

GUIDANCE ON RENTAL PAYMENTS FOR LUCKY 7 OPERATIONS

We have recently been asked to provide guidance on whether a commercial bingo hall can charge rent to a charity for the operation of Lucky 7 ticket sales in conjunction with a bingo game. For the reasons set out below, these rental payments are not permissible. We do note, however, that a licensed gaming consultant may charge charities for services related to the operation of bingo and Lucky 7 sales as part of the consulting fees authorized under RSA 287-E:7, II (b).

The operation of bingo and Lucky 7 is governed by RSA 287-E. This guidance relates specifically to Lucky 7 games that are “sold in conjunction with bingo games” at licensed commercial bingo halls pursuant to RSA 287-E:21. Rental of facilities for these games is set by administrative rule in accordance with RSA 287-E:3, IX. The Lottery Commission has adopted administrative rule Lot 7004.05(a) which states as follows:

“The amount of the hall rental to the charitable organization shall not exceed \$10 per player per charitable organization's bingo event.”

The remainder of the rule provides a list of the items that are included in the rental fee but does not specifically address Lucky 7 sales. Accordingly, there is a lack of clarity as to the application of rent to Lucky 7 activities. We can identify three potential interpretations:

1. Rental fees for Lucky 7 activities are covered by Lot 7004.05(a)
2. Commercial bingo halls have no legal ability to collect rent for Lucky 7 activities
3. Commercial bingo halls have a right to collect rent for Lucky 7 activities and there is no statutory or regulatory limit on those rents.

While bingo and Lucky 7 are governed by the same general statute and while Lucky 7 is often sold in conjunction with a bingo game, the statute and regulation treats the games separately. Specifically, RSA 287-E is separated into a bingo section (RSA 287-E:1 through RSA 287-E:15) while Lucky 7 is addressed in RSA 287-E:16 through 26. There are separate definitions sections and rulemaking authorizations for the separate games. Of note, the only statutes that deal with both games together relate to local referendums and criminal penalties.

As this relates to rent, the distinction between the two games is clear. RSA 287-E:3, IX commands the Lottery Commission to develop rules for the “rental of facilities and the leasing of equipment for use in bingo games.” There is no similar provision in the Lucky 7 rulemaking statute (RSA 287-E:18). Nor is there any other reference to rent being permitted under the Lucky 7 portion of the statute. As the legislature clearly distinguished between these games we believe that the rental fees identified in Lot 7004.05(a) relate solely to bingo activities and do not relate to Lucky 7 tickets.

The legislature is therefore silent on charitable organizations being charged “rent” to operate Lucky 7 games. We interpret that silence to be a lack of authorization to charge rent as opposed to a permission. In reviewing the legislature’s intent, it is notable

that in all other instances of charitable gaming, the statute has either defined the ability to charge rent or directed the Lottery Commission to address rent in the administrative rules. It defies logic, therefore, that the legislature would take pains to carefully define limits on rent with respect to games of chance and bingo, but allow for any amount of rent in Lucky 7. Rather, it appears that the legislature's silence is based on the fact that they did not believe that rent could be applied to Lucky 7. Specifically, Lucky 7 tickets can be sold at a facility already controlled by the charity or in conjunction with a bingo game where the facility was already rented for that purpose. In these circumstances the legislature likely determined that rent would not be relevant to Lucky 7 games.

After review of the statutes and regulations, we believe that the best interpretation of the statutes is that a commercial bingo hall does not have authority to collect rent for Lucky 7 activities. We will note, however, that RSA 287-E:7, II (b) permits gaming consultants to charge fees for services for consultation, management, assistance with the operation of Lucky 7 tickets and that charges that had previously been identified as rent may be legally charged as a consulting fee.

In order to provide time to adjust business practices relating to this interpretation, the Lottery Commission will consider this interpretation to go into effect as of March 1, 2022.