



SC REVENUE RULING #94-10 (TAX)

SUBJECT: Agent, Promoter or Representative of the House
(Bingo)

EFFECTIVE DATE: Applies to all periods open under the statute.

SUPERSEDES: SC Revenue Ruling #94-6

REFERENCES: S. C. Code Ann. Section 12-21-3320 (Supp. 1993)
S. C. Code Ann. Section 12-21-3410 (Supp. 1993)

AUTHORITY: S. C. Code Ann. Section 12-4-320 (Supp. 1993)
SC Revenue Procedure #94-1

SCOPE: A Revenue Ruling is the Department of Revenue's official advisory opinion of how laws administered by the Department are to be applied to a specific issue or a specific set of facts, and is provided as guidance for all persons or a particular group. It is valid and remains in effect until superseded or modified by a change in the statute or regulations or a subsequent court decision, Revenue Ruling or Revenue Procedure.

Questions:

1. For purposes of the bingo law, what is meant by the phrase "agent, promoter or representative of the house"?
2. Can an "agent, promoter or representative of the house" play bingo at the location at which such person works or is otherwise in a position of authority?
3. Can a bus driver, who is hired by a bingo promoter or nonprofit organization to bring players to the location to play bingo, play bingo at that location?

Conclusions:

1. For purposes of the bingo law, a promoter is one who is hired to manage, operate or conduct a bingo game for the nonprofit organization.

An agent or representative of the house would include the promoter (whether or not such person is a volunteer), employees and volunteers working for the promoter, employees of the nonprofit organization, bona fide members of the nonprofit organization (other than one serving as the promoter) on the days they volunteer their services with respect to bingo operations, individuals under contract with the promoter or nonprofit organization to assist in conducting the bingo games, officers of the promoter or nonprofit organization, or anyone who acts or has the power to act for the promoter or nonprofit organization. An agent or representative of the house does not include a bona fide member of the nonprofit organization who is not an employee of the promoter or nonprofit organization or a bona fide member of the nonprofit organization on the days that person is not volunteering his or her services with respect to bingo operations.

2. An "agent, promoter or representative of the house", as defined in Conclusion #1, can not play bingo at a location managed by a promoter, or sponsored by a nonprofit organization, for which such person works (whether or not paid) or has a position of authority.
3. A bus driver, who is hired by a bingo promoter or nonprofit organization to bring players to the location to play bingo, can not play bingo at that location if the driver is an employee of the promoter or nonprofit organization. If the bus driver is not an employee but an independent contractor, then the bus driver can play bingo provided he does not otherwise assist the promoter or nonprofit organization in conducting the bingo games.

Facts:

Nonprofit organizations that conduct bingo games, and the promoters they contract with to manage these games, hire or contract with many people in order to run a successful bingo operation. They hire:

1. "Runners" to sell cards to the players;
2. "Callers" to randomly select the bingo balls and announce to the players the number selected; and,
3. "Drivers" to bring groups to the games that want to play bingo.

Nonprofit organizations and promoters also employ others to sell concessions, to manage the operation's books, to clean the bingo hall, and to perform other duties as necessary. In addition, members of the nonprofit organization may volunteer their services with respect to these and other services needed to operate a bingo game.

Finally, corporate officers of the nonprofit organization and the promoter make decisions, enter into contracts, and perform other duties with respect to the bingo game.

Discussion:

Article 23 of Chapter 21 of Title 12 of the South Carolina Code of Laws regulates the game of bingo in this State. Specifically, the law sets forth who may establish a bingo operation, the licenses and

taxes that are due, how the game is to be played, and various other requirements.

Code Section 12-21-3410 establishes how the game of bingo must be played. The section states that "[b]ingo is played by more than one player and a caller who is associated with the house." The section further states specific duties of the caller and the players.

Code Section 12-21-3320 defines several terms used in the bingo law, and reads in part:

* * * *

(4) "Promoter" means an individual, corporation, partnership, or organization compensated either by salary or percentage of the games' proceeds or both to manage, operate, or conduct the licensee's bingo game. The person hired under written contract is considered the promoter.

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(11) "Caller" means the house representative who is responsible for drawing bingo balls and announcing to the players the result of each drawing.

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(13) "House" means the nonprofit organization licensed with the commission.

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(16) "Player" means one who participates in the game of bingo other than as an agent, promoter, or representative of the house.

In Home Health Service, Inc v. South Carolina Tax Commission, Opinion No. 24008 dated February 7, 1994 the State Supreme Court, in considering "whether an employee of a bingo operator can temporarily sit in for a player during the player's absence from the game", held:

In construing a statute, the language used should be given its plain and ordinary meaning. City of Columbia v. Moser, 280 S.C. 134, 311 S.E. 2d 920 (1983). The construction of a statute by an agency charged with its administration is entitled to the most respectful consideration and should not be overruled absent compelling reasons. Emerson Electric v. Wasson, 287 S.C. 394, 339 S.E. 2d 118 (1986).

In construing the definition of a player, the plain meaning shows that a player is someone other than an agent, promoter or representative of the house. Considering that the employee fills in briefly for the player as a service of the house, the employee is acting as an agent of the house. Such activity is prohibited by the statute. Accordingly, appellant violated the Bingo Act by permitting employees to substitute for players.

Therefore, an agent, promoter, or representative of the nonprofit organization licensed to operate a

bingo establishment may not play bingo at the location for which they are an agent, promoter, or representative.

Next we must determine who is an agent, who is a promoter, and who is a representative.

As cited above, the bingo statute defines the term "promoter" as "an individual, corporation, partnership, or organization compensated either by salary or percentage of the games' proceeds or both to manage, operate, or conduct the licensee's bingo game."

The statute, however, does not define "agent" or "representative".

One of the primary rules of statutory construction is that words used in a statute should be taken in their ordinary and popular meaning, unless there is something in the statute which requires a different interpretation. Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231; Investors Premium Corp. v. South Carolina Tax Commission, 260 S.C. 13, 193 S.E.2d 642. Also, where the terms of a statute are clear and unambiguous and leave no room for construction, they must be applied according to their literal meaning. Mitchell v. Mitchell, 266 S.C. 196, 222 S.E.2d 217; Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323.

The Second College Edition of the American Heritage Dictionary defines "agent" and "representative" as follows:

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| Agent | 1. One that acts or has the power to act. 2. One that acts for or as the representative of another; <i>an insurance agent</i> |
| representative | 1. One that serves as an example or type for others of the same classification. 2. One that serves as a delegate or agent for another. ... |

Finally, in order to complete our analysis of the statute, we must consider the role of volunteers.

A review of the bingo statute indicates that the General Assembly authorized bingo to be conducted by nonprofit organizations and that they understood the importance of bona fide members volunteering their services.

First of all, the statute establishes one class of license, Class E, which must be operated "exclusively by bona fide members [of the nonprofit organization] who are residents of this State and who do so on a strictly volunteer basis". In addition, the Class C license was established by statute for small operations, usually run by churches, who rely on volunteers. (Code Section 12-21-3440) Neither of these licenses require the hiring or designation of a promoter. (Code Section 12-21-3360) Also, even if a Class AA or Class B nonprofit organization does not contract with an outside promoter to manage or conduct the organization's game, the organization must designate a member as the promoter. As such, the statute does not require the hiring of a promoter but envisions the "designation" of a member, possibly a volunteer, as the promoter.

Therefore, an agent or representative of the house would include the promoter (whether or not such

person is a volunteer), employees and volunteers working for the promoter, employees of the nonprofit organization, bona fide members of the nonprofit organization (other than one serving as the promoter) on the days they volunteer their services with respect to bingo operations, individuals under contract with the promoter or nonprofit organization to assist in conducting the bingo games, officers of the promoter or nonprofit organization, or anyone who acts or has the power to act for the promoter or nonprofit organization. An agent or representative of the house does not include a bona fide member of the nonprofit organization who is not an employee of the promoter or nonprofit organization or a bona fide member of the nonprofit organization on the days that person is not volunteering his or her services with respect to bingo operations.

SOUTH CAROLINA DEPARTMENT OF REVENUE

s/A. Crawford Clarkson, Jr. _____
A. Crawford Clarkson, Jr., Chairman

s/James M. Waddell, Jr. _____
James. M. Waddell, Jr., Commissioner

Columbia, South Carolina
August 3, _____ 1994

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