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62706

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LICENSES:

Bingo License and Tax Act

Honorable Philip G. Reinhard  
State's Attorney  
Winnebago County  
Courthouse  
Rockford, Illinois 61101

Dear Mr. Reinhard:

This is in response to your letter regarding  
the bingo games being conducted by the Rockford Comets.  
In that letter you describe the Rockford Comets as follows:

"For your additional information, the Rockford Comets is a girl's softball team which plays in a league called the Northern Illinois Women's Fast Pitch League which is affiliated with the American Softball Association. The Rockford Comets is not incorporated, does not have federal tax exempt status and is an amateur team. Any monies netted from the bingo operation

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by the Rockford Comets is to be used for expenses of their baseball team such as equipment, travel, baseball diamond rentals, umpires, registration fees, etcetera. \* \* \* The bingo games are not connected with any official meeting of the Rockford Comets and, in fact, the Comets have approximately two meetings per year, right before and after the baseball season.

\* \* \*

I should also add that the Rockford Comets has no meeting hall, room or telephone."

Your letter also states that this organization has been conducting bingo games on the premises of a local retail liquor licensee. These premises, which are used for the retail sale of liquor, are provided rent-free to the Comets.

You then ask the following questions:

"1. Is the girl's softball team, Rockford Comets as previously described, a bona fide religious, charitable, labor, fraternal, educational or veterans' organization, which is eligible to hold a bingo license pursuant to Chapter 120, Section 1101?

2. May a bingo licensee conduct bingo games rent free on the premises of a person or organization licensed to serve liquor when this person or organization does not also have a license to conduct its own bingo games?

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3. Assuming your answer is in the affirmative to questions one and two, can the Winnebago County Board or the local liquor commissioner prohibit the conduct of bingo upon the premises of a liquor licensee which does not have a bingo license?"

The playing of bingo and other similar games for prizes was prohibited by the Constitution of 1870. (1954 Ill. Att'y. Gen. Op. 210.) This constitutional bar was removed with the ratification of the Illinois Constitution of 1970, but there remained the probability that bingo might be prohibited by the gambling provisions of the Criminal Code. In 1971 the Bingo License and Tax Act (Ill. Rev. Stat. 1973, ch. 120, pars. 1101 et seq.) became law. That Act legalizes bingo games that are conducted in a manner consistent with its provisions.

The Bingo License and Tax Act altered the long-standing public policy against lotteries and games of chance. A statute that changes the public policy against gambling activity should be construed strictly and every reasonable doubt should be resolved so as to limit the powers and rights claimed under its authority. (Aicardi

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v. Alabama, 86 U.S. (19 Wall.) 635; Hawthorne Kennel Club v. Swenson, 339 Ill. 220; Swigart v. People, 154 Ill. 284.)

In order to qualify as a bingo licensee an organization must be identified as one of the types of organizations authorized by the Bingo License and Tax Act. Section 1 of that Act (Ill. Rev. Stat. 1973, ch. 120, par. 1101) provides in pertinent part as follows:

"§ 1. The Department of Revenue shall, upon application therefor on forms prescribed by such Department, and upon the payment of an annual fee of \$200, and upon a determination by the Department that the applicant meets all of the qualifications specified in this Section issue a license for the conducting of bingo to any bona fide religious, charitable, labor, fraternal, educational or veterans' organization which operates without profit to its members, which has been in existence continuously for a period of 5 years immediately before making application for a license and which has had during that entire 5 year period a bona fide membership engaged in carrying out its objects. However, the 5 year requirement shall be reduced to 2 years as applied to a local organization which is affiliated with and chartered by a national organization which meets the 5 year requirement. Each license expires at midnight, June 30 following its date of issuance. A licensee may hold only one license and that license is valid for only one location.

\* \* \*

(emphasis added.)

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According to your letter, the central activity of the Rockford Comets is playing softball. The team clearly was not organized to accomplish any religious or labor related purpose. Neither is there any indication that the team is affiliated with a veterans' organization. The Comets possibly perform some tenuous charitable or educational function in the community. For example, it can be said that the team provides free entertainment and also an opportunity for players in the area to learn softball skills by observing Comet games. But it must be admitted that neither of these functions is the hallmark of the team. The Comets remain a primarily recreational association. Any charitable or educational benefits accruing to the community from the Comets' activities are only incidental to the team's recreational purposes. The Comets thus fall quite short of the ordinary definitions of charitable and educational organizations that require charitable and educational activities be central to the reason for the organization's being. Rogers Park Post No. 108 v. Brenza.

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8 Ill. 2d 286; People ex rel. Brenza v. Turnverein Lincoln,

8 Ill. 2d 198.

The remaining type of organization specified in the Bingo License and Tax Act is fraternal. In a very broad sense, the term fraternal can be applied to an organization when its activities create a brotherly feeling among its members. Courts and legislatures have used the term fraternal in a much more restricted manner. Statutes make reference to both social and fraternal organizations. (e.g. Ill. Rev. Stat. 1973, ch. 23, par. 5103(b)2 and ch. 121 1/2, par. 137.3H.) This would indicate that the legislature has understood fraternal organizations to be in some way distinct from ordinary social organizations. Courts have clarified this distinction by noting at least two characteristics that mark fraternal organizations. First the structure of the organization is formalized. Members meet regularly to review the organizations' activities and to choose officers who manage the affairs of the organization. These meetings are usually transacted in conformity with certain ritualistic patterns and ceremonies. (Gallegos v. Aetna Life Ins. Co., 292 Ill. App. 123; State ex rel. Leahy v. O'Rourke, 115 Mont. 502,

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146 P. 2d 168; Huffman v. Brotherhood of Railroad Trainmen, 65 N.D. 446, 259 N.W. 663.) Secondly, the primary purpose of the organization is either to promote the welfare of its members or to provide assistance to the general public. (In re Mason Tire & Rubber Co., 11 F. 2d 556.) In promoting the welfare of its members the organization involves itself with a broad range of interests that concern the membership. Fraternal organizations develop programs for the social, moral and intellectual well-being of its membership and also usually furnish relief to members and their families in the event of sickness or death. Fullenwider v. Royal League, 180 Ill. 621; National Union v. Marlow, 74 F. 775; National Turn Verein v. City of Newark, 19 N.J. Misc. 452, 20 A. 2d 708.

The Rockford Comets softball team is a social organization which no doubt fosters a fraternal feeling among its team members. However, the team lacks two of the characteristics that distinguish fraternal organizations. Because of the nature of the sport, membership on the softball team must be limited to a small number of persons. Formal team meetings are infrequent. It is difficult to imagine

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the structured conduct and ritualistic behavior usually associated with fraternal organizations developing out of this setting. As a recreational association the purpose of the team is to benefit the team members. Any benefit received by the public from the team's activity is only incidental. The type of benefit that membership bestows on a player is very limited. Entertainment, social contracts and recreational activity are provided. However, team membership contributes little to the overall welfare of the individual and his family. The Rockford Comets softball team, therefore, does not come within the ordinary meaning of fraternal organization.

It is possible to argue that this ordinary meaning should be ignored and that the term "fraternal organization" should include all social organizations that create a fraternal feeling. But such a use of the term is unwarranted here. In addition to the rule that statutes changing the public policy against gambling should be strictly construed, the Bingo License and Tax Act itself indicates a legislative intent that the terms of the Act be narrowly defined. The legislature has legalized bingo games, but only on a limited, controlled basis.



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Restrictions on the conduct of bingo games are detailed in the Act. Records of games are rigidly monitored. Violations of the Act's provisions are punished criminally. It would be inconsistent with the precise limitations of the Act to use the terms "bona fide religious, charitable, labor, fraternal, educational or veterans' organization" in a manner that would include a wide range of social organizations. Limiting bingo licenses to specific, well defined organizations facilitates the regulation of the games and also enables the legislature to determine the effect of changing the gambling laws.

It is, therefore, my conclusion that on the basis of your description, the Rockford Comets are not eligible for a bingo license under the terms of the Bingo License and Tax Act. This conclusion is in accord with the case of Allendale Field and Stream Association v. Legalized Games of Chance Control Commission, 41 N.J. 209, 195 A. 2d 620. In that case the Supreme Court of New Jersey interpreted an amendment to the New Jersey Constitution that legalized

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bingo games when conducted by "bona fide veterans, charitable, educational, religious or fraternal organizations, civic and service clubs, volunteer fire companies, and first aid or rescue squads". The court ruled that a hunting club organized primarily for the recreation of its members did not come within the terms of the amendment.

Sections 1 and 2 of the Bingo License and Tax Law (Ill. Rev. Stat. 1973, ch. 120, pars. 1101 and 1102) provide an answer to your second question. The pertinent parts of these sections read as follows:

"§ 1.

\* \* \*

Licensing for the conducting of bingo is subject to the following restrictions:

\* \* \*

(3) Each license shall state which day of the week and at what location the licensee is permitted to conduct bingo. The Department may, on special application made by any organization having a bingo license, issue a special permit for conducting bingo at other premises and on other days not exceeding 7 consecutive days. No more than 2 such special permits may be issued in one year to any one organization. Any organization, qualified for a license but not holding one, upon

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application and payment of a \$50 fee may receive a permit to conduct bingo at no more than 2 indoor or outdoor festivals in a year for a maximum of 5 days on each occasion. Such permit shall be prominently displayed at the site of the bingo games.

\$2. The conducting of bingo is subject to the following restrictions:

\* \* \*

(7) The number of bingo days conducted by a licensee or its licensed lessee under this Act is limited to one per week, except as provided by special permit issued pursuant to paragraph (3) of Section 1 of this Act.

(8) A licensee may rent a premises on which to conduct bingo only from an organization which is also licensed under this Act.

\* \* \*

The licensing procedure set out in subsection 3 of section 1 permits each bingo licensee to conduct only one bingo game a week. According to subsection 8 of section 2, only a bingo licensee may accept rental payments for the conduct of bingo games held on its premises. The decision to accept rent is significant since subsection 7 of section 2 requires that a licensee refrain from conducting its own bingo games when it receives rent from another licensee for a particular week. These provisions result in confining

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the direct proceeds of bingo games to licensed organizations. Proceeds from the conduct of games and from rent paid for the use of premises can be received only by licensed organizations. The amount that any one licensee can collect is limited by the fact that a licensee can receive income from bingo games only once a week, either from the conduct of its own games or from the rent paid by another licensee.

This legislative scheme of identifying and limiting the direct proceeds from bingo games is not disrupted by permitting a bingo licensee to conduct its games rent free at a location owned by a person or organization not holding a bingo license. The scheme confines payments received from the conduct of games and rent paid for the use of premises to bingo licensees. A person not holding a bingo license who allows his premises to be used for bingo games receives some incidental benefits, such as better recognition of his establishment by the public and use of his food and drink services during the games by bingo players. Although real, these benefits are too indirect and too uncertain to constitute rental payments. (See,

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Cox v. Snyder, 241 Ill. App. 471.) They are not the type of benefits which the legislature has confined to bingo licensees.

The owner who offers his premises rent free to a bingo licensee may be a liquor licensee. Section 28-3 of the Criminal Code (Ill. Rev. Stat. 1973, ch. 38, par. 28-3) describes in pertinent part the effect of using the premises of a liquor licensee for gambling purposes:

"§ 28-3. Keeping a Gambling Place.)  
A 'gambling place' is any real estate, vehicle, boat or any other property whatsoever used for the purposes of gambling. Any person who knowingly permits any premises or property owned or occupied by him or under his control to be used as a gambling place commits a Class A misdemeanor. Each subsequent offense is a Class 4 felony. When any premises is determined by a court having jurisdiction to be a gambling place:

\* \* \*

(b) All licenses, permits or certificates issued by the State of Illinois or any subdivision or public agency thereof authorizing the serving of food or liquor on such premises shall be void; and no license, permit or certificate so cancelled shall be reissued for such premises for a period of 60 days thereafter; nor shall any person convicted of keeping a gambling place

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be reissued such license for one year from his conviction and, after a second conviction of keeping a gambling place, any such person shall not be reissued such license.

\* \* \*

Section 28-1 of the Criminal Code (Ill. Rev. Stat. 1974 Supp., ch. 38, par. 28-1) expressly excludes licensed bingo games from the definition of gambling. That section provides in pertinent part as follows:

" \* \* \*

(b) Participants in any of the following activities shall not be convicted of gambling:

\* \* \*

(5) The game commonly known as 'bingo', when conducted in accordance with 'An Act making lawful the conducting of bingo by certain non-profit organizations, requiring licensing and prescribing regulations therefor.'

\* \* \*

The Criminal Code thus does not prohibit liquor licensees from hosting licensed bingo games. Neither is there such a prohibition in any other chapter of the Illinois Revised Statutes.

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Therefore, it is my opinion that the Bingo License and Tax Act permits bingo licensees to conduct bingo games rent-free on the premises of a person or organization not licensed to conduct bingo games. The fact that these premises are licensed to serve liquor does not prevent the conduct of the games.

Of course, organizations, such as the Rockford Comets, which are not eligible for a bingo license, may not conduct bingo games. The fact that an ineligible organization conducts bingo games on rent-free premises cannot legitimize the games.

Your final question concerns the power of the Winnebago County Board and "the local liquor commissioner". The local liquor commissioner administers the appropriate provisions of the Liquor Control Act (Ill. Rev. Stat. 1973, ch. 43, pars. 94 et seq.) and the liquor ordinances and resolutions enacted by the city, village, town or county to which the commissioner is attached. (Ill. Rev. Stat. 1973, ch.

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43, par. 111.) Your letter does not specify the particular unit of government to which the local liquor commissioner in your last question is attached. I will assume it is not a home rule unit; and, therefore, I will formulate my answer with the understanding that you seek to know whether a non-home rule unit, such as Winnebago County, can under its power to regulate intoxicating liquors prohibit the conduct of bingo games upon the premises of a liquor licensee which does not have a bingo license.

The power of a county or municipality to control the sale of intoxicating liquors is derived solely from the State, and the county or municipality has only that power delegated to it and no other. (Heidenreich v. Ronske, 26 Ill. 2d 360.) The Liquor Control Act contains the delegation of this power and sets the limits beyond which a county or municipality may not act; any ordinance beyond the legislative authorization of the Liquor Control Act is invalid. Maywood-Provisio State Bank v. City of Oakbrook Terrace, 67 Ill. App. 2d 280.



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The Liquor Control Act makes no explicit grant to counties and municipalities to prohibit the playing of legalized games of chance, such as bingo, on the premises of a liquor licensee. If this prohibition is possible it must be derived from the general language of section 1 of article IV of the Act (Ill. Rev. Stat. 1973, ch. 43, par. 110) which permits a county or municipality to "establish such further regulations and restrictions upon the issuance of and operations under local licenses not inconsistent with law as the public good and convenience may require \* \* \*." (emphasis added.) This language has been relied upon to support regulatory powers not explicitly enumerated in the Liquor Control Act. (Cheetah Enterprises, Inc. v. County of Lake, 22 Ill. App. 3d 306; Picco v. Simon, 80 Ill. App. 2d 277.) However, this language cannot support a prohibition that is inconsistent with statutory provisions regulating liquor licenses.

The General Assembly, by excluding licensed bingo games from the definition of gambling, has determined that conducting games on the premises of a liquor licensee does not threaten the public sufficiently enough to necessitate

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revocation of the liquor license under the provisions of section 28-3 of the Criminal Code. A local liquor regulation that would bar bingo games played on the premises of a liquor licensee which does not have a bingo license would be inconsistent with this determination. The pertinent provisions of sections 28-1 and 28-3 of the Criminal Code, quoted above, express a policy that bingo games can be played on the premises of a liquor licensee. This policy is without the qualification that the liquor licensee must also be a bingo licensee. A local governmental unit's power to regulate liquor for the public good does not enable that unit to qualify a statutory policy regarding liquor licenses. The language in section 1 of article IV of the Liquor Control Act cannot support the prohibition you propose in your final question because this prohibition conflicts with the legislative determination that the public is not seriously endangered by permitting liquor licensees to host bingo games.

Therefore, it is my opinion that non-home rule units of government cannot prohibit the conduct of bingo

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games upon the premises of a liquor licensee which does not have a bingo license since the power to make this prohibition is neither expressly or impliedly granted to local governments in the Liquor Control Act.

Very truly yours,

A T T O R N E Y   G E N E R A L