Landlord leasing premises to qualified organization to conduct bingo games may adjust rent charged to organization downward from amount specified in lease based on amount organization actually earns from games, provided rent actually paid for premises does not exceed property's fair market value.

The Honorable Ray A. Conner
Commissioner of the Revenue for the City of Chesapeake

January 15, 1996

You ask whether a landlord leasing premises to organizations to conduct bingo games may lower the amount of rent charged from that specified in the lease agreement based on the amount earned by the organization from bingo games conducted on the leased premises.

You relate that a landlord leases a facility to an organization that conducts bingo games. The premises are leased on a daily or nightly basis for a set fee that covers the use of the hall and equipment, utilities, advertising, maintenance and other miscellaneous expenses. You advise further that the rent is not increased to an amount above the amount stated in the lease; however, the landlord regularly adjusts the rent to an amount below the amount in the lease agreement based on the amounts earned by the organization during bingo games. The landlord contends that the diminution in rent is an "in-kind" contribution to the organization conducting the bingo, and that there is no violation of the bingo laws so long as the rent actually charged to the organization does not exceed the fair market value of the leased premises.

Prior opinions of the Attorney General conclude that a per game fee lawfully may be charged as a rental fee for premises used for bingo, even though the fee is not based on a percentage of the receipts of a bingo game, and, further, that a lease for a premises used for bingo may not provide for a minimum amount of rent, and if the gross proceeds from bingo exceed a certain amount, the landlord may not use any additional percentage of gross proceeds from the bingo games as additional rent. Although the prior opinions construe the predecessor provisions to § 18.2-340.9(C) of the Code of Virginia, the opinions are based on the conclusion that the intent of the General Assembly is to allow "bingo games . . . to be conducted only by qualified nonprofit, charitable organizations, and to prohibit situations where private individuals, as opposed to the authorized organizations would benefit from or make a profit from such bingo games."

In § 18.2340.9(C), the General Assembly prohibits the payment or receipt of rent in excess of the fair market value for use of any premises as a bingo hall; however, it does not address a situation
when the rental amount is less than the fair market value of any such premises. A well-settled principle of statutory construction requires that when the language of a statute is plain and unambiguous, effect must be given to it, and its plain meaning and intent govern. In addition, when a statute is penal in nature, "it must be strictly construed against the state and limited in application to cases falling clearly within the language of the statute." Accordingly, I am of the opinion that so long as the rent actually paid for the premises does not exceed the fair market value of the property, the landlord may adjust the rent charged to the organization downward from the amount specified in the lease based on the amount actually earned by the organization from bingo games conducted on the leased premises, without violating the provisions of § 18.2-340.9(C).

1 You do not state whether the rent specified in the lease is itemized according to "the amount attributable to the rent of the premises, equipment, and each service to be provided by the landlord," as specified by § 18.2340.9(F) of the Code of Virginia. The first paragraph of § 18.2340.9(F) provides: "No landlord shall, at bingo games conducted on the landlord's premises, (i) participate in the conduct, management, or operation of any bingo games; (ii) sell, lease or otherwise provide for consideration any bingo supplies, including, but not limited to, bingo cards, instant bingo cards, markers, or other game pieces; or (iii) require as a condition of the lease or by contract that a particular manufacturer, distributor or supplier of bingo supplies or equipment be used by the organization. If equipment or services are included by a landlord in any lease or contract, the lease or contract shall itemize the amount attributable to the rent of the premises, equipment, and each service to be provided by the landlord."

If the set fee to which you refer does not include such an itemization, the lease arrangement you describe would constitute participation by the landlord "in the conduct, management, or operation" of the bingo games, in violation of § 18.2340.9(F), regardless of whether the amount of the rent is reduced based on amounts earned by the organization during bingo games.


3 Section 18.2340.9(C) provides: "No person, firm, association, organization, partnership, or corporation shall pay or receive for use of any premises devoted, in whole or in part, to the conduct of bingo games or raffles any consideration in excess of the current fair market rental value of such property. For purposes of [the bingo laws], no fair market rental value consideration shall be based upon or determined by reference to a percentage of the proceeds derived from the operation of bingo games … nor shall such consideration be based upon or determined by any reference to the number of people in attendance at such bingo games … ."


5 This assumption is predicated on the provisions of § 18.2340.9(C), which provide that "no fair market rental value consideration shall be based upon or determined by reference to a percentage of the proceeds derived from the operation of bingo games." In the event
that rental charged, which is predicated on a percentage of the bingo proceeds, is asserted
to be the fair market value of the property rather than below fair market value, the
payment or receipt of such rent would violate § 18.2340.9(C). You do not ask and I do
not address whether the landlord lawfully may claim a tax deduction based on an "in-kind
charitable donation" when the rent charged is below the amount stated in the lease
because of a reduction in the organization's bingo proceeds.

Att'y Gen. 93, 95.

7Graybeal v. Commonwealth, 228 Va. 736, 739, 324 S.E.2d 698, 700 (1985) (quoting