



DAVE YOST

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August 15, 2022

Walter S. Auer Post No. 3747 Veterans of Foreign Wars of the United States
1935 Avalon NE
Canton, OH 44705

Re: Notice of Intent to Limit and/or Restrict and Opportunity for Hearing

Members and Operatives:

Enclosed is a Notice of Intent to Limit and/or Restrict and Opportunity for Hearing. Please read it carefully as the information contained within concerns Walter S. Auer Post No. 3747 Veterans of Foreign Wars of the United States' bingo license. Be advised if you would like to request a hearing on this matter, you must do so within 30 days of the mailing of this Notice.

Alternatively, if your organization is willing to remove the schemes of chance at issue in this Notice, the Office is prepared to enter into a Settlement Agreement with your organization. A proposed agreement is attached for your consideration. If you agree to its terms, please sign and return the signature page to AAG Nelson.

Thank you for your time and attention to this matter.

Very respectfully yours,

DAVE YOST
Ohio Attorney General

Daniel W. Fausey
Section Chief
Ohio Attorney General's Office
Charitable Law Section
30 E. Broad Street, 25th Floor
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Enclosures

CC: Megan N. Nelson, Assistant Attorney General
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**OHIO ATTORNEY GENERAL
CHARITABLE LAW SECTION**

August 15, 2022

IN THE MATTER OF:

Walter S. Auer Post No. 3747 Veterans of Foreign Wars of the United States
1935 Avalon NE
Canton, OH 44705

EIN: 34-0077101

Bingo License No: 0255-48

**NOTICE OF INTENT TO LIMIT AND RESTRICT 2022 BINGO LICENSE 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 issue Walter S. Auer Post No. 3747 Veterans of Foreign Wars of the United States’ (“VFW #3747”) a 2022 Charitable Bingo License with the following limitations and restrictions:

- VFW #3747 will not be licensed to conduct electronic instant bingo unless and until all schemes of chance (including the schemes of chance observed by the Office of the Attorney General) are permanently removed from VFW #3747’s premises.

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.

VFW #3747 was first issued bingo license no. 0255-48 in 2003. On or about December 13, 2021, VFW #3747 filed a 2022 bingo license application. The Office issued VFW #3747’s 2022 Charitable Bingo License on April 15, 2022, authorizing the organization to conduct paper and electronic instant bingo other than at a bingo session.

On or about March 3, 2022 the Office conducted an electronic instant bingo pre-licensing inspection of VFW #3747. During that inspection, the Office’s inspector identified illegal schemes of chance.

Notice is hereby given that the Attorney General intends to limit and/or restrict VFW #3747’s 2022 Charitable Bingo License for the following reasons:

COUNT 1

Under R.C. 2915.02(A)(2) “no person shall...establish, promote, or operate or knowingly engage in conduct that facilities...any scheme of chance.” Upon information and belief, VFW #3747 has promoted, operated and/or knowingly facilitated member use of gaming devices that are illegal schemes of chance.

First, a scheme of chance is defined, in part, as “a slot machine unless authorized under Chapter 3772 of the Revised Code.” R.C. 2915.01(C). Slot machines are only authorized in Ohio in casino facilities. See R.C. 3772.01(E), 3772.20(A), (B). A slot machine includes “(a) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player who gives the thing of value in the hope of gain; (b) Any mechanical, electronic, video, or digital device that is capable of accepting anything of value, directly or indirectly, from or on behalf of a player to conduct bingo or a scheme or game of chance.” R.C. 2915.01(QQ)(1). *See also* Ohio Casino Control Commission, *Legality of “pre-reveal” and “no-chance” electronic gambling devices* (June 2018), https://casinocontrol.ohio.gov/Portals/0/Skill%20Games/OCCC_Pre_reveal_whitepaper_June2018.pdf (“Unless otherwise expressly authorized under Ohio law, every mechanical, electronic, video, or digital gaming device is a slot machine, unless it is a ‘skill-based amusement machine.’”).

Upon information and belief, VFW #3747’s gaming devices are slot machines not authorized under the Ohio Revised Code: they are electronic, video, and/or digital devices, the devices are capable of accepting cash or a cash equivalent from players, and players hope to win cash or a cash equivalent in return.

Second, a slot machine “does not include a skill-based amusement machine” (“SBAM”). R.C. 2915.01(QQ)(2). VFW #3747’s gaming devices do not qualify as SBAMs. An SBAM is defined, in part, as “a mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes.” R.C. 2915.01(UU)(1).

Merchandise prizes are “any item of value, but shall not include...cash, gift cards, or any equivalent thereof.” R.C. 2915.01(VV)(1). Upon information and belief, VFW #3747’s gaming devices reward players with cash, gift cards, or vouchers redeemable for cash or gift cards. Therefore, VFW #3747’s gaming devices are not SBAMs because they do not only reward players with merchandise prizes or vouchers redeemable only for merchandise prizes.¹

Third, scheme of chance is defined to include “the use of an electronic device to reveal the results of a game entry if valuable consideration is paid, directly or indirectly, for a chance to win a prize.” R.C. 2915.01(C). An “electronic device” includes a “video, digital, or electronic machine or device that is capable of displaying information on a screen” *Id.* Upon information and belief, VFW #3747’s gaming devices are electronic devices that will reveal the result of a game only if the player pays some amount of money, and players hope to win cash prizes in return. Therefore, VFW

¹ While VFW #3747 has a Skill-Based Amusement Machine Location License from the Ohio Casino Control Commission, the gaming machines at issue are not SBAMs and are not covered by this license.

#3747's gaming devices are also schemes of chances under this definition.

The attorney general intends to restrict VFW #3747's 2022 charitable bingo license to prohibit electronic instant bingo because VFW #3747 has violated R.C. 2915.02(A)(2).

LAWS AND RULES

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 to Limit and/or Restrict 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 the mailing 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 mailing 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 to Limit and/or Restrict and Opportunity for Hearing must be submitted to the undersigned at the address listed below.

Very respectfully yours,

DAVE YOST
ATTORNEY GENERAL



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Section Chief
Ohio Attorney General's Office
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