

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

September 29, 1993

SUBJECT: Taxation and Revenue - Disclosure Of Bingo Tax Information By The Department Of Revenue And Taxation.

SYLLABUS: The Freedom of Information Act (FOIA) does not prohibit the Department of Revenue and Taxation from disclosing the gross proceeds listed on reports required by Chapter 21 of Title 12. Further, S.C. Code Ann. Section 12-54-240 (Supp. 1992) does not prohibit the disclosure of such information since Section 12-54-240 does not apply to reports and information presented to the Department of Revenue and Taxation under the reporting requirements of Chapter 21 of Title 12.

TO: Harry T. Cooper, Jr., Esq.
Director, Policy and Special Procedures

FROM: Ray N. Stevens *ARS*
Chief Deputy Attorney General

QUESTION: Can information reported to the Department of Revenue by licensed bingo parties under Chapter 21 of Title 12 be disclosed to the public?

APPLICABLE LAW: S.C. Code Ann. Sections 12-21-3500, 12-21-3610, and 12-54-240 (Supp. 1992).

DISCUSSION:

Bingo is considered gambling and the General Assembly has authorized extensive governmental activities to regulate bingo in South Carolina. Army Navy Bingo, Garrison v. Plowden, 281 S.C. 226, 314 S.E.2d 339, 340 (SC 1984). The regulation of bingo consists in part of the requirement of obtaining a license (see S.C. Code Ann. Section 12-21-3340 (Supp. 1992) as to the nonprofit organization, and S.C. Code Ann. Section 12-21-3350 (Supp. 1992) as to the promoter) as well as a duty to maintain extensive records (see S.C. Code Ann. Section 12-21-3370 (Supp. 1992) for maintaining written contracts with promoters, and S.C. Code Ann. Section 12-21-3490 (Supp. 1992) for requirements of checking account records).

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As a part of the record keeping duties, each quarter the licensee conducting bingo is required to file a report with the Department of Revenue. The information required in that report is set out in Section 12-21-3500 as follows:

(A) Each licensee conducting bingo games shall submit quarterly to the commission a report under oath containing the following information:

(1) the amount of gross proceeds derived from the games;

(2) each item of expense incurred or paid;

(3) each item of expenditure made or to be made, with a detailed description of the merchandise purchased or the services rendered;

(4) the net proceeds derived from the games;

(5) the use to which the proceeds have been or are to be applied;

(6) a list of prizes offered and given, with their respective values.

Under this report, the licensee is required to show significant details concerning not only the gross proceeds from the bingo games, but also the expenses incurred as well as the use to which the proceeds are applied.

In addition to the reporting requirements, the license holder is liable for taxation as a result of the bingo operation. S.C. Code Ann. Section 12-21-3440 (Supp. 1992) imposes a license tax of varying amounts depending upon the prizes offered; S.C. Code Ann. Section 12-21-3441 (Supp. 1992) imposes a set tax per player per session, and Section 12-21-3610 imposes a tax on the gross proceeds from the game of bingo.¹

The inquiry here is whether under the bingo statutes the gross proceeds as well as other information filed with the Department of Revenue and Taxation can be disclosed to the

¹Gross proceeds is defined at S.C. Code Ann. Section 12-21-3320(8) (Supp. 1992) as the total amount received from the sale of bingo cards and entrance fees charged at locations in which the bingo is conducted.

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public. Such a determination is controlled by the FOIA and secrecy statutes prohibiting disclosure of otherwise public information.

The FOIA, codified at S.C. Code Ann. Section 30-4-10, et seq., (Supp. 1992) is designed to guarantee access to the activities of government. Martin v. Ellisor, 264 S.C. 202, 213 S.E.2d 732, 733 (SC 1975). The FOIA statutes are disclosure statutes and do not create a duty of secrecy, nor do such statutes prevent disclosure. Bellamy v. Brown, ___ S.C. ___, 408 S.E.2d 219, 221 (SC 1991). Thus, there is no requirement under FOIA that forbids the disclosure of the gross proceeds information here under review.

Additionally, the secrecy statute of Section 12-54-240 does not prevent the disclosure. Section 12-54-240 makes it ". . . unlawful for any person to divulge or make known in any manner any particulars set forth or disclosed in any report or return required under Chapters 7, 15, 16, 17, 35, or 36 [of Title 12]". The secrecy statute does not limit disclosure of information received by the Department of Revenue under Chapter 21. Gross proceeds and other information result from reports required under Chapter 21 of Title 12. The reports require the party to identify the gross proceeds as well as other detailed information resulting from the operation of bingo. Further, gross proceeds for purposes of Chapter 21 is defined at Section 12-21-3320(8) as the "total amount received from the sale of bingo cards and entrance fees charged at locations in which bingo is conducted". Such is not the definition of gross proceeds under a Chapter 36 tax on sales (see S.C. Code Ann. Section 12-36-90 (Supp. 1992)). Thus, the secrecy provision related to a Chapter 36 return is not applicable to a report required under Chapter 21. Such is especially true when Chapter 36 and Chapter 21 have separate and different definitions of gross proceeds.

CONCLUSION:

The Freedom of Information Act (FOIA) does not prohibit the Department of Revenue and Taxation from disclosing the gross proceeds listed on reports required by Chapter 21 of Title 12. Further, S.C. Code Ann. Section 12-54-240 (Supp. 1992) does not prohibit the disclosure of such information since Section 12-54-240 does not apply to reports and information presented to the Department of Revenue and Taxation under the reporting requirements of Chapter 21 of Title 12.

RNS:wcg