



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 31, 1993

Ms. Jeannene Fox  
Acting Administrator  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

Letter Opinion No. 93-117

Re: Whether the Texas Lottery Commission may accept as security under section 38(a) of the Bingo Enabling Act, V.T.C.S. article 179d, a written promise of a licensee to pay taxes and bingo prize fees if the commission deems that promise sufficient to secure the payment of required taxes and prize fees (RQ-625)

Dear Ms. Fox:

In August 1993 your predecessor in office wrote to ask whether the Texas Alcoholic Beverage Commission may accept as security under section 38(a) of the Bingo Enabling Act (the "act"), V.T.C.S. article 179d, a written promise of a licensee to pay taxes and bingo prize fees if the Texas Alcoholic Beverage Commission deems that promise sufficient to secure the payment of required taxes and prize fees. At the time he wrote, the Texas Alcoholic Beverage Commission was authorized to enforce the act. Beginning September 1, 1993, however, that authority passed to the Texas Lottery Commission. See Acts 1993, 73d Leg., ch. 286, § 1, at 1327 (amending V.T.C.S. art. 179d, § 2(20), to define "commission" as "the Texas Lottery Commission"). Consequently, we will answer your predecessor's question with regard to the authority of the Texas Lottery Commission (the "commission") to accept a written promise from a licensee to pay taxes and bingo prize fees.

Currently, the act imposes a tax on the rental of premises for the conduct of bingo games. V.T.C.S. art. 179d, § 2B(a). The amount of tax a licensed authorized commercial lessor or licensee must pay is equivalent to three percent of the gross rentals the lessor or licensee receives for the rental of premises on which bingo is conducted. *Id.* § 2B(b). The act also requires each authorized organization licensed to conduct bingo to collect from each person who wins a prize in a bingo game a fee equal to five percent of the amount or value of the prize. Acts 1993, 73d Leg., ch. 286, § 13 (amending V.T.C.S. art. 179dd, § 19b(a), (b)). Both the tax on gross rentals and the fee on prizes are due to the state treasurer on a quarterly basis. *Id.* § 15 (amending V.T.C.S. art. 179d, §§ 2B(c), 19b(c), and 20).

Section 38 of the act provides for each licensed commercial lessor and each authorized organization licensed to conduct bingo to provide a bond or other security sufficient to secure the payment of the required tax on gross rentals and the required fee

on prizes. Section 38, as amended by Acts 1993, 73d Leg., ch. 286, § 22, provides as follows:

(a) Each licensee under this Act shall furnish to the commission a cash bond, a bond from a surety company chartered or authorized to do business in this state, certificates of deposit, certificates of savings or U.S. treasury bonds or, subject to the discretion and approval of the commission, an assignment of negotiable stocks or bonds, or *such other security as the commission may deem sufficient to secure the payment of required tax on gross rentals or fee on prizes under this Act.* The commission shall fix the amount of the bond or security in each case, taking into consideration the amount of money that has or is expected to become due from the licensee under this Act. The amount of the bond or security required by the commission may not exceed three times the amount of the licensee's average quarterly reports.

(b) On failure to pay the gross rentals tax or the fee on prizes imposed under this Act, the commission may notify both the licensee and any surety of the delinquency by jeopardy or deficiency determination. If payment is not made when due, the commission may forfeit the bond or security or any part thereof.

(c) If the licensee ceases to conduct bingo games and relinquishes his license, the commission shall authorize the release of all bonds and security on a determination that no amounts of gross rentals tax or fee on prizes remain due and payable under this Act. [Emphasis added.]

To resolve your predecessor's question, we must determine the meaning the legislature intended to impart to the word "security" in the phrase, italicized above, "such other security as the commission may deem sufficient to secure the payment of required tax on gross rentals or fee on prizes under the act." The statute itself does not define the word. However, according to established principles of statutory construction, "[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects enumerated by the preceding specific words." 2A SUTHERLAND STATUTORY CONSTRUCTION § 47.17, at 188 (5th ed. 1992). In section 38(a) of the act, the general words, "such other security as the commission may deem sufficient to secure the payment of required tax on gross rentals or fee on prizes under this Act," follows an enumeration of specific types of bonds or securities that the commission may accept: a cash bond, a bond from a surety company, certificates of deposit, certificates of savings or United States treasury bonds, or an assignment of negotiable stocks or bonds. Each of the specifically enumerated bonds or securities is in such a form as to be forfeitable in accordance with section 38(b).

In our opinion, the legislature intended to use the word "security" to indicate some type of instrument, pledge, or deposit to which the commission might have recourse or might "exercise dominion over" if the licensed authorized commercial lessor or licensee fails timely to pay the required tax on gross rentals or the required fee on prizes. See 79 C.J.S. *Security, Securities* at 941, 946 (1952). We therefore construe the phrase "such other security as the commission may deem sufficient to secure the payment of required tax on gross rentals or fee on prizes under this Act" to encompass only types of security that the commission may forfeit, consistent with section 38(b) of the act, so as to receive expeditious payment of the delinquent taxes and fees. A mere written promise to pay taxes and fees is not forfeitable. Accordingly, we conclude that section 38(a) of the act does not authorize the commission to accept as security a licensee's nonforfeitable, written promise to pay taxes and prize fees. Whether the commission deems such a written promise as sufficient to secure the payment of required taxes and prize fees is irrelevant.<sup>1</sup>

### S U M M A R Y

The Texas Lottery Commission may not, in any circumstance, accept as security under section 38(a) of the Bingo Enabling Act, V.T.C.S. article 179d, a licensee's written promise to pay taxes and bingo prize fees if the promise is not subject to forfeit.

Very truly yours,



Kimberly K. Oltrogge  
Assistant Attorney General  
Opinion Committee

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<sup>1</sup>The rules of the Texas Alcoholic Beverage Commission (promulgated while it was authorized to enforce the act) pertaining to bonds and security required to secure the payment of gross rental taxes and prize fees further support our conclusion. Pursuant to the rules, codified as title 16, section 55.545(a)(4), (b)(4), of the Administrative Code, an authorized organization licensed to conduct bingo and a licensed authorized commercial lessor, respectively, must provide as security for the payment of prize fees and gross rental taxes, in an amount equal to the individual's estimated quarterly tax liability, cash; irrevocable assignments of certificates of deposit or savings accounts in banks, savings and loan institutions, or credit unions; United States treasury bonds of a type that are readily convertible to cash; or a surety bond executed on a form approved by the commission and issued by a surety company chartered or authorized to do business in the State of Texas. 16 T.A.C. § 55.545(a)(4)(A), (b)(4)(A). Thus, the Texas Alcoholic Beverage Commission construed section 38(a) of the act to require bonds and security that are forfeitable and may be liquidated quickly. Where the meaning of a statutory provision is unclear, the construction of the statute that the agency charged with its administration has placed upon it is entitled to weight. *Texas Health Facilities Comm'n v. El Paso Medical Surgical Assocs.*, 573 S.W.2d 291, 295 (Tex. Civ. App.—Tyler 1978, writ ref'd n.r.e.).

**cc: Ms. Nora Linares  
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