



2008-135

STATE OF ALABAMA  
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February 11, 2011

Please be advised that the opinion issued to Honorable Warren Beck, Member, House of Representatives, dated September 19, 2008, A.G. No. 2008-135, is hereby withdrawn and revoked by direction of Attorney General Luther Strange.

LUTHER STRANGE  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

LS/BFS



2008-135

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

September 19, 2008

ALABAMA STATE HOUSE  
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MONTGOMERY, AL 36130  
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Honorable Warren Beck  
Member, House of Representatives  
Post Office Box 333  
Geneva, Alabama 36340

THIS OPINION WAS WITH-  
DRAWN AND REVOKED BY  
ATTORNEY GENERAL LUTHER  
STRANGE ON FEBRUARY 11,  
2011

Bingo - Licenses and Permits -  
County Commissions - Houston  
County

A private club's bona fide employees may operate a bingo entertainment center under Amendment 569 of the Constitution of Alabama.

The club may pay compensation to a developer or its affiliates under a Development and License Agreement and Trademark License Agreement (as opposed to the real property or premises lease) in the form of a percentage of bingo revenue.

A "special permit" holder is only required to comply with the *Rules and Regulations for the Operation of Charitable Bingo in Houston County* in regards to operating bingo games under that special permit.

Dear Representative Beck:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) Pursuant to Amendment 569 of the Constitution of Alabama, may a properly

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organized private club's employees operate a bingo entertainment center?

(2) May the compensation to the developer or its affiliates under the Development and License Agreement and the Trademark License Agreement (as opposed to the real property or premises lease) be a percentage of bingo revenue?

(3) Given the absence of any regulation of "special permits" by local act, must a "special permit" holder comply with any other provision of law besides Amendment 569 and Houston County Resolution 08-05, entitled *Rules and Regulations for the Operation of Charitable Bingo in Houston County*?

#### FACTS AND ANALYSIS

Your request states that a private club will operate bingo games in Houston County on premises leased at a fixed rate from an affiliated entity of a real estate developer. You further state that the real estate rental payments will in no way be based on a percentage of bingo profits or receipts. The bingo games will be operated by the club's employees. The club will, through a Development and License Agreement, purchase a license from the developer to operate the club's electronic bingo machines and will obligate the developer to meet the economic development objectives set forth in a separate agreement between the developer and the county. The club will license (the "Trademark License Agreement") the name Country Crossing from the developer or its affiliate. The compensation to the developer under the Development and License Agreement will be a percentage of bingo revenue less prizes paid. This Office understands that the compensation to the developer or its affiliate under the Trademark License Agreement will be a percentage of bingo revenue before prizes are paid.

Section 1 of the Local Amendments for Houston County of the Recompile Constitution of Alabama authorizes the operation of charitable bingo in Houston County. ALA. CONST. LOCAL AMENDS., Houston County § 1 (amend. 569) (hereinafter "Amendment 569" or the "Houston County Amendment"). The Houston County Amendment further provides

that organizations operating bingo games must comply with certain organizational requirements. In particular, the amendment provides as follows:

No nonprofit organization or club shall enter into any contract with any individual, firm, association, or corporation to have the individual or entity operate bingo games or concessions on behalf of the nonprofit organization or club. No nonprofit organization or club may pay consulting fees, any compensation or salary to any individual or entity for any services performed relating to operating or conducting any bingo game.

ALA. CONST. LOCAL AMENDS., Houston County § 1(a)(4) (amend. 569).

This provision has two primary features: First, it prevents nonprofit organizations and private clubs from contracting with other individuals and entities to operate bingo games on the organization's or club's behalf; and, second, it prevents organizations from paying compensation to individuals or entities for operating or conducting bingo games. The plain language of section 1(a)(4) of Amendment 569 operates to bar an entity from paying its own employee a salary for services related to the operation or conduction of a bingo game.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting a statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). A literal interpretation of a statute that would defeat the purposes of the statute should not be adopted if another reasonable interpretation can be given to it. *Odum Lumber Co. v. S. States Iron Roofing Co.*, 36 Ala. App. 270, 272, 58 So. 2d 641, 643 (1951). Courts do not interpret provisions in isolation, but consider them in context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala.2001). This Office has recognized that "general principals governing the construction of statutes equally apply to the construction of constitutions." Opinion to Honorable Chester Carroll, Mayor, Town of Camp Hill, dated February 24, 2006, A.G. No. 2006-060 at 4.

The purpose of Amendment 569 is generally to allow bingo in Houston County. If a nonprofit organization or private club was not able to pay its own employees, the purpose of Amendment 569 would be defeated. A logical interpretation of section 1(a)(4) of Amendment 569,

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in the context of the entire statutory scheme, is that it prohibits the payment of compensation to or the salary of any individual who is not a bona fide employee of the nonprofit organization or private club. In other words, under this provision a nonprofit organization or private club operating a bingo game could not pay the salary of or any compensation to an employee of a separate entity to operate the bingo games.

Regarding your second question, Amendment 569 provides as follows:

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

ALA. CONST. LOCAL AMENDS., Houston County § 1(a)(3) (amend. 569).

Words used in a statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says. *Ex parte Cove Properties, Inc.*, 796 So. 2d 331, 333-34 (Ala. 2000); *Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997); *State Dep't of Transp. v. McLelland*, 639 So. 2d 1370, 1371 (Ala. 1994). This provision allows a club to operate a bingo game on leased premises as long as the rate of rental for the premises is not based upon a percentage of receipts or profits resulting from the bingo games. There is no corresponding provision in Amendment 569 that restricts any other payments from the club from being based upon a percentage of receipts or profits. As previously noted, as long as the club is not paying any consulting fees, compensation, or salary of any individual for the operation of the bingo games, the percentage payment of revenue, under the Development and License Agreement and the Trademark License Agreement, to the developer would be permissible.

Regarding your third question, Amendment 569 provides, in pertinent part, as follows:

(a) The operation of bingo games for prizes or money by certain nonprofit organizations and certain private clubs for charitable, educational, or other lawful purposes shall be legal in

Houston County, subject to any resolution or ordinance by the county commission as provided by law regulating the operation of bingo. *The county commission may promulgate rules and regulations for issuing permits or licenses and for operating bingo games* within the county jurisdiction.

(a)(2) Except for *special permit holders*, no bingo permit or license shall be issued to any nonprofit organization or qualified private club, unless the organization or club shall have been in existence for at least five years and owned real property in the county for five years immediately prior to issuing the permit or license, except the following:

a. A fraternal, or benevolent, or charitable organization which qualifies as an exempt organization under Section 501(c) of the Internal Revenue Code.

b. A private club with annual membership dues of three hundred (\$300) or more.

(b) *The Legislature may, by local legislation, provide for the implementation of this amendment*, including, but not limited to, the imposition of criminal penalties for violations of this amendment or the local legislation.

ALA. CONST. LOCAL AMENDS., Houston County §1(a) & (b) (amend. 569) (emphasis added).

Amendment 569 expressly authorizes the issuance of "special permits" in Houston County. It further provides for the regulation of bingo in Houston County by either local law(s) passed by the Legislature or by rules and regulations enacted by the county commission. Amendment 569 provides generally for the regulation of "bingo," but is silent as to the

regulation of "special permits." In determining the regulatory parameters on "special permits," one must then look next for guidance to any local laws that the Legislature has enacted pursuant to Amendment 569.

The initial enabling legislation for this amendment was Act 93-532, 1993 Ala. Acts No. 93-532, 871. This act did specifically provide for and address "special permit holders." *Id.* at 872-74. It defined "special permit holders" to be those who were issued a "valid permit for a special occasion." *Id.* at 872. The Legislature strictly limited the use of a "special permit" to those permits that were not permanent but rather were issued for use on a "special occasion not to exceed one day per quarter per organization or club." *Id.* at 874.

Act 93-532 was repealed and replaced by Act 95-420. 1995 Ala. Acts No. 95-420, 910. Act 95-420 omitted the provisions for special permits, indicating the Legislature's intent to no longer regulate such permits itself and, instead, to delegate exclusive regulation of such special permits to the county commission if and to the extent that it chose to do so.

For thirteen years, no special permits were authorized or issued in Houston County. On February 25, 2008, the Houston County Commission, pursuant to the authority vested in it by Amendment 569 to regulate bingo within the county's borders, adopted Resolution 08-05, which is entitled *Rules and Regulations for the Operation of Charitable Bingo in Houston County*. This resolution provides extensive regulations that specify, in detail, the eligibility criteria that must be met for an applicant to qualify for the issuance of a special permit in Houston County. That resolution is the sole legal provision that addresses, defines, and regulates "special permits" and provides all of the law with which a special permit holder in Houston County must comply.

#### CONCLUSION

A private club's bona fide employees may operate a bingo entertainment center under Amendment 569 of the Constitution of Alabama.

The club may pay compensation to a developer or its affiliates under a Development and License Agreement and Trademark License Agreement (as opposed to the real property or premises lease) in the form of a percentage of bingo revenue.

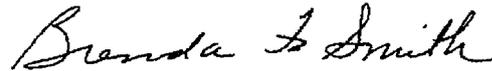
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A "special permit" holder is only required to comply with the *Rules and Regulations for the Operation of Charitable Bingo in Houston County* in regards to operating bingo games under that special permit.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Cheairs Porter of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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