

1975 WL 29020 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 21, 1975

*1 Officers and Noncommissioned Officers Open Messes at Charleston Air Force Base may operate bingo games.

Honorable Wheeler M. Tillman
Member from Charleston
S. C. House of Representatives

QUESTION(S) PRESENTED:

Whether the open mess programs on Charleston Air Force Base, which is not fully ceded to the U. S. Government, fall within the exempt organizations in Article XVII, Section 7 of the South Carolina State Constitution as to permit the playing of bingo?

STATUTES, CASES, ETC., INVOLVED

Constitution of South Carolina, 1895, Article XVII, Section 7, as amended and ratified in Act No. 43 of 1975.

Title 26, [United States Code, Section 501](#).

83 C.J.S., Section 213, [Constitutional Provisions: Construction](#).

Air Force Regulation 215-1.

[State ex rel. Leahy v. O'Rourke, 146 P. 2d 168 \(Montana 1944\)](#).

[Woman's Club of Little Fall v. Township of Little Falls, 26 A.2d 739 \(N.J. 1942\)](#).

DISCUSSION OF ISSUE(S)

Air Force Regulation 215-1, Volume Xi, paragraph 8-1, provides:

'Bingo may be played in open messes on installations or portions thereof within the United States, its territories and possessions which are fully ceded to the U. S. government. Bingo may also be played on those installations that are not fully ceded where the playing of bingo is allowed by the state, territory or possession.'

Charleston Air Force Base falls into the latter class of Bases, in that it is not fully ceded to the Federal Government. Therefore, as to whether Bingo may be played in the open messes at Charleston Air Force Base, the newly amended Article XVII, Section 7, of the S. C. Constitution of 1895, is applicable. Art. XVII Section 7 provides:

'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, when 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.' (Emphasis added)

The bingo exception within this Section applies only to certain tax exempt organizations under federal law. Constitutional provisions should be construed strictly 'as to prevent evasion and to guard against the evils intended to be prevented.' 82 C.J.S. Section 213. Using this rule of construction, an open mess system must fall into one of these three categories, even though it is tax exempt as an instrumentality of the United States government.

Since open messes by regulation do not profess to be religious or charitable organization, but rather organizations for 'morale, welfare, and recreation', (Air Force Regulation 215-1), the issue turns on whether open messes are 'fraternal organizations' within the meaning of Article XVII, Section 7, South Carolina Constitution.

Prior to the bingo exceptions becoming a part of Section 7, *supra*, there was no class of persons or organizations exempt in any fashion from the gambling prohibitions within this State. This has left this entire matter without the benefit of court decisions of this State's judiciary that could shed light on the question. Whether an open mess could qualify for federal tax exemption as a fraternal organization under 26 U.S.C. Section 501(c) is probably an academic question. Because of its existing tax exempt status, the Internal Revenue Service would be hesitant to give an open mess such a ruling.

*2 However, decisions in other jurisdictions on the question of qualification as a fraternal organization would suggest that an open mess would so qualify. In *State ex rel Leahy v. O'Rourke, supra*, the Montana Supreme Court was dealing with a statute, which similar to ours, exempted religious, fraternal, and charitable organizations from a general prohibition of gambling. There the defendant failed to qualify for the exemption as a fraternal organization, as the court centered its attention on the defendants' organization failing in three characteristics of a fraternal organization—failure to have regularity of membership, failure to have regularity of meetings, and conducting activities which were designed for the purpose of profit to individual members. Certainly open messes do not suffer failure in these respects.

The New Jersey Supreme Court defined a fraternal organization as 'an organized body of men (or of women, or of both) who are banded together, not for pecuniary profit, but for mutual assistance, and to promote moral, intellectual or social benefits among the members.' (emphasis added) *Women's Club of Little Falls v. Township of Little Falls, supra* at 741. Under this definition an officers' or enlisted men's open mess does qualify as a fraternal organization, in that all revenues are spent on actual expenses, with the excess not profiting any member, and that these open messes are organized with a governing body elected by the membership.

CONCLUSION

Therefore, it is the opinion of this Office that an officers' or enlisted men's open mess at the Charleston Air Force Base may operate bingo games as a fraternal organization exempt from federal income taxation.

Harry B. Burchstead, Jr.
Assistant Attorney General

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