

FRATERNAL GROUP GAMES OF CHANCE / BINGO MEMO:

This is an overview guide regarding games of chance. In general, all types of gambling including bingo operations are illegal in the State of Ohio. However, the conduct of bingo is exempt through RC 2915.02(D) if all the provisions are met.

Basically, Fraternal Groups are 501 c 8 organizations which may conduct bingo games, **but not games of chance (IE Poker, Craps, Roulette, Texas Hold 'Em Tournaments, Las Vegas Nights ECT.) if they apply and receive a bingo license from the State of Ohio.** They are not a 501 c 3 organization defined as a qualifying charitable organization which may conduct games of chance if they comply with the law.

The following is the Policy Guidelines – Games of Chance published by the Ohio Attorney General in March, 2005. Also, following the policy statement is specific information regarding Bingo and an application for a Bingo license.

Because there are many complex situations that may arise, fraternal groups should seek competent professional guidance from a local attorney. If the attorney hired has additional questions, she/he may contact _____.

OHIO ATTORNEY GENERAL CHARITABLE LAW SECTION POLICY 201: GAMES OF CHANCE

1.0 Purpose

This procedure establishes the policy and guidelines for the dissemination of information regarding the conduct of games of chance pursuant to Revised Code Section 2915.02 by qualifying charitable organizations. Charitable Law Section employees will use this procedure in responding to public inquiries regarding the conduct of games of chance and in reviewing or auditing the records of games of chance.

2.0 Revision History

<u>Date</u>	<u>Rev. No.</u>	<u>Modification</u>
3/04/05	1.0	New Document

3.0 Persons, Units Affected

A. All charitable organizations that plan to conduct games of chance, all veteran, fraternal, and sporting organizations and governmental units that plan to lease their premises for the conduct of games of chance, and members of the public seeking information on the statutory requirements for the conduct of games of chance.

B. All Attorney General employees who, in response to public inquiries, provide information regarding the statutory requirements for the conduct of games of chance by charitable organizations.

4.0 Policy

It is the policy of the Attorney General's Charitable Law Section that the conduct of games of chance for profit is statutorily limited to qualifying charitable organizations under the restrictions set forth by statute in R.C. § 2915.02(D). Recognizing that the legal conduct of games of chance by qualifying charitable organizations is an allowable and effective means of raising funds to further charitable programs in the community, it is the policy of the Attorney General's Charitable Law Section to provide complete information to persons and entities planning to conduct games of chance for profit, so that such games may be conducted in compliance with Ohio law, which requires all of the following:

a) The games of chance may be conducted only by a *charitable organization* that is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

b) The games of chance may not include craps for money or roulette for money;

c) The games of chance are conducted at *festivals* of the charitable organization;

d) The games of chance are conducted by the charitable organization either for a period of four consecutive days or less and not more than twice a year or for a period of five consecutive days not more than once a year;

e) The games of chance are conducted by the charitable organization on premises that are either:

1) Owned by the charitable organization conducting the games of chance for at least one year immediately preceding the conduct of the games of chance, or

2) Leased from a *governmental unit*, or

3) Leased from a veteran's or fraternal organization for a rental rate not to exceed the lesser of 45% of the gross receipts of the games of chance or \$600 per day of the festival, provided that the premises have been owned by the veteran's or

fraternal organization for at least one year immediately preceding the conduct of the games of chance and have not already been leased by the veteran's or fraternal organization four times during the preceding year for the conduct of games of chance;

f) The only expense that may be deducted from the money or assets received from the games of chance are the prizes paid out during the conduct of the games of chance. All of the remaining funds must be used by, or given, donated or otherwise transferred to an organization that is described in subsection 509(a)(1), 509(a)(2), or 509(a)(3) of the Internal Revenue Code and is either a governmental unit or an organization that is tax exempt under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;

g) The games of chance are not conducted during, or within ten hours of, a bingo game conducted for amusement purposes only;

h) No person receives any commission, wage, salary, reward, tip, donation, gratuity, or other form of compensation, directly or indirectly, for operating or assisting in the operation of any game of chance; and

i) The charitable organization maintains all records regarding the games of chance required by R.C. § 2915.10, as follows:

1) An itemized list of the gross receipts of each game of chance;

2) A list of all prizes awarded during each game of chance conducted by the charitable organization, and the name, address, and social security number of all persons who are winners of prizes of six hundred dollars or more in value;

3) An itemized list of the recipients of the net profit of the game of chance, including the name and address of each recipient to whom the money is distributed, and if the organization uses the money or assets received from the game of chance for any charitable or other purpose set forth in division (D) of section 2915.02, a list of each purpose and an itemized list of each expenditure for each purpose;

4) The number of persons who participate in any game of chance that is conducted by the charitable organization.

5) The charitable organization shall maintain these records for a period of three years from the date on which the game of chance is conducted, and shall keep the records at its principal place of business in this state or at its headquarters in this state and shall notify the Attorney General of the location at which those records are kept.

The Attorney General's Charitable Law Section adopts the following policies with respect to the interpretation of the provisions of R.C. § 2915.02:

- R.C. § 2915.02(D) was enacted to allow qualifying charitable organizations to conduct games of chance to raise funds to support charitable and public programs.
- Games of chance may be conducted only by qualifying charitable organizations, and the charitable organization cannot transfer its right to conduct games of chance to any other person or entity.
- Qualifying charitable organizations may conduct games of chance only at festivals of the charitable organization, as that term is defined below.
- A governmental unit is not limited in the number of times per year that it may lease premises to qualifying charitable organizations for the conduct of games of chance.
- A governmental unit is not statutorily required to own the premises it leases to qualifying charitable organizations for the conduct of games of chance.
- A governmental unit may lease premises to a qualifying charitable organization for the conduct of games of chance for a rental rate that is not more than is customary and reasonable for the lease of similar premises for similar purposes. In determining what constitutes a customary and reasonable rental rate for the use of similar premises for similar purposes, the rental rate that a veteran's or fraternal organization may charge for the use of its premises for the conduct of games of chance may be considered. 4
- A governmental unit that is described in R.C. § 2915.02(D)(1)(d) is qualified to receive distributions from the proceeds of the games of chance, even if the governmental unit is the lessor of the premises at which the games of chance were conducted.
- No person may be compensated in any manner, directly or indirectly, for operating or assisting in the operation of a game of chance. Compensated employees of a business that provides equipment and supplies to a charitable organization for the conduct of games of chance shall not operate or assist in the operation of the games of chance on behalf of that charitable organization.
- No deductions may be taken from the money or assets received from the games of chance except for the prizes paid out on the games of chance. No other expenses may be paid or payments made from the money or assets received from the games of chance. All of the remaining money or assets received from the games of chance must be distributed in accordance with R.C. § 2915.02(D)(1)(d).

- Expenses incurred in the conduct of the games of chance, such as rent for the premises, purchase or lease of equipment or supplies necessary for the conduct of the games of chance, or advertising, may be paid only from a source of funds other than the money or assets received from the games of chance, and only to the extent that the amount paid is not more than is customary and reasonable for the goods or services provided.
- If participants in the games of chance are required to pay an admission or entry fee to enter the festival and/or to participate in the games of chance, the admission fees paid by all such participants shall be included in the “money or assets received from the games of chance.”

5.0 Definitions

A. *Game of chance* shall have the same meaning as defined in R.C.2915.01(D): poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.

B. *Game of chance for profit* shall have the same meaning as defined in R.C.§ 2915.01(E): any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo. Card games conducted for profit at Texas Hold ‘Em Tournaments, Las Vegas Nights, and similar events are “games of chance conducted for profit.”

C. *Scheme of chance* shall have the same meaning as defined in R.C. §2915.01(C): a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit. No person or organization can legally conduct a scheme of chance in Ohio. Under Ohio law, slot machines, machines that are not skill-based amusement machines, pools conducted for profit, and numbers games are examples of a scheme of chance when a participant gives a valuable consideration for a chance to win a prize.

D. *Charitable organization* shall have the same meaning as defined in Section 2915.01(H) of the Revised Code: any tax exempt religious, educational, veteran’s fraternal, sporting, service, nonprofit medical, volunteer rescue service, volunteer firefighter’s, senior citizen’s, historic railroad educational, youth athletic, amateur athletic, or youth athletic park organization. An organization is tax exempt if the organization is, and has received from the internal revenue service a determination letter that currently is in effect stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code, or if the organization is a sporting organization that is exempt from federal taxation under

subsection 501(a) and is described in subsection 501(c)(7) of the Internal Revenue Code. To qualify as a charitable organization, an organization, except a volunteer rescue service or volunteer firefighter's organization, shall have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under section 2915.08 of the Revised Code or the conducting of any game of chance as provided in division (D) of section 2915.02 of the Revised Code. A charitable organization that is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code and that is created by a veteran's organization, a fraternal organization, or a sporting organization does not have to have been in continuous existence as such in this state for a period of two years immediately preceding either the making of an application for a bingo license under section 2915.08 of the Revised Code or the conducting of any game of chance as provided in division (D) of section 2915.02 of the Revised Code.

E. *Veteran's organization* shall have the same meaning as defined in Section 2915.01(K) of the Revised Code: any individual post or state headquarters of a national veteran's association or an auxiliary unit of any individual post of a national veteran's association, which post, state headquarters, or auxiliary unit has been in continuous existence in this state for at least two years and incorporated as a nonprofit corporation and either has received a letter from the state headquarters of the national veteran's association indicating that the individual post or auxiliary unit is in good standing with the national veteran's association or has received a letter from the national veteran's organization indicating that the state headquarters is in good standing with the national veteran's association. As used in this division, "national veteran's association" means any veteran's association that has been in continuous existence as such for a period of at least five years and either is incorporated by an act of the United States congress or has a national dues-paying membership of at least five thousand persons.

F. *Fraternal organization* shall have the same meaning as defined in Section 2915.01(M) of the Revised Code: any society, order, state headquarters, or association within this state, except a college or high school fraternity, that is not organized for profit, that is a branch, lodge, or chapter of a national or state organization, that exists exclusively for the common business or sodality of its members, and that has been in continuous existence in this state for a period of five years.

G. *Qualifying charitable organization* shall mean a charitable organization that is also recognized as a 501(c)(3) public charity by the Internal Revenue Service and has a current determination letter to that effect from the Internal Revenue Service. Only 501(c)(3) charities that are one of fourteen types of charitable organization separately defined in R.C. Chapter 2915 may legally conduct games of chance for profit. The fourteen types of charitable organization are: religious, educational, veteran's, fraternal, sporting, service, nonprofit medical, volunteer rescue service, volunteer firefighter's, senior citizen's, historic railroad educational, youth athletic, amateur athletic, or youth athletic park organization.

H. *Governmental unit* shall mean any department or agency of the United States, a state, or any political subdivision of a state. A governmental unit may also include a joint venture between two or more governmental units, if the joint venture does not include persons or entities that are not governmental units.

I. *Year* shall mean twelve consecutive months.

J. *Preceding year* shall mean the twelve consecutive month period immediately prior to and including the period for which a veteran's or fraternal organization proposes to lease premises owned by the veteran's or fraternal organization to a qualifying charitable organization for the conduct of games of chance.

K. *Festival* shall mean an event or celebration which may recur at regular intervals, and that consists of a program containing multiple elements, such as performances, cultural exhibitions, musical performances, art and craft displays, children's games, competitions, dancing, agricultural displays or programs, historical exhibitions, or religious celebrations. A festival shall include at least two types of activities conducted by the charitable organization that do not include games of chance. An event that is held solely for the purpose of conducting games of chance and providing food and beverages to the participants of the games of chance is not a festival.

6.0 Responsibilities

A. Attorney General employees who provide information to the public with respect to the conduct of games of chance pursuant to R.C. § 2915.02, shall provide complete and accurate information concerning the statutory requirements set forth in that section, consistent with this policy.

B. Attorney General employees who audit or review the use of the money or assets received from the conduct of games of chance conducted by charitable organizations, shall determine that the games of chance were conducted by the charitable organization in compliance with all of the statutory requirements of Chapter 2915 of the Revised Code, consistent with this policy.

7.0 Procedures

A. Attorney General employees who provide information to the public regarding the conduct of games of chance for profit shall advise the public that such games of chance may be conducted only if all of the requirements of R.C. § 2915.02 are satisfied.

B. Attorney General employees who provide information to the public regarding the conduct of games of chance for profit shall advise the public that violation of the requirements of R.C. § 2915.02 may result in criminal penalties, and that criminal enforcement of Revised Code Chapter 2915 lies not with the Attorney General, but with local law enforcement authorities.

C. Attorney General employees who audit or review the use of the money or assets received from the conduct of games of chance conducted by a charitable organization shall determine that the charitable organization conducted the games of chance in accordance with R.C. § 2915.02(D) and this policy.

D. Attorney General employees who audit or review the use of the money or assets received from the games of chance conducted by charitable organizations shall verify that no expenses other than the prizes paid out from the games of chance were paid from the money or assets received from the games of chance and shall verify that all money or assets received from the games of chance were used or distributed in conformance with R.C. § 2915.02(D)(1)(d).

E. Attorney General employees who audit or review the records of the games of chance conducted by charitable organizations shall determine if all records required pursuant R.C. § 2915.10 were accurately maintained by the charitable organization.

F. Any failure to comply with the statutory requirements and this policy discovered by the Attorney General employee's compliance with the procedures set forth in items "C" through "E" above shall be noted in the employee's report on the audited organization.

Dated: March 3, 2005

BINGO – EXCEPTION TO GAMBLING

DEFINITIONS:

Bingo: is defined under Ohio Revised Code (RC) 2915.01(S)(1) and (2) as either a game with the use of bingo cards or sheets and a bingo operator (Traditional Bingo) or instant bingo, punch boards or raffles (Instant bingo).

Calendar year - means November 1 of one year through October 31 of the following year.

Gross Receipts: means all money or assets, including admission fees that person receives from bingo without the deduction of any amounts for prizes paid out or for the expense of conducting bingo. This does not include the following: any money

directly taken from the sale of food or beverage by a charitable organization or a bona fide auxiliary unit of society of a charitable organization conducting the bingo so long as the following conditions are met:

- 1) the auxiliary unit or society has been in existence for two years or longer prior to conducting bingo
- 2) the person who purchases the food or beverage receives nothing of value except the food or beverage
- 3) the food or beverage is sold at a reasonable price

Gross Profit: Gross receipts minus the amount actually expended for the payment of prize awards.

Types of Bingo:

Type I – Traditional bingo with the use of bingo sheets and a bingo operator who calls the combination of letters and numbers by means of a device that will choose the combination by chance.

Type II – Instant bingo played with Type I bingo

Type III – Solely instant bingo

APPLICATIONS FOR A BINGO LICENSE:

Organizations must determine whether if it has applied for a bingo license in the past or whether this will be its first attempt at securing a license. The applications for a renewal or first time application may be found at the Attorney General's office or website.

Annually before the first day in January a charitable organization must file the proper application and submit it to the Attorney General along with the proper fee as set out in RC 2915.08(A)(a)(b).

PROVISIONS FOR ALL TYPES OF BINGO

- 1) A bingo licensee may now begin Type II instant bingo ticket sales at 9:00 a.m. when it has a Type I bingo session that begins at 10:00 a.m.
O.R.C. 2915.09(C)(6)
- 2) The bingo licensee shall either own or lease from a charitable organization all the bingo equipment at a customary rental rate.
- 3) Use a the gross receipts from bingo to pay for prizes, reimbursement of customary expenses for the conduct of bingo
- 4) A member of the organization may be paid a customary wage for selling instant bingo cards so long as none of the compensation is coming from the bingo receipts.

- 5) The fraternal organization is no longer required to pay all direct and indirect expenses by check from the instant bingo account. However, the purchase of instant bingo tickets must be paid by check from the instant bingo checking account. *O.R.C. 2915.101(A)(3)*
- 6) Organizations may reimburse their general fund for reasonable and customary charges of rent and permissible expenses. *O.R.C. 2915.09(A)(2)*
- 7) The charitable organization must conspicuously display its bingo license on the premises where the bingo is being conducted
- 8) Maintain financial and recipient records for a period of three years. See *RC 2915.10* for a detailed list of all records to be maintained.

TRADITIONAL BINGO PROVISIONS

- 1) The bingo licensee must conduct bingo on premises it owns or rents from another charitable organization for a sum on not more than \$600.00 or 45% of gross receipts from the bingo proceeds.
- 2) The bingo licensee may deduct from the total amount of the gross receipts from the lesser of \$600.00 or 45% of gross receipts from the bingo in that division as consideration for the use of the premises.
- 3) The bingo licensee may not pay compensation to a bingo game operator for operating a bingo session that is conducted by the bingo licensee.
- 4) The bingo licensee may not pay compensation to the bingo operator for preparation, selling or serving food or beverages at the site of the bingo operation.
- 5) The bingo licensee may pay for consulting services relating to the bingo operation
- 6) The bingo licensee may not pay concession fees to any person who provides refreshments to the participants in the bingo session.
- 7) The bingo licensee may not pay out more than \$3500.00 in prizes during any bingo session. These prizes do not include awards from instant bingo.

There are several other provisions that may be applicable to your situation. Please see RC 2915.09

INSTANT BINGO PROVISIONS

A bingo licensee may conduct instant bingo if it meets either of the following exceptions:

- a. An IRS determination letter stating that it is tax exempt under Internal Revenue Code (IRC) 501(a), 501(c)(3) and is a charitable organization under RC 2915.01 and in compliance with RC 1716. OR
- b. Is tax exempt under IRC 501(a), described under 501(c)(7), 501(c)(8), 501(c)(10) or 501(c)(19) or a veterans organization as described in 501(c)(4).

An Organization that wishes to conduct instant bingo must:

- 1) conduct bingo only during the hours and days when it is licensed to do so
- 2) lease or purchase supplies to conduct bingo from a licensed distributor as described above.
- 3) keep unsold bingo cards for three years
- 4) not pay fees for services performed in relation to instant bingo

There are several other restrictions that may or may not apply to your situation. See RC 2915.091 for a detailed list.

CHARITABLE DISTRIBUTIONS AND EXPENSES:

Instant bingo organizations rules for distributing net profit from the proceeds of the sale of instant bingo.

1) First \$75,000 of Net Profit (O.R.C.2915.101 (A)(1))

The organization must distribute at least **25 percent** to a 501(c)(3) charitable organization as described in O.R.C. 2915.01(Z)(1) or to a governmental unit or a political subdivision. The organization may retain up to 75 percent for reimbursement or payment of allowable expenses as defined in O.R.C. 2915.01(LL).

2) Net Profit In Excess of \$75,000

At least **50 percent** must go to a 501(c)(3) charitable organization as described in above, or to a governmental unit or a political subdivision. The organization may retain up to **5 percent** for its own charitable purposes or distribute it to a community action agency. The organization may deduct or retain up to **45 percent** for reimbursement or payment of its expenses as defined in O.R.C. 2915.01(LL)

3) Organizations are allowed to transfer the allowable percentage of net profit for the organization's expenses from the checking account devoted exclusively to instant bingo to the organization's general account if the following conditions are met:

a) pays all expenses for the purchase of instant bingo tickets or cards by check drawn from the checking account devoted exclusively to the instant bingo game;

b) deposits the proceeds from the sale of instant bingo into the checking account devoted exclusively to the instant bingo game within seven days of the conduct of the instant bingo;

c) record the sale of all instant bingo tickets upon a ledger form approved by the attorney general;

d) annually provides to the attorney general a written statement, signed by the organization's principal person, attesting that all of the funds so transferred were used for the organization's expenses in conducting the instant bingo and that no part of such

funds were used for paying salaries of any employee who sells instant bingo tickets for the organization, or who prepares, sells, or serves food or beverages at the site of the instant bingo game; and

e) complies with all provisions of Chapter 2915 of the Revised Code in conducting charitable gaming.

VETERAN AND FRATERNAL BINGO PROVISIONS – *The laws set out above are applicable to the conduct of the Type of Bingo you are conducting.*

- 1) An organization may conduct instant bingo other than at a bingo session if it limits the sale of instant bingo tickets to its own premises and only to its members and invited guest.
- 2) For Organizations, a prescribed contract is required between a fraternal organization and a charity when the fraternal organization wishes to raise money for the specified charity. This contract may be found at the Attorney General's office or website.
- 3) The organization must be raising money through such sale for an organization that is tax exempt under IRC 509 (a) 1, 2, or 3 and is a governmental unit or organization which maintains its principle office in the state of Ohio and is in good standing and executes a written contract with the organization.
- 4) Fraternal organizations have expanded hours and days for the sale of Type III instant bingo. Instant bingo ticket sales will be permitted for 12 hours a day, seven days a week and must be between the hours of 10:00 a.m. and 2:00 a.m., but the **hours no longer need to be consecutive**. O.R.C. 2915.13 (A) (1)
- 5) State charities created by a fraternal organization are acceptable 501(c) (3) recipients for net profit from Type III instant bingo ticket sales. The fraternal organizations may also designate how the funds will be allocated. O.R.C. 2915.101(C).
 - a. A 501(c)(3) organization created by a fraternal organization is not limited to the number of different locations it may conduct instant bingo at. Normally a charitable organization is limited to 5 different locations.
- 6) Organizations that own a liquor permit may lose the liquor permit if any violations of the § 2915 are violated.
- 7) Veteran and fraternal organizations will be added to the types of charitable organizations that are permitted to conduct raffles. This provision requires that any organization authorized to conduct a raffle that is not a 501(c)(3) charitable organization must donate 50 percent of the net profit from that raffle to a purpose described in O.R.C. 2915.01(Z), to a governmental unit or to a political subdivision. O.R.C. 2915.092(A)(2)

LIQUOR LICENSE AND GAMBLING

An Organization that own a liquor permit may lose the liquor permit if it violates § 2915.

LINKS:

http://www.ag.state.oh.us/sections/charitable_Law - Attorney General's website where renewal or first time bingo applications may be found.

http://www.ag.state.oh.us/ag_forms/charitable_law.htm - Attorney General's website where the contracts can be found for the bingo operations.

<http://onlinedocs.andersonpublishing.com/oh/lpExt.dll?f=templates&fn=main-h.htm&cp=OAC> – This link will take you to Anderson's Publishing online. From there you will need to type in the search box the code section you wish to review.

2915 – Gambling section of the Ohio Revised Code

2915.02(D) – Gambling exemption

2915.01 – Definitions

2915.09– Restrictions on the conduct of bingo

2915.091 – Restrictions on the conduct of instant bingo

2915.101 (A)(1) – Instant bingo distributions

2915.01(LL) – List of expenses that may or may not be deducted from the gross profit

2915.13 – Section on veterans and fraternal organization instant bingo provisions

1716 – Section on Charitable Organizations

4301.252, 2915.13(C)(1) – Liquor License section for gambling

<http://www.irs.gov/charities/content/0,,id=96986,00.html> – Internal Revenue Service website, link to frequently asked questions about exempt organizations, such as 501 (c) (3) corporation.