JUNE 7, 1957

HON. MERRITT LANE, JR., *Secretary*
Legalized Games of Chance Control Commission
1100 Raymond Boulevard
Newark, New Jersey

FORMAL OPINION, 1957—No. 6

DEAR COMMISSIONER LANE:

You have submitted two questions for our opinion relating to the effect of a recently enacted law, P.L. 1957, c. 57, which permits qualified organizations to conduct bingo on premises not owned by them subject to certain conditions.

Previous to this enactment, in order to carry out its duty to prevent games of chance from being conducted for commercial purposes (N.J.S.A. 5:8-6), the Commission determined, by rule, that no organization could hire premises for the conduct or operation of a bingo game except from any other organization qualified to conduct bingo or raffles under the Bingo and Raffles Licensing Laws (see Rule 20, Part VII). This regulation was sustained in *Daughters of Miriam, etc.* v. *Legalized Games of Chance Control Commission,* 42 N. J. Super 405 (App. Div. 1956). Thereafter, because certain organizations attempted to evade the Commission's policy against commercialism by paying incidental fees in lieu of rent, the Commission adopted Rule 25, Part VII which limited the number of times a commercial hall could be *used* by any number of qualified organizations to six times a month. Thus, qualified organizations, authorized to conduct bingo on six occasions a month by statute (N.J.S.A. 5:8-33) had to either conduct bingo games on their own premises or rent from another qualified organization if the commercial hall where they had previously operated bingo games was used in excess of the authorized number of occasions.

Now, the Legislature, empowered to restrict and control the terms and conditions by which such games of chance may be conducted by qualified organizations *(New Jersey 1947 Constitution,* Art. IV., Sec. VII, Par. 2A) has seen fit to permit qualified organizations to conduct bingo either in commercial halls rented for that specific purpose or in premises owned by other qualified organizations. In P.L. 1957, c. 57, which supplements both the Bingo Licensing Law (P.L. 1954, c. 6), and the law conferring upon the Commission the power to administer and supervise the conduct of bingo and raffles (P.L. 1954, c. 7), renting commercial halls is specifically permitted. But, at the same time, the Commission is given complete authority to exercise the strictest control over such commercial operations. The terms of this act empower the Commission to insure that rentals charged qualified organizations shall be fair and reasonable and that the rentors of such halls shall be free from crime and of good moral character. Control is exercised by way of requiring that such rentors be licensed, which license the Commission has a right to revoke if certain requirements are not fulfilled, or if any law dealing with games of chance or Commission regulations are violated.

The first question you ask is whether Rule 25, Part VII, may be continued, or is abrogated by virtue of the fact that in the section which authorizes the Commission to implement P.L. 1957 c. 57 with rules and regulations, a limitation is placed upon the Commission's general power relating to the number of times commercial premises may be used. The Commission has raised this question because of some feeling on its part that the new act acts only prospectively and does not effect formerly adopted rules.

Section 8, in question here, states that:

"The commission shall have power to make and enforce such reasonable rules and regulations as it may deem necessary to effectuate the provisions of this act and the powers conferred upon it hereunder and to prevent the circumvention or evasion thereof. Said rules and regulations may, among other things, require that all rental or use agreements be in writing and in form approved by the commission and may provide for the form of application and the information to be furnished the commission on any application for approval, *but shall not impose limitations on the number of days a month the premises may be used for purposes authorized by the act* hereby supplemented." (Emphasis supplied)

Rule 25, Part VII, on the other hand, states that:

"Bingo games shall not be held, operated or conducted in any premises more often than on six days in any calendar month, except in such premises as are owned by a qualified organization registered with the Control Commission."

It is our opinion that the act in question supersedes the former legislation dealing with the rental of premises, and also, by virtue of the terms quoted above, abrogates any conflicting rules and regulations which imposed limitations and restrictions upon the renting of premises *(U. S.* v. *Phlimac Mfg. Co.,* 192 F. 2d 517 (C. A. 3 1951); *Willapoint Oysters Inc.* v. *Ewing,* 174 F. 2d 676 (C. A. 9 1949); cert. den. 338 U.S. 860 (1949), petition for rehearing den. 339 U.S. 945 (1950). A fair and reasonable interpretation of P.L. 1957, c. 57 leads to only one conclusion, that the Legislature, fully recognizing the Commission's broad powers and authority to prevent commercial halls from being rented to qualified organizations *(Daughters of Miriam, etc.* v. *L.G.C.C.C., supra),* intended to permit commercial leasing under strict supervision. To repeat, the Legislature has complete power to prescribe the restrictions and controls of the playing of bingo by virtue of the constitutional provisions cited above. The supplement to the 1954 legislation is a direction to the Commission, acting on behalf of the Legislature, to permit commercial renting under the terms and controls therein prescribed. To continue, Rule 25, Part VII would cause the Commission to enlarge or vary the powers conferred by the Legislature. Any rule or regulation which is in conflict with the organic statute would be wholly invalid *(Abelson's Inc.* v. *N. J. State Board of Optometrists,* 5 N.J. 412 (1950); *Sherry* v. *Schomp,* 31 N.J. Super 267 (App. Div. 1954); *Welsh Farms Inc.* v. *Bergsma,* 16 N.J. Super. 295 (App. Div. 1951)). Thus, not only are Rules 20 and 25, Part VII superseded, but the terms and provisions dealing with certain restrictions relating to the rental of premises that are contained in N.J.S.A. 5:8-26 are repealed by implication.

Your second question about P.L. 1957, c. 57, is whether a qualified organization which wishes to rent its premises to another qualified organization so as to enable the latter to conduct bingo, must comply with the same conditions and requirements as would a commercial lessor, and if so, whether the required statutory license fee of $100.00 (P.L. 1957, c. 57, § 5(b)) may be waived.

As has been related above, P.L. 1957, c. 57 enables qualified organizations to rent commercial halls and also premises owned by other qualified organizations. However, the act differentiates between the two types of rentors.

Section 1 of P.L. 1957, c. 57, defines an organization as:

"'Organization' shall mean any organization licensed to hold, operate or conduct games of chance under the Bingo Licensing Law (P.L. 1954, c. 6, as amended and supplemented)."

The rentor is defined as:

"'Rentor' shall mean and include the owner, lessor, and supplier of premises furnished or supplied to, or used by, an organization for the purpose of holding, operating or conducting games of chance under the Bingo Licensing Law."

Section 2 goes on to state that:

"An organization may, for the purpose of holding, operating and conducting games of chance under the Bingo Licensing Law rent or use premises not owned by such organization upon compliance with the provisions of this act. No such rental or use shall be permitted unless the commission shall determine that the payment to be made for such rental or use of the premises is fair and reasonable and that the rentors of said premises are approved rentors under this act."

And Section 3 states that:

"From and after the effective date of this act, no person shall act as, or be, a rentor unless said person (a) is itself licensed to hold, operate or conduct games of chance under the Bingo Licensing Law or (b) has first obtained from the commission a license as an approved rentor."

The terms of Section 3 are important. Two classes of rentors are established. First, there are qualified organizations. Second, there are commercial rentors who must obtain a license in order to rent premises to qualified organizations. The latter class are "approved rentors" who must comply with those sections (Secs. 4 through 7) enumerated in the act. Qualified organizations do not need to obtain a license; commercial rentors must do so, and in addition thereto, pay the $100.00 fee. This is the obvious design of the statute. The Commission which had in the past and will in the future have control over qualified organizations, now for the first time, may exercise complete jurisdiction over this new class of licensees, the "approved rentor", also known as the commercial lessor. Under this statutory pattern, although qualified organizations need not be licensed, the Commission still exercises complete jurisdiction over both types of rentors and, by the terms of Section 2 of this act, may determine what rent is fair and reasonable and may be paid by a qualified organization.

Therefore, it is our opinion that qualified organizations intending to rent premises to other organizations do not have to obtain a license or pay the required license fee. This limitation, however, does not prohibit the Commission from exercising its general power to supervise qualified organizations under its general rule-making authority to carry out the intent and purpose of this act as well as the general laws dealing with the conduct of bingo.

Very truly yours,

GROVER C. RICHMAN, JR.
Attorney General

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