



DAVE YOST

OHIO ATTORNEY GENERAL

Charitable Law Section
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December 13, 2023

Fraternal Order of Eagles #1403 Aerie
433 E. Court St.
Sidney, OH 45365

Via Kiteworks E-Mail to Rober Elsner at ltbeme_1403@yahoo.com

Re: **Notice of Intent to Reject and Opportunity for Hearing**

Board Members and Game Operators:

Enclosed is a Notice of Intent to Reject and Opportunity for Hearing. Please read it carefully as the information contained within concerns Fraternal Order of Eagles #1403 Aerie's bingo license. Be advised if you would like to request a hearing on this matter, **you must do so within 30 days of the service of this Notice.**

Thank you for your time and attention to this matter.

Very respectfully yours,

DAVE YOST
Ohio Attorney General

A handwritten signature in blue ink, appearing to read "Daniel W. Fausey".

Daniel W. Fausey
Section Chief
Ohio Attorney General's Office
Charitable Law Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-3181

Enclosure

**OHIO ATTORNEY GENERAL
CHARITABLE LAW SECTION**

December 13, 2023

IN THE MATTER OF:

Fraternal Order of Eagles #1403 Aerie
433 E. Court St.
Sidney, OH 45365

EIN: 34-4237230
Bingo License No: 0058-32

NOTICE OF INTENT AND OPPORTUNITY FOR HEARING

INTRODUCTION AND JURISDICTION

Notice is hereby given that, pursuant to Ohio Revised Code (“R.C.”) Section 2915.08(F), the Attorney General intends to refuse to grant; to revoke or to suspend; or to place limits, restrictions, or probationary conditions for a limited or indefinite period on, Fraternal Order of Eagles #1403 Aerie’s (“FOE #1403”) 2023 Charitable Bingo License or to impose a fine on FOE #1403.

In accordance with the provisions of R.C. Sections 119.06 and 119.07, you are hereby notified that you are entitled to a hearing.

FOE #1403 was first issued bingo license no. 0058-32 in 2005. On or about March 1, 2023, FOE #1403 filed a 2023 bingo license application. The Office issued FOE #1403’s 2023 Temporary Charitable Bingo License on March 2, 2023.

The issuance of the temporary permit does not grant any rights to FOE #1403 other than those granted in R.C. 119.06 and does not prohibit the Attorney General from rejecting FOE #1403’s application. R.C. 2915.08(D).

Notice is hereby given that the Attorney General intends to refuse to grant; to revoke or suspend; or to place limits, restrictions, or probationary conditions for a limited or indefinite period on, FOE #1403’s 2023 Charitable Bingo License and/or to impose a civil fine for the following reasons:

COUNT 1

Under R.C. 2915.14(B), “No charitable organization that conducts electronic instant bingo shall do any of the following: ... (2) Conduct electronic instant bingo on any day, at any time, or on any premises not specified on the organization’s type II or type III license issued under section 2915.08 of the Revised Code.” To “conduct” electronic instant bingo “means to back, promote, organize, manage, carry on, sponsor, or prepare for the operation of bingo.” R.C. 2915.01(P).

For purposes of determining whether the Attorney General may reject, revoke, suspend, or place

limits, restrictions, or probationary conditions on an organization's license, "any action of an officer, trustee, agent, representative, or bingo game operator of an organization is an action of the organization." R.C. 2915.08(F)(5).

FOE #1403 conducted electronic instant bingo at times not specified on its type III bingo license. At all relevant times, FOE #1403 was licensed to conduct instant and electronic instant bingo other than at a bingo session Monday through Friday from 1:00 p.m. to 1:00 a.m. and Saturday and Sunday from 12:00 p.m. to 12:00 a.m.

From April 1, 2022 through October 12, 2023, FOE #1403 conducted electronic instant bingo at times not specified on FOE #1403's type III license. on approximately 432 days including:

- April 2022: 12, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
- May 2022: 1, 2, 3, 4, 5, 7, 9, 10, 11, 15, 16, 18, 25, 26
- June 2022: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
- July 2022: 1, 2, 3, 5, 7, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31
- August 2022: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31
- September 2022: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
- October 2022: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31
- November 2022: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
- December 2022: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31
- January 2023: 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31
- February 2023: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28
- March 2023: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 21
- April 2023: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30
- May 2023: 1, 2, 3, 7, 8, 9, 10, 11, 14, 15, 16, 17, 28, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31
- June 2023: 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 28, 29
- July 2023: 27
- August 2023: 3, 4, 9, 10, 15, 16, 17, 18, 21, 22, 23, 24
- September 2023: 12, 14, 15, 16, 20, 22, 23
- October 2023: 6, 9, 11

FOE #1403 violated 2915.14(B); therefore, the attorney general intends to refuse to grant; revoke or suspend; or place limits, restrictions, or probationary conditions for a limited or indefinite period on FOE #1403's 2023 charitable bingo license under R.C. 2915.08(F)(2)(a) or to impose a civil fine under R.C. 2915.08(F)(4).

COUNT 2

The attorney general may refuse to grant, revoke, suspend, or place limits, restrictions, or probationary conditions on a charitable bingo license if “[t]he attorney general has good cause to believe that the organization will not conduct bingo in accordance with sections 2915.07 to 2915.15 of the Revised Code or with any rule adopted by the attorney general pursuant to this chapter.” R.C. 2915.08(F)(2)(e).

FOE #1403 conducted electronic instant bingo at times not specified on its type III license on approximately 432 days as described in more detail in Count 1. The pervasive and persistent course of this conduct gives the attorney general good cause to believe that FOE #1403 will not conduct bingo in accordance with sections 2915.07 to 2915.15 of the Revised Code or with any rule adopted by the attorney general pursuant to R.C. Chapter 2915.

Therefore, the attorney general intends to refuse to grant; revoke or suspend; or place limits, restrictions, or probationary conditions for a limited or indefinite period on FOE #1403's 2023 charitable bingo license or to impose a civil fine.

COUNT 3

R.C. 2915.10(C) states, “The gross profit from each bingo session or game described in division (O)(1) or (2) of section 2915.01 of the Revised Code shall be deposited into a checking account devoted exclusively to the bingo session or game.” Organizations with an electronic instant bingo license “shall keep all proceeds from the sale of electronic instant bingo in a checking account devoted exclusively to the organizations electronic instant bingo activities.” O.A.C. 109:1-5-20(A).

Review of electronic instant bingo server data and FOE #1403's electronic instant bingo account bank statements identified a shortage in deposits to the electronic instant bingo account in the amount of \$88,704.90 for the period November 1, 2022 through April 30, 2023.

Therefore, the attorney general intends to refuse to grant; revoke or suspend; or place limits, restrictions, or probationary conditions for a limited or indefinite period on FOE #1403's 2023 charitable bingo license or to impose a civil fine.

LAWS AND RULES

An applicant for a bingo license “shall, at all times, have the burden of demonstrating to the attorney general, by clear and convincing evidence, that the applicant is eligible, qualified, and suitable to be granted and retain the license or endorsement for which application is made under the applicable standards and requirements of Chapter 2915. of the Revised Code and”

O.A.C. 109:1. O.A.C. 109:1-4-02(B). “Licensees have a continuing obligation to demonstrate suitability to hold a license or endorsement by complying with Chapter 2915. of the Revised Code, [O.A.C. 109:1], and all federal, state, and local laws relating to the suitability of the licensee.” O.A.C. 109:1-4-02(E).

Ohio Revised Code section 2915.08(F)(2) states “If any of the following applies to an organization, the attorney general may refuse to grant a license to the organization, may revoke or suspend the organization's license, or may place limits, restrictions, or probationary conditions on the organization's license for a limited or indefinite period, as determined by the attorney general:

- (a) The organization fails or has failed at any time to meet any requirement of section 109.26, 109.31, or 1716.02, or sections 2915.07 to 2915.15 of the Revised Code, or violates or has violated any provision of sections 2915.02 or 2915.07 to 2915.13 of the Revised Code or any rule adopted by the attorney general pursuant to this chapter.
- (b) The organization makes or has made an incorrect or false statement that is material to the granting of the license in an application filed under this section.
- (c) The organization submits or has submitted any incorrect or false information relating to an application if the information is material to the granting of the license.
- (d) The organization maintains or has maintained any incorrect or false information that is material to the granting of the license in the records required to be kept pursuant to section 2915.10 of the Revised Code, if applicable.
- (e) The attorney general has good cause to believe that the organization will not conduct bingo in accordance with sections 2915.07 to 2915.15 of the Revised Code or with any rule adopted by the attorney general pursuant to this chapter.”

Ohio Revised Code section 2915.08(F)(3) further states, “If the attorney general has good cause to believe that any director or officer of the organization has breached the director's or officer's fiduciary duty to, or committed theft or any other type of misconduct related to, the organization or any other charitable organization that has been issued a bingo license under this chapter, the attorney general may refuse to grant a license to the organization, may impose limits, restrictions, or probationary conditions on the license, or may revoke or suspend the organization's license for a period not to exceed five years.”

Finally, under R.C. 2915.08(F)(4), “The attorney general may impose a civil fine on an organization licensed or permitted under this chapter for failure to comply with any restrictions, limits, or probationary conditions on its license, and for failure to comply with this chapter or any rule adopted under this chapter, according to a schedule of fines that the attorney general shall adopt in accordance with Chapter 119. of the Revised Code.”

HEARING PROCEDURES

Pursuant to the Administrative Procedure Act, Ohio Revised Code Section 119.07, an Applicant who has been issued a Notice of Intent and Opportunity for Hearing may request a hearing before the Charitable Law Section of the Office of the Ohio Attorney General within thirty (30) days of the time of service of the Notice. **The request for a hearing must be received by the Charitable Law Section of the Office of the Ohio Attorney General within thirty (30) days of the service of this Notice.**

The Applicant may appear in person, by his or her attorney, or by such other representative who is permitted to practice before the Ohio Attorney General's Office. The Applicant may present evidence and examine witnesses appearing for and against the Applicant or may present a position, argument and contentions in writing in lieu of appearing at the hearing. A hearing may be continued on motion of either the Attorney General or the Applicant, if the Attorney General so approves.

Failure to request a hearing within the time prescribed may result in the Attorney General issuing an adjudication order regarding the application without conducting a formal hearing in the matter.

Requests for a hearing upon the Notice of Intent and Opportunity for Hearing must be submitted to the undersigned at the address listed below.

Very respectfully yours,

DAVE YOST
ATTORNEY GENERAL



Daniel W. Fausey
Section Chief
Ohio Attorney General's Office
Charitable Law Section
30 E. Broad Street, 25th Floor
Columbus, Ohio 43215
(614) 466-3181

Via Kiteworks E-Mail to: Rober Elsner at ltbeme_1403@yahoo.com