

GREENWOOD CITY COUNCIL

November, 17, 2003 - 6:20 p.m.

**PUBLIC APPEAL HEARING**

PRESENT

Council Members: Mayor Nicholson, Niki Hutto, Linda Edwards, Herbert Vaughn, Johnny Williams, and Barbara Turnburke; City Manager; Assistant City Manager; City Clerk; City Attorney; Mike Hatfield of WCRS, and Wallace McBride from the Index-Journal.

CALL TO ORDER

The meeting in the Council Chambers was called to order by Mayor Nicholson at 6:20 p.m.

CONSIDER

An Appeal by Ramon Ashy, Jr., Owner of Northside Bingo, Regarding the Use of Gross Receipts as Stated in the 2003 Business License.

Mayor Nicholson said, "As Mayor, I call this appeal hearing to order. I would like to remind City Council that this hearing is an appeal of the City staff person's decision. I ask for everyone's cooperation."

The Mayor began the hearing by reading the letter from Mr. Ashy requesting an appeal of the audit of Northside Bingo gross receipts.

MAYOR NICHOLSON

"I would like to ask the members of City Council if they have any personal interest in this appeal. Do you stand to gain or lose any financial benefit as a result of the outcome of this hearing? Can you hear and consider application in a fair and objective manner? I would like each Council member to state their position right now."

Each Council member stated that they had no personal interest in the outcome of the Northside Bingo appeal decision.

"Mr. Pfeiffer, the ground rules is each side will identify who will testify. I will swear in all witnesses. All speakers must speak into the microphone and give their name and address for the record. All comments should be addressed to City Council. It should be in reference to the appeal item, Northside Bingo gross receipts, and not be of a personal nature. Let's try to avoid repetitive comments so that we can get through this as quick as possible. Does everyone understands the ground rules?"

SCOTT PFEIFFER

"Yes, your honor."

MAYOR NICHOLSON "Who all will be testifying?"

STEFFANIE DORN "Mr. Mayor, I will be testifying on behalf of the City's position."

MAYOR NICHOLSON "Just you?"

SCOTT PFEIFFER "I'll testify on behalf of Mr. Ashy."

STEFFANIE DORN "Ms. O'Dell may be needed to answer questions about gross receipts and comments."

MAYOR NICHOLSON "Okay, I'm going to administer the oath to all three of you if you don't mind."

Mayor Nicholson then swore in Steffanie Dorn, Sara O'Dell and Scott Pfeiffer.

The Mayor then called for a brief recess before the actual hearing proceedings at 6:23 p.m.

The Mayor called the hearing back in session at 6:30 p.m.

"I would like to ask the City staff person to present the City's position."

STEFFANIE DORN "Thank you, Mr. Mayor. I would like to present Council with a copy of the correspondence that has transpired both from Mr. Ashy and from the City in chronological order. I'd like to start with giving you a background on the events that led up to this hearing request by Mr. Ashy. In accordance with Section 15-24 of the City of Greenwood Code of Ordinances, we selected Northside Bingo for an audit. As you are aware, we have been conducting these audits for several years now. On August 28, 2003, Sara O'Dell, in my office, sent a request to Mr. Ashy for the information necessary to complete the audit.

On September 22, Ms. Joni Adams from Tink's Accounting Service in Simpsonville, SC, called and notified Ms. O'Dell that the information would be faxed to our office. On the same day, she did receive the fax. Once Ms. O'Dell reviewed the information that was received and determined that the gross receipts had been under-reported, she consulted with me to be sure that her interpretation was correct. I advised Ms. O'Dell that I concurred with her decision and instructed her to send a letter explaining our position and the amount due. On September 24, the letter was sent to Mr. Ashy and we requested payment by October 15. On September 29, Mr. Ashy mailed a letter back to Ms. O'Dell stating that he disagreed with our decision. Mr. Ashy's letter stated that

he believed that the 'gross income for the bingo is equal to the deposits made at the close of each session.' He further explained that the books of the business included all money taken in 'because of the state's requirement to track cash taken in and paid out on a daily basis.' After reviewing the information that he provided to us and reviewing the ordinance, Ms. O'Dell, on October 3, sent a letter restating our position that all money taken in was gross receipts and requested payment of the difference due by October 22. On October 21, we received the letter from Mr. Ashy requesting an appeal of our decision. Mr. Ashy's appeal is based on our definition of gross income. According to the information forwarded to us by Tink's Accounting Service, Bingo Prizes Awarded and Till Shortages were deducted as 'Cost of Sales' from Gross Revenues and the difference reported to our office.

Bingo is a business that is highly regulated by the State of South Carolina. Our authority to collect business licenses is also regulated by S.C. Code §5-7-30 lists certain restrictions of other businesses, but does not restrict or change the definition of gross income. Mr. Ashy feels that prizes awarded to the game players is not part of gross receipts. We disagree. According to your ordinance, the definition of 'Gross Income' is the total revenue of a business received or accrued for one calendar or fiscal year collected or to be collected by a business within the City. Further, Section 15-20 of your ordinance states, 'No license based on gross receipts, or otherwise, shall be issued except under oath of the applicant that the applicant's report of gross receipts, or otherwise, conforms to the books and records of the applicant's business and with the report or return of such gross receipts, or otherwise, for the corresponding period made or to be made to the Director of Internal Revenue of the United States, the South Carolina Tax Commission, or the Insurance Commissioner of the State, as the case may be.' According to the Internal Revenue Manual Handbook [7.8.1] 22.6.1, 'gross receipts' is the total amount received from the conduct of all gaming activities. 'Pursuant to IRC 6033(a)(1) and Reg. 1.6033-2(a)(1), and in accordance with the Instructions to Form 990, gross receipts must be reported on Form 990 without reduction for prizes or similar expenses.' The Form 990 would be the annual return required by the Internal Revenue Service to be filed by this business.

The definition of gross income that matters in this case is the definition as outlined in your ordinance. Your ordinance refers to the gross receipts reported to the Internal Revenue Service, which clearly matches our interpretation. Prize payouts are a cost of doing business and are not deductible for business license purposes. Prize payouts are no different than the cost of goods sold or other expenses that are not deductible. I would offer a business such as Sportsbreak as an example. They often hold various contests and offer cash prizes. These prizes would be reflected as an expense and not a reduction of gross income.

Further, some businesses pay their employees out of the “till” at the end of the day. The payment to their employees would be a business expense, not a reduction of gross income.

In conclusion, we believe that your ordinance requires that prizes and till shortages be included in gross receipts. We respectfully request that you rule in our favor and ask Mr. Ashy to pay the fee due of \$5,310.38. The amount due includes the license fee due on the under-reported amount for three years as allowed by the statute of limitations. The amount also includes penalties of five percent per month after the due date as set forth in Section 15-24. The fee does **not** include any costs of the audit as allowed in the same Ordinance Section. The fee also does not include any additional penalties that have been added since the original determination date.”

MAYOR NICHOLSON “Thank you, Ms. Dorn. Do you have any questions for Ms. Dorn?”

SCOTT PFEIFFER “No, your honor, I don’t.

MAYOR NICHOLSON “Does the City Attorney have any questions?”

JOHN MCCRAVY “No further questions.”

MAYOR NICHOLSON “Okay Council, do you have any questions for Ms. Dorn? Thank you. Ms. O’Dell do you have anything to add?”

SARA O’DELL “No sir.”

MAYOR NICHOLSON “Okay. Thank you.”

SCOTT PFEIFFER “Thank you, Mr. Mayor...”

MAYOR NICHOLSON “Please state your name and address for the record for us again.”

SCOTT PFEIFFER “My name is Scott Pfeiffer. My address is 214 Loblolly Lane, Greenville, South Carolina. I am an attorney at the law firm of Pfeiffer, Gantt, and Gleaton located at 200 South Main Street, Greenville, South Carolina. I’m here representing the charity and Mr. Ashy.

I really don’t disagree with anything that your City Clerk and Treasurer has said. I’m here to discuss with you how this City Council should interpret its own ordinance and what it should consider gross receipts from a very unique business, the game of charitable bingo. The game of charitable bingo is absolutely unique in this State because it is created by the Constitution of the State of South Carolina. It is regulated by State statute, the South Carolina Bingo Act, and it is administered by the South Carolina Department of Revenue. Charitable is unique in every way. It pays no income tax, nor sales tax, but instead it pays a unique bingo tax of 16 ½ percent to the State of South Carolina up front

when it buys its bingo cards, which it must purchase through authorized distributors. So the charity goes to the State, pays the 16 ½ percent tax, and is given a voucher which permits it to buy the bingo cards, which it then sells to generate its revenues at the door. The South Carolina Bingo Tax Act mandates that the bingo then return as prizes 50% or more of the amounts generated by the sales of these bingo cards. The remaining monies are deposited into the cash register and the bank at the end of the night. It is from those monies, which goes into a State statute mandated bingo account, that it uses to pay the expenses of the bingo and the bingo alone, it's rent, employees, and that sort of thing. The net profits of that bingo account are to be given to the charity and must, by statute, be used 100% for charitable purposes.

The prize money is never deposited in the bingo's bank accounts. It is reported to the South Carolina Department of Revenue and the Federal Government because of the requirement under the Bingo Tax Act that report those prizes so that it can demonstrate it has met the statutory requirement of paying at least 50% of the money out as prizes. The City Clerk has stated the opinion that the prize money is the same as prizes or pay out of a till offered by any other business. I would beg to differ with that characterization. Those businesses give the prizes away from money they have received, or they account for it on their 1099 and are responsible to pay sales and income tax. Unlike those businesses, the charity is statutorily mandated to give those prizes. There is no choice. It's not like rent. We can't go find a cheaper place to operate, buy a different product that costs a little less, nor use a different phone service to get a better rate. The State of South Carolina tells us to pay that money out of the gross receipts. So we would ask the Council to consider the unique nature of those prizes in determining whether they are properly includible in our gross revenues.

Now, because the Bingo Tax Act requires that all of the net proceeds from this bingo game, 100% to the charitable purposes of the charity, it can't be used to pay the charity's overhead. If you decide to tax those prizes, we can't pass that tax along to our consumers. In other words, we can't hand the guy a prize and say, 'Oh by the way, you owe the City of Greenwood a tax on that prize.' That's not permitted by the statute. That tax money on their 50% has to come out of the charities 50%. So that money comes directly from the charities charitable purpose. The charity of this bingo is the South Carolina Association of Blind Athletes. It's a very good charity that gives over 70%, almost 80%, of it's gross proceeds directly to its charitable purpose. It provides opportunities for athletes, who are not sighted, to compete on a parallel with sighted athletes. So we would say that because of the unique nature of these prizes and their statutory mandate that the monies are going directly to a charitable purpose, we would ask this City to interpret its statute not to include those prizes in

gross receipts for purposes of your City business tax.

Now there are other activities going on at the bingo like the canteen selling cokes and little stampers for the bingo cards and that sort of thing. All of that activity is separately licensed and pays the full tax on their full gross revenues, so you're not exempting any of that. We're only talking about the actual sale of the charitable bingo cards in the statutorily mandated door fee which the Bingo Tax Act requires. Thank you very much."

MAYOR NICHOLSON

"Mr. Pfeiffer, one question."

SCOTT PFEIFFER

"Yes, sir."

MAYOR NICHOLSON

"When Ms. Dorn stated the 1099 from the Internal Revenue Service, I think the Internal Revenue say any money or prizes cannot be deducted from gross receipts, correct?"

SCOTT PFEIFFER

"She is absolutely right on that point. There is an informational term. Now remember this is a charity so it pays no tax, but it does file an informational tax return to the Federal government and the Internal Revenue Service. On that form, there is a line for gross receipts and it includes the prize money. That's where I believe she got her number that she's taxing us on. We don't disagree with that. We're just asking you to interpret your statute not to include those prizes for purposes of your ordinance."

MAYOR NICHOLSON

"Right. So you're thinking about maybe we need to change our ordinance?"

SCOTT PFEIFFER

"I think you need to interpret your ordinance not to include those because of the unique nature of this business. This business isn't even in your lowest tax classification. This is taxed under Class 3. There are other for-profit businesses in town that are under Class 1 and are paying less tax per dollar than this charity is paying. So we ask you to take that under consideration."

MAYOR NICHOLSON

"Now the charitable organization is South Carolina for Blind Athletes? Now that just goes to a state organization because I don't think there is a local chapter in our area."

SCOTT PFEIFFER

"It's a national charity."

MAYOR NICHOLSON

"So it goes to the national office?"

SCOTT PFEIFFER

"The South Carolina Chapter of the Association of Blind Athletes is located in Columbia and it spends the revenue from your bingo here all over the State of South Carolina. That's where the money goes, to the blind athletes in the state. I have an information sheet about the US Association of Blind Athletes. It includes more than 3,000 athletes and it supports sports at over 125 organizations."

MAYOR NICHOLSON "Mr. Attorney, I think you have a question."

JOHN MCCRAVY "I don't have any specific questions of him, but I would like to just make a short statement if I could. This issue was presented to me a few weeks ago and it's a very interesting issue. I spoke with the South Carolina Department of Revenue, specifically Anne Pearce. She's in charge of the bingo collections, and is very intimately involved in the bingo industries in our state. She takes the position, and has a strong opinion, that the purchase of the card is the same thing as the sale of goods. Therefore, when somebody buys a card, that money is the same as any business selling something. What happens with it later would be irrelevant to our ordinance, which would be based on gross income. So after thinking about it long and hard, looking at the law and the ordinance, and talking with her, I concur with her opinion that it would be includible in the gross income. Therefore the calculations of the City Treasurer would be correct. I would just state that as our position."

MAYOR NICHOLSON "Okay. Steffanie, do you have any questions?"

STEFFANIE DORN "If I could just ask one question of Mr. Pfeiffer. For these three years in question, how much did the bingo contribute to the Association of Blind Athletes?"

SCOTT PFEIFFER "How much the bingo contributed to the Association of Blind Athletes? Let me see if I can find that. I have been informed by the accountant that the number is an average of about \$35,000 per year."

STEFFANIE DORN "Based on the statements that we have received, they've posted a loss in all three of these years."

SCOTT PFEIFFER "Some of that money comes through the 16 ½ percent tax. The 16 ½ tax, which the Department of Revenue collects a portion of, goes to various State charities. A portion of it goes to some other operating budgets, and a portion of that goes back to the bingo. A lot of that money comes from the Department of Revenue."

STEFFANIE DORN "It comes directly from the State?"

SCOTT PFEIFFER "Exactly, rather than to pass through on the bingo account where, as you can see, things are a little tight."

MAYOR NICHOLSON "I think Councilman Williams have a question."

JOHNNY WILLIAMS "How much do you all make a year, total?"

SCOTT PFEIFFER "How much do we make?"

JOHNNY WILLIAMS "Yes. How much do you make in one year in gross receipts?"

SCOTT PFEIFFER "How much bingo gross receipts?"

JOHNNY WILLIAMS "I think it was \$36,000?"

SCOTT PFEIFFER "About \$35,000 a year is what the charity gets from the operation of the bingo."

JOHNNY WILLIAMS "And how much do you bring in?"

SCOTT PFEIFFER "Of gross receipts? It's about \$1.2 to \$1.4 million in gross receipts. Out of that \$1.2 to \$1.4 million, you got the bingo prizes awarded that are in the \$745,000 to \$880,000 range. So that's the difference we're talking about. The City wants to tax the whole \$1.2 million. We want them to not to tax that \$880,000 in prizes, which we basically take it in and right back out the same night as per the statute. It's the tax on that \$880,000 that we're talking about tonight. We think that it should be an allowable deduction and not be includible in gross income. The City takes a different position."

JOHNNY WILLIAMS "You're saying, if I still do math correctly, y'all still making over \$200,000 profit to pay expenses and all, don't you?"

SCOTT PFEIFFER "Out of that \$200,000 we're paying for the rent on the building, power and lights, insurance, employees, and the equipment."

JOHNNY WILLIAMS "How many employees do you have?"

SCOTT PFEIFFER "I don't know the answer to that; about 20 employees."

MAYOR NICHOLSON "Okay. Any other questions?"

SCOTT PFEIFFER "I would also like to point out that the bingo is paying, in addition to the City ordinance business license fee, about \$200,000 in property taxes to the City."

MAYOR NICHOLSON "So they own the building?"

SCOTT PFEIFFER "It's a triple net lease where the landlord pass the taxes on the tenant, which is the bingo."

MAYOR NICHOLSON "Do we need any rebuttal? Mr. Pfeiffer, thank you very much."

SCOTT PFEIFFER "Thank you, very much."

MAYOR NICHOLSON "If there are no other questions I would like to close the hearing and thank all of you for sharing the information with us."

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There being no further business, the public appeal hearing was

adjourned at 6:45 p.m.

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Floyd Nicholson, Mayor

Attest:

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City Clerk and Treasurer