



STATE OF KANSAS

Office of the Attorney General

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March 31, 1975

Opinion No. 75-141

Mr. William Harris
General Counsel
Department of Revenue
2nd Floor - State Office Building
Topeka, Kansas 66612

Dear Mr. Harris:

The Secretary of Revenue has asked for our opinion concerning certain problems which have arisen out of Senate Bill 116, commonly known as the bingo law.

The Secretary first inquires whether country clubs and class A clubs may be licensed to play bingo for profit. It is our opinion that they may be so licensed. Section 1(d) of Senate Bill 116 states

"'Fraternal organization' means any organization within this state which exists for the common benefit, brotherhood, or other interests of its members and is authorized by its written constitution, charter, articles of incorporation, or bylaws to engage in a fraternal, civic or service purpose within this state." [Emphasis supplied.]

Further, subsection (g) of section 1 of the bill states:

"'Nonprofit organization' means any organization which is exempt from taxation under paragraphs (4), (5), (6), (7) and (8) of subsection (c) of section 501 of the internal revenue code of 1954, as amended."

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The wording of these two sections indicates that any organization which is exempt from taxation under 501 (c), (4), (5), (6), (7) and (8) of the IRS code which is banded together for any mutual interest may be licensed to play bingo. It is possible that the legislature did not intend such a broad application of the act, but the wording of paragraph 1(d) of the bill, when strictly construed, provides the vehicle by which a wide number of organizations may indeed be licensed.

The Secretary has also inquired as to the legality of a licensed organization using the funds derived from bingo games to pay rent on a building to be used for the conduct of bingo games. Actually, this question goes deeper than that, and may be expressed as follows: May a sponsoring organization transfer the proceeds derived from bingo games to the organization's general fund, or must the proceeds from bingo games be strictly applied to charitable uses?

It is our opinion that an organization may transfer the funds from bingo games directly into its general fund. Section 6(a) states

"the entire gross receipts received by any such organization from the operation of conduct of games of 'bingo', except that portion utilized for the payment of the cost of prizes and licenses fees and taxes imposed under the provisions of this act, shall be used exclusively for the lawful purposes of the organization permitted to conduct that game." [Emphasis supplied.]

If one of the lawful purposes of the organization sponsoring any such bingo game is to sponsor bingo games, or to unite for recreational purposes, or to engage in money-making projects, then the proceeds from any activity of that organization may be used as it sees fit to further the purposes of said organization. Such purposes may be to make mortgage payments on a clubhouse or club lodge, or, if no such lodge is available, to pay rent on locations in which the organization may meet or conduct its activities.

The third question which the Secretary has posed is: May the sponsoring organizations sell bingo cards away from the licensed

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location? It is our opinion that such sales do not violate the act, since there is no express provision contained herein.

Finally, the Secretary has inquired whether the licensed organization may collect the two percent (2%) enforcement tax provided for in section 4 of Senate Bill 116 directly from the person playing the game. Once again, the wording of the statute is specific on this matter, providing that

"there shall be collected and paid by each licensee a tax at the rate of two percent (2%) upon the gross receipts received by the licensee from charges or participation in such games . . ."
[Emphasis supplied.]

If the legislature did not intend for the licensee to collect the two percent (2%) from the customer, it would not have used the word "collected". Therefore, it is our opinion that not only may the licensee collect the two percent (2%) tax as well as the sales tax on each card directly from the customer, the licensee must collect both taxes.

Yours very truly,

CURT T. SCHNEIDER
Attorney General

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