

PIEDMONT JAYCEES, INC.
P.O. Box 342
Piedmont, AL 36272-0342,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. S. 99-268

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Piedmont Jaycees, Inc. (AJaycees@) for sales tax for August 1995 through December 1997. The Jaycees appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on March 13, 2001 in Birmingham, Alabama. Bayne Smith represented the Jaycees. Assistant Counsel Wade Hope represented the Department.

ISSUE

The Jaycees operated a bingo game in Calhoun County, Alabama during the subject period. The issue is whether the gross proceeds derived from the bingo were exempt from sales tax pursuant to Code of Ala. 1975, ' 40-23-4(a)(43). That statute exempts the gross receipts derived from bingo games Aconducted in compliance with validly enacted legislation authorizing the conduct of such games and operations, and which comply with the distribution requirements of the applicable local laws.@

FACTS

The Piedmont Jaycees were organized and became affiliated with the U.S. Junior Chamber of Commerce in 1952. The Jaycees are a qualified ' 501(c) charitable organization under the Internal Revenue Code, and over the years have provided countless charitable and

community services to the City of Piedmont and Calhoun County. The Jaycees became involved in bingo in Piedmont in 1995. A history of bingo in Piedmont before 1995 will help the reader understand the case.

Bingo was legalized in Calhoun County in 1990 by Amendment 508 to the Alabama Constitution of 1901. Shortly thereafter, various out-of-state gamblers, with the apparent acquiescence of certain local officials, began operating high-stakes bingo in Piedmont. The bingo was conducted through various front entities, including Cranberry Magnetite, Inc.

Cranberry Magnetite constructed the Frontier Palace in Piedmont in 1993 for the purpose of conducting high-stakes bingo games. The Frontier Palace cost over six million dollars to build, and has a seating capacity of several thousand people. A single bingo game at the Frontier Palace in 1994 grossed over one million dollars.

The individuals that controlled bingo in Piedmont had a falling out, and sued each other in Calhoun County Circuit Court in 1994. Those individuals stopped operating bingo at the Frontier Palace in late 1994 or early 1995. The Calhoun County Circuit Court ruled in April 1995 that bingo in Piedmont had been a sham, and had violated the laws of Alabama. The Court also directed the Revenue Department to investigate the bingo operation for tax violations.

The Department audited Cranberry Magnetite, and assessed it for over \$600,000 in unpaid sales, use, and withholding taxes. Cranberry Magnetite appealed to the Administrative Law Division. The Administrative Law Division affirmed all but one of the smaller assessments, holding in part that the bingo receipts were not exempt from sales tax under ' 40-23-4(a)(43) because Cranberry Magnetite was not a qualified ' 501(c) organization, and

that the receipts had not been used solely for charitable purposes. See, *Cranberry Magnetite v. State of Alabama, Inc.* 95-371 (Admin. Law Div. 4/14/97).

The evidence submitted in *Cranberry Magnetite* clearly established that before 1995, bingo in Piedmont involved illegal activities and had not complied with Amendment 508 and the applicable Piedmont ordinances. The individuals that controlled the games attempted to hide their illegal activities by using various front entities, and secretly siphoned large amounts of cash from the games. One of the individuals that operated the games is now in prison. A second fled the country, and presently lives in France. There is no evidence, however, that the individuals that controlled bingo in Piedmont before 1995 were involved in bingo during the period in issue.

The Piedmont City Clerk contacted the Jaycees in early 1995 concerning the possibility of the Jaycees conducting bingo at the Frontier Palace. Brian Pike was an active member and treasurer of the Jaycees at the time.¹ He and the other Jaycees viewed bingo as a way of raising additional money for charities in the area. They were aware, however, of the past problems with bingo at the Frontier Palace. Consequently, to insure that they complied with all applicable laws, the Jaycees discussed the matter with the Calhoun County District Attorneys Office, the Piedmont city attorney and various other city officials, and the Calhoun County Bingo Regulatory Commission.

¹Pike is also employed full-time as the sales manager of an oil company in Calhoun County.

The Jaycees subsequently voted to operate bingo at the Frontier Palace. They formed a bingo board comprised of past Jaycee presidents to oversee the bingo operation. They also hired an attorney to review the building lease with S.B.I. Communications, Inc., which had purchased the Frontier Palace from Cranberry Magnetite. The Jaycees initially leased the facility and equipment for \$75,000 a month. The monthly lease was later reduced to \$25,000.

The Jaycees started operating bingo at the Frontier Palace in August 1995. Pike managed and called the games. From August through November 1995, he and several other Jaycees voluntarily operated the games without pay. After they realized how much work and how many hours it took to operate the facility, they asked the Piedmont city attorney if they could be paid for their work. The city attorney responded that they could be paid, but only the same reasonable wages that any other person would be paid for the same work. The Jaycee bingo board consequently voted to pay its members that worked at the facility a reasonable wage, which generally amounted to \$6.00 an hour. No more than three or four Jaycees worked at the facility at any one time. The board agreed to pay Pike \$500 a week for his numerous duties and long hours spent at the facility.

The Jaycee bingo board also voted to employ two non-members during the audit period. One worked as Pike's assistant. The other was transportation coordinator. They each received a \$1,000 weekly salary. Both individuals passed thorough criminal background checks before being hired. There is no evidence that either individual was ever employed by or involved with Cranberry Magnetite or any other individual or front entity that operated bingo in Piedmont before 1995. The individuals each received a \$10,000 bonus after an unusually

profitable game at the facility. The bonus was approved by the Jaycee bingo board.

The bingo proceeds were deposited daily into a special events bank account. Bingo expenses, salaries, and some charitable donations were paid from that account. The remainder was transferred to the Jaycees regular account, and later disbursed for various charitable purposes. Some of the bingo money was used to improve the Jaycees meeting facility, including a fence, paint, a satellite system, and a pool table. Some was also deposited into a mutual fund. The Jaycees used the mutual fund after the period in issue for operating expenses and to provide charitable services.

The Jaycees properly filed all financial reports with the City of Piedmont and The Calhoun County Bingo Regulatory Commission during the period in issue, as required by law. They also paid an annual permit fee to the Regulatory Commission, and an admissions tax to the City.

The Jaycees reported and paid sales tax from August 1995 until June 1997 on retail sales in a gift shop and snack bar at the Frontier Palace. The Jaycees did not pay tax on the bingo gross receipts because they thought the receipts were exempt pursuant to '40-23-4(a)(43). The Jaycees closed the snack bar and gift shop in June 1997. They stopped operating bingo at the Frontier Palace in late 1997 because of increased competition from casinos, and also because of bad publicity concerning the prior operators of the Frontier Palace.

The Department audited the Jaycees and determined that the bingo gross proceeds were not exempt from sales tax because the Jaycees had not complied with Amendment 508, Act 96-662, which relates to the operation of bingo in Calhoun County, and Piedmont City

Ordinance 429. Specifically, the Department contends the Jaycees (1) illegally paid wages to its members and the two non-members that worked at the facility; (2) illegally paid consulting fees; and (3) did not use the bingo proceeds for strictly charitable purposes.

In conducting the audit, the Department relied on a March 8, 1998 Order entered by Circuit Judge Joel Laird in *State v. Ronald Carey Foster*, CC 95-678. Foster was convicted in 1995 of illegally promoting bingo-related gambling in Calhoun County before 1995. The issue before the Court in March 1998 was whether Foster had violated his probation by continuing to promote gambling activities in Calhoun County. The Court found that he had, and revoked his probation accordingly. The Court also concluded, in part, that the payment of wages by a bingo operator, as authorized by both Piedmont Ordinance 429 and Act 96-662, was unconstitutional because it violated Amendment 508. The Department relies on that holding as support for its position that the Jaycees illegally paid wages during the audit period.

ANALYSIS

The legal authority allowing and governing bingo in Piedmont during the subject period was Amendment 508, Piedmont Ordinance 429, and Act 96-662.

Amendment 508 authorizes nonprofit organizations to operate bingo in Calhoun County for Acharitable, education, or other lawful purposes.@ Paragraph (d) prohibits the nonprofit organization from contracting with any other party to operate bingo games or concessions for the organization, or to pay consulting fees to any party. Paragraph (g) prohibits the organization from takingAany expenses for the operation of a bingo game except as permitted by law.@

Piedmont Ordinance 429 required that the bingo proceeds must be used for

Acharitable, civic, community, educational, benevolent, religious, or scholastic activities@ consistent with the charter of the charitable organization that operated the games. It also authorized the payment of all expenses necessary to operate bingo, including reasonable wages.

Act 96-662 specifies, in part, that all net bingo proceeds shall be used for Acharitable or educational purposes.@ The Act also provides that a qualified bingo operator may pay a reasonable salary or wage for services rendered. The Act prohibits the payment of consulting fees, as does Amendment 508, and provides that only members of the nonprofit organization can participate in the management or operation of the games.

As indicated, the Department argues that the Jaycees (1) illegally paid wages to bingo employees (2) illegally paid consulting fees, and (3) failed to use the net bingo proceeds for strictly charitable purposes.

Concerning argument (1), Act 96-662 and Ordinance 429 both allow the payment of reasonable wages by a bingo operator. The Department contends, however, that the payment of wages by the Jaycees was illegal because the Calhoun County Circuit Court ruled in its March 8, 1998 Order in *Foster* that the payment of wages was unconstitutional.

The Calhoun County Circuit Court did rule in *Foster* that the payment of wages by a

bingo operator violated Amendment 508, and thus was unconstitutional.² However, the *Foster* case involved only a probation revocation. The constitutionality of Act 96-662 was not in issue. Consequently, with due respect to the Circuit Court, its holding concerning the constitutionality of Act 96-662 was dicta, and is not binding. *McDonald's Corporation v. Robertson*, 147 F.3d 1301 (11th Cir. 1998) (A...dicta in our opinions is not binding on anyone for any purpose. . . Dicta in our opinions cannot establish either the law of the circuit, or even the law of the case.@ See also, *Wilkinson v. Rowe*, 98 So.2d 435 (Ala. 1957).

The Circuit Court's Order also was entered after the period in issue. Consequently, even if the Court's finding was binding, it would not apply to the period in issue. The Jaycees could not have known when they operated the bingo games that the payment of wages, as allowed by Ordinance 429 and Act 96-662, and as approved by the Piedmont city attorney,

²The Circuit Court presumably held that the payment of wages was unconstitutional based on paragraph (g) of Amendment 508, which provides that no bingo operator shall take any expenses for the operation of a bingo game except as permitted by law.@ There is a question whether the taking of expenses for the operation of bingo includes the paying of reasonable wages for services rendered. In any case, Amendment 508 prohibits the taking of expenses except as permitted by law.@ Act 96-662 clearly permits a qualified bingo operator to pay reasonable wages for the operation of bingo in Calhoun County. The payment of reasonable wages by the Jaycees was permitted by law,@ and thus did not violate Amendment 508.

was unconstitutional, and thus improper. The payment of wages by the Jaycees during the audit period was in accordance with Avalidly enacted legislation,@as required for the ' 40-23-4(a)(43) exemption to apply.

The Department next argues that the Jaycees improperly paidAconsulting fees@to the two non-members that worked at the Frontier Palace. I disagree.

The two non-members were not paid consulting fees. They were employees that received reasonable wages for services performed at the bingo facility. Admittedly, the one-time \$10,000 bonuses were extraordinary and unusual, but there is no indication they were consulting fees. The prohibition against consulting fees is intended to prevent a bingo operator from funneling bingo receipts to third parties that do not work at the games. That did not occur in this case.

Paragraph (d) of Amendment 508 prohibits a charitable organization from contracting with anyone to operate bingo for the organization. Section 7(e) of Act 96-662 also prohibits anyone except a member of a qualified charitable organization from managing or operating the bingo. Pike was the on-site manager and operated the games. The Jaycee bingo board was responsible for overall management of the games. The two non-members were only salaried employees that answered to Pike. They did not have overall authority to manage or operate the games. Consequently, neither paragraph (d) of Amendment 508 nor ' 7(e) of Act 96-662 was violated.

Finally, the Department argues that the net bingo proceeds were not used exclusively for charitable purposes, as required by Amendment 508, Act 96-662, and Ordinance 429.

Specifically, the Department claims the Jaycees improperly used some of the bingo money for a fence, a satellite system, a pool table, and other improvements to the Jaycee clubhouse.

Improving the facilities of a qualified 501(c) charitable organization that performs civil and community services clearly constituted a civic or community use of the funds as required by Piedmont Ordinance 429. Such use also complied with Amendment 508, which allows bingo funds to be used for other lawful purposes. Improving the Jaycee's clubhouse facility was a lawful use of the funds.

Act 96-662 requires the funds to be used for only charitable and educational activities. I understand the Department's position that using the bingo money to repair and buy amenities for the Jaycee's meeting place was not a use of the money for a charitable purpose. But the Jaycees are a charitable organization. It is undisputed that they raise money for charitable purposes and perform countless charitable services in the community. Improving the Jaycees facility could only enhance membership and participation in the organization, and thereby promote those charitable activities.³

³The Jaycees and other local civic organizations inquired with the County Bingo Commission as to exactly what constituted a charitable activity. They never received an answer.

The intent of Amendment 508 was to allow bingo in Calhoun County for charitable and other lawful purposes that benefit the citizens of the County. I agree with Circuit Judge Laird that what was intended by Amendment 508 as a civic good to benefit worthwhile causes turned in the early 1990s into a very big time, high stakes industry of greed and corruption that benefits no one any greater than those who are operating the games. @ *Foster* Order at 6. Judge Laird was correct in condemning those individuals that conducted or condoned illegal bingo in the early 1990s. The Revenue Department audited the bingo operation at Judge Laird's request, and assessed and collected over \$600,000 in delinquent taxes as a result. See again, *Cranberry Magnetite v. State of Alabama*, supra.

There is no evidence, however, that the Jaycees were in cahoots with the individuals that illegally operated the bingo before 1995, or that those individuals were otherwise involved in the bingo during the period in issue. Importantly, there is no evidence that any bingo money was skimmed or illegally diverted for an improper use during the subject period, as was the case before 1995.

In summary, the Jaycees substantially complied with all applicable statutes and ordinances when they operated bingo during the subject period. Consequently, the bingo gross receipts were exempt from sales tax under ' 40-23-4(a)(43). The final assessment is dismissed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

Entered July 24, 2001.