

1980 WL 121028 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 9, 1980

***1 Subject: Bingo**

(1) Although the Great Falls Fire Department may be a charitable organization under the caselaw of the State of South Carolina, the organization nonetheless has not received an income tax exemption status from the Internal Revenue Service, and consequently does not qualify as a 'fraternal, religious, or charitable organization exempt from federal income taxation' under [Article XVII, Section 7 of the Constitution of South Carolina](#).

(2) The Supreme Court Opinion of [Bingo Bank, Inc. v. J. P. Strom](#), 268 S. C. 498, 234 S. E. 2d 381 (1977) defines the game of bingo for the purposes of [Article XVII, Section 7 of the State Constitution](#), and is thus the guideline to follow in establishing a constitutionally operable game of bingo.

Robert H. Orr, Jr.
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QUESTIONS:

1. Are the Bingo Games as proposed by the Great Falls Volunteer Fire Department legal?
2. If the proposed Bingo Games are not legal, how should they be structured in order to comply with the law of the State of South Carolina?

STATUTES AND CASES:

The [Constitution of South Carolina \(1976\)](#), [Article XVII, Section 7](#); Title 26, § 501(a), (c)(3), (c)(8), and (c)(10).

[National Turn Verein v. City of Newark](#), 19 N. J. Misc. 452, 20 A. 2d 708 (1941); [Women's Club of Little Falls v. Township of Little Falls](#), 20 N. J. Misc. 278, 26 A. 2d 739 (1942); [Bean v. Piedmont Interstate Fair Association](#), 222 F. 2d 227 (1955); [Eiserhardt v. State Fair Assn.](#), 235 S. C. 305, 111 S. E. 2d 568 (1959); [Bingo Bank, Inc. v. J. P. Strom](#), 268 S. C. 498, 234 S. E. 2d 881 (1977); [Terry v. Boy Scouts of America, Inc.](#), 471 F. supp. 28 (1975).

DISCUSSION:

1. [Article XVII, Section 7 of the Constitution of South Carolina](#) provides that:
'No lottery shall ever be allowed or be advertised by newspapers, or otherwise, or its tickets be sold in this State. The game of bingo, where conducted by charitable, religious or fraternal organizations exempt from federal income taxation or when conducted at recognized annual State and county fairs, shall not be deemed a lottery prohibited by this Section.'

The aforementioned constitutional provision has a plain and clear meaning. The conduct of lotteries within the State of South Carolina is illegal. The sole exception to this ban is the game of bingo when conducted by charitable, religious or fraternal

organizations exempt from federal income taxation or when conducted at a recognized annual State or county fair. The Great Falls Volunteer Fire Department does not purport to be a recognized annual State or county fair. Consequently, our initial inquiry is directed at whether the Great Falls Volunteer Fire Department is considered a charitable, religious, or fraternal organization exempt from federal income taxation within the meaning of [Article XVII, Section 7 of the Constitution of South Carolina](#).

The nature of the organization must withstand scrutiny from two sources—state and federal. To be exempt from federal income taxation the fire department must satisfy the requirements of the Constitutional provision by falling within the definition of that of a charitable, religious, or fraternal organization.

*2 The initial point of inquiry is whether or not the Great Falls Volunteer Fire Department comes within the purview of the constitutional classification of ‘charitable, religious, or fraternal organizations exempt from federal income taxation.’

Charitable, religious or fraternal organizations for the purposes of the Internal Revenue Code are defined by Sections 501(c)(3) (8) and (10) of the United States Code. Section 501(c)(3) defines charitable and religious organizations in the following manner:

••Corporations in any community chest, fund, or foundation organized and operated exclusively for religious ?? for public safety, literary or educational purposes or to ?? national or international amateur sports competitions (but only if no part of its activities involve the provision of athletic facilities or equipment) or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislations (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.”

Section 501(c)(8) defines fraternal organizations in the following manner:

Fraternal beneficiary societies, orders, or associations—

(a) operating under the lodge system, or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(b) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

Under [Section 501\(c\)\(10\) of Title 26 of the United States Code](#) defines the exemptions for fraternal associations in the following manner:

Domestic fraternal societies, orders, or associations, operating under the lodge system—

(a) the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes, and

(b) which do not provide for the payment of life, sick, accident, or other benefits.

Given the above statutory definitions of charitable, religious and fraternal organizations, the Internal Revenue Service is empowered itself to make the determination as to whether or not a given organization qualifies for tax exemption for their purposes. Should the Internal Revenue Service issue tax exempt status to a given organization it can be properly assumed, for the purposes of the Internal Revenue Code, such an organization qualifies as a charitable, religious or fraternal organization. This is not to say, however, that a determination on the part of the Internal Revenue Service that a given organization qualifies

for the appropriate tax exemption means that it is conclusively presumed that such an organization is a charitable, religious, or fraternal organization for the purposes of [Article XVII, Section 7 of the Constitution](#).

*3 The State of South Carolina must also determine that an organization is either 'charitable, religious, or fraternal' within the purview of [Article XVII, Section 7 of the Constitution](#). The State may first examine the nature of the organization using the criteria set forth in the federal legislation above. Simply because the federal government makes an initial determination at a given point in time, does not necessarily mean the State cannot go behind that determination at a point subsequent to examine whether or not the organization qualifies under the federal provisions. However, it appears that for the purposes of [Article XVII, Section 7 of the Constitution](#), mere conformity to the Internal Revenue Code is insufficient in all cases in determining the organizations qualified to conduct the game of bingo in South Carolina. For instance, while a fraternal order might be defined as an association formed, aside from fraternal objects, for the sole purpose of rendering financial aid or other assistance to its members, as in [Section 501\(c\)\(8\) of the Internal Revenue Code](#) and 36 Am. Jur. 2d 807, Fraternal Orders, etc., it does not appear that such a fraternal organization would be qualified for the purposes of [Article XVII, Section 7 of the South Carolina Constitution](#). Charitable and religious organizations, as stated above, must be of a public purpose in order to comport with the State Constitution. Likewise, fraternal organizations exempt from the lottery laws must be charged with a public purpose. Thus, fraternal organizations for the purposes of [Article XVII, Section 7 of the Constitution](#) must be of a character beneficial to the public generally and devoted to uses which were of substantial benefit to the public and to the community in order to establish an exemption from the bingo laws. See [Women's Club of Little Falls v. Township of Little Falls](#), 21 N. J. Misc. 278, 26 A. 2d 739 (1942); [National Turn Verein v. City of Newark](#), 19 N. J. Misc. 452, 20 A. 2d 708 (1941). The description of the volunteer fire department as provided clearly fails to show the volunteer fire department to be a fraternal organization within the meaning of [Article XVII, Section 7 of the State Constitution](#).

We turn next to the question of whether or not the volunteer fire department you describe constitutes a charitable organization and is therefore exempt from the lottery provisions of the code. Looking beyond the federal legislation outlined above, it must be said that certain types of activity in the interest of the public welfare have always been considered charitable and any organization founded upon public donations and engaged without profit in such activity of a non-eleemosynary nature are unquestionably charitable. 15 Am. Jur. 2d, Charities, § 181, p. 217. Further, a limitation of benefits to a particular segment of society will not defeat the classification of an organization as charitable. As long as no private or selfish interest appears, an organization might be organized for the benefit of the blind, for the benefit of the mute, for those suffering under special diseases, for the aged, for infants, for women, for men, or for different callings or trades by which humanity earns its bread, and as long as the community as a whole directly or indirectly benefits, though only a small number may be directly benefited, it is public. Id. at p. 219. Whether or not the Great Falls Volunteer Fire Department is a charitable organization depends upon its purpose and function and whether or not it has been established primarily for the public good. [Terry v. Boy Scouts of America](#), 471 F. Supp. 28 (1978); [Brown v. Anderson County Hospital Ass'n.](#), 234 S. E. 2d 873 (1977); [Eiserhardt v. State Fair Ass'n.](#), 235 S. C. 305, 111 S. E. 2d 568 (1959); [Bean v. Piedmont Interstate Fair Association](#), 222 F. 2d 227 (1955).

*4 By its title it appears that the Great Falls Volunteer Fire Department was designed to fulfill a public purpose to provide fire service and benefit for the Great Falls Community. However, determination of whether a given organization is a public charity entails an examination of the functions of the organization and the fact that an organization has a name which denotes a public purpose is not controlling or dispositive. Inasmuch as information pertaining to the purpose, function and organization of the Great Falls Volunteer Fire Department has not been provided to this Office, it is not possible at this time to resolve whether or not the Great Falls Volunteer Fire Department conforms with the definition of a public charitable organization under [Article XVII, Section 7 of the Constitution of South Carolina](#).

It is plainly evident that the Great Falls Volunteer Fire Department is not a religious organization within the meaning of [Article XVII, Section 7](#), therefore, discussion to that effect is not here necessary.

2. You have asked whether or not the game in question is permissible under the law. The opinion of the Supreme Court in the case of [Bingo Bank, Inc. v. J. P. Strom](#), 268 S. C. 498, 234 S. E. 2d 881 (1977), defines the game of bingo for the purposes of

[Article XVII, Section 7 of the State Constitution](#). It is the Opinion of this Office that the game of bingo, as described therein, is the only game permitted by that Section. Any other game, regardless of its name, is improper, and thus constitutes a lottery which is illegal under state law. Reference to that case provides an explicit guideline for determining whether the game in question is proper.

CONCLUSION:

1. It is the Opinion of this Office that although the Great Falls Volunteer Fire Department may be a charitable organization under the caselaw of the State of South Carolina, the organization nonetheless has not received an exemption status from the Internal Revenue Service, and consequently does not qualify as a ‘fraternal, religious, or charitable organization exempt from federal income taxation’ under [Article XVII, Section 7 of the Constitution of South Carolina](#). If the organization is able to obtain such an exemption from the Internal Revenue Service, then in all likelihood, it may be able to operate the game of Bingo within the purview of the constitutional provision.

2. It is the Opinion of this Office that the Supreme Court case of [Bingo Bank, Inc. v. J. P. Strom, 268 S. C. 498, 234 S. E. 2d 881 \(1977\)](#) adequately resolves the final issue of this case. The Supreme Court in that case defined the game of bingo for the purposes of [Article XVII, Section 7 of the State Constitution](#). Reference to that case provides an explicit guideline for determining whether or not the game in question is proper.

Sincerely yours,

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