



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

RULING PETITION FOR DECLARATORY RULING OF

LOUISIANA I GAMING, A LOUISIANA PARTNERSHIP IN COMMENDAM D/B/A BOOMTOWN BELLE CASINO

Louisiana I Gaming, a Louisiana Partnership in Commendam (Louisiana I Gaming), is licensed under the Riverboat Economic Development and Gaming Control Act (Riverboat Gaming Act), La. R.S. 27:42 - 114, to conduct gaming activities on a riverboat upon certain statutorily designated rivers and waterways. Louisiana I Gaming operates the Boomtown Belle Casino which is berthed in a slip off the Harvey Canal, a section of the Intracoastal Waterway. Petitioner states that the United States Army Corps of Engineers proposes to build a flood wall or levee across the entrance to the site where the licensee is berthed, which would close off Boomtown Belle's access to the Intracoastal Waterway. Accordingly, Louisiana I Gaming seeks a declaratory ruling by this Board as to the applicability of La. R.S. 27:43 - 44 to the proposed flood wall.

Gaming activities under the Riverboat Gaming Act must be conducted on a riverboat upon statutorily designated rivers or waterways. La. R.S. 27:43 (A)¹ and La. R.S. 27:65 (A)². The section of

¹ La. R.S. 27:43 (A) provides:

Notwithstanding any other provision of law to the contrary, the conducting of gaming activities on a riverboat in accordance with the provisions of this Chapter, while upon designated rivers or waterways as described in Subsection B of this Section, is hereby authorized.

the Intracoastal Waterway adjacent to where Boomtown Belle is berthed is a designated waterway under the Riverboat Gaming Act.

The issue presented for our consideration is whether the construction of the flood wall across the site where Boomtown Belle is berthed will result in the site no longer being on a designated waterway under the Riverboat Gaming Act, thereby requiring Boomtown Belle to relocate to a different berth in order to continue conducting gaming activities.

Title I of Book II of the Louisiana Civil Code categorizes things into common, public or private. It defines the seashore, banks of navigable rivers or streams and the use to which they are subject. Title II of Book II and the applicable jurisprudence deal with the ownership of the banks of navigable waterways, the effect of levee construction on the navigability of the waterway for ownership purposes and

B(1) For purposes of this Chapter, designated rivers and waterways shall include those portions of the Mississippi, Red, except the portion of the Red River within the borders of Rapides Parish, Calcasieu, Mermentau, or Atchafalaya Rivers and Bayou Segnette within the city limits of Westwego, the Mississippi River Gulf Outlet, Bayou Bienvenue, Lake Pontchartrain, Lake Maurepas, Lake Charles, the Intracoastal Waterway, except the portion thereof within the borders of Terrebonne and Lafourche Parishes, and the Sabine River north of the Toledo Bend Reservoir Dam subject to the provisions of Paragraph (2) of this Subsection, upon which a gaming operator is authorized to conduct gaming operations in accordance with the provisions of this Chapter.

La. R.S. 27:44(5) provides:

“Designated river” or “designated waterway” means those rivers or bodies of water listed in R.S. 27:43 upon which gaming activities may be conducted.

² La. R.S. 27:65(A) provides as follows:

Notwithstanding any other provisions of law to the contrary, upon application properly submitted and examined, the division may issue up to fifteen licenses to conduct gaming activities on a riverboat, in accordance with the provisions of this Chapter. No more than six licenses may be granted for the operation of gaming activities on riverboats for operation from any one designated waterway.

the use of its banks or waterbottoms. However, Book II of the Civil Code does not address the issue before us, which is whether the construction of a flood wall affects the berth's status as a designated waterway under the Riverboat Gaming Act.

Navigability of the waterway, is not an issue. A review of the law and jurisprudence reveals that we need not determine whether the proposed flood wall will affect the navigability of the berth for licensing and gaming purposes under the Riverboat Gaming Act. See **Chase v. Louisiana Riverboat Gaming Partnership**, 30,368 (La. App. 2d Cir. 2/25/980; 709 So.2d 904, writ denied, 98-0869 (La. 6/26/98); 719 So. 2d 1057.³ We need only determine whether construction of the flood wall or levee will affect the status of the berth as a designated waterway under that act. We determine it does not.

The public policy of the Riverboat Gaming Act is contained in La. R.S. 27:42 as provided in pertinent part:

(3) The nature of the riverboat industry is such that the operation of riverboats on the waters of the state of Louisiana while allowing certain gaming activities will result in many benefits to the state with no significant detriment to the citizens of the state.

"On" is defined in **Webster's Ninth New Collegiate Dictionary** 811 (1991) as a function word which indicates "position in contact with and supported by the top surface of," or "position in or in contact with an outer surface" or "position in close proximity with." The word "upon" means on or on the surface of. **Id** at 1298. The legislature's use of the phrases "on" or "upon" a designated river or waterway in the

³ In **Chase v. Louisiana Riverboat Gaming Partnership**, the court distinguished between the meaning of a "vessel" for Jones Act or general maritime purposes from the meaning of "vessel" for Gaming Act purposes, determining that although the riverboat in question was a "vessel" under the Riverboat Gaming Act, it was not a "vessel" under the Jones Act or under general maritime law.

above cited statutes and the statutory riverboat licensing scheme in general, make it a prerequisite for licensing that the riverboat be berthed or located on, in contact with, or in close proximity to a designated waterway.

Initially, under former La. R.S. 27:65(B) all licensed riverboats, except for those located in parishes bordering the Red River, were required to cruise in order to conduct gaming activities. Dockside gaming was not allowed except under certain specific conditions documented by the master of the riverboat. At least one of the riverboats located in the Shreveport - Bossier area bordering the Red River is surrounded by a containment pond, insulated from tidal effects and separated from the remainder of the river by a weir gate. For riverboat licensing purposes, it is considered to be on or upon the designated river or waterway regardless of the fact that the hull of the vessel is not in actual contact with the waterway.

Under La. R.S. 27:65 (B)(1)(c) as enacted by Act No. 3 of the First Extraordinary Session of the Legislature of 2001, effective March 27, 2001, only dockside gaming may be conducted on designated rivers or waterways.⁴ Thus, at its present berth, Boomtown Belle could effectively enclose itself in a coffer dam or retention pond as do several of the riverboats licensed under the Riverboat Gaming Act which are located in parishes bordering the Red River and still meet the statutory requirements of being located on a designated waterway. Its subsequent enclosure caused by a flood wall constructed by the Army Corps of Engineers for flood control purposes does not change the designation of its berth. Consequently, the initial licensing of a riverboat for casino gaming at a location behind a levee or weir separating the location from the designated waterway would be prohibited. However, where the riverboat is licensed at a berth

⁴ The exception is provided in La. R.S. 27:65(B)(1)(a) and 27:66 (riverboats licensed to conduct gaming in Orleans Parish).

on a designated waterway which location is **subsequently** enclosed by a levee or weir erected for flood control purposes by the licensee or a third person, the riverboat remains on a designated waterway for gaming purposes.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of September 17, 2002:

IT IS THE RULING of the Board that the initial licensing of a riverboat for casino gaming at a location behind a levee or weir separating the location from the designated waterway would be prohibited. However, where the riverboat is licensed at a berth on a designated waterway which location is subsequently enclosed by a levee or weir erected for flood control purposes by the licensee or a third person, the riverboat remains on a designated waterway for gaming purposes.

THUS DONE AND SIGNED on this the 18th day of September, 2002.

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 19th DAY
OF September, 2002

APPEAL DOCKET CLERK

