

# **Report To The Mississippi Legislature**



## **An Evaluation of the Mississippi Gaming Commission's Bingo Division**

**November 13, 1997**

Mississippi's Charitable Bingo Law does not authorize the Gaming Commission's Bingo Division to restrict bingo licensure to authentic charities with a record of charitable operations or to audit the flow of funds from receipt by bingo licensees to use of funds for charitable purposes.

The Bingo Division lacks trained accounting personnel necessary to perform financial analysis tasks associated with gaming regulation, does not obtain financial documentation sufficient to carry out financial regulation of licensees, and does not comply with its own procedures relative to agents' reporting to management regarding work plans and achievements. Also, the current annual license requirement places an undue burden on agency staff who must spend significant time on background checks in the late summer and early autumn, with less time available to them for inspections of bingo halls.

**The PEER Committee**

## **PEER: The Mississippi Legislature's Oversight Agency**

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

Mississippi's constitution gives the Legislature broad power to conduct examinations and investigations. PEER is authorized by law to review any public entity, including contractors supported in whole or in part by public funds, and to address any issues which may require legislative action. PEER has statutory access to all state and local records and has subpoena power to compel testimony or the production of documents.

PEER provides a variety of services to the Legislature, including program evaluations, economy and efficiency reviews, financial audits, limited scope evaluations, fiscal notes, special investigations, briefings to individual legislators, testimony, and other governmental research and assistance. The Committee identifies inefficiency or ineffectiveness or a failure to accomplish legislative objectives, and makes recommendations for redefinition, redirection, redistribution and/or restructuring of Mississippi government. As directed by and subject to the prior approval of the PEER Committee, the Committee's professional staff executes audit and evaluation projects obtaining information and developing options for consideration by the Committee. The PEER Committee releases reports to the Legislature, Governor, Lieutenant Governor, and the agency examined.

The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**An Evaluation of the Mississippi Gaming Commission's  
Bingo Division**

**November 13, 1997**

**The PEER Committee  
Mississippi Legislature**

The Mississippi Legislature

**Joint Committee on Performance Evaluation and Expenditure Review**

PEER Committee

**SENATORS**  
EZELL LEE  
Vice-Chairman  
WILLIAM CANON  
Secretary  
HOB BRYAN  
BOB M. DEARING  
JOHNNIE E. WALLS, JR.



**REPRESENTATIVES**  
WILLIAM E. (BILLY) BOWLES  
Chairman  
ALYCE G. CLARKE  
HERB FRIERSON  
TOMMY HORNE  
MARY ANN STEVENS

**TELEPHONE:**  
(601) 359-1226

**FAX:**  
(601) 359-1233

Post Office Box 1204  
Jackson, Mississippi 39215-1204

Max K. Arinder, Ph.D.  
Executive Director

**OFFICES:**  
Professional Building  
222 North President Street  
Jackson, Mississippi 39201

November 13, 1997

Honorable Kirk Fordice, Governor  
Honorable Ronnie Musgrove, Lieutenant Governor  
Honorable Tim Ford, Speaker of the House  
Members of the Mississippi State Legislature

At its meeting of November 13, 1997, the PEER Committee authorized release of the report entitled **An Evaluation of the Mississippi Gaming Commission's Bingo Division.**

A handwritten signature in cursive script that reads "Billy Bowles", written over a horizontal line.

Representative Billy Bowles, Chairman

**This report does not recommend increased  
funding or additional staff.**

## ***Table of Contents***

Letter of Transmittal .....	i
List of Exhibits .....	v
Executive Summary.....	vii
Introduction .....	1
Authority .....	1
Purpose and Scope.....	1
Method .....	1
Overview .....	2
Background .....	4
Significance of Bingo as a Charity Fundraising Tool.....	4
Summary of the Charitable Bingo Law.....	4
Licensing of Entities Eligible to Conduct Bingo .....	4
Legal Expenditures.....	5
Licensing Lessors, Suppliers, and Others Associated with Bingo.....	5
Bingo and Social Risks .....	6
The Charity Fraud Risk.....	6
The Cheat Risk.....	7
The Level Playing Field Risk .....	8
Conclusions .....	9
Adequacy of State Law and Gaming Commission Rules.....	9
Protection Against the Charity Fraud Risk .....	10
Protection Against the Cheat Risk.....	19
Protection Against the “Even Playing Field” Risk.....	20
Adequacy of the Bingo Division’s Operations.....	21
Responsibilities of the Bingo Division.....	21
Education, Training, and Financial Records Review.....	22
Management and Oversight of Agents.....	25
Sanctions.....	27
Annual Relicensure and the Regulatory Process.....	28

***Table of Contents (continued)***

Recommendations.....	30
Legislative Recommendations.....	30
Administrative Recommendations .....	31
Appendix A:     Summary of States' Controls on Charitable Bingo Used to Restrict Entry, Control Charitable Expenditures, and Regulate Session Length .....	33
Appendix B:     Analysis of Agents' Time Devoted to Bingo Licensure Background Checks.....	37
Agency Response.....	39

***List of Exhibits***

1.	Flow and Use of Funds from Bingo Operations.....	15
2.	Transfer of Funds Between Selected Bingo Licensees and Related Parties, April 1995 through December 1996.....	17

---

# **An Evaluation of the Mississippi Gaming Commission's Bingo Division**

## **Executive Summary**

***November 13, 1997***

---

### **Introduction**

PEER reviewed regulation of charitable bingo in Mississippi to determine the societal risks associated with this form of legalized gambling, whether state law and Gaming Commission regulations adequately address these risks, and whether the commission effectively implements its legal mandate.

The principal risks associated with legalized bingo are that licensees might not meet their charitable obligations which they accept as a precondition to licensing, that games might not be conducted fairly, and that the competitive playing field for all charities might not be kept level so that all have opportunity to use charitable bingo as a means of raising funds.

### **Overview**

State law does not adequately address the charity fraud risk in that it does not:

- authorize the commission to restrict bingo licensure to bona fide charities with a record of charitable operations;
- authorize the commission to track the flow of funds to determine that charitable causes are being supported;
- determine clearly the duties to charity of veterans' organizations; and,
- provide the commission with authority to devise standards to protect against abuses in the appraisal process.

Additionally, Gaming Commission rules dealing with controls on the number of sessions a licensee may operate have not been in compliance with state law.

The weaknesses in law have allowed organizations which have not carried out significant charitable activities to become licensed to conduct chari-

table bingo. Further, these weaknesses have left the Gaming Commission without legal authority to require licensees to submit plans for the support of charitable activities and to audit for material compliance with these plans.

The commission's lack of authority over the methods used by appraisers in commercial leasing leaves the commission without a way of insuring that the methods used in appraising property give a landowner only a fair price and not an excessive price on the property.

With respect to operations of the Gaming Commission's Bingo Division, the division lacks the trained accounting personnel necessary to perform financial analysis tasks associated with gaming regulation, lacks proper financial documentation to carry out financial regulation of licensees, and does not comply with its own procedures relative to agents' reporting to management regarding work plans and achievements. Also, the commission's hearings procedures contain technical deficiencies relative to burden of proof and licensees making legal arguments before the entire commission when appealing decisions of the agency hearing's officer.

These conditions result in inconsistencies in the enforcement of agency rules. More importantly, the lack of trained accounting personnel to regulate the activities of bingo licensees leaves the agency without the staff needed to review financial reports of bingo licensees to insure that persons involved in the business are not owners of interests in other businesses such as lessors or suppliers.

### **Recommendations**

The Legislature should amend the Charitable Bingo Law (MISS. CODE ANN. Section 97-33-50 et seq.) to provide the Gaming Commission with authority to restrict licenses to entities with a record of providing charitable services. The law should be amended to require that licensees submit plans of support for charitable activity which the commission can audit to insure that bingo charities are



making material progress toward meeting their expressed purposes of supporting charities.

The Legislature should also amend the law to allow the commission to set standards for appraisals to be submitted for commercial leases. PEER also recommends that the Legislature change the bingo licensure cycle from one year to two, with staggered expiration dates to reduce the annual workload for agents involved in the review of license applications.

The Gaming Commission should adhere to its policy which requires agents' written plans of work

and reports on accomplishments. The agency should review its current positions filled and vacant to determine if it has resources to carry out the financial accounting analysis needed by the Bingo Division. In the event that the commission cannot carry out this function with existing resources, it could request additional resources specifically for this purpose.

PEER also recommends that the commission amend its rules to allow attorneys representing licensees and the state to argue errors of law before the commission. Further, the commission should amend its rules to shift the burden of proof to the state in matters involving penalties.

**For More Information or Clarification, Contact:**

PEER Committee  
P. O. Box 1204  
Jackson, MS 39215-1204  
(601) 359-1226  
<http://www.peer.state.ms.us>

Representative Billy Bowles, Chairman  
Houston, MS (601) 456-2573

Senator Ezell Lee, Vice-Chairman  
Picayune, MS (601) 798-5270

Senator William Canon, Secretary  
Columbus, MS (601) 328-3018

# **An Evaluation of the Mississippi Gaming Commission's Bingo Division**

## ***Introduction***

### **Authority**

The PEER Committee authorized an evaluation of the Mississippi Gaming Commission's Bingo Division. The Committee acted in accordance with MISS. CODE ANN. Section 5-3-51 et seq.

### **Purpose and Scope**

This review answers the following questions regarding the Bingo Division's capability to regulate charitable bingo effectively and in the public interest:

- What are the social risks associated with legal bingo?
- Do state laws and Gaming Commission rules adequately address these risks?
- Does the Gaming Commission effectively implement bingo laws and regulations?

### **Method**

In conducting this review, PEER:

- sent questionnaires to Mississippi bingo licensees concerning strengths and weaknesses of current bingo laws, regulations, and operations of the Bingo Division;
- contacted selected states regarding the scope and content of their bingo regulations;
- obtained information from other states regarding potential problems associated with illegal activity being conducted through bingo operations;
- reviewed records of the Gaming Commission's Bingo Division;

- reviewed current literature on legalized gambling and bingo regarding significant social risks associated with gaming activities;
- determined the state's regulatory needs based on the risks associated with bingo;
- reviewed state law and Gaming Commission practices to determine whether both meet regulatory needs concerning bingo regulation;
- derived criteria from the assessment of social risks and from other states' practices to judge the content of Mississippi's bingo regulatory laws and enforcement program; and,
- developed recommendations to address weaknesses in state law or practice concerning bingo regulation.

### **Overview**

PEER reviewed regulation of charitable bingo in Mississippi to determine the societal risks associated with this form of legalized gambling, whether state law and Gaming Commission regulations adequately address these risks, and whether the commission effectively implements its legal mandate.

The principal risks associated with legalized bingo are that licensees might not meet their charitable obligations which they accept as a precondition to licensing, that games might not be conducted fairly, and that the competitive playing field for all charities might not be kept level so that all have opportunity to use charitable bingo as a means of raising funds.

State law does not adequately address the charity fraud risk in that it does not:

- authorize the commission to restrict bingo licensure to bona fide charities with a record of charitable operations;
- authorize the commission to track the flow of funds to determine that charitable causes are being supported;
- determine clearly the duties to charity of veterans' organizations; and,
- provide the commission with authority to devise standards to protect against abuses in the appraisal process.

Additionally, Gaming Commission rules dealing with controls on the number of sessions a licensee may operate have not been in compliance with state law.

The weaknesses in law have allowed organizations which have not carried out significant charitable activities to become licensed to conduct charitable bingo. Further, these weaknesses have left the Gaming Commission without legal authority to require licensees to submit plans for the support of charitable activities and to audit for material compliance with these plans.

The commission's lack of authority over the methods used by appraisers in commercial leasing leaves the commission without a way of insuring that the methods used in appraising property give a landowner only a fair price and not an excessive price on the property.

With respect to operations of the Gaming Commission's Bingo Division, the division lacks the trained accounting personnel necessary to perform financial analysis tasks associated with gaming regulation, lacks proper financial documentation to carry out financial regulation of licensees, and does not comply with its own procedures relative to agents' reporting to management regarding work plans and achievements. Also, the commission's hearings procedures contain technical deficiencies relative to burden of proof and licensees making legal arguments before the entire commission when appealing decisions of the agency hearing's officer.

These conditions result in inconsistencies in the enforcement of agency rules. More importantly, the lack of trained accounting personnel to regulate the activities of bingo licensees leaves the agency without the staff needed to review financial reports of bingo licensees to insure that persons involved in the business are not owners of interests in other businesses, such as lessors or suppliers.

## ***Background***

### **Significance of Bingo as a Charity Fundraising Tool**

Mississippi bingo halls take in considerable amounts of money in a fiscal year. Based on FY 1996 data obtained from the Mississippi Gaming Commission, approximately 128 bingo licensees in Mississippi operating charitable bingo games generated over \$135 million in gross revenues. According to unaudited financial information licensees file with the Gaming Commission, these licensees transferred to their charity accounts approximately \$13 million between July 1995 and June 1996. During the same period, these licensees paid out approximately \$104 million in prizes and \$18 million in operating expenses.

Because of the volume of funds collected in the name of charitable causes, the regulation of bingo is a significant matter. While some charities are undoubtedly assisted by the collection of funds from bingo operations, there is some risk that persons conducting games will do so for their own profit (see **Bingo and Social Risks**, pages 6 through 8.) Consequently, the state needs a strong and vigilant regulatory body capable of insuring that bingo is conducted fairly and for the legally intended purpose of charitable support.

### **Summary of the Charitable Bingo Law**

Mississippi's Charitable Bingo Law, codified as MISS. CODE ANN. Section 97-33-50 et seq., establishes the terms and conditions under which bingo may be legally conducted in Mississippi. These sections establish a procedure for licensing entities eligible to conduct bingo, define legally acceptable expenditures for such entities, and provide for the licensing of suppliers and other persons who provide support to the bingo industry. Such controls are established to enable the state to determine whether legitimate charity licensees consisting of suitable persons are engaged in bingo. These provisions are also intended to control the amounts and recipients of bingo proceeds to entities other than charities.

### ***Licensing of Entities Eligible to Conduct Bingo***

Section 97-33-51 provides that in order to be legal, a bingo game in which prizes are given must be conducted in conformity with the Charitable Bingo Law. Section 97-33-53 requires that an entity must be a "charitable organization" to be eligible for a bingo license. Mississippi law defines a "charitable organization" as one which has either obtained or has applied for tax-exempt status under Internal Revenue Code Section 501(c) or (d) and is either a chapter or post of a national veterans' organization or a not-for-profit civic, educational, or wildlife organization, or a religious

organization domiciled in the state (see Section 97-33-53[b]). The term of a license is one year and annual re-application is required.

For an entity to be licensed, the Gaming Commission must be satisfied that the entity meets the previously mentioned charitable criteria and that the members in charge of the bingo games are of good moral character and that the games will be conducted in accordance with state laws and rules of the Gaming Commission. The commission may not issue licenses to persons who have been convicted of gambling-related offenses or other offenses described by the commission in its rules or to those persons who are "professional gamblers," which is not defined by the statute. Firms which have as officers or directors persons who have been convicted of such offenses are also be barred from licensure.

### *Legal Expenditures*

As stated above, Mississippi law provides that entities conducting bingo games do so for charitable purposes. Specifically MISS. CODE ANN. Section 97-33-52 requires that the net proceeds of bingo be expended for the purpose for which the entity is created. Proceeds of bingo may not be used to purchase, improve, or construct buildings solely used for the purpose of conducting bingo games. A bingo licensee may pay only those expenses of bingo operations authorized under law. Expenses which may be paid are those associated with procuring supplies and equipment necessary to conduct games and reasonable expenses associated with obtaining or performing janitorial, bookkeeping, and security services, as well as reasonable market rent for the building used for bingo operations. Salaries may also be paid to bingo supervisors and others so long as the salaries paid do not exceed \$400 per session. Prizes may not exceed \$7,500 per session unless the bingo licensees play but one session per week, under which conditions the limit is \$8,000 per session (see sections 97-33-67 and 97-33-69).

State law does not require that licensees operating bingo halls provide a specific sum to support organizations carrying on charitable activities. A bingo licensee must use the net proceeds of bingo halls to support the purposes for which the organization is created. This may be achieved by either providing assistance to other charitable organizations or providing services directly to persons in need of assistance.

### *Licensing Lessors, Suppliers, and Others Associated with Bingo*

State law requires that manufacturers, distributors, and commercial lessors be licensed. Manufacturers and distributors provide bingo supplies such as bingo paper and electronic machines to bingo licensees. Commercial lessors lease buildings to bingo licensees where games are conducted. In some cases, the lessor is the actual owner of the building.

In other cases, the lessor is a real estate management firm which obtains a lease from the owner and subleases the building to the bingo licensee. This licensure requirement is intended to determine suitability of these persons to do business with bingo halls in Mississippi. The law bars persons convicted of crimes from being involved in any of these businesses and such licensees may not own direct or indirect interests in bingo halls.

Commercial lessors must also comply with additional requirements. Section 97-33-203 requires that lessors submit two real estate appraisals to the Gaming Commission to justify changes in rent. Further, the Gaming Commission must approve lease terms between commercial lessors and bingo licensees. The purpose of these provisions is to protect against excessive rental charges which may reduce the amount of money made available to charity.

### **Bingo and Social Risks**

Charitable bingo in Mississippi is a form of legalized gambling. As in the case of other forms of gambling, the activity poses certain risks to the people of Mississippi. State law and the efforts of regulators should be formulated in order to protect the state's residents from these associated risks.

After reviewing the literature on bingo, including the laws of other states which have chosen to legalize bingo for the exclusive support of charitable activities, PEER determined that the following are the principal risks associated with the legalization of bingo for charitable purposes:

- the charity fraud risk;
- the cheat risk; and,
- the even playing field risk.

These risks are described in detail in the following sections.

#### *The Charity Fraud Risk*

Perhaps the most significant risk associated with legalization of bingo for charitable purposes is the charity fraud risk. Bingo licensees may be tempted to operate their halls for purposes other than the support of charity. Their purpose for doing this could be to either skim funds for criminal purposes, launder funds from illegal operations thorough a bingo hall, or to use funds legally obtained for the support of activities which are not charitable in nature.

Mississippi's early experiences with legalized bingo clearly exemplify the risk of criminal activities associated with operation of bingo halls. In 1988, the Office of the Attorney General, operating in conjunction with local law enforcement in Forrest County, closed three Hattiesburg-area bingo halls which were operating illegally. Property from the three halls was forfeited in accordance with state laws providing for civil forfeiture of property used in certain criminal conspiracies (Racketeer Influenced and Corrupt Organizations [RICO]) and under the state's controlled substances laws and gambling laws.

Neighboring states have also experienced recent problems with bingo licensees operating as a cover for illegal activities. As recently as November 1996, a federal grand jury in Louisiana indicted two persons who ran a bingo hall with multiple counts of money laundering and illegal gambling operations. The persons indicted allegedly used money from the bingo hall for their own benefit rather than for a charitable purpose.

In Florida, a state grand jury investigated several large bingo halls and concluded that many of the largest halls in Florida provided more benefit to the persons operating them than to the charities for which bingo was supposed to provide financial assistance. The Grand Jury for the 12th Judicial District reported that typically large bingo halls provide their licensees with as much as \$2,000 per day, while only giving the charity \$100 to \$200 per day.

As mentioned earlier, it is also possible for a bingo hall to be legitimate on its face, yet operated for the benefit of persons or activities not charitable. In these instances, the hall is not operated as part of a criminal conspiracy, but is operated to enrich persons other than those engaged in charitable purposes.

Several states have enacted comprehensive statutory schemes to provide protection against bingo licensees without charitable purposes. These statutory schemes allow for audits of the licensee and erect barriers to entry for those organizations which have not established a record of providing material assistance to charitable causes. For a detailed discussion of how Mississippi's law protects against these risks, see page 10 of this report.

### *The Cheat Risk*

The general public often perceives that persons who gamble may be cheated by sharp operators whose purpose is to take money without giving a fair chance of winning. Most states recognize this risk and make provision in their laws to protect patrons from cheating schemes in gambling establishments. Bingo is no exception to this, as the states which have regulated it have enacted laws dealing with this risk by providing some degree of patron protection against cheating. For an overview of how Mississippi's law addresses this matter, see page 19 of this report.



### *Level Playing Field Risk*

States which have legalized bingo for charitable purposes have authorized a broad range of organizations to play bingo. Such organizations include religious organizations, veterans' organizations, and other not-for-profit organizations which are eligible for tax-exempt status under Internal Revenue Code Sections 501(c) and (d). Such organizations may intend to play bingo only once a week to raise money for a church. Others may choose to play as often as the law allows them to play bingo. Theoretically, large bingo halls could play called bingo for an unlimited amount of time during a week. Such activity, coupled with aggressive promotion, could make it difficult for small halls to compete. Many states, seeing that small halls could be placed at a competitive disadvantage, have established limits on the amount of time per week a bingo hall may play called bingo and on the total amounts of prizes a hall may offer. ("Called bingo" is what is traditionally thought of as bingo. A person calls randomly generated numbers which players mark off on their cards). This enables a small hall to compete by being open when others are closed, and in some cases, by giving larger prizes. For an overview of how Mississippi's law addresses this matter, see page 20 of this report.

## **Conclusions**

PEER conducted field work to address the following primary questions regarding the Bingo Division's capability to regulate charitable bingo effectively and in the public interest:

- Do state laws and Gaming Commission rules adequately address the risks associated with legalized bingo?
- Does the Gaming Commission effectively implement bingo laws and regulations?

### **Adequacy of State Law and Gaming Commission Rules**

**Do state laws and Gaming Commission rules adequately address the risks associated with legalized bingo?**

***While Mississippi law and Gaming Commission rules establish standards and procedures for protecting against some of the risks mentioned on pages 6 through 8, these laws and rules do not fully meet the state's needs to protect against the charity fraud risk:***

- ***State law does not provide the Gaming Commission with statutory authority to inquire closely into the operations of charitable organizations and monitor their transactions.***
- ***State law does not provide the Gaming Commission with legal authority to control processes by which appraisals are obtained and performed for commercial lessors.***

***Generally, state law adequately addresses the other risks associated with legalized bingo, although some technical corrections would make Gaming Commission rules more effective tools.***

In arriving at the above conclusion, PEER sought the answers to several related, more specific questions:

*Does Mississippi law adequately protect against the risk that charitable licensees may not operate their bingo halls for the benefit of charities?*

*Do state law and commission practice protect against the cheat risk?*

*Do state law and commission practice protect against the level playing field risk?*

## *Protection Against the Charity Fraud Risk*

*Does Mississippi law adequately protect against the risk that charitable licensees may not operate their bingo halls for the benefit of charities?*

*For reasons discussed below, Mississippi law does not adequately address this risk. State law establishes an entry standard which allows organizations without a charitable track record to enter into the bingo business and does not allow the regulatory authority to audit non-bingo expenses of licensees to insure that they are expended for charitable purposes. Current practice regarding contracting with commercial lessors does not insure that fair rent is paid to these entities. The effect of these weaknesses is that the Gaming Commission cannot protect against the risk that funds collected in the name of charity will be disposed of in the manner most beneficial to charity.*

Of critical importance to understanding the purpose of legalized bingo in Mississippi is MISS. CODE ANN. Section 97-33-52, which requires that after expenses, the net proceeds of bingo are to be expended for the purposes for which the organization was established. Only charitable organizations may conduct bingo. Consequently, it can be inferred that the Legislature intended bingo to be a fundraising activity for persons who have the intention of supporting charitable activities within the state.

Mississippi's licensure provisions do not provide adequate legal safeguards to insure that bingo activities and funds support charitable acts. Adequate safeguards would be those necessary to insure that the charitable purpose of bingo laws is carried out and would address the risks noted above. Specifically, these safeguards would include provisions to ensure that licensees are reputable charitable organizations, that funds derived from bingo operations go to charities, that the law clearly addresses the charitable support requirements for all licensees, and that the requirements for the use of lessors ensure that only a fair market value is paid to real estate lessors. The laws would also protect against cheats and would make reasonable efforts to maintain a level playing field for the broad range of charitable organizations which could qualify to operate bingo as a fundraising activity. The following discusses how Mississippi law addresses these matters.

MISS. CODE ANN. Sections 97-33-52 through 97-33-67 establish guidelines for persons who seek licenses to operate bingo halls. As noted above, these provisions of law require that a person seeking a license to operate a bingo hall establish eligibility to operate a hall by establishing that his or her purposes are charitable within the meaning of state law and that he or she is morally competent to hold a license.

Specifically, Section 97-33-55 requires that an applicant for a bingo license provide the Gaming Commission with the officers of the entity, the location and times when games are to be conducted, the prizes to be given to

players, the expense items associated with operating games, and the purposes to which net proceeds of bingo are to be devoted and in what manner. These applicants must also be charitable organizations. As noted earlier, an organization may be considered charitable if it can provide a copy of its application for Internal Revenue Code Section 501(c) or (d) status.

These requirements are necessary to carry out the purposes of the Charitable Bingo Law. The principal problem with these provisions is that they lack additional protections found in other state's laws which protect against licensees intent on using charity funds for non-charitable purposes. Specifically, the major weaknesses in Mississippi law are as follows.

- *State law does not require that applicants for a charitable bingo license show a documented record of providing support to charitable purposes.*

Mississippi's liberal licensure requirement does not require that a potential licensee show any experience or history in providing charitable services to the public or a portion thereof. Specifically, MISS. CODE ANN. Section 97-33-55 provides that charitable organizations desiring to conduct bingo in Mississippi must do so with a license. Section 97-33-53(b), which defines charitable organizations, includes any not-for-profit organization which has filed for its Internal Revenue Code Section 501(c) or (d) status. Thus a new organization which has no track record of operating as a not-for-profit charitable organization may obtain a license under Mississippi law. Because of the specific statutory allowance for 501(c) or (d) applicants, the Gaming Commission is not legally authorized to apply a more stringent standard (such as being a not-for-profit, tax-exempt organization for three years) when making decisions as to who may legally obtain a license.

The state of Washington, a leader in both comprehensiveness and detail of controls, requires that a licensee must show continuous operation for twelve months prior to obtaining a license to conduct bingo. Idaho also requires that organizations exist for one year prior to licensing. Maine requires two years; Texas requires three years; and Indiana, Massachusetts, and Nebraska require that organizations operate for five years prior to obtaining a bingo license.

The essential character of these requirements is that an entity prove that it is an ongoing not-for-profit organization. States such as Washington carry the requirements a step further by requiring continuous operation. This requires that the organization prove that it has actually been performing functions and has not simply been incorporated without carrying out activities.

An example of a charitable organization which has been able to enter into Mississippi charitable bingo without an established record of

operations is Mississippi Wildlife Conservation, Inc., of Crystal Springs, Mississippi. This entity was first licensed by the Gaming Commission to conduct charitable bingo in 1994, the year it sought its Internal Revenue Code Section 501(c) status as a not-for-profit organization. (See Appendix A, page 33, for other states' entry requirements into charitable bingo.)

According to its charter and by-laws, this organization was established to:

- be devoted to the preservation and development of better wildlife and wildlife habitat for the future;
- acquire tracts of land for conversion to habitat for wildlife;
- assist federal and state agencies and other not-for-profit organizations devoted to conservation; and,
- serve as a holding agent for other state and federal agencies in acquiring wildlife habitats.

Information PEER obtained from the Gaming Commission shows no evidence that this organization has made material progress toward meeting these charitable purposes.

While it is entirely possible that this organization may not always be a licensee of the state of Mississippi, as it could in theory lose its charitable status with the Secretary of State, more stringent laws governing entry of charitable organizations into Mississippi's bingo industry would make an organization prove that it has a record of performing charitable works and not simply provide a litany of good intentions evidenced by broad statements of corporate purpose.

Under current law, regulators could have two possible remedies:

- *Refuse to re-license them in the future.* Under this procedure, a dubious charity could lose its license if the Gaming Commission could build a case that the licensee should not receive a license. The Gaming Commission has used this remedy before to deal with organizations which have not lived up to agency rules and regulations. Such matters are subject to appeal through the courts of this state.
- *Rely on the Secretary of State to revoke the organization's charitable standing.* Many organizations which receive a bingo license must also be licensed by the Secretary of State. (Fraternal organizations and organizations not claiming not-for-profit status under IRC Section 501[c][3] are not covered under the Secretary of State's regulatory powers). If the Secretary of State determines that a charitable organization has not carried out its

charitable purposes or has in some way made fraudulent representations in applications for charitable status, the Secretary of State may bring administrative proceedings against the charitable organization to revoke its charitable certification. PEER knows of no instance in which the Secretary of State has taken this action against a bingo licensee.

Both of the above-stated remedies are retrospective insofar as that they would not bar an entity from being licensed, but could be used as a basis for revocation of a license if a regulator finds the licensee failing to perform charitable acts.

- *State law is unclear as to how veterans' organizations must use their funds to meet the requirements of the charitable bingo law.*

Under Section 97-33-53, the definition of a charitable organization includes veterans' organizations and not-for-profit civic, educational, wildlife conservation, and religious organizations. The latter are those generally associated with purposes of providing support to charitable causes such as child abuse prevention and church relief activities. Veterans' organizations generally provide support to their membership in a variety of ways. In some cases the support is social; in other cases, these groups assist persons who are in need of medical care. State law is silent on whether veterans' organizations should be required to provide a material amount of assistance to the sick, homeless, or otherwise unfortunate or whether they should continue to provide support to their own members in the form of social activities. In some instances this has included contributions to bowling associations and to the ladies' auxiliary of the organization's post.

- *State law does not require bingo licensees to dedicate a specific amount or percentage of their income annually to support charitable acts. State law also does not specifically authorize the Gaming Commission to track the flow of funds from the licensee to charitable uses.*

MISS. CODE ANN. Section 97-33-55 requires that bingo licensees include in their applications a statement regarding "the specific purposes to which the entire net proceeds of the bingo games are to be devoted and in what manner." Further, CODE Section 97-33-52 (2) provides:

*Except as may be otherwise provided in Sections 97-33-51 through 97-33-203, all net proceeds derived from a bingo game authorized by this section shall be expended only for the purposes for which the organization is created.*

This provision is silent on when funds must be given to charity, how much must be given to charity, and what constitutes support of a charity.

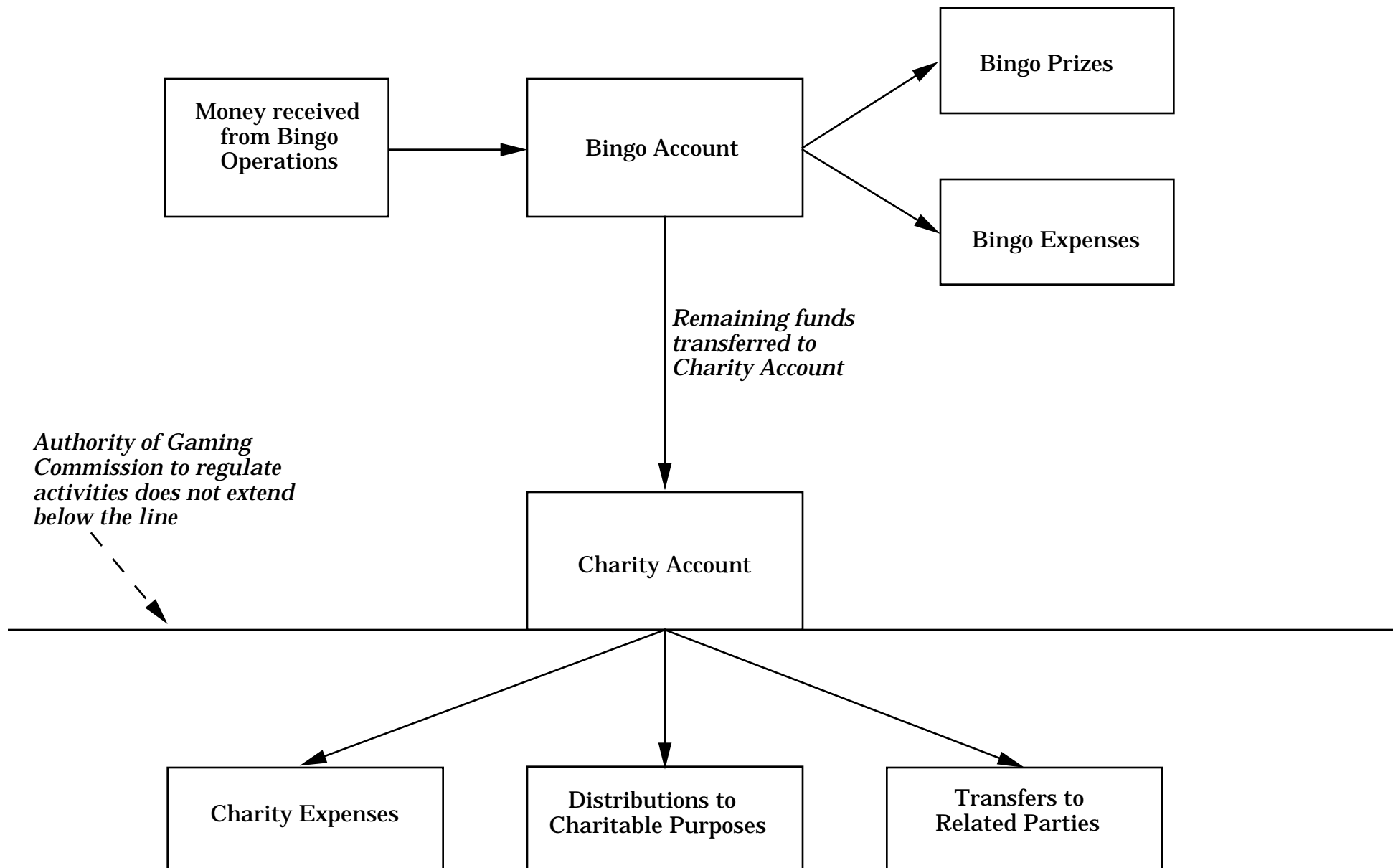
CODE Section 97-33-69 grants the Gaming Commission the authority to review licensee expenses associated with operation of bingo games. However, the commission has no explicit or implied authority to review licensee expenses not associated with bingo. Under this law, the Gaming Commission can monitor expenses of the bingo operations but cannot monitor how funds are spent for charitable purposes. (See Appendix A, page 33, for other states' controls on spending of bingo funds.)

Under current practice, the Gaming Commission can require that the charitable organization operating bingo games maintain a bingo account and a charity account. Further, it can require that funds other than those needed to operate the bingo games be transferred to the charity account. It has recently begun requiring that a bingo hall must annually transfer forty percent of its adjusted gross income (total gross income minus fees paid to the Gaming Commission and prizes paid) from its bingo account to its charity account. However, aside from reviewing the charity account to insure that at least some funds were transferred to some ostensibly charitable purpose, the Gaming Commission cannot legally require that charitable organizations operating bingo games provide a certain percentage of funds to actual charitable activities in any given year or follow funds expended through an auditing process to insure that they were expended for charitable purposes. Consequently, licensees can transfer funds to any organization in amounts as they see fit, without oversight from the Gaming Commission. (See Exhibit 1, page 15.)

Under current law, both well-intentioned and unscrupulous organizations could transfer funds to charities which are related parties because of common directors or key management. If the licensee is a well-intentioned organization, such transfers may not be a problem. However, such transfers could serve unscrupulous organizations by obscuring the audit trail of funds and could be an attempt by the licensee to remove funds from any potential oversight by the Gaming Commission. The commission should have authority to determine how such funds are utilized by a related party organization and trace funds until an unrelated organization is the recipient (i.e., an organization without material financial ties or without a key manager or director common to both). Granting the Gaming Commission greater authority to determine how charities' funds are expended would benefit legitimate charities by empowering the commission to detect abuses and rescind the licenses of unscrupulous organizations.

To illustrate how bingo funds can flow between related organizations, PEER provides the following example. While PEER does not use actual

**Exhibit 1**  
**Flow and Use of Funds from Bingo Operations**



SOURCE: PEER interviews of Gaming Commission officials.



names in this example, this is an actual case of funds transferred between entities. The flow of funds between the related parties presented below is not illegal and does not imply improper actions on the part of the organizations involved. The purpose of this information is to show how easily large amounts of funds may be transferred between related parties without oversight by the Gaming Commission.

Four bingo licensees, charities A, B, C, and D, are considered to be related parties due to common directors or key management. Related Party X, which is not a bingo licensee, is also considered a related party to the above organizations due to common directors or key management. PEER reviewed the audited financial statements filed with the Secretary of State for these five organizations and found numerous transfers of cash and assets between the organizations.

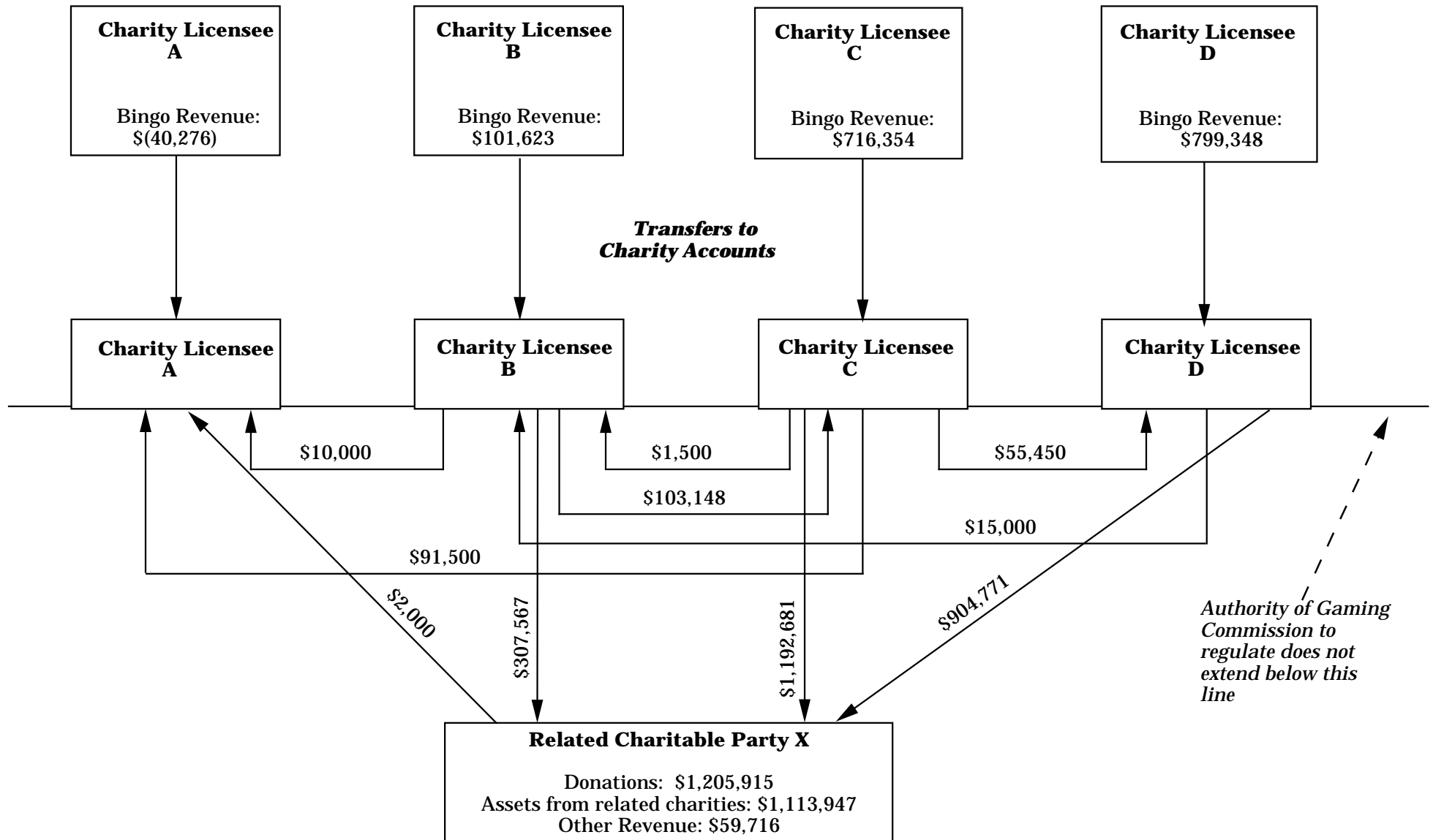
For example, Related Party X, which began operations on October 9, 1995, and as of December 31, 1995, reported total assets of \$327, assumed all authority, responsibility, control, and liability beginning January 1, 1996, for a number of programs from charities B, C, and D. In order to assist in the operation of the transferred programs, charities B, C, and D donated and transferred over \$2.3 million in cash, investments, and assets to Related Party X. (See Exhibit 2, page 17.)

This example illustrates how easily assets are transferred between licensees and non-licensees, which can obscure the audit trail used to determine if the assets are being used for the benefit of charitable purposes or being used merely to support the management and general expenses of other organizations. Licensees which operate several bingo halls under different charitable organizations also may transfer assets to a related party organization which is not receiving sufficient revenues from its associated bingo hall. This offers the opportunity for funds being used to support a struggling bingo hall instead of the funds being used for charitable purposes.

Other states deal with this problem by requiring that licensees make transfers of funds for charitable purposes in accordance with state laws, rules, or regulations. Washington bingo rules require that organizations have a stated charitable purpose and show evidence of progress in meeting that purpose prior to getting a license. To ensure that the charitable or not-for-profit organization has made significant progress toward meeting its primary purpose, the organization must annually show the progress it has made in meeting this purpose. Major bingo operators must prove that sixty percent of their net gambling income was used as functional expenses for providing services to members or to the public. Organizations which cannot establish that they have met these requirements are not bona fide organizations for purposes of the Washington gaming rules and statutes.

Idaho also has utilization rules. Idaho state law requires that twenty percent of gross bingo proceeds be used for enumerated charitable purposes

**Exhibit 2**  
**Transfer of Funds Between Selected**  
**Bingo Licensees and Related Parties**  
**April 1995 through December 1996**



SOURCE: PEER analysis of audited financial statements.

provided for under the law. An organization must show that proceeds are used for charitable purposes.

- *State law does not authorize the Gaming Commission to set standards to control the methods used by appraisers conducting appraisals of commercial property used in bingo operations.*

Because the purpose of legalized bingo in Mississippi is support of charity, the state has an interest in seeing that the expenditures of bingo halls are controlled so as to maximize the amount of revenue available for charities. Current appraisal practices do not maximize the amount of revenue that can be passed on to charity.

MISS. CODE ANN. Section 97-33-203 addresses the process by which bingo commercial lessors obtain licenses and lease their property to bingo licensees. With respect to the appraisal process, this section provides:

*No lease of any premises by a commercial lessor to any charitable organization for a charitable bingo game shall provide for payment in excess of the reasonable market rental rate for such premises as determined by the average of (2) two independent appraisals for the premises. Such appraisals shall be conducted by appraisers selected by the applicant for a commercial lessor's license from a list of state-certified appraisers compiled and maintained by the commission. The appraisals shall be submitted by the commercial lessor as a part of the application for a commercial lessor's license. The commission may require that a third independent appraisal be conducted by a state-certified appraiser, selected by the applicant from the list. . . .*

In determining the market value of a lease, some appraisers use a conservative method by selecting properties located near the bingo hall. Such an appraiser uses property in a shopping center where the bingo hall is located to determine the fair market value. In cities with competing bingo halls, some appraisers consider the lease amounts paid by those bingo halls in formulating an appraisal of fair market value.

In some cases, appraisers use only bingo halls as comparable for determining market value whether or not there are other bingo halls in the community wherein the subject property is located. With these appraisers, it does not matter if the bingo hall is located in a particular town in Mississippi, the comparable will come from other cities in Mississippi with bingo halls. PEER also noted that in some cases, bingo commercial lessors procure the services of appraisers who have used information on bingo halls in other states as a basis for arriving at the fair market value of property used for bingo halls in Mississippi. These differences can be attributed to the fact that the lessor, not the charity, is responsible for

selecting and paying the appraiser. A lessor is interested in getting the best return on his investment, but is not necessarily interested in maximizing the benefit transferred to a charitable activity. While it is not uncommon for lessors to seek the best price available to them through the use of appraisers who give favorable appraisals, the regulated industry of charitable bingo is conducted for the benefit of charitable activities. In this case, the state has an interest in seeing that the means and processes used to appraise property are reasonable and fair to the property owner, but which also insure that potential returns to charity are diminished only by the amount necessary to pay a lessor a fair price for his property.

Presently, the Gaming Commission could refuse to list an appraiser as approved but the law does not authorize the commission to make provision for acceptable practices appraisers may use in conducting bingo hall appraisals. Under these conditions, it is questionable as to whether the commission could have a rational basis for removing an appraiser from the list of approved appraisers, absent more statutory authority.

PEER determined that appraisers do not use a consistent methodology in conducting appraisals of bingo halls. This is exacerbated by the fact that state law does not allow the commission to select an appraiser of its own choosing to perform an appraisal if it finds appraisals submitted to it by lessors to be excessive in their estimate of value. The net effect of this condition is that bingo licensees often pay much more in rent to their lessors when they acquire their leasehold interest from the owner of the building.

### *Protection Against the Cheat Risk*

*Do state law and commission practice protect against the cheat risk?*

*Current law authorizes the commission to inspect bingo halls and insure that games are conducted fairly. The commission has in place a procedure whereby patrons may complain to the commission regarding alleged unfair aspects of bingo operations. Commission agents may investigate complaints to determine if there is a basis for concluding that games are conducted in violation of state law or commission rules. Commission agents may also recommend to bingo halls that patrons treated unfairly be compensated for winnings not paid. Compliance with this is voluntary.*

MISS. CODE ANN. Section 97-33-65 authorizes the Gaming Commission to inspect bingo halls and insure that the games are fairly held. The commission has established a procedure whereby agents of the commission may receive and investigate complaints against bingo licensees. In reviewing a sample of cases, PEER determined that many complaints are made by customers who contend that they actually "bingoed" and that the employees of the bingo hall did not recognize their bingo. If agents conclude that the complaint is true, the agent will

recommend to the bingo licensee that it pay the patron. PEER determined that the files contained evidence of witness statements and actual bingo cards when a patron argued that he had “bingoed.” Thus the commission makes reasonable efforts to review complaints regarding cheating and attempts to resolve them.

### *Protection Against the “Even Playing Field” Risk*

*Do state law and commission practice protect against the level playing field risk?*

*While state law has provided adequate definitions of a bingo session and the length of a session, commission regulations do not conform with state law.*

State law provides some control over the amount of time bingo halls may conduct called bingo in a given week. MISS. CODE ANN. Section 97-33-67 places limits on the amount of money a bingo hall may pay (no more than \$7,500 per session of called bingo). A limit of \$8,000 in prizes is allowed for halls which play only one session of called bingo per week. CODE Section 97-33-53 defines a “session” as any five-hour period in a day, or any one six-hour period in any week. This same section defines a week as the seven-day period beginning at 12:01 on a Monday and ending at midnight the following Sunday. A day is the twenty-four-hour period running from midnight to midnight. CODE Section 97-33-67(1)(a) restricts bingo licensees to no more than eight sessions per week and no more than two in a day. (See Appendix A, page 33, for other states’ laws regarding length of bingo sessions.)

The Gaming Commission has explained this scheme of regulation as a method for giving small bingo halls a means of competing with large halls by restricting the amount of time the large halls may operate. While state law is clear on the subject of how long a session must be, Gaming Commission rules have created considerable confusion on this subject.

- *The Gaming Commission regulation addressing the length of a bingo session is not in compliance with the letter of MISS. CODE ANN. Section 97-33-67.*

The Gaming Commission’s Regulation A, Section 2, paragraph (x) elaborates on the above-cited legal definition of a “session” and in so doing contradicts the statutory definition. Specifically, the regulation states:

*...A session may be less than five hours, and in no case may an organization hold more than eight sessions in a week regardless of the total number of hours played in a session.*

Clearly, the regulation attempts to allow for sessions of less than five hours in duration. Some bingo halls operated by one Jackson area licensee have relied on this provision and have operated sessions of shorter duration than five hours. At the same time other licensees have been concerned that by allowing this to occur, the Gaming Commission has in some way extended a benefit to one licensee which it has not, or would not have, extended to others. PEER has found no evidence of the commission's allowing some halls to have short sessions while seeking sanctions against other halls for essentially the same pattern of conduct.

The Gaming Commission is considering a change in its rules which would require that a session be five hours. The proposed rule would allow play for a period of no less than three hours.

### **Adequacy of the Bingo Division's Operations**

In reviewing the operations of the Bingo Division of the Gaming Commission, PEER answered the following question with respect to the agency's performance in applying existing rules and statutes:

**Does the Gaming Commission effectively implement bingo laws and regulations?**

***While the Gaming Commission has procedures and personnel to determine whether persons seeking licenses have criminal backgrounds or otherwise are of poor moral character, the agency lacks the resources and trained personnel capable of performing the financial and auditing component of its mission. Thus the agency cannot properly analyze licensure information and other financial data to determine whether bingo licensees comply with the law. This problem is partly attributable to inefficiencies created by law and also to historical staffing patterns which have emphasized hiring law enforcement personnel rather than auditors.***

### *Responsibilities of the Bingo Division*

State law provides for a system of licensure and ongoing regulation of bingo licensees. Such licensure and regulation require review of individuals' fitness to run a bingo hall and financial evaluation to ensure that suppliers have no financial ties to bingo halls or to other persons profiting from bingo operations and that expenses are legitimate in accordance with state law and Gaming Commission regulations.

To meet the complexities of bingo regulation, the Gaming Commission has promulgated policies and procedures to govern the licensure process and the inspection process. These policies require the review and inspection of financial and law enforcement records to ensure

that licensees are of good moral character and do not own interests in related bingo industries. Agents of the Gaming Commission conduct inspections to determine whether the games are conducted in accordance with laws and rules of the commission and to determine whether bingo halls properly report bingo session activity and expenses.

In determining the fundamental characteristics necessary for a regulatory agency with the responsibilities of the Gaming Commission, PEER determined that at the most fundamental level the agency should have:

- personnel with educational background and training to carry out diverse tasks associated with regulation;
- a method for managing its personnel, including a method for determining whether the division's rules are enforced consistently;
- a system of imposing sanctions with both substantive rules and procedural rules which ensure that parties are entitled to due process under law; and,
- an efficient system for regulating bingo licensees.

#### *Education, Training, and Financial Records Review*

- *The Gaming Commission's bingo agents lack the financial background to conduct some of the legally mandated licensure reviews and bingo hall audits.*

The Gaming Commission has a detailed set of substantive statutes, policies, and procedures governing licensure and inspection procedures of its agents. These provisions are intended to protect against the risk that criminals or persons with a motive of profit become involved in the operations of bingo halls. These provisions require that agents perform a variety of checks to insure that licensees are not convicted felons nor are financially involved with other licensees. These substantive requirements are discussed below.

MISS. CODE ANN. Section 97-33-81 states:

*No organization which conducts charitable bingo games shall be a manufacturer, distributor or operator of supplies or equipment for such games.*

*No officer, director or manager of an organization which conducts charitable bingo games shall:*

- (a) *Have a direct or indirect financial interest in any entity which manufactures or distributes supplies or equipment for charitable bingo games;*
- (b) *Serve as an officer, director, shareholder, proprietor or employee of an entity which manufactures or distributes supplies or equipment for charitable bingo games; or*
- (c) *Serve as an officer, director, shareholder, proprietor or employee of a commercial lessor who leases buildings, structures or premises to organizations licensed under the provisions of Section 97-33-51 through 97-33-203.*

Sections 97-33-71 and 97-33-73 require that licensees provide financial reports to the Gaming Commission and authorize the commission to examine the books and records of licensees and require that agents perform audits of bingo halls to insure that bingo account expenses are in accordance with law and regulations. Clearly, these standards require that agents analyze financial records to determine whether applicants possess prohibited ownership interests.

In reviewing the commission's personnel records, PEER determined the following about the agents' identified elements of work and their training and background:

- Approximately thirty percent of the tasks agents identified as being critical to their work were related to review of expenses from the bingo account, inventorying of supplies, or auditing of bingo licensees.
- None of the current agents have formal education in accounting.
- The agency has not provided any formal training in accounting or auditing to its personnel in the form of in-service or self-study programs. One agent has taken Internal Revenue Service training in auditing.

The agents are trained law enforcement personnel who have been certified by the Board of Law Enforcement Officers Standards and Training. To be so certified, agents must complete a course from one of the state's training academies. This ensures that agents will have some fundamental knowledge of investigative procedures and can effectively perform those acts generally associated with enforcing laws of the state. It does not, however, ensure that agents will be able to conduct audits of licensees or be able to evaluate financial records of licensees.

The lack of accounting expertise in the organization impairs the commission's capacity to ensure that applicants and licensees are in compliance with laws because the staff cannot conduct detailed financial



analysis. Consequently, applicants for a charitable bingo license could own interests in commercial lessors, manufacturers, or distributors and commission personnel would not be able to detect such an interest. This may also explain another problem of the regulatory effort: the lack of adequate financial information necessary to conduct financial evaluations of license applicants. A staff of auditors with experience in conducting financial audits or evaluations would be more likely to take steps to insure that the agency obtains complete financial information on applicants.

- *The Gaming Commission does not obtain the necessary information from license applicants to conduct the financial reviews required by law.*

The Gaming Commission obtains and reviews federal tax returns of bingo licensees to determine sources of the licensees' revenue. Specifically, commission reviews the returns to determine whether the licensee receives revenue as a manufacturer, distributor, or operator of supplies or equipment for bingo. However, the commission does not always require the licensee to provide supporting statements, attachments, and forms to document information appearing on the forms unless the agent reviewing the forms has questions. If questions arise, the commission can request the additional information. PEER reviewed the tax returns of ten licensees and found no supporting statements, attachments, or forms in the files.

The Gaming Commission obtains individual federal tax returns of officers, directors, and managers from organizations conducting charitable bingo games to determine the compliance of each individual with CODE Section 97-33-81. The commission does not usually obtain supporting forms such as W-2, which provides information on salaries and the individual's employer(s), or the 1099, which provides information on income from interest and dividends. If an agent has a question, this information may be requested.

Without complete tax returns including attachments, form W-2s, and form 1099s, the commission has no way of determining the source of a person's income. Without source information, the commission cannot determine whether a person applying for a license has had any financial connections to other licensees which would be prohibited under law. This situation could allow individuals to own interests in such entities as lessors, manufacturers, and distributors and never report these sources of income.

## *Management and Oversight of Agents*

- *While the Bingo Division has comprehensive policies governing the setting of work plans and the reporting of work activities, the division does not presently enforce these policies. The lack of consistent application of these policies leads to inconsistent enforcement of bingo rules and regulations.*

Because the Gaming Commission has responsibilities throughout the state, with agents based away from the central office, it is necessary for the agency to develop a management system to insure that agents consistently apply gaming regulations when they inspect bingo halls and carry out reviews associated with the issuance of licenses. The following summary of Gaming Commission procedures describes an adequate system for managing a decentralized network of professionals who must exercise initiative and independence in performing their work. These policies describe a system which allows central management to receive information on what each agent intends to do with respect to inspections and background checks and what each agent accomplished in the previous month. If this system were completely implemented, it would ensure that management has the means of monitoring work performed and work planned for the upcoming month and for ensuring consistency of application of commission regulations.

Standard operating procedures of the commission include the following provisions for employees' reporting to Gaming Commission management:

- *Policy 3.1 Requiring Work Schedules:* This policy requires that each agent submit to the Gaming Commission a report of planned activities for the upcoming month. The schedule is required to show each type of inspection the agent will carry out at each location, as well as the estimated amount of time to be spent on each inspection.
- *Policy 3.2 Monthly Activity Reports:* This policy requires that agents submit to the central office a report of activities carried out in the previous month, including a description of activities and the amount of time spent on these activities. This type of report, combined with the type required by Policy 3.1, provides a form of time management system for agents as well as a tool for monitoring agent field activity if the supervisory personnel in the central office choose to do so.
- *Policy 5.1 and 5.2 Site Inspections:* This policy provides for agent inspections of bingo operations. This rule requires an initial inspection to inform bingo licensees of the requirements of the laws and regulations of the commission and follow-up inspections to ensure that the licensee is abiding by state gaming laws and

regulations. Inspections are to be documented with written reports of the conditions observed at the bingo halls. All inspection reports are to be sent to the Jackson office.

- *Policy 6.1 Violations of Regulations and Laws:* This policy requires agents to forward any recommendation that a bingo charity be cited for violating laws or regulations to Jackson for review by the division director. The division director is responsible for determining whether the agent has established a case for citing a bingo hall for a violation.

These policies establish the basis for managing a diffused regulatory responsibility. However, the Gaming Commission has not fully complied with its own regulations.

Personnel of the Bingo Division have noted that agents do not transmit inspection reports to Jackson except in those instances in which the agent has noted that a potential violation has occurred. Further, this year the division, because of a reduction in the number of supervisory personnel, decided not to require that agents forward their inspection activity reports and work schedules. The division has complied with its policy requiring that the central office, and not the individual agent, be responsible for citing bingo halls for violations of laws or rules.

Systems such as those provided for under commission rules ensure that there is in place a means of effectively managing staff dispersed throughout the state. The commission's decision not to require the filing of work plans or activity reports or the submission of inspection reports leaves the commission without a means of reviewing the field work of agents when they inspect bingo halls. This lack of information could lead to problems of inconsistency in rules enforcement. Several bingo licensees have complained that the commission has been inconsistent in rules enforcement. In particular, bingo licensees have noted the following as examples of problems they have with inconsistency in rule application or in getting assistance from the commission:

- In one documented instance, the division failed to give a warning to a bingo hall prior to citing the hall for a violation.
- The division has been inconsistent in considering some items as allowable utility expenses of bingo operation (e.g., pest control, cable television).
- The commission does not keep complete appraisal files for all commercial lessors who change their rental terms. Commercial lessors must provide two appraisals of their property when they are about to raise the rent. While in almost all cases, the Gaming Commission had on file two appraisals for each lease that was

going to have an increase in rent, in two cases (in Cleveland and Yazoo City) lessors did not have two appraisals in the files.

Further, the lack of a formal process for reviewing the observations and assessments of agents deprives the agency of a source of information on which areas bingo licensees are having difficulty applying or understanding the law and regulations.

These problems can be attributed in part to the lack of supervisory personnel at the Bingo Division. The current branch director for the Bingo Division, the subordinate of the Division Director for Bingo, has decided not to require that monthly work schedules and activity reports be provided to the agency, as he is currently the only manager in the Bingo Division and does not have the time to carry out his functions and review all such work plans. The director of the Bingo Division has been ill for several months and has not been available to provide leadership to his division. Further, the Gaming Commission transferred a Special Agent position to other duties in the division. This has left the current branch director of the Bingo Staff carrying out the duties of his superior and his key subordinate as well as his own duties. Currently this person must provide all of the supervision to his field staff and office staff as well as work with the commission in carrying out commission rules relating to modification of agency policy.

In recent months, the Bingo Division has instituted regular staff meetings between the current branch director for bingo and the agents. At these meetings the staff are to discuss matters they are dealing with in the field and ways by which they might resolve consistency matters in the application of rules. Complaints against agents regarding professional competence or behavior are handled by the Investigations Division of the Gaming Commission.

### *Sanctions*

MISS. CODE ANN. Section 97-33-50 et seq. and rules of the Gaming Commission provide sanctions to be used by the Bingo Division. A charge brought against a bingo licensee for discipline must be brought before a hearings officer of the commission. At such hearings, attorneys for the commission and the licensee present testimony and offer tangible evidence. Decisions of the hearings officer are reviewable by the entire commission. Decisions of the commission may be appealed to the circuit court of the county wherein the licensee is located. PEER determined that weaknesses exist in the procedures applied by the Gaming Commission with respect to sanctions, including license revocations or denials. The standard for reviewing the provisions of rules cited below was whether they would pass constitutional muster if attacked and whether they promote fair resolution of disputes.

- *The regulation addressing hearing procedures for licensees places the burden of proof in a proceeding upon the licensee, which may be constitutionally defective. Further, agency practice does not allow parties to argue errors of law before the entire commission, which creates the possibility that the commission would not be able to correct errors made by the hearings officer before the matter is appealed to circuit court.*

Specifically, Regulation KK, Section 3, provides:

*In any hearing before the commission, or the hearing examiner, the burden of proof shall be on the licensee to show compliance with the Charitable Bingo Act, and the regulations promulgated thereunder.*

While Gaming Commission staff have noted that they do not require the licensee to meet this burden, some attorneys who have represented bingo charities have expressed concern regarding this regulation. Generally, in most administrative proceedings in this state and in others, in proceedings wherein penalties are imposed, the burden falls on the state to prove that irregularities in a licensee's operations have occurred and not on the licensee to prove that he has acted in conformity with the law. The current provision could be found unconstitutional as a violation of due process.

Gaming Commission Regulation KK also establishes procedures for practice before the Gaming Commission and its hearing examiners. While evidence may be presented before the hearings officer, appeals to the full commission are limited to the record made below. Several attorneys who have practiced before the commission have noted that the commission will not allow attorneys to present possible errors of law made below by the hearing examiner.

While it is not necessary for errors of law to be argued before the commission, allowing attorneys to make their arguments in written form before the commission could enable the commission to correct errors at the administrative level and thus reduce the possibility of lengthy expensive appeals before the circuit court.

### *Annual Relicensure and the Regulatory Process*

Under MISS. CODE ANN. Section 97-33-57, bingo licenses must be renewed annually. This applies to all licenses, whether for a charity, a commercial lessor, a manufacturer, or a distributor.

- *State law regarding annual relicensure of all bingo licensees requires agents to devote virtually all of their working hours during the late summer and early autumn of each year to such relicensure, to the exclusion of other important regulatory activities.*

In addition to management issues discussed above which affect the efficiency of agency operations, the Gaming Commission deals with a legally imposed hurdle to efficient operation of the agency. At present, MISS. CODE ANN. Section 97-33-57(3) requires that licensees be relicensed annually. This requires that agents responsible for regulating bingo operations also work on the requisite background checks for licensees. Added to this is the provision of Section 97-33-57(4)(e) which provides that the commission must act on an application within sixty days of filing or it is automatically accepted by operation of law.

Currently the Bingo Division has ten agents on staff (with twelve positions). Based on information provided by the Gaming Commission on licenses due each year and on assumptions on the number of work hours available to an employee in a year, PEER determined that agents will require approximately 230 hours of background check time during the six-week period between August 1 and September 15 of each year in order to have work complete for a mid-September commission meeting when licenses will be either approved or rejected. (Most licenses are due for renewal in October of each year.) This means that agents will not have much time to carry out inspections of bingo halls or to review complaints during a normal work month of 160 hours. (See Appendix B, page 37, for an analysis of agent time devoted to licensure background checks.)

Approximately fifty more licenses come due for renewal between October 5 and November 21. Consequently, agents must begin working on these matters by late September in order to meet licensing deadlines. As a practical matter, agents must spend an overwhelming amount of time in August, September, and October working on licensure matters and leave other regulatory matters for whenever a free hour may become available. This means that the regulation of halls and the investigation of complaints will be of secondary importance during these periods of the year.

## ***Recommendations***

### **Legislative Recommendations**

1. The Legislature should amend MISS. CODE ANN. Section 97-33-53 to require that a charitable organization have IRC 501 (c) or (d) status for three years prior to being eligible for licensure. Also, the Gaming Commission should require the applicant organization to document that it has made significant progress toward meeting its corporate purposes prior to becoming licensed.
2. The Legislature should amend MISS. CODE ANN. Section 97-33-57 to authorize the Gaming Commission to:
  - require that licensees submit plans to the commission detailing what charitable activity they intend to support for the period of the license;
  - require that the licensee report to the commission all transfers made in support of charity;
  - audit the transfers of funds from licensees to any other entity which has one or more common officers;
  - revoke the license of any licensee which has failed to comply with the provisions of its business plans or which makes contributions to any organization which fails to provide material support (as defined by the commission) for charitable activities; and,
  - ensure that revenue from charitable bingo operations is used in support of charitable purposes. The commission should have the authority to determine how funds generated from bingo operations and transferred to the charity account are expended. The commission should also have the authority to determine what percentage of the funds from bingo operations may be used to support a charity's management and general expenses and how much must be used to support charitable purposes.
3. The Legislature should amend MISS. CODE ANN. Section 97-33-203 to require the Gaming Commission to:
  - establish lists of approved appraisers to perform commercial lease appraisals;
  - prohibit the practice of using bingo halls as comparables in appraisals unless they are in the same local area as the facility being appraised; and,

- require that a lessor use an appraiser of the commission's own choosing if, in the opinion of the commission, the appraisal submitted by the lessor is invalid or is otherwise suspect. Lessors should be required to pay for the appraisal.
- 3. The Legislature should amend MISS. CODE ANN. Section 97-33-52 to clarify the responsibilities of veterans' organizations with respect to charitable contributions. Changes in law should make clear whether veterans' organizations should be responsible for providing support to charitable activities other than the operations and upkeep of the veterans' organization.
- 4. Because the current annual licensure requirement places a considerable burden on the regulatory capacity of the Gaming Commission, the Legislature should amend MISS. CODE ANN. Section 97-33-57 to provide for two-year bingo licenses which come up for renewal at staggered intervals.

### **Administrative Recommendations**

- 5. The Gaming Commission should study specific duties of the licensure and regulation process and compare them with capabilities of commission staff to determine whether any vacant positions could be committed to the Bingo Division or whether other commission staff could provide assistance to the Bingo Division to conduct financial analysis. In the event that no vacant positions could be reallocated or assigned to the Bingo Division or that no other commission staff could assist the Bingo Division, the commission should study alternatives for providing the Bingo Division with financial analysis support.
- 6. The Gaming Commission should begin obtaining from licensees and applicants all necessary documents for complete financial reviews of persons involved in bingo operations.
- 7. The Gaming Commission should adhere to its policies regarding work plans and work accomplished. It should also continue its practice of meetings between the enforcement agents and management to discuss problems in enforcement. Commission management should take steps to return to the Bingo Division any positions which were transferred out to other divisions of the agency and should provide additional management personnel in the Bingo Division to assist the current Branch Director.
- 8. The Gaming Commission should amend Rule KK to allow for attorneys representing the licensees and the state to argue errors of law in written briefs before the commission. Further, the commission should amend Rule KK to shift the burden of proof to the state in matters involving penalties.



9. The Gaming Commission should continue to develop rules and regulations which are consistent with state law concerning length of bingo sessions.

## ***Appendix A***

### **Summary of Selected States' Controls on Charitable Bingo Used to Restrict Entry, Control Charitable Expenditures, and Regulate Session Length**

#### ***Entry Controls***

<b>State</b>	<b>Citation</b>	<b>Entry restrictions</b>
Alabama	Local control	Regulated at county level
Arkansas	No charitable bingo	NA
Idaho	Idaho Code 67-7702	1 year of existence and has 501(c) status
Indiana	Indiana Code 4-32-6-20	Civic, veterans, educational, political, or senior citizens organization for 5 years and tax-exempt under Section 501(c)
Louisiana	La. RS Section 33-4861.2	A not-for-profit organization domiciled in LA with federal tax-exempt status
Maine	Maine Revised Statutes 17-13A- 314	2 years of existence as a not-for-profit organization
Massachusetts	Mass. Lottery Commission rules, Ch. 10, Sec 38	Fraternal organizations, support organizations for volunteer fire departments, ambulance services, retarded children, and veterans; organizations in existence for five years
Nebraska	Nebraska Bingo Rules 316-35-201.5, and 201.06	Five years of existence and a history of carrying out its lawful purpose during that period. The state may request information establishing that the organization has been carrying out charitable purposes during that period.
South Carolina	S.C. Code Section 12-21-3920	Charitable, religious, or fraternal organizations which are tax exempt under Section 501(c)
Tennessee	No charitable bingo	NA
Texas	Title 6, Art 179d, Sec 2	Existence for 3 years, has 501(c) status
Washington	Commission Rule WAC 230-04-024	1 year and tax-exempt status

SOURCE: PEER's review of selected states' statutes and bingo regulations.

**Appendix A (continued)***Charitable Spending Controls*

<b>State</b>	<b>Citation</b>	<b>Spending restrictions</b>
Alabama	Local control	NA
Arkansas	NA	NA
Idaho	Idaho Code 67-7705	20% of gross for charity. The section enumerates the types of activities which may be funded, including civic, educational, scientific testing, safety, or literary purposes. The organization may also use funds to construct facilities. No funds may be used to compensate corporate officers directly or indirectly.
Indiana	Indiana Code 4-32-9-16	Net proceeds to be spent on the lawful purposes of the organization.
Louisiana	La. RS Section 33-4861.2	Net proceeds to be spent on the lawful purposes of the organization.
Maine	Maine Revised Statutes 17-13A-326	Funds may be used for the lawful purposes of the organization. Funds may not be paid to members except to pay costs associated with illnesses.
Massachusetts	Mass. Lottery Commission Rules, Ch. 10, Sec 38	Funds used for charitable, religious, or educational purposes. Funds shall not be distributed to members of the organization.
Nebraska	Nebraska Bingo Rules 316-35-201.01, 201.02, and 201.03	Bingo profits may be devoted to lawful purposes of the organization. These include religious activities, educational activities, social activities of the organization, and defraying the costs of operating fraternal organizations' activity. Donations outside of the organization may be devoted only to the support of the state and its institutions, the United States, a local community chest organization, or to the posts of veterans' organizations.

**Appendix A (continued)**

<b>State</b>	<b>Citation</b>	<b>Spending restrictions</b>
South Carolina	SC 12-21-4100	Funds must be distributed to a charitable purpose. Requires reports on the purpose to which the net proceeds are to be applied. Organizations must keep records necessary to substantiate these reports.
Tennessee	NA	NA
Texas	See Title 6, 179d Sec 2, and See Title 6, 179d Sec 12.	Requires that net proceeds be devoted to charitable purposes and defines charitable purposes. Also requires that the licensee designate in his application the charitable purposes to which the net proceeds will be devoted.
Washington	WAC 230-08-255, 230-04-024, and 260-08-255.	Requires charity submit plan of action outlining activities it intends to support. Charity must make significant progress in meeting goals for relicensure.

**Appendix A (continued)***Session Length*

<b>State</b>	<b>Citation</b>	<b>Session length restrictions</b>
Alabama	Local control	NA
Arkansas	NA	NA
Idaho	Idaho Code 67-7707	No more than 3 sessions per week, no more than 8 hours per session.
Indiana	Indiana Code 4-32-9-18	No more than 1 event per day (8 hours is the maximum duration of an event), no more than three events in a week, and no more than two consecutive nights of events.
Louisiana	LAC 1.1703, La RS 4861.11	33- No more than one session per day (four hours per session). Bingo may not be played more than 15 days in a month.
Maine	Maine Revised Statutes 17-13A-314	Not allowed on Christmas or before 11 a.m. on Sunday. Not allowed between the hours of midnight and 7 a.m.
Massachusetts	Mass. Lottery Commission Rules, Chapter 10, Sec 58	No more than 2 days per week. On one day, the games may not begin before 6 p.m. and may not last past midnight. On the other day, games may not begin before 1:00 p.m. and last past 6:00 p.m.
Nebraska	Nebraska Statutes 9-241.03	No more than two occasions per week. An occasion has no set duration but is when bingo games are played.
South Carolina	SC 12-21-3620	A session may begin after 1:00 p.m. and last through 1:00 p.m.. No limit is placed on the number of sessions per week.
Tennessee	NA	NA
Texas	NA	Local option.
Washington	WAC 250-02-104	A session is a continuous series of games with only brief intermission.

## ***Appendix B***

### **Analysis of Agents' Time Devoted to Bingo Licensure Background Checks**

If one assumes that the level of filled agent positions will continue to be ten:

- There are 2087 work hours in a year per employee.
- Based on the Job Content Questionnaire for an agent's position, 40% of an agent's time is spent on licensure-related matters and investigations. This is the total amount of time available for investigating licensees. Staff estimates that at best, it takes approximately 4 hours to perform a background check.
- There are 186 licensed entities of all types (charities, commercial lessors, manufacturers, etc.), with 96 due on or about October 1.
- According to commission staff approximately 6 persons must be reviewed on average per licensee.

This poses the greatest difficulty for the Gaming Commission during the months of August and September. Because 96 of the licenses expire during the month of October, the Gaming Commission must commit the following time to licensure in August and September in order to have the licensure work prepared for the mid-September commission meeting (assume that the Gaming Commission is working on licenses that expire on October 1, 1997):

$$96 \times 6 \times 4 = 2,304 \text{ hours}$$

$$2,304/10 = 230.4 \text{ per agent between August 1 and September 15.}$$

Assuming that normal weekly work time for an agent in a month is 160 hours, most of an agent's time will be consumed performing background checks. In the event that a check takes longer to perform than 4 hours, an agent will have to perform the work and request compensatory time for extra hours worked.

SOURCE: PEER analysis of Bingo Division records.

***Agency Response***

**W. W. Gresham, Jr.**  
*Chairman*

**Captain Robert C. Engram**  
*Commissioner*

**Victor P. Smith**  
*Commissioner*



**Paul A. Harvey**  
**Major General USAF (RET)**  
*Executive Director*

**MISSISSIPPI GAMING COMMISSION**

Post Office Box 23577  
Jackson, Mississippi 39225-3577  
(601) 351-2800

November 12, 1997

Max Arinder, Ph.D., Director  
PEER Committee  
222 North President Street  
Jackson, Mississippi 39201



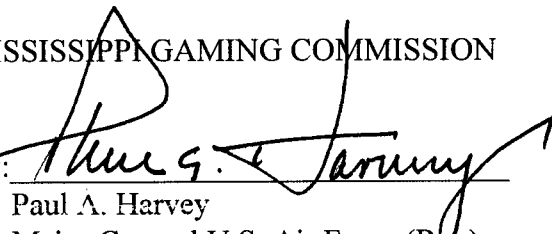
Dear Dr. Arinder:

We have examined the draft copy of the PEER report with respect to charitable bingo in Mississippi, and we concur with the findings given in the report.

Sincerely,

MISSISSIPPI GAMING COMMISSION

By:

  
Paul A. Harvey  
Major General U.S. Air Force (Ret.)  
Executive Director

PAH:jm

---

## **PEER Staff**

---

### Director

Max Arinder, Executive Director  
Ava Welborn

### Administration and Support Division

Steve Miller, General Counsel and  
Controller

Shirley Anderson  
Thelisa Chapman  
Louwill Davis  
Sam Dawkins  
Larry Landrum  
Pat Lockett  
Mary McNeill  
Pam Sutton

### Evaluation Division

James Barber, Division Manager  
Kathleen Sullivan, Division Manager

Michael Boyd  
Ted Booth  
Katherine Stark Frith  
Barbara Hamilton  
Jacqui Hatfield  
Dale Hetrick  
Kelly Lockhart  
Joyce McCants  
David Pray  
John Ringer  
La Shonda Stewart  
Linda Triplett  
Larry Whiting

---