



State of Louisiana

Gaming Control Board

M. J. "MIKE" FOSTER, JR.
GOVERNOR

HILLARY J. CRAIN
CHAIRMAN

**RULING ON
APPLICATION FOR REHEARING OF
PETITION FOR DECLARATORY ORDER OF**

EL CHICO RESTAURANT # 6

VP0904207925

EL CHICO RESTAURANT # 16

VP0904207911

EL CHICO RESTAURANT # 82

VP0904208564

EL CHICO RESTAURANT # 205

VP0801207829

El Chico Restaurants of America, Inc., the owner of El Chico Restaurant Nos. 6, 16, 82 and 205 filed a petition for rehearing of the declaratory ruling considered by this Board in open meeting on January 16, 2001 and signed on January 22, 2001. (See attached copy). Therein, we ruled that La. R.S. 27:311(G) is applicable to a merger and that under the facts alleged, El Chico Restaurants of America, Inc.'s (the surviving entity) acquisition of El Chico Restaurants of Louisiana, Inc.'s video gaming license in the merger would constitute a transfer of the license which is prohibited under La. R.S. 27:311(G).

El Chico alleges that the Board's ruling "faults El Chico for violating a statutory provision that on its face is inapplicable to the merger in question." We did not fault El Chico's for *violating* La. R.S. 27:306(E) and/or 42 L.A.C. XI.2405(D)(1). We merely noted that we need not determine the applicability of La. R.S. 27:306(E) to a merger because under the facts alleged by El Chico,

regardless of whether La. R.S. 27:306(E) or Rule 2405(D)(1) is applicable to a merger, El Chico did not meet the provisions of La. R.S. 27:306(E)(1) which are a prerequisite to allowing the new owner to operate the video gaming devices for 180 days under the license of the previous owner.

On rehearing, El Chico contends that the Board's ruling ignores La. R.S. 49:961(B) of the Administrative Procedure Act which provides:

When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

This issue was raised for the first time in this petition for rehearing and is thus beyond the scope of rehearing. We note, however, that in the original petition, El Chico sought a ruling regarding the applicability of La. R.S. 27:311(G), La. R.S. 27:306(E), 42 L.A.C. XI.2405(D)(1) and La. R.S. 12:115(C) to a factual scenario alleged by counsel for El Chico: the surviving entity of the merger is not the original licensee. Under the factual allegations made by El Chico, the license did not expire. The licensee ceased to exist. La. R.S. 12:115(B).

The remaining assignments raise issues which were addressed in the Declaratory Ruling of January 2001.

Accordingly, rehearing should be denied.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of March 19, 2001:

IT IS THE RULING of the Board that the rehearing application is **DENIED**.

THUS DONE AND SIGNED on this the 19th day of March 2001.

LOUISIANA GAMING CONTROL BOARD

BY:


HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 21st DAY
OF March 2001

APPEAL DOCKET CLERK
