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### ATTORNEY GENERAL
### STATE OF ILLINOIS
### SPRINGFIELD

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FILE NO. 81-038

REVENUE:
Revocation of License Under
Bingo License and Tax Act

Honorable Robert G. Cronson
Auditor General
State of Illinois
509 South Sixth Street, First Floor
Springfield, Illinois 62701

Dear Mr. Cronson:

I have your letter wherein you ask the following

questions:

"(a) When a statute provides for the 'automatic
revocation' of a license on the occurrence
of a particular event, must the provisions
of § 1016(c) of the Administrative Procedure
Act be applied before the license is revoked?

(b) Is the automatic revocation provision of
Section 3 of the Bingo Act self-executing or
does the department have to take affirmative
action? If the department must take affirma-
tive action, is the department's action
subject to Section 1016(c) of the Administrative
Procedure Act?"

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Subsection 16(c) of the Illinois Administrative
Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1016(c))
sets forth the procedures to be followed before a license may
be revoked by an agency subject to the Act:

"(c) No agency shall revoke, suspend, annul,
withdraw, amend materially, or refuse to renew
any valid license without first giving written
notice to the licensee of the facts or conduct
upon which the agency will rely to support its
proposed action, and an opportunity for hearing in
accordance with the provisions of this Act con-
cerning contested cases. At any such hearing, the
licensee shall have the right to show compliance
with all lawful requirements for the retention, or
continuation or renewal of the license. If, however,
the agency finds that the public interest, safety
or welfare imperatively requires emergency action,
and if the agency incorporates a finding to that effect
in its order, summary suspension of a license may be
ordered pending proceedings for revocation or
other action which proceedings shall be promptly
instituted and determined.

Any application for renewal of a license which
contains required and relevant information, data,
material or circumstances which were not contained
in an application for the existing license, shall
be subject to the provisions of Section 16(a) of
this Act."

Section 2 of the Act (Ill. Rev. Stat. 1980 Supp., ch. 127,
par. 1002) sets forth the limits of applicability of the Act:

"This Act applies to every agency as defined
herein. Beginning January 1, 1978 in case of
conflict between the provisions of this Act and
the Act creating or conferring power on an agency,
this Act shall control. However if an agency has
existing procedures on July 1, 1977 specifically
for contested cases or licensing those existing
provisions control, except that this exception
respecting contested cases and licensing does not
apply if the Act creating or conferring power on
the agency adopts by express reference the provision
of this Act. Where the Act creating or conferring
power on an agency establishes administrative

procedures not covered by this Act, such procedures shall remain in effect.
                                        * * *                                   "

"Agency" is defined in section 3.01 of the Act (Ill. Rev. Stat. 1979, ch. 127, par. 1003.01):

> "'Agency' means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, 'agency' does not include:
>
> (a) the House of Representatives and Senate, and their respective standing and service committees;
>
> (b) the Governor; and
>
> (c) the justices and judges of the Supreme and Appellate Courts.
>
> No entity shall be considered an 'agency' for the purposes of this Act unless authorized by law to make rules or to determine contested cases."

"Licensing" is defined in section 3.04 of the Act (Ill. Rev. Stat. 1979, ch. 127, par. 1003.04):

> "'Licensing' includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license."

Section 2 of the Act contains certain exceptions to the application of the Act. The Act will not apply to specific procedures for contested cases or licensing in existence on July 1, 1977, unless the Act creating or conferring power on

the agency has adopted by express reference, the provisions
of the Illinois Administrative Procedure Act.  Section 2 also
provides that where the Act creating or conferring power on an
agency has established administrative procedures not covered
by the Illinois Administrative Procedure Act, such procedures
remain in effect.  Section 2 of the Act further provides:

"          * * *

> The provisions of this Act shall not apply to
> (1) preliminary hearings, investigations or practices
> where no final determinations affecting State funding
> are made by the State Board of Education, (2) State
> Board of Education statements, guidelines or policies
> which do not have the force of law, (3) legal opinions
> issued under Section 2-3.7 of The School Code, and
> (4) as to State colleges and universities, their
> disciplinary and grievance proceedings, academic
> irregularity and capricious grading proceedings,
> and admission standards and procedures, and (5)
> the class specifications for positions and individ-
> ual position descriptions prepared and maintained
> pursuant to the 'Personnel Code'; however such
> specifications shall be made reasonably available
> to the public for inspection and copying.  Neither
> shall the provisions of this Act apply to hearings
> under Section 20 of the 'Uniform Disposition of
> Unclaimed Property Act'."

Illinois follows the rule of statutory construction
expressio unius est exclusio alterius.  (People v. Schaffra
(1975), 30 Ill. App. 3d 600, 602 - 603.)  Under this rule the
expression of statutory exceptions is generally construed as
the intention by the General Assembly to exclude all other ex-
ceptions.  (Laurent v. Brelji (1979), 74 Ill. App. 3d 214, 217.)
The mere fact that a statute provides for the automatic revo-
cation of a license on the occurrence of a particular event does
not, in itself, appear to fall within any of the exceptions

provided in section 2 of the Act. It is therefore my opinion
that when a statute provides for the automatic revocation of a
license on the occurrence of a particular event, the procedures
set forth in subsection 16(c) of the Illinois Administrative
Procedure Act must be followed before the license is revoked
unless the statute otherwise falls within an exception provided
in section 2 of the Act.

Section 3 of the Bingo License and Tax Act (Ill. Rev.
Stat. 1979, ch. 120, par. 1103) provides for the automatic
revocation of a bingo license for failure to submit either the
required payment or report within the specified time:

> "There shall be paid to the Department of
> Revenue, 5% of the gross proceeds of any game of
> bingo conducted under the provision of this Act.
> Such payments shall be made 4 times per year,
> between the first and the 20th day of April, July,
> October and January. Payment must be by money
> order or certified check. Accompanying each payment
> shall be a report, on forms provided by the
> Department of Revenue, listing the number of games
> conducted, the gross income derived and such other
> information as the Department of Revenue may require.
> Failure to submit either the payment or the report
> within the specified time shall result in automatic
> revocation of the license.
>
>          * * *              "

(Emphasis added.)

A statute is considered self-executing when its
provisions are carried out automatically upon the occurrence
of some specific act or omission of some specific act. (Pierne
v. Valentine (1943), 42 N.Y.S. 2d 404, 410-411; State v. Iowa
Southern Utilities Company of Delaware (1942), 231 Iowa 784,
2 N.W. 2d 372, 397-398; Ridgeway v. City of Akron (1940), 36

Abs. 46, 42 N.E. 2d 724, 726; Feinberg v. Dow (1939), 14 C. 2d 24, 92 P. 2d 640, 642.) "Automatic" is defined as "self-acting or self-regulating". (Black's Law Dictionary, 4th Rev. Ed., p. 169; Land O' Lakes Dairy Company v. Hintzen (1948), 225 Minn. 535, 31 N.W. 2d 474, 476.) On the basis of the above, it is clear that the provision in section 3 of the Bingo Act providing for the automatic revocation of a license, is self-executing upon the failure to submit either the required payment or report.

The self-executing language of section 3 is not inconsistent with a pre-revocation hearing requirement allowing the licensee to prove that he has timely submitted the required payment and report. If such a hearing is requested, revocation of the license would automatically occur at the termination of the hearing unless the licensee has proved that all the requirements of section 3 of the Bingo Act have been met. Therefore, the fact that the automatic revocation provision in section 3 of the Bingo Act is self-executing does not remove the provision from the application of the Illinois Administrative Procedure Act. As I concluded above, when a statute provides for the "automatic revocation" of a license on the occurrence of a particular event, the provisions of subsection 16(c) of the Illinois Administrative Procedure Act must be applied before the license is revoked unless the statute falls within an exception provided for in section 2 of the Act. Section 5.1 of the

Bingo Act (Ill. Rev. Stat. 1979, ch. 120, par. 1105.1) clearly makes the Bingo Act subject to the Illinois Administrative Procedure Act:

> "The Illinois Administrative Procedure Act is hereby expressly adopted and shall apply to all administrative rules and procedures of the Department of Revenue under this Act, except that (1) paragraph (b) of Section 4 of the Administrative Procedure Act does not apply to final orders, decisions and opinions of the Department, (2) subparagraph (a)2 of Section 4 of the Administrative Procedure Act does not apply to forms established by the Department for use under this Act, and (3) the provisions of Section 13 of the Administrative Procedure Act regarding proposals for decision are excluded and not applicable to the Department under this Act."
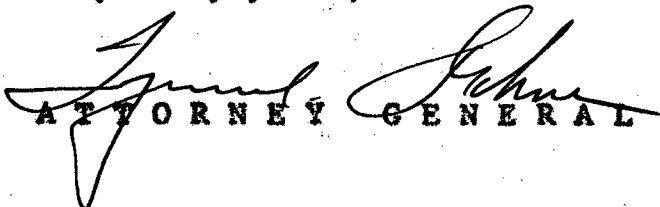
The language of section 5.1 of the Bingo Act is clear. Statutory language which is clear and unambiguous must be enforced as enacted. (People ex rel. Gibson v. Cannon (1976), 65 Ill. 2d 366, 369.) There is nothing in either section 5.1 of the Bingo Act or section 2 of the Illinois Administrative Procedure Act which exempts the automatic revocation provision of section 3 of the Bingo Act from the provisions of subsection 16(c) of the Illinois Administrative Procedure Act. Under the rule of expressio unius est exclusio alterius, no such exception may be inferred. Laurent v. Brelji (1979), 74 Ill. App. 3d 214, 217.

Therefore, it is my opinion that, while the provision in section 3 of the Bingo Act regarding the automatic revocation of a license for failure to submit either the required payment

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or report is self-executing, section 3 is nevertheless subject
to the provisions of subsection 16(c) of the Illinois Adminis-
trative Procedure Act.

Very truly yours,

ATTORNEY GENERAL