

Opinion No. 2007-208

August 14, 2007

The Honorable Shawn Womack
State Senator
Post Office Box 332
Mountain Home, AR 72654-0332

Dear Senator Womack:

I am writing in response to your request for an opinion on the following:

Act 388 of 2007 defines a Bingo “face” as “a disposable flat piece of paper that may be used one time and cannot be reused after the game, in which the bingo face was used, is ended. The bingo face is marked off into any number of squares in any arrangement of rows, with each square being designated by number, letter, or combination of numbers and letters with one of more squares designated as a ‘free’ space with the word “Arkansas” and a facsimile outline of a map of Arkansas on the space.” Also pursuant to Act 388 of 2007, an excise tax of one cent is charged for each Bingo face. Many organizations purchase Bingo faces in boxes containing 4000 sheets. Each sheet contains nine individual Bingo faces. A participant may play only one face or up to nine faces on a sheet simultaneously during a single game. Currently, DF&A is collecting one cent per face or nine cents per sheet in excise tax. For purposes of collecting the excise tax, should a Bingo “face” be defined as a sheet containing several faces or each individual face on a sheet?

RESPONSE

In my opinion, the Department of Finance and Administration (“DF&A”) is the proper entity to interpret the provisions of Act 388 of 2007. Furthermore,

DF&A's interpretation will likely be upheld by a court unless it can be demonstrated that such interpretation is "clearly wrong."

Act 388 of 2007 defines a "Bingo Face" as:

(E) "Bingo face" means a disposable flat piece of paper that may be used one (1) time and that cannot be reused after the game, in which the bingo face was used, is ended. The bingo face is marked off into any number of squares in any arrangement of rows, with each square being designated by number, letter, or combination of numbers and letters, and with one (1) or more squares designated as a "free" space with the word "Arkansas" and a facsimile outline of a map of Arkansas on the space[.]

Id. at § 1 (to be codified at A.C.A. § 23-114-102).

As you indicate in your request, an excise tax is levied by the new A.C.A. § 23-114-601(a)(1) as follows:

There is levied an excise tax of one cent (~~10~~) upon the sale of each bingo face sold by a licensed distributor to a licensed authorized organization in this state.

Act 388 also places the duty of enforcing and administering its provisions in DF&A. Specifically, Act 338 adds the following pertinent code sections:

23-114-201. Control and supervision of games of bingo and raffles.

(a) The Director of the Department of Finance and Administration shall administer this chapter under the provisions of the Arkansas Tax Procedure Act, Section 26-18-101 et. seq.

(b) The director has broad authority and shall exercise strict control and close supervision over all games of bingo and raffles conducted in this state so that bingo and raffles are fairly conducted and the proceeds derived from bingo and raffles are used only for an authorized purpose.

(c) The department may employ any inspectors or other personnel that the director determines are necessary to properly administer this chapter.

23-114-202. Approval of bingo faces and raffle tickets.

(a) The Director of the Department of Finance and Administration by rule shall provide procedures for the approval of bingo faces and raffle tickets.

(b)(1) A licensed authorized organization shall not use or distribute a bingo face unless the bingo face has been approved by the director.

(2)(A) All bingo faces must be purchased by the licensed authorized organization from a distributor licensed under this chapter.

(B) Only one (1) game shall be played on each bingo face.

(c) All bingo faces and raffle tickets must be pre-printed on paper or plastic in a form approved by the director. No electronic devices, machines, or facsimiles may be used as bingo faces, raffle tickets, or otherwise, by participants of games of bingo or raffles conducted under this chapter.

(d) All bingo faces and raffle tickets must be sequentially numbered at the time of printing.

23-114-203. Rulemaking authority.

The Director of the Department of Finance and Administration may adopt rules to aid in the enforcement and administration of this chapter.

Act 388 of 2007, § 1.

The question you pose inquires whether DF&A has properly interpreted Act 388 of 2007. The interpretation of an administrative agency charged with the enforcement of a statute is highly persuasive, and will be upheld by the courts

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unless “clearly wrong.” *See Macsteel, Parnell Consultants v. Ark. Ok. Gas Corp.*, 363 Ark. 22, 210 S.W.3d 878 (2005); *McClane Co., Inc. v. Davis*, 353 Ark. 539, 110 S.W.3d 251 (2003); *Arkansas State Medical Board v. Bolding*, 324 Ark. 238, 920 S.W.2d 825 (1996); *Junction City Sch. Dist. v. Alphin*, 313 Ark. 456, 855 S.W.2d 316 (1993); *Pledger v. Boyd*, 304 Ark. 91, 799 S.W.2d 807 (1990); *Arkansas Contractors Licensing Bd. v. Butler Const. Co., Inc. of Barling*, 295 Ark. 223, 748 S.W.2d 129 (1988); *Morris v. Torch Club*, 278 Ark. 285, 645 S.W.2d 938 (1983); *see also* Op. Att’y Gen. 2005-124.

In my opinion, based on the limited facts you have presented, it is not “clearly wrong” to treat each separate game card on a single “sheet” as a “bingo face.”

Assistant Attorney General Joel DiPippa prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JMD/cyh