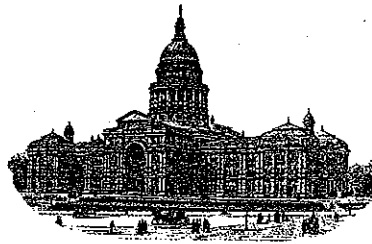


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OPINION COMMITTEE

AARON PEÑA  
CHAIRMAN

FILE # ML-45937-08  
I.D. # 45937

December 3, 2008.

The Honorable Greg Abbott  
Office of the Attorney General  
P.O. Box 12548  
Austin, TX 78711-2548

RQ-0771-GA

Dear Attorney General Abbott:

On October 29, 2008, the Texas Lottery Commission ("the Commission") initiated rulemaking to adopt a new rule to more specifically define who is eligible for a bingo manufacturer's or distributor's license. In response, the Commission drafted and proposed new rule 16 TAC §402.104 ("Rule 402.104") that set out definitions of "professional gambler" and "gambling promoter."

There is significant concern that the proposed definitions in Rule 402.104 have the effect of modifying the plain language and meaning of the terms "professional gambler" and "gambling promoter" as used in the Texas Bingo Enabling Act as written and intended by the Texas legislature.

Under the Bingo Enabling Act "a person who is or has been a professional gambler or gambling promoter" is not eligible for a bingo manufacturer's or distributor's license. See Tex. Occ. Code §2001.202 (2) and §2001.207(2).

Under the Texas Lottery Act, a professional gambler is prohibited from holding a license. See Tex. Gov. Code §466.155(a)(1)(B). Texas Lottery Commission rule 16 TAC §401.153(b)(2) defines professional gambler as "a person whose profession is, or whose major source of income derives from, playing games of chance for profit."



The Commission's proposed new rule defines "professional gambler" and "professional promoter" differently:

§402.104 Professional Gambler and Gambling Promoter.

(a) The term "gambling promoter" means a person who has been convicted of an act:

- (1) proscribed by Title 10, Chapter 47, Section 47.03 of the Texas Penal Code; or
- (2) in any state or governing jurisdiction outside of the United States that is fundamentally equivalent to promotion of gambling as proscribed by Title 10, Chapter 47, Section 47.03 of the Texas Penal Code.

(b) The term "professional gambler" means a person who:

- (1) has three or more convictions for one or more of the offenses proscribed by Title 10, Chapter 47, Sections 47.02, 47.03, 47.04, and 47.05 of the Texas Penal Code or convictions for offenses in other jurisdictions, the principal elements of which are fundamentally those proscribed by the above referenced penal statutes. The convictions may be for one, or a combination of offenses, and may be from any one or a combination of jurisdictions; or
- (2) has been convicted under the laws of any governing jurisdiction of being a professional gambler.

I believe that the adoption of the Commission's proposed new rule with divergent definitions of "gambling promoter" and "professional gambler" would contravene the plain meaning of those statutory terms as set out in the Bingo Enabling Act and is inconsistent with the term "professional gambler" as set out in the Texas Lottery Act and its associated rules. The ramifications of such "interpretive deviation" are of great significance to the State of Texas.

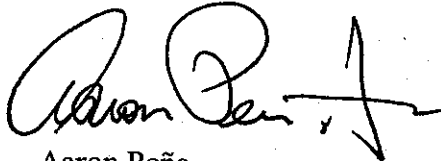
I seek your opinions regarding the following questions:

- (1) Whether the Commission's proposed Rule 402.104 is valid under the law?
- (2) Whether the Commission's proposed definitions of "gambling promoter" and "professional gambler" in Rule 402.104 conflict with the plain meaning of those terms as used in Tex. Occ. Code §2001.202(2) and §2001.207(2)?

(3) Whether Tex. Occ. Code §2001.202(2) and §2001.207(2) refer to a person that has committed an unlawful act as set out in the Commission's proposed Rule 402.104?

Thank you for your consideration of this matter. Please do not hesitate to contact me if you have any questions or need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron Peña", with a stylized flourish extending to the right.

Aaron Peña