as a "fraternal organization" under section 2, subsection (4) of the Act.

Texas Constitution, article III, section 47, subsections (b) and (c), provide the constitutional authorization for the Act. Subsection (b) specifically provides for licensure of "fraternal organizations." The constitutional provision does not define "fraternal organization." You do not ask and we do not address whether the definition of "fraternal organization" in section 2, subsection (4), of article 179d is constitutional, i.e. whether "fraternal organization" as defined in the Act is within the meaning of "fraternal organization" in article III, section 47. See generally City of Amarillo v. Amarillo Lodge No. 731, A.F. & A.M., 488 S.W.2d 69 (Tex. 1972).

Section 2, subsection (4) of article 179d, provides the following definition of "fraternal organization" for purposes of the Act:

(A) a nonprofit organization that is organized to perform and engages primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions and that:

(i) has been organized within Texas for at least three years;

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(ii) during the three-year period has had a bona fide membership actively and continuously engaged as an organization in furthering its authorized purposes;

(iii) has not authorized any person on behalf of its membership, governing body, or officers to support or oppose a particular candidate for public office by making political speeches, passing out cards or other political literature, writing letters, signing or circulating petitions, making campaign contributions, or soliciting votes; and

(iv) is not an organization whose members are predominantly veterans or dependents of veterans of the armed services of the United States; or

(B) a nonprofit National Historical District Association representing the owners and lessees of a majority of the real property located within a 'National Historical District' so determined and designated by the National Register of Historic Places, Heritage Conservation and Recreation Service (HCRS) of the United States Department of the Interior, whose net proceeds as herein defined are used for restoration, construction, maintenance, and security within the district, and which has been so designated for at least five years.

Your first three questions are:

(1) Assuming all other requirements are met, does a non-profit organization that is organized for recreational purposes, and engages primarily in providing these activities for its membership, qualify as a fraternal organization for a license to conduct bingo?

(2) Assuming all other requirements are met, does a non-profit organization that is organized for recreational purposes, and engages primarily in providing these activities for persons who are not members of

the organization, qualify as a fraternal organization for a license to conduct bingo?

(3) If your answer to question (1) or question (2) above is no, would your opinion change if the persons for whom the activity is provided are disabled?

We find the description "recreational" insufficient to apprise us of an organization's eligibility for licensure as a "fraternal organization," which subsection (4)(A) of section 2 of the act defines as "an organization that is organized to perform and engages primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions." (Emphasis added.) We think that a court's determinations, vis-a-vis the issue of eligibility for licensure would depend on the particular organization and activities of the "recreational" organization.<sup>1</sup>

Similarly, whether the fact that a "recreational" organization provides activities for members, or for non-members, affects its eligibility for licensure, would depend on the nature of the membership or non-membership for whom activities are provided as well as on the type of activities provided.

Also, whether the fact that the organization's functions benefit the disabled affects its eligibility for licensure would, we think, depend on what particular

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1. We decline to attempt to define the scope of the terms "charitable, benevolent, patriotic, employment-related, or educational" in the context of broad hypothetical questions, the terms of which are themselves uncertain of definition. See the definition of "benevolent" adopted in Needville I.S.D. v. S.P.J.S.T. Rest Home, 566 S.W.2d 40, 43 (Tex. Civ. App. - Beaumont 1978, no writ). But see also, State v. Alliance Village, Inc., 592 S.W.2d 687 (Tex. Civ. App. - Corpus Christi 1979, no writ). "Patriotic" and "educational" functions are often characterized as types of "charitable" functions. See e.g., Boyd v. Frost National Bank, 196 S.W.2d 497 (Tex. 1946), and Fisch, Freed, and Schacter, Charities and Charitable Foundations, § 259 et seq. at 236 and § 300 et seq. at 267 (1974). The courts will ordinarily defer to the administrative agency charged with enforcement of a statute to construe its terms.

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functions and benefits are performed. We do note that aid to the disabled is within the traditional meaning of charitable functions. Wilson v. Franz, 359 S.W.2d 630 (Tex. Civ. App. - El Paso 1962, writ ref'd).

Your fourth question is:

Would the fact that an organization has an IRS exemption under Section 510(c)(7) [a]ffect your answer to question (1) or question (2)?

26 U.S.C. § 501(c)(7) provides for a federal tax exemption for

Clubs organized for pleasure, recreation, and other nonprofitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder.

To be a "fraternal organization" for purposes of the act, an organization must have a section 501(c) exemption, pursuant to section 2, subsection (3)(C). It does not follow, however, that an organization that has a section 501(c) exemption is necessarily a "fraternal organization." The scope of section 501(c)(7) seems broader than the requirement under section 2, subsection (4)(A) that the fraternal organization be "a non-profit organization that is organized to perform and engages primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions," etc. See American Concrete Inst. v. Michigan State Tax Comm., 163 N.W.2d 508 (Mich. Ct. App. 1968), cited in Dallas Symphony v. Dallas Co. Appraisal District, 695 S.W.2d 595, 598 (Ct. App. - Dallas 1985, writ ref'd n.r.e.). Therefore, the fact that an organization has obtained a section 501(c)(7) federal tax exemption does not in itself mean that the organization is a "fraternal organization" for purposes of article 179d.

Your fifth and sixth questions are:

(5) Assuming all other requirements are met, does a non-profit organization organized to promote performing arts, whose primary activities are the preparation and performance of performing art productions, open to the general public who purchase tickets,

qualify as a fraternal organization for a license to conduct bingo?

(6) If your answer to question (5) is no, would the fact that an organization conducts free performances or admits some persons to its performances free of charge change your answer to question (5)?

Again, we find the description "to promote the performing arts" insufficient to apprise us of an organization's eligibility for licensure as a "fraternal organization," which must be one that "is organized to perform and engages primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions." (Emphasis added.) A determination could only be made upon consideration of a particular organization's actual activities and organization.

Similarly, whether the fact that such an organization charges fees for some or all those admitted to its performances is consistent with its being a "fraternal organization" as defined by the Act, might well depend on which persons are charged a fee, which persons are admitted without charge, the amount charged, and the disposition of the proceeds.

We do find that charging a fee for the benefits it confers is not inconsistent with an organization's being "charitable." Dallas County Appraisal Dist. v. The Leaves, Inc., 742 S.W.2d 424 (Ct. App. - Dallas 1987, n.w.h.); Lamb County Appraisal District v. S. Plains Hospital-Clinic, Inc., 688 S.W.2d 896 (Ct. App. - Amarillo 1985, writ ref'd n.r.e.).

Also, we find no authority that "benevolent, patriotic, employment-related or educational functions" implies gratuitous benefits. Fees charged must of course be applied consistently with the organization's being a "non-profit organization," as required in section 2, subsection (3).

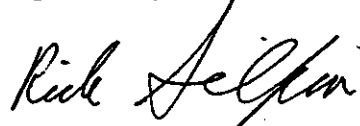
Your last question is:

(7) In determining whether an organization is engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions, how do we weigh the applicant's activities to determine which activities are its primary activities?

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Webster's defines primarily as "for the most part" or "chiefly." Webster's Ninth New Collegiate Dictionary (1983). We believe that "primarily" in the language of section 2, subsection (4) should be construed according to its ordinary meaning, i.e., more than half of the functions which the organization performs must be "charitable, benevolent, patriotic, employment-related, or educational." We interpret the disjunctive "or" in the above quoted language to mean that the charitable, benevolent, patriotic, employment-related and educational functions of an organization, taken together, must constitute more than half of the overall functions of the organization.

Very truly yours,



Rick Gilpin  
Chairman  
Opinion Committee

RG/WW/bc

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APPROVED: OPINION COMMITTEE