

OFFICE OF THE ATTORNEY GENERAL

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Honorable David Barber
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Gambling - Bingo

The permitholder must allow the inspection of the entire location at which bingo is being conducted and may not prohibit or impede the inspection of rooms designated as "Members Only."

T-shirts and key rings printed with the location at which bingo is played are advertising media and are not authorized by sheriff's Rule 2.1 and are, therefore, prohibited by Section 10(5) of Act No. 80-609.

A club's bylaws and charter should be examined to determine whether it qualifies as a religious, educational, service, senior citizens, fraternal, or veteran's organization.

The applicant may be personally culpable for violations of the Act committed by the permitholder or employees thereof.

The Attorney General by opinion cannot determine whether there has been a violation of a criminal statute.

Permits may be issued for bingo games to be conducted only on a premises wholly owned by the permitholder.

Bingo equipment may be rented on a session-by-session basis but must be clearly marked with the name of the permitholder.

Act No. 80-609 authorizes the payment of not more than \$20.00 per day to each person assisting in conducting the bingo.

Dear Mr. Barber:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION 1

Does Act No. 80-609, Section 15(3) authorize an inspection by the sheriff of the whole premises, even rooms designated as "Members Only?"

FACTS AND ANALYSIS

Yes. Act No. 80-609, Section 15(3) requires that the location at which bingo is being conducted be open at all times to inspection:

"(3) The location at which bingo is being conducted or at which an applicant or permitholder intends to conduct bingo shall be open to inspection at all times by a duly authorized employee of the

sheriff or by the state police or a peace officer of a political subdivision of the state."

This section requires the permitholder to allow inspection of the entire location at which bingo is being conducted at all times. This section is mandatory and places an affirmative duty on the permitholder to allow a duly authorized employee of the sheriff, the state police or any peace officer to inspect the premises. The permitholder may not exclude any part of the premises from inspection. The permitholder may not prohibit the inspection of any area by allowing "Members Only" in the vicinity.

CONCLUSION

The permitholder must allow the inspection of the entire location at which bingo is being conducted and may not prohibit or impede the inspection of rooms designated as "Members Only."

QUESTION 2

Are t-shirts and key rings which are printed with the location and place bingo is played, and given or sold to players and workers, a violation of Act No. 80-609, Section 10, Subsection (5) and Sheriff's Promulgated Rules and Regulations, Rule 2.1, which states that no advertising shall be permitted except that in-house newsletters to members, bulletin and notices posted within the facilities of the permitholder are allowed?

FACTS AND ANALYSIS

Section 10(5) of Act No. 80-609 and Section 1(5) of Act No. 94-393 state:

"(5) A permitholder may not advertise bingo except to the extent and in the manner authorized by rule of the sheriff. If the sheriff allows a

permitholder to advertise bingo, the permitholder shall indicate in the advertisement the purposes for which the net proceeds will be used by the permitholder."

Thus, the law allows no advertisement except as authorized by the sheriff.

The Rules of the Sheriff, Rule 2.1, states:

"ADVERTISEMENT

"Rule 2.1 No advertising of bingo games is permitted except that in-house newsletters to members, bulletin and notices posted within the facilities of the permitholder are allowed."

The only allowed advertising, then, are in-house newsletters and bulletins and notices posted within the facilities of the permitholder. Key rings and t-shirts are advertising media used to carry an advertising message to a target population. See Attorney General's opinion to Ed Hall, dated June 10, 1985, A.G. No. 85-00037, for a discussion of the term "advertising medium." The sheriff's rules do not authorize the use of key rings or t-shirts to advertise bingo games.

CONCLUSION

T-shirts and key rings printed with the location at which bingo is played are advertising media and are not authorized by sheriff's Rule 2.1 and are, therefore, prohibited by Section 10(5) of Act No. 80-609.

QUESTION 3

Act No. 80-609, Section 1, Subsection (7) defines a qualified organization as a bona fide religious, educational, service, senior citizens, fraternal, or veterans organization. Do country clubs, such as Chase Lake Country Club and the Roma Club, fit in one of the above-described organizations?

FACTS AND ANALYSIS

A "country club," as that term is commonly understood, is normally not a religious, educational, service, senior citizens, fraternal, or veteran's organization. The particular club's bylaws and charter should be examined to determine whether it fits into one of the above-described organizations.

CONCLUSION

A club's bylaws and charter should be examined to determine whether it qualifies as a religious, educational, service, senior citizens, fraternal, or veteran's organization.

QUESTION 4

Is the person who signs as applicant for the permit, personally responsible for any violation of this act or a rule promulgated under this act by the permitholder or any person working for said permitholder?

FACTS AND ANALYSIS

Section 17 of Act No. 80-609 makes the violation of the provisions of the Act a misdemeanor. Whether the applicant is personally responsible for a violation of the Act committed by the permitholder or any employee thereof is a question of fact for a jury. However, it is possible that the applicant would be found criminally culpable for acts done by employees or the permitholder.

Section 17 prohibits action that is malum prohibita. The crime is statutory, and no intent or knowledge need be proved as an element of the offense. Any person who does an act in violation of the statute may be punished therefor.

Further, the purpose of the statute is to prevent the prohibited activity and protect the public at large. The applicant is responsible for insuring that the bingo is conducted in accordance with all laws.

CONCLUSION

The applicant may be personally culpable for violations of the Act committed by the permitholder or employees thereof.

QUESTIONS 5 AND 6

Act No. 80-609, Section 7, Subsection (6) states that no person shall pay consulting fees to any person for any services performed in relation to the operation of conduct of a bingo game. Section 10, Subsection (2) prohibits a person from receiving any commission, salary, pay, profit, or wage for participating in the management or operation of bingo except as provided by rule of the sheriff. Are Rugo, Inc., and the permitholders in violation of either of these sections?

Act No. 80-609, Section 10, Subsection (1) prohibits a person, other than a bona fide member of the permitholder from participating in the management of bingo. Persons other than bona fide members of the permitholder may participate in the operation of bingo as provided by rule of the sheriff. Is Rugo, Inc., acting as the management of bingo, and are the permitholders in violation of this section?

FACTS AND ANALYSIS

A violation of the provisions of the Act in question is a criminal offense. Since this office is not a fact-finding entity, when providing opinions based on the facts given in the opinion request, we cannot say whether there is a violation of the statute. Only a court of competent jurisdiction can make such a determination based on facts addressed in open court. Attorney General's opinion to Roy W. Johnson, Jr., dated December 16, 1988, A.G. No. 89-00088.

However, we note that Section 7(6) of Act No. 80-609 prohibits consulting fees, that Section 10(1) prohibits any person other than the permitholder from participating in the management of bingo, and that Section 10(2) prohibits any person from receiving a commission, salary, pay, profit or wage for participating in the management or operation of bingo. These prohibitions are clear, and any violation thereof is a violation of the Act for which there can be a criminal prosecution. The ultimate question of whether Rugo, Inc., is acting as the management of bingo and receiving fees therefor is a factual question to be presented to a jury. However, if it is determined by a jury that Rugo, Inc., is performing such a function, it is in violation of the law.

CONCLUSION

In rendering an opinion based on facts presented, the Attorney General cannot determine whether there has been a violation of the criminal statute.

QUESTION 7

Must bingo games be held on the premises wholly owned by a qualified permitholder, as defined in Section 2, Subsection (6), of Act No. 80-609, or can they be held on premises being rented by the permitholder, as defined in Section C of Amendment No. 386, and Section 1, Subsection (C) of Act No. 80-431? If the games are held on premises being owned by the permitholder, can the permitholder charge itself rent for the use of the premises for the conducting of bingo sessions?

If it is determined that bingo games shall be held only on the premises wholly owned by a qualified permitholder, what is the validity of the permits issued to organizations that rent facilities to conduct bingo games? And what actions are necessary to comply with the Act? Must the permits be reissued when they expire?

FACTS AND ANALYSIS

Section 2(5) of Act No. 80- 609 provides:

"(5) 'Location' means a single building, hall, enclosure, or outdoor area used for the purpose of playing bingo pursuant to a permit issued under this act. Bingo games shall be held only on the premises wholly owned by a qualified permitholder as defined in Section 2, subsection (6), with exception to rental agreement in Section 9(c) of this act."

Section 9(c) of the Act further provides:

"(c) Rental of location at which bingo is conducted. When premises owned by a permitholder is destroyed by a natural disaster or any act not the fault of the tenant or property owner, then the premises may be rented for only 1 year."

In addition, Section (c) of Act No. 80-431 provides:

"(c) Bingo games shall be operated only on the premises owned or leased by the nonprofit organization operating the bingo game. If the premises is leased, the rate of rental shall not be based on a percentage of receipts or profits resulting from the operation of bingo games. . . ."

Construing these sections in pari materia, it appears that bingo games may be held only on the premises wholly owned by the permitholder, except that if the premises is destroyed by a natural disaster or any act not the fault of the tenant or property owner, then a premises may be rented for a maximum of one year. During the year, the rate of rental shall not be based upon a percentage of the receipts or profits.

Whether the permitholder charges itself rent is a matter of accounting that is not addressed by the Acts but is not prohibited by any law of which we have knowledge. Permits issued to permitholders in violation of the statute are void

and should not be reissued. A permit should not be issued to a permitholder unless the permitholder intends to conduct bingo on a premises wholly owned by the permitholder.

CONCLUSION

Permits may be issued for bingo games to be conducted only on a premises wholly owned by the permitholder.

QUESTION 8

Act No. 80-609, Section 10, Subsection (3) states that bingo may not be conducted with any equipment which is not owned, being purchased, or being rented by the permitholder. Section 7, Subsection (2) states that all equipment shall be stamped or clearly marked with the name of the organization using same, and it shall be unlawful to use equipment marked with the name of another organization. Can a permitholder rent the necessary equipment needed for conducting bingo, on a session-by-session basis, and if so, how must the equipment be marked?

FACTS AND ANALYSIS

Section 10(3) of Act No. 80-609 provides:

"(3) Bingo may not be conducted with any equipment which is not owned, being purchased, or being rented at a reasonable rate by the permitholder."

Section 7(2) provides:

"(2) A qualified organization shall not lend its name or allow its identity to be used by any individual, firm, association or corporation in the operating or promoting of a bingo game in which said qualified organization is not directly and solely operating said bingo

game. All equipment shall be stamped or clearly marked in letters no less than one-half inch in height and one-fourth inch in width (except for the letter 'I') with the name of the organization using same, and it shall be unlawful to use equipment marked with the name of another organization."

Thus, a permitholder may rent the equipment it uses for bingo, but the equipment must be clearly marked with the name of the permitholder in order to comply with the provisions of Section 7(2). There is no restriction against renting the equipment on a session-by-session basis.

CONCLUSION

Bingo equipment may be rented on a session-by-session basis but must be clearly marked with the name of the permitholder.

QUESTION 9

Act No. 80-609, Section 7, Subsection (5) states that no person or organization shall take any salary, expense money or fees for the operation of any bingo game, except that not more than \$20.00 per day may be paid to one or more individuals for assisting in the conduct of such games on such day. Does this authorize the payment of \$20.00 per day per individual or a total of \$20.00 per day for the individuals assisting in the conduct of the bingo games?

FACTS AND ANALYSIS

The Act authorizes the payment of not more than \$20.00 per day to each person who assists in the conducting of bingo.

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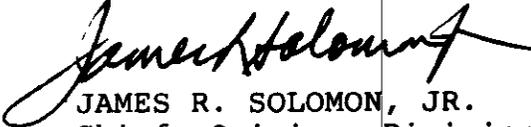
CONCLUSION

Act No. 80-609 authorizes the payment of not more than \$20.00 per day to each person assisting in conducting the bingo.

I hope this sufficiently answers your questions. If our office can be of further assistance, please contact Jane L. Brannan of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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