



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

RULING

PETITION FOR DECLARATORY RULING OF ISLE OF CAPRI CASINOS, INC., ST. CHARLES GAMING COMPANY, INC., GRAND PALAIS RIVERBOAT, INC.

IN THE MATTER OF DELTA DOWNS, INC., DELTA DOWNS RACING ASSOCIATION, INC., AND/OR DELTA DOWNS ENTERPRISES, L.L.C. CONTRACTING WITH BOYD GAMING CONCERNING THE "ELIGIBLE FACILITY" AT VINTON, LOUISIANA

St. Charles Gaming Company, Inc. and Grand Palais Riverboat, Inc., subsidiaries of Isle of Capri Casinos, Inc., are licensed to conduct gaming activities under the Louisiana Riverboat Economic Development and Gaming Control Act, La. R.S. 27:41 - 114. The two riverboats are berthed in the Lake Charles area.

Isle of Capri Casinos, Inc., St. Charles Gaming Company, Inc. and Grand Palais Riverboat, Inc. (hereafter referred to collectively as Isle of Capri) filed this petition seeking to have this Board exercise its jurisdiction and review the contract and/or the contracts by/among Delta Downs, Inc., Delta Downs Racing Association, Inc., Delta Downs Enterprises, L.L.C. (hereafter referred to collectively as Delta Downs), and/or others owning or affiliated with Delta Downs and Boyd Gaming regarding the sale of the "eligible facility" as defined in La. R.S. 27:353(4) of the Pari-Mutuel Live Racing Facility Economic Redevelopment and Gaming Control Act; examine the terms of the contracts by which Delta Downs and /or its principals and/or lenders receive payments;

examine and approve Delta Downs' and/or its principals and/or its lenders' suitability to profit from the contract(s) concerning the "eligible facility"; examine Boyd's suitability; and take all other actions appropriate under the circumstances which are consistent with the law and applicable regulations. Isle of Capri asserts it has standing to invoke the Board's jurisdiction in this matter because Boyd's proposed acquisition and/or operation of the "eligible facility" will affect and impact business at its casinos.

Essentially, petitioners assert that pursuant to La. R.S. 27:361, 363, 364 and 365 and 42 L.A.C.VII. 2101-2107, 2109, 2111 and 2113 and in light of the jurisprudence (**Metro Riverboat Associates, Inc. v. Louisiana Gaming Control Board**, 99-0863 [La. App. 1st Cir. 5/12/00]; 761 So.2d 694) the sale or transfer of an "eligible facility" by an applicant for a license to conduct slot machine gaming at the facility requires the Board's prior approval, thus requiring the Board to conduct a suitability investigation of the parties to the contract and a review of the terms and conditions of the contract and any agreements pertinent thereto. Citing La. R.S. 27:363(C), petitioners also contend that prior to execution of the sale agreement and any contracts in relation thereto, the Board has the duty to determine whether "the seller of an 'eligible facility' *that has applied for a license* may reap windfall profits by selling that facility, without the Board finding it suitable to operate."

APPLICABLE LAW

The Pari-Mutuel Live Racing Facility Economic Redevelopment and Gaming Control Act, La. R.S. 27:351, et seq., was enacted in order to revitalize and rehabilitate specific eligible live racing facilities located within strategically located geographic areas of the state, and result in overall economic development and additional revenues to the state and parishes where the facilities are

located. La. R.S. 27:352 (3).

‘Eligible facility’ means no more than one facility in St. Landry Parish, Bossier Parish, and Calcasieu Parish at which the Louisiana State Racing Commission has licensed the conduct or at which the commission has approved the future licensing of the conduct of not less than eighty days within a consecutive twenty-week period each year of live horse race meetings.

La. R.S. 27:353 (4).

The eligible facility is one which has been licensed or approved by the Louisiana State Racing Commission for the conduct of live horse racing within statutorily designated areas and has had placement of slots approved by a local option election. The Board is charged with the implementation, administration and regulation of slot machine gaming at the designated live racing facilities. This includes (among other things) preparing the application forms; overseeing the application process; directing the Division to conduct a suitability investigation of the applicant/owner of the “eligible facility” and report its findings to the Board; determining the suitability of the applicant and based on the suitability determination, issuing or denying the license. The Board also has the authority to deny, revoke, condition or suspend the license of any person who is found, after having received a license, to have been unsuitable at the time of application for the license or who is otherwise found unsuitable, or who violates any provision of the act or rule adopted in accordance thereof. La. R.S. 27:361 and 364.

La. R.S. 27:361(E)(2)(b)(ii) provides as follows:

The board shall provide by rule the opportunity for a proposed buyer of an eligible facility to undergo the same processing and investigation by the board that would be conducted regarding an applicant for licensing to conduct slot machine gaming as an owner of an eligible facility in advance of the proposed buyer’s concluding the purchase. In such a case, the board shall determine and inform

the proposed buyer of whether or not based on the processing and investigation the proposed buyer would be licensed to conduct slot machine gaming as the owner of the facility should he apply for such a license.

Thus a proposed buyer of an eligible facility may choose to avail himself of the opportunity to have the suitability investigation conducted prior to purchasing the eligible facility. We have not finally determined whether this would be available to a proposed buyer prior to a license to operate slots at the eligible facility having been issued. In any event, a person not a party to the proposed sale may not require the proposed buyer to submit to suitability prior to completion of the purchase of the eligible facility.

42 L.A.C. VII.2501(A) provides as follows:

The transfer of a license, permit, or of an application for a license or permit is prohibited. The transfer of an interest in a license, permit, or of an application for a license or permit is also prohibited.

This rule prohibits transferring an application or an interest in an application for conducting slot machine gaming at an eligible facility. It does not prohibit a purchaser of an eligible facility from subsequently filing its own application for licensing.

Petitioners cite the following rules as authority for the Board to exercise jurisdiction in this matter:

42 L.A.C. VII.2101. **General Authority of the Board and Division**

The board and the division shall have the authority to call forth any person who, in the board's or division's opinion, has the ability to exercise influence over a licensee or permittee, or the pari-mutuel live racing industry, and such person shall be subject to all suitability requirements. In the event a person is required by the board to obtain a license or permit, and such license or permit is not applied for or denied, then the licensee and/or permittee, shall cease association with such person(s).

42 L.A.C. VII.2103. **Applications in General**

Any license or permit issued by the board or division is deemed to be a revocable privilege, and no person holding such a license or permit is deemed to have acquired any vested rights therein. An applicant for a license or permit authorized by the act or these regulations, is seeking the granting of a privilege, and the burden of proving qualification to receive the license or permit is at all times on the applicant. An applicant accepts the risk of adverse public notice, embarrassment, criticism, or other action or financial loss that may result from action with respect to an application and expressly waives any claim for damages as a result thereof, except relating to willful misconduct by the board or the division. The filing of an application under the act or these regulations constitutes a request for a decision upon the applicant's general suitability, character, integrity, and ability to participate or engage in or be associated with pari-mutuel live racing or other gaming activity authorized by law and by filing an application, the applicant specifically consents to the making of such a decision by the board and the division.

42 L.A.C. VII.2105. **Investigations**

The board or division shall investigate all applications for licenses or permits or other matters requiring board approval. The board or division may investigate, without limitation, the background of the applicant, the suitability of the applicant, the suitability of the applicant's finances, the applicant's business probity, the suitability of the proposed premises for gaming, the suitability of a person with an economic interest in the applicant of five percent or more, the suitability of any person who in the opinion of the board or division has the ability to exercise influence over the activities of a licensee and the proposed establishment's compliance with all applicable federal, state, and local laws and regulations.

42 L.A.C. VII.2107. **Applicants in General; Restrictions**

The securing of a license or permit required under the act is a prerequisite for conducting, operating, or performing any activity regulated by the act. Each applicant must file a complete application.

A. Except as provided herein, if the applicant is a general partnership or joint venture, each individual partner and joint venturer

must file a complete application.

B. If the license applicant is a corporation, each officer and director of the corporation must file a "Part B" personal history and financial form. Any shareholder with five percent or more of the corporation must file a completed "Part B" form, and if such shareholder is other than a natural person, then each officer, director, or person with an economic interest equal to or greater than five percent in the license applicant must file a "Part B" form.

C. If the license applicant is a limited partnership, the general partner and each limited partner having five percent or more interest must file a complete application. If the partner or limited partner is other than a natural person, then each officer, director, or person with an economic interest equal to or greater than five percent in the license applicant must file a "Part B" form.

D. If the license applicant is a limited liability company, pursuant to R.S. 12:1301 et seq., each officer or manager of the company must file a "Part B" form. Any member of five percent or more of the company must file a "Part B" form, and if such member is other than a natural person, then each officer, director or person with an economic interest equal to or greater than five percent in the license applicant must file a "Part B" form.

E. If the license applicant is a registered limited liability partnership, pursuant to R.S. 9:3431 et seq., the managing partner and each partner having five percent or more interest must file a "Part B" form. If the partner is other than a natural person, then each officer, director, or person with an economic interest equal to or greater than five percent in the license applicant must file a "Part B" form.

F. An application may be required to be filed by any person who is shown by a preponderance of evidence to:

1. have influence over the operation of gaming at an eligible facility;
2. receive any share or portion of the gaming money or property won by the operator or owner of an eligible facility; or
3. 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; or
4. be a lessor or provider of goods or services; or
5. have any contractual agreement with a licensee.

42 L.A.C. VII.2109. Suitability Determination

A Type A gaming license shall be in the name of the owner of the eligible facility. The licensee, gaming operator, owner of facilities, officer or director, or any person having a five percent or more interest in such entity or any person who in the opinion of the board has the ability to exercise significant influence over the activities of the licensee shall be required to submit to an investigation to determine suitability. All costs associated with conducting an investigation for suitability of the licensee, operator of facilities, officer or director, or an person having any economic interest in such entity, shall be borne by the licensee.

42 L.A.C. VII.2111. License or Permit Disqualification Criteria

The board shall not award a license or permit to any person who fails to prove by clear and convincing evidence that he is qualified in accordance with the provisions of the act or these regulations.

42 L.A.C. VII.2113. License and Permits; Suitability

A. No person shall be eligible to receive a license or permit issued pursuant to the provisions of the act or these regulations unless the board finds that:

1. The applicant is a person of good character, honesty, and integrity; and has never been convicted of a felony offense;

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 or to the effective regulation and control of slot machine gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods and activities in the conduct of slot machine gaming or the conducting of business and financial arrangements incidental thereto;

3. The applicant is capable of conducting the activity for which a license is sought, which means that the applicant can demonstrate the capability, through either training, education, business experience, or a combination of them, to conduct such activities.

4. Particularly as to the owner of the eligible facility, the applicant can demonstrate that the proposed financing of slot machine gaming at the eligible facility is adequate for the nature of the proposed operation and from a source suitable and acceptable to the board.

5. The applicant, if a natural person, is a Louisiana domiciliary and if not, is a Louisiana corporation, partnership, limited liability company, or a registered limited liability partnership licensed to conduct business in the state of Louisiana.

The above cited rules address the authority of the Board and Division to conduct a thorough investigation of the suitability of an applicant, delineate the persons who must meet suitability and some of the factors considered in determining suitability.

Under the facts and circumstances presented in this petition, neither the statutory provisions nor the rules cited by petitioners authorize the prior approval of a sale of an eligible facility by the Board before a license has been issued to conduct slot machine gaming at the facility.

We note that both parties to the proposed sale of this eligible facility are subject to this Board's jurisdiction as both Boyd Gaming (the proposed buyer) and Delta Downs and/or its affiliates (the proposed seller) of the eligible facility are gaming licensees and they are subject to continuing suitability under the Riverboat and Video Gaming Acts respectively. Regardless of the filing of this petition, as part of the application process, when the purchaser/owner of an eligible facility files its application for licensing, during the course of the suitability investigation conducted during the application process, the Division will as a matter of course delve into all aspects of the purchase of the eligible facility including all concerns raised in this petition such as the terms and conditions of the sale, the suitability of persons who will receive gaming revenue, the suitability of the applicant/purchaser including persons with an ownership or an economic interest in the applicant

or persons in a position to exert significant influence over the applicant. At the conclusion of the investigation, the Division's findings will be presented to the Board for a suitability determination. However, prior to the issuance of a license to conduct slot machine gaming at the eligible facility, there is no legal authority in the statutes or rules for the Board to approve the sale of the eligible facility.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of May 15, 2001:

IT THE RULING OF THE LOUISIANA GAMING CONTROL BOARD that the Board does not give prior approval to the sale of an eligible facility before a license has been issued to conduct slot machine gaming at that facility. All matters relating to suitability to conduct slot machine gaming at an eligible facility will be investigated and determined when an application is made for a license to conduct slot machine gaming at a particular eligible facility.

THUS DONE AND SIGNED on this the 15th day of May, 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 16th DAY
OF May, 2001

APPEAL DOCKET CLERK

Hester D. Coleman