



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

RULING ON PETITION FOR DECLARATORY ORDER OF

LOUISIANA CASINO CRUISES, INC. D/B/A CASINO ROUGE NO. R011700193

Louisiana Casino Cruises, Inc. d/b/a Casino Rouge (LCCI) filed this petition for declaratory ruling regarding whether a lessor is subject to the jurisdiction of the Board and Division and required to submit to suitability review under the following circumstances: the lessor and applicant/licensee executed a "ground lease" whereby the lessor agrees to lease immovable property to the applicant/licensee for use as a terminal and docking facility for the applicant's/licensee's riverboat gaming operations; the maximum monthly rental fee is a fixed percentage of all gross revenue derived from the leased premises and any riverboats docked thereon including a percentage of the monthly net gaming proceeds of the licensee.¹

¹ Petitioner also sought a predetermination of the sanctions, if any, to be imposed against the lessor and its principals in the event that the Board should rule that lessor is subject to suitability review and lessor refuses to submit and whether the imposition of regulatory sanctions against the lessor or its principals would adversely affect the gaming license of lessee or result in lessee's default on the lease. At the February 20, 2001, hearing on this matter, petitioner abandoned these requests.

We note that it would be premature to give an opinion regarding the penalty, if any, which may be imposed against a lessor or lessee should a lessor refuse to submit requested information and application forms and refuse to submit to suitability review. The determination of whether the imposition of a penalty is warranted and if warranted, the appropriate penalty to be imposed is a matter which should be considered only after a hearing of the Division's report regarding the renewal of LCCI's license. Nor would it be appropriate to attempt to predetermine the effect, if any, on the licensee, of the refusal of the lessor to submit to suitability review. We also note that it is not within the province of this Board to determine the contractual rights of the parties to a

LESSOR SUITABILITY

The legislature declared it to be the public policy of the state that the development of a controlled gaming industry for the purpose of promoting the economic development of the state requires that the public must be protected from criminal and corrupt elements and that all persons, locations, practices, associations and activities related to the operation of licensed and qualified gaming establishments are to be strictly regulated. La. R.S. 27:2(A). It also provided that any license, permit, approval or thing obtained or issued pursuant to the Gaming Control Law is a pure and absolute revocable privilege and not a property right under the federal and state constitution and no recipient of any license, permit, any other thing or affirmative board action or approval acquires a vested interest or right therein or thereunder. **Montecino v. Louisiana**, E.D. La. 1999; 55 F.Supp.2d 547; La. R.S. 27:2(B).

The Board has all regulatory authority, control and jurisdiction, including investigation, licensing, and enforcement, and all incidental or necessary powers over all aspects of gaming activities and operations as authorized by the Louisiana Riverboat Economic Development and Gaming Control Act (Riverboat Act). La. R.S. 27:15(B)(1).

State Police is charged with conducting investigations and audits regarding the qualifications of applicants for licenses and permits which require a suitability determination as required by statute, rule or as deemed necessary by the Board. It is also charged with performing all other duties and functions necessary for the efficient, efficacious and thorough regulation and control of gaming activities and operations under the Board's jurisdiction. La. R.S. 27:20(A)(1). The Board and State

lease or whether the actions or inactions of a party to a lease would constitute breach or default of the lease itself.

Police is also statutorily mandated to ensure that licenses or permits are not issued to or held by disqualified persons and that a licensee has no direct or indirect material involvement with a disqualified person in accordance with La R.S. 27:76.² La. R.S. 27:58(9)

La. R.S. 27:70 provides in pertinent part:

A. No person shall be eligible to receive a license to conduct gaming operations on a riverboat or any license or permit issued pursuant to the provisions of this Chapter unless the division finds

² La. R.S. 27:76 provides as follows:

A. The division or the Louisiana Gaming Control Board shall not award a license or permit to any person who is disqualified on the basis of any of the following criteria:

(1) Failure of the applicant to prove by clear and convincing evidence that he is qualified in accordance with the provisions of this Chapter.

(2) Failure of the applicant to provide information and documentation to reveal any fact material to qualification, or the supplying of information which is untrue or misleading as to a material fact pertaining to the qualification criteria.

(3) The conviction of or a plea of guilty or nolo contendere by the applicant, or of any person required to be qualified under this Chapter as a condition of a license, for an offense punishable by imprisonment of more than one year, or theft or any offense involving false statements or declarations, or gambling as defined by the laws or ordinances of any municipality, any parish, any state, or of the United States.

(4) Current prosecution of or pending charges in any jurisdiction against the applicant, or any person who is required to be qualified under this Chapter as a condition of a license, for an offense punishable by more than one year imprisonment.

(5) If the applicant is a corporation which is owned by a parent or other corporation or person as defined in R.S.27:44, then the applicant shall be disqualified if any person owning more than five percent of the common stock of the parent corporation has been convicted of, or pled guilty or nolo contendere to, a felony offense, or theft or any offense involving false statements or declarations, or gambling as defined by the laws or ordinances of any municipality, any parish, any state, or of the United States.

(6) If the applicant is a corporation, partnership, association, joint venture, or other entity of which any individual holding five percent or more interest in the profits or losses has been convicted of, or pled guilty or nolo contendere to, an offense which at the time of conviction is punishable as a felony, or theft or any offense involving false statements or declarations, or gambling as defined by the laws or ordinances of any municipality, any parish, any state, or of the United States.

B. In the awarding of a license or permit, a conviction or a plea of guilty or nolo contendere shall not constitute an automatic disqualification as otherwise required pursuant to the provisions of Paragraph A(3), (5), or (6) of this Section if ten or more years has elapsed between the date of application and the successful completion or service of any sentence, deferred adjudication, or period of probation or parole. These provisions shall not apply to any person convicted of a crime of violence as defined in R.S. 14:2(13). The Louisiana Gaming Control Board may consider the seriousness and circumstances of the offense and subsequent arrests.

that:

(1) The applicant is a person of good character, honesty and integrity.

(2) The applicant is a person whose prior activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto.

Gaming must be conducted in accordance with the terms and conditions placed on the license, the requirements of the Riverboat Act, and the pertinent rules and regulations. La. R.S. 27:65(B)(15).

"Gaming activities" or "gaming operations" means the use, operation, or conducting of any game or gaming device upon a riverboat including all activities related to and integral to the operation and profitability of a riverboat, including accounting procedures and internal controls governing the licensee's operations. La. R.S. 27:44(11).

"Net gaming proceeds" means the total of all cash and property, including checks, whether collected or not, received by the licensee from gaming operations, less the total of all cash paid out as winnings to patrons. La. R.S. 27:44(15).

42 L.A.C.XIII.2107(A) provides in pertinent part:

(6) A personal history form may be required to be filed by any person who is shown by a preponderance of evidence to:

(a) have influence over the operation of gaming on a riverboat or riverboats;

(b) **receive any share or portion of the gaming money or property** won by the operator of gaming on a riverboat;

(c) receive compensation or remuneration in excess of \$50,000 per annum (as an employee of a licensee or in exchange for any service or thing) provided to the licensee on a riverboat; or

(d) be a **lessor** or provider of goods or services; or

(e) have any contractual agreement with a licensee.

(Emphasis ours).

The location of the docking and terminal facilities of a riverboat gaming applicant/licensee; a lease of the property on which the docking and terminal facilities are located and which purports to entitle a lessor to a fixed percentage of all gross revenue derived from the operations, including a fixed percentage of the net gaming proceeds; the resulting payment of a percentage of net gaming proceeds by a licensee to a lessor and the lessor's receipt of net gaming proceeds fall within the legislative mandate of La. R.S. 27:2(A), to strictly regulate the persons, locations, practices, associations and activities related to the operation of a licensed gaming establishment. The terms of the lease of the land on which the terminal and docking facilities of the applicant/licensee are located comprise an activity related to and integral to the operation and profitability of a riverboat as defined in La. R.S. 27:44(11). Additionally, pursuant to Rule 2107A(6) (b) and (d) respectively, both a recipient of net gaming proceeds and a lessor are required to submit to suitability.

ORDER

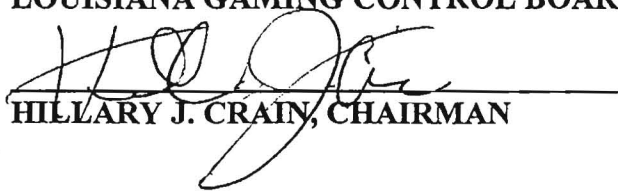
This matter having been considered by the Louisiana Gaming Control Board in open meeting of February 21, 2001:

IT IS THE RULING of the Board that where the property on which the docking and terminal facilities of a Riverboat Applicant/Licensee are located is leased to the Riverboat Applicant/Licensee and the terms of the lease purport to entitle the lessor to a fixed percentage of all gross revenue derived from the riverboat operations, including a fixed percentage of the net gaming proceeds, the suitability of the lessor falls within the scope of the legislative mandate of La. R.S. 27:2(A) to strictly regulate the persons, locations, practices, associations and activities related to the operation of a licensed gaming establishment and the lessor is required to submit to suitability review.

THUS DONE AND SIGNED on this the 21st day of February, 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 22ND DAY
OF February 2001

APPEAL DOCKET CLERK

