



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

RULING ON PETITION FOR DECLARATORY ORDER OF CERIDIAN CORPORATION

A petition for declaratory ruling was initially filed on September 30, 2002, by Ceridian Corporation (hereafter referred to as Ceridian) seeking the Board's ruling on the application of L.A.C. 42:XI.2157, La. R.S. 27:28(E) and La. R.S. 27:29.3 regarding whether Ceridian may furnish services or goods and receive compensation or remuneration in an amount of \$100,000 or less per calendar year with a riverboat gaming licensee within five years of the denial of its application for a nongaming vendor permit based on the following facts: Ceridian submitted a nongaming vendor permit application in 1997. On April 9, 1998, the Division denied the permit due to Ceridian's failure to submit additional information requested by the Division in conjunction with the suitability investigation. Ceridian received notice of the denial and did not request an administrative hearing. As a result of Ceridian's failure to seek administrative review of the denial, on May 25, 1998, this Board issued a "Notice of Denial." Ceridian neither applied for rehearing nor sought judicial review of the denial.

In the original petition, Ceridian contended that (1) the denial of its permit application was not based on suitability issues, it was based on Ceridian's failure to complete a form within the time specified by the Division; (2) it was not advised "that it could or should seek to obtain permission to withdraw the application in the event Ceridian elected not to go forward with the application for whatever reason;" (3)

it was not advised that “in the event it failed to seek permission to withdraw the application, its application would be denied, and, if not appealed, such denial would result in Ceridian being unable to do business with any licensee for any sum in the State of Louisiana for a period of five years.” Ceridian also stated that it never supplied services or goods to a licensee in excess of the \$50,000 threshold which was applicable when the permit application was filed, thus, it was never required to obtain a nongaming vendor permit.

Prior to the Board’s consideration of the petition, at Ceridian’s request, a continuance was granted. On May 1, 2003, Ceridian filed a “First Supplemental and Amending Petition for Declaratory Relief” incorporating by reference all factual statements and representations set forth in the original petition.

Ceridian also seeks to have the Board declare the following:

A. That the denial of Ceridian’s application was not a determination of lack of suitability so as to preclude Ceridian from doing business with gaming licensees so long as such business does not exceed the statutory threshold sum of \$100,000.

B. That the expiration of the 5-year period from the time of the denial of Ceridian’s application, which time will expire either on April 27, 2003, (being the 5-year anniversary of the last day Ceridian could have appealed the Division’s denial), or at the outside, May 25, 2003, (being five years from the date Ceridian was notified by the Louisiana Gaming Control Board of its denial), Ceridian may do business with gaming licensees without the necessity of filing an application to obtain a nongaming vendor permit, so long as such business does not meet or exceed the sum of \$100,000, being the threshold sum that would require Ceridian to file for a nongaming vendor permit.

C. That since the 5-year period for denial has expired and/or for the other reasons set forth herein, no gaming licensee will be considered to be in violation of any gaming law or regulation for doing business with Ceridian, should Ceridian seek and obtain a nongaming vendor permit or in the event doing business with Ceridian does not meet or exceed the threshold sum required for filing an application for a nongaming vendor permit as required by La. R.S. 27:29.3.

D. Ceridian further requests all just, equitable and legal relief as may be allowed or required under the law or under the unique facts set forth herein.

a. Adequacy of Notice

The denial of Ceridian's nongaming vendor permit occurred approximately on May 25, 1998. The denial is final. The Board has no jurisdiction to reopen the matter. Ceridian's arguments regarding adequacy of notice of the consequences of the denial of its permit application in 1998 are not appropriate for declaratory ruling.

b. Application of L.A.C. 42:XIII.2157 and La. R.S. 27:28(E)

La. R.S. 27:28 as enacted by 2001 La. Acts, No.1222, sec.1, effective July 2, 2001, provides in pertinent part:

E. Any person whose license or permit has been revoked or who has been found unsuitable in this state or any other jurisdiction is not eligible to obtain any license or permit pursuant to the provisions of this Title for a period of five years from the date the revocation or finding of unsuitability becomes final.

L.A.C. 42:XIII.2157 Application After Denial

A. Any person whose application for license or permit has been denied by the division, and who has not successfully appealed the decision of denial to the commission, or whose application has been withdrawn with prejudice is not eligible to reapply for any approval authorized by the act for a period of five years unless the supervisor rules that the denial is without prejudice.

More than five years have elapsed from the date of denial, thus we need not consider the application of La. R.S. 27:28(E) and L.A.C. 42:XIII.2157 to Ceridian.

c. Effect of La. R.S. 27:29.3 and La. R.S. 27:28 on a person or entity who proposes to furnish goods or services other than gaming equipment or supplies to a casino gaming licensee

A “nongaming supplier” is “any person who sells, leases or otherwise distributes, directly or indirectly, goods or services other than gaming equipment and supplies to the holder of a license, as defined in R.S. 27:44(14) [riverboat gaming licensee], R.S. 27:353(5) [licensee under the Pari-Mutuel Live Racing Facility Economic Redevelopment and Gaming Control Act, La. R.S. 27:351-393], or the casino gaming operator [operator of the land based casino].” La. R.S. 27:3 (18). La. R.S. 27:29.3¹ (as enacted by 2001

¹ La. R.S. 27:29.3 provides as follows:

A. The division shall issue a non-gaming supplier permit to suitable persons who furnish services or goods and receive compensation or remuneration in excess of one hundred thousand dollars per calendar year for such goods or services, as defined by the rules of the board, to the holder of a license as defined in R.S. 27:44(14), R.S. 27:353(5) or the casino gaming operator. Such services include but are not limited to industries offering goods or services whether or not directly related to gaming activity, including, junket operators and limousine services contracting with the holder of a license as defined in R.S. 27:44(14), R.S. 27:353(5) or the casino gaming operator, suppliers of food and nonalcoholic beverages, gaming employee or dealer training schools, garbage handlers, vending machine providers, linen suppliers, or maintenance companies. Any employee or dealer training school, other than employee or training schools conducted by a licensee, or the casino gaming operator, shall be conducted at an institution approved by the Board of Regents or the State Board of Elementary and Secondary Education.

B. (1) The division may waive any person or field of commerce from the requirements of this Subsection if the division determines either of the following:

(a) That the person or field of commerce is currently and sufficiently regulated by a public agency or that it will provide goods or services in insubstantial or insignificant amounts or quantities as determined by rule of the board.

(b) That permitting is not advisable or necessary in order to protect the public interest or to accomplish the policies established by this Section.

(2) Any non-gaming supplier required to obtain a non-gaming supplier permit, other than those listed in Subsection E in this Section may request a waiver of the necessity of obtaining a non-gaming supplier permit. The division may grant such a request upon a showing of good cause by the non-gaming supplier.

(3) The division may rescind any waiver issued pursuant to this Subsection.

C. A person is ineligible to receive a non-gaming supplier permit, if the applicant holds, or employs a person who holds a gaming employee permit under this Title and participates in the management or operation of gaming operations authorized under this Title.

D. The holder of a license as defined in R.S. 27:44(14) or R.S. 27:353(5), or the casino gaming operator shall ensure that all persons required to be licensed or permitted, or persons performing regulated tasks who are supplied by contractual agreement or otherwise, are properly licensed or permitted pursuant to this Title.

La. Acts, No.1222, sec.1, effective July 2, 2001) provides that the Division shall permit any suitable nongaming supplier who supplies or furnishes services or goods to a casino gaming licensee or the casino gaming operator and receives compensation or remuneration in excess of \$100,000 per calendar year for such services or goods, as defined by the rules of the Board. Prior to the enactment of La. R.S. 27:29.3 in 2001, a nongaming supplier was required to obtain a permit if it supplied goods or services to such licensee and received compensation or remuneration therefrom in excess of \$50,000 during the preceding fiscal year. La. R.S.27:81 (A) (prior to its amendment by 2001 La. Acts, No.1222, sec.1, effective July 2, 2001) and L.A.C. 42:XIII.2108(A). Rule 2108² entitled “Nongaming Suppliers” was promulgated in

E. Persons, firms, or corporations holding valid wholesale licenses issued by the federal, state, and local governments for the sale of alcoholic beverages shall not be required to obtain a permit of the sale of goods other than gaming devices or equipment and shall be exempt from the fee provided for in Subsection F of this Section.

F. The annual fee for a permit issued under the provisions of this Section is two hundred fifty dollars. This fee is required to be submitted at the time of application and on the anniversary date of the issuance of the permit thereafter.

² L.A.C. 42:XIII.2108 provides as follows:

A. Except as provided in Subsection E and F of this Section, any nongaming supplier shall obtain a nongaming supplier permit from the division, upon providing goods and/or services to a licensee in an amount in excess of \$50,000 during the preceding fiscal year.

B. Any nongaming supplier, regardless of whether having been permitted or not and regardless of the dollar amount of goods or services provided to a licensee may be requested to apply to the division for a finding of suitability.

C. Unless otherwise notified by the division in writing, a licensee shall conduct business with a nongaming supplier only if:

1. such supplier possesses a valid nongaming permit which has been placed in an approved status by the division; or
2. such supplier has been issued a waiver form the division regarding the necessity of obtaining a permit, pursuant to the provisions of Subsections E and F of this Section; or
3. during the immediate preceding fiscal year period, such supplier has received \$50,000 or less from the licensee as payment for providing nongaming services or goods to the licensee.

D. It shall be the responsibility of each licensee to ensure that it has not paid more than \$50,000 to any nongaming supplier during the preceding fiscal year period as payment for providing nongaming services or goods, unless such nongaming supplier holds a valid nongaming permit which has been placed in an approved status by the division or has been issued a waiver regarding the necessity of obtaining such a permit from the division pursuant to subsections E or F of this Section.

E. The following nongaming suppliers shall be deemed to have been waived by the division from the necessity of obtaining a nongaming permit pursuant to this Section:

1. nonprofit charitable organizations, and educational institutions which receive funds from the licensee, including educational institutions that receive tuition reimbursement on behalf of employees of a licensee:

a. "nonprofit charitable organization" shall mean a nonprofit board, association, corporation, or other organization domiciled in this state and qualified with the United States Internal Revenue Service for an exemption from federal income tax under Section 501(c), (3), (4), (5), (6), (7), (8), (10), or (19) of the Internal Revenue Code;

2. entities which provide one or more of the following services to a licensee and which are the sole source provider of such service:

- a. water;
- b. sewage;
- c. electricity;
- d. natural gas; or
- e. local telephone services;

3. regulated insurance companies providing insurance to a licensee and its employees including providers of medical, life, dental, and property insurance;

4. administrators of employee benefits and retirement plans including incorporated 401K plans and employee stock purchase programs;

5. national or local professional associations which receive funds from a licensee for the cost of enrollment, activities, and membership;

6. all state, federal, and municipal operated agencies;

7. all liquor, beer and wine industries regulated by the Office of Alcohol and Tobacco Control;

8. state and federally regulated banks and savings and loan associations;

9. newspapers, television stations and radio stations which contract with licensees to provide advertising services;

10. providers of professional services, including but not limited to accountants, architects, attorneys, consultants, engineers and lobbyists, when acting in their respective professional capacities.

F. Any nongaming supplier required to obtain a nongaming permit, other than those listed in subsection E in this Section may request a waiver of the necessity of obtaining a nongaming permit. The division may grant such a request upon a showing of good cause by the nongaming supplier. The division may rescind any such waiver which has been previously granted upon written notice to the nongaming supplier.

G. Junket representatives shall be subject to the provisions of this Section in the same manner as other nongaming suppliers.

H. Each licensee shall submit to the division, on a quarterly basis, a report containing a list of all nongaming suppliers which have received \$5,000 or more from the licensee during the previous quarter, or \$50,000 or more during the preceding fiscal year period as payment for providing nongaming services or goods to the licensee. This report shall include the name and address of the nongaming supplier, a description of the type of goods or services provided, the nongaming suppliers nongaming permit number, if applicable, federal tax identification number, and the total amount of all payments made by the licensee, or any person acting on behalf of the licensee, to each nongaming supplier during the previous four quarters. For each nongaming supplier listed in this quarterly report which is a provider of professional services as defined in Paragraph E.10 of this Section, each licensee shall also submit a brief statement describing the nature and scope of the professional service rendered by each provider, the number of hours of work performed by each such provider, and the total amount paid to each such provider by the licensee or any person acting on behalf of the licensee during the previous quarter. This report shall be received by the board and the division not later than

June 2000. Section (A) of Rule 2108 was not amended after the enactment of La. R.S. 27:29.3 in 2001 to reflect the statutory change regarding the amount of compensation or remuneration received by a nongaming supplier (\$100,000) which triggers the permitting requirement. All other provisions of Rule 2108 remain in effect.

The eligibility requirements for obtaining a nongaming vendor permit were enumerated in former La. R.S. 27:82 (prior to its repeal by 2001 La. Acts, No. 1222, sec. 2, effective July 2, 2001) which provided in pertinent part:

- D. A person is ineligible to receive a supplier's or other permit, if:
 - (1) The person fails to meet the qualifications of R.S. 27:70.³
 - (2) The person has submitted an incomplete application for a permit or license under this Chapter or submitted an application which contains false information.

....

- (6) The permit or license of the person issued under this Chapter, or a license to own, operate, or participate in gaming activities in any other jurisdiction, has been revoked or suspended.

The subject matter of former La. R.S. 27:82 (suitability standards for nongaming suppliers) is now contained in La. R.S. 27:28 as enacted by 2001 La. Acts, No. 1222, sec. 1, effective July 2, 2001. La.

the last day of the month following the quarter being reported.

³ **La. R.S. 27:70** (as it appeared prior to its amendment by 2001 La. Acts, No. 1222, section 1, effective July 2, 2001), provided 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 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 carrying on of the business and financial arrangements incidental thereto.

R.S. 27:28 provides in pertinent part:

A. No person shall be eligible to obtain a license or permit, enter into a casino operating contract with the state, or obtain any other approval pursuant to the provisions of this Title unless the applicant has demonstrated by clear and convincing evidence to the board or division, where applicable, that he is suitable. For the purposes of this Title, "suitable" means the applicant, licensee, casino gaming operator, permittee, or other person is:

(1) A person of good character, honesty, and integrity.

(2) 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 carrying on of the business and financial arrangements incidental thereto.

(3) Capable of and likely to conduct the activities for which the applicant, licensee, permittee, casino gaming operator, or licensed eligible facility is licensed, permitted, or approved pursuant to the provisions of this Title.

(4) Not disqualified pursuant to the provisions of Subsection B of this Section.

B. The Board or Division, where applicable, shall not grant a license or permit, enter into a casino operating contract, or issue any other approval pursuant to the provisions of this Title to any person who is disqualified on the basis of the following criteria:

....

(4) The failure to provide information and documentation to reveal any fact material to a suitability determination, or the supplying of information which is untrue or misleading as to a material fact pertaining to the suitability criteria.

Each applicant must file a complete application. L.A.C. 42:XIII.2107.⁴ An applicant who fails to provide information required by La. R.S. 27:28(B)(4) is not only disqualified from obtaining a license,

⁴ L.A.C. 42:XIII.2107, entitled "Applicants in General; Restrictions" provides in pertinent part:

A. 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.

permit or other approval required under the Gaming Control Law, the applicant also fails to meet suitability under La. R.S. 27:28(A). Such conduct adversely impacts the Division's ability to conduct a thorough investigation of the applicant's suitability and is a basis for denial under present law (La. R.S. 27:28) just as it was a basis for denial under former La R.S. 27:82.

We need not determine whether the denial of a nongaming supplier permit in 1998 for the failure to furnish information required by the Division is equivalent to a finding of unsuitability under either former La. R.S. 27:82 or the current suitability statute, La. R.S. 27:28, nor need we determine why Ceridian failed to furnish the requested information. It is a historical fact that Ceridian's permit application was denied and the denial is final. The denial is final regardless of whether Ceridian ever furnished services or goods in excess of the \$50,000 threshold of the prior law. We cannot and will not rewrite that historical fact.

Pursuant to Rule 2101, a casino gaming licensee or permittee is prohibited from having any association or connection with a person or entity that has had an application for a license or permit denied. L.A.C. 42:XIII.2101⁵. Because Ceridian's permit was denied, Rule 2101 would prohibit a casino gaming licensee from doing business with Ceridian even if the value of services or goods it seeks to furnish will not exceed \$100,000.

The Division or the Board has the authority to require Ceridian to undergo suitability at any time that Ceridian attempts to furnish services or goods to a casino gaming licensee. La. R.S. 27:2 and 27:15; L.A.C. 42:XIII.2108(B). Thus, if Ceridian seeks to supply nongaming services or goods to a casino

⁵ L.A.C. 42:XIII.2101 provides as follows:

A. The division shall have the authority to call forth any person who, in the division's opinion, exercises influence over a licensee, permittee or the riverboat gaming industry, and such person shall be subject to all suitability requirements. In the event a person is required by the division to obtain a license or permit, and such license or permit is denied, then the licensee and/or permittee shall cease connection with such person(s).

gaming licensee in an amount of \$100,000 or less, Ceridian must initially apply to the Division for a finding of suitability.

ORDER

This matter was considered by the Louisiana Gaming Control Board in open meeting of July 15, 2003.

THUS DONE AND SIGNED this 16th day of July, 2003.

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 July, 2003
APPEAL DOCKET CLERK