



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

RULING PETITION FOR DECLARATORY RULING VENDING DATA CORPORATION

Vending Data Corporation (Vending Data) submitted an application with the Louisiana State Police Gaming Division (Division) for the issuance of a gaming manufacturer permit. Vending Data alleges that in conjunction with the suitability investigation regarding the application, the Division has requested that James E. Crabbe, Jr., Michael D. Crabbe and Amy Huson Fisher submit disclosure information in the form of a "Level II, Part B Application." Objecting to the Division's request, Vending Data filed this petition for declaratory ruling seeking a determination regarding whether the above-named individuals are required to comply with the Division's request to submit to suitability.

James E. Crabbe, Jr.
Michael D. Crabbe

According to the allegations made in the petition, James E. Crabbe is the grantor/settlor and trustee of the James E. Crabbe Revocable Trust (Revocable Trust) which owns 59.95% of Vending Data stock. The trustee has voting power of the stock and any income distribution to the beneficiaries is made at the discretion of the trustee. As trustee, Mr. Crabbe submitted a Level II, Part B application to the Division.

The trust beneficiaries are James E. Crabbe, Jr. and Michael D. Crabbe, who individually own less than ½ of 1% of Vending Data stock (each owning 12,500 shares of the 38,129,072 outstanding shares of stock). It is alleged that neither beneficiary is employed by Vending Data, sits on its Board of Directors or exercises any influence over the company. Vending Data further alleges that the trustee, not the

beneficiaries, exercises control of the trust's shares of Vending Data stock. Thus, the beneficiaries are not required to submit to suitability until they actually inherit or otherwise come into possession or ownership of 5% or more of Vending Data stock.

Amy Huson Fisher

Vending Data asserts that the Richard S. Huson Marital Trust owns 12.49% of Vending Data stock and Mrs. Yvonne Huson, the widow of Richard S. Huson, is both trustee and income beneficiary of the trust. As trustee, Mrs. Huson submitted a Level II, Part B application. Ms. Fisher is the daughter of Richard Huson and Yvonne Huson. Exhibit "D" of the petition is the "Revocable Trust Agreement." By the terms of the trust Mrs. Yvonne Huson is authorized to dispose of the marital trust principal by means of a will to the children of Mr. Huson, including Ms. Fisher. Vending data further alleges that Ms. Fisher is neither an officer or director, nor does she exercise influence over Vending Data. Neither Ms. Fisher nor Mrs. Yvonne Huson votes the trust's shares of Vending Data. Those shares are voted by Mr. Crabbe.

It is unclear from the petition whether Vending Data contends that the Division is requiring Ms. Fisher to undergo suitability because of her potential to inherit (upon the death of Mrs. Yvonne Huson) the principal from the marital trust or because in her own right, Ms. Fisher has a 48% interest in the stock of Tower Rock Partners which owns 70,000 shares of Vending Data stock, thereby giving Ms. Fisher an interest of approximately 35,600 shares of Vending Data stock.

Ms. Fisher filed an affidavit (Exhibit E) swearing that she does not vote the Vending Data stock owned by the trust, she exercises no influence over Vending Data; she receives no income or profit interest from Vending Data; and her only entitlement to receive income or profit interest from Vending Data is through her interest in Tower Rock. Vending Data contends that Ms. Fisher is not required to submit to suitability until she actually inherits or comes into possession of 5% or more of Vending Data stock.

APPLICABLE LAW

L.A.C. 42:XIII.2107¹ provides as follows:

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.

1. 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.

2. If the applicant is a corporation, each officer and director of the corporation must file a personal history form. Any shareholder with 5 percent or more of the corporation must file a completed personal history 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 5 percent in the applicant must file a personal history form.

3. If the applicant is a limited partnership, the general partner and each limited partner having 5 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 5 percent in the applicant must file a personal history form.

4. If the applicant is a limited liability company, pursuant to R.S. 12:1301 et seq., each officer or manager of the company must file a personal history form. Any member of 5 percent or more of the company must file personal history 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 5 percent in the applicant must file a personal history form.

5. If the applicant is a registered limited liability partnership, pursuant to R.S. 9:3431 et seq., the managing partner and each partner having 5 percent or more interest must file a personal history 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 5 percent in the applicant must file a personal history form.

¹ L.A.C. 42:VII.2107 (Pari-Mutuel Live Racing Facility Slot Machine Gaming) and Chapter 21 of Part IX of Title 42 of the Louisiana Administrative Code (Landbased Casino Gaming) contain similar provisions.

6. A personal history form may be required to be filed by any person who is shown by 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; or
- 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.

Rule 2107 does not specifically require persons having less than a 5% economic interest in an applicant submit to suitability. However, the Gaming Control Law authorizes the Division to obtain information needed in furtherance of its investigative and enforcement duties in assisting the Board to strictly regulate gaming.

Louisiana Revised Statute 27:2 sets forth the public policy of this state regarding the regulation of gaming:

A. The legislature hereby finds and declares it to be the public policy of the state that the development of a controlled gaming industry to promote economic development of the state requires thorough and careful exercise of legislative power to protect the general welfare of the state's people by keeping the state free from criminal and corrupt elements. The legislature further finds and declares it to be the public policy of the state that to this end all persons, locations, practices, associations, and activities related to the operation of licensed and qualified gaming establishments and the manufacture, supply, or distribution of gaming devices and equipment shall be strictly regulated. (Emphasis ours)

The Board is mandated to regulate all gaming activities and operations in the state as specifically provided in Title 27. It is vested with all "regulatory authority, control, and jurisdiction, including investigation,

licensing, and enforcement, and all power incidental or necessary to such regulatory authority, control, and jurisdiction over all aspects of gaming activities and operations.” La. R.S. 27:15(A) and (B). The Division is charged with conducting investigations regarding the qualifications of applicants for permits requiring suitability determinations as required by law or rule or determined necessary by the Board. La. R. S. 27:20(A)(1)(a). The Division is required to perform 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)(e). The Division also has the duty to enforce the law, including the provisions of the Gaming Control Law and applicable regulations, without the necessity of direction from the board. La. R.S. 27:20(B).

No permit or license may be issued unless the applicant has demonstrated by clear and convincing evidence to the Board or Division its suitability for licensing as follows:

La. R.S. 27:28

A. No person shall be eligible to obtain a license or permit...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:

(1) The conviction or a plea of guilty or nolo contendere by the applicant or any person required to be suitable under the provisions of this Title for any of the following :

(a) Any offense punishable by imprisonment of more than one year.

(b) Theft or attempted theft, illegal possession of stolen things, or any offense or attempt involving the misappropriation of property or funds.

(c) Any offense involving fraud or attempted fraud, false statements or declarations.

(d) Gambling as defined by the laws or ordinances of any municipality, any parish or county, any state, or of the United States.

(e) A crime of violence as defined in R.S. 14:2(13).

(2) There is a current prosecution or pending charge against the person in any jurisdiction for any offense listed in Paragraph (1) of this Subsection.

(3) The person is not current in filing all applicable tax returns and in the payment of all taxes, penalties and interest owed to the state of Louisiana, any political subdivision of Louisiana, or the Internal Revenue Service, excluding items under formal appeal.

(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.

C.(1) In the awarding of a license, permit, casino operating contract, or other approval pursuant to the provisions of this Title, a conviction or plea of guilty or nolo contendere by the applicant shall not constitute an automatic disqualification as otherwise required pursuant to provisions of Subparagraphs (a), (b), (c), and (d) of Paragraph (1) of Subsection B of this Section if:

(a) 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; or

(b) Five or more years has elapsed between the date of application and the successful completion of any sentence, deferred adjudication, or period of probation or parole and the conviction for an offense defined in R.S. 27:28(B)(1)(b) was a misdemeanor offense.

(2) The provisions of Paragraph (1) of this Subsection shall not apply to any person convicted of a crime of violence as defined in R.S. 14:2(13).

(3) Notwithstanding any provision of law to the contrary, the board and division may consider the seriousness and circumstances of any offense, any arrest, or any conviction in determining suitability in accordance with Subsection A of this Section.

D. An applicant who is not disqualified as a result of Subsection B of this Section shall be required to demonstrate to the board and division that he otherwise meets the remaining requirements for suitability, particularly those contained in Paragraphs (A)(1), (2), and (3) of this Section. Evidence of, or relating to, an arrest, summons, charge, or indictment of an applicant, or the dismissal thereof, may be considered by the board or division even if the arrest, summons, charge, or indictment results in acquittal, deferred adjudication, probation, parole, or pardon.

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.

F. All licensees, all permittees, the casino gaming operator, and any other persons who have been found suitable or approved by the board or division shall maintain suitability throughout the term of the license, permit, casino operating contract, or approval. In the event of a current prosecution of an offense as provided in R.S. 27:28(B)(2), the board, or division where applicable, shall have the discretion to defer a determination on a person's continuing suitability pending the outcome of the proceedings provided that if a decision is deferred pending such outcome the board, or division where applicable, may take such action as is necessary to protect the public trust, including the suspension of any license or permit.

G. All licensees, all permittees, the casino gaming operator, and any other persons required to be found suitable shall have a continuing duty to inform the board and division of any possible violation of this Title and of any rules adopted by the board. No person who so informs the board or division of a violation or possible violation shall be discriminated against by the applicant, licensee, permittee, or casino gaming operator because of supplying such information.

H.(1) Any person who has or controls directly or indirectly five percent or more ownership, income, or profit or economic interest in an entity which has or applies for a license or permit or enters into a casino operating contract with the state pursuant to the provisions of this Title, or who receives five percent or more revenue interest in the form of a commission, finder's fee, loan repayment, or any other business expense related to the gaming operation, or who has the ability, in the opinion of the board, to exercise a significant influence over a licensee, the casino operator, a permittee, or other person required to be found suitable pursuant to the provisions of this Title, shall meet all suitability requirements and qualifications pursuant to the provisions of this Title.

I. If the board finds that an individual owner or holder of a security of a licensee, permittee, or the casino gaming operator, or of a holding or intermediary company of a licensee, permittee, or the casino gaming operator, or any person or persons with an economic interest in a licensee, permittee, or the casino gaming operator, or a director, partner, officer, or managerial employee is not suitable, and if as a result, the licensee, permittee, or casino gaming operator is no longer qualified to continue as a licensee, permittee, or casino gaming operator, the board shall propose action necessary to protect the public interest, including the suspension or revocation of the license or permit, or any action authorized under the casino operating contract. The board may also issue under penalty of revocation or suspension of a license or permit, or any action authorized under the casino operating contract, a condition of disqualification naming the person or persons and declaring that such person or persons may not:

(1) Receive dividends or interest on securities of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval.

(2) Exercise directly, or through a trustee or nominee, a right conferred by securities of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval of the board issued pursuant to the provisions of this Title.

(3) Receive remuneration or other economic benefit from any person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval issued pursuant to this Title.

(4) Exercise a significant influence over activities of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval issued pursuant to the provisions of this

Title.

(5) Continue owning or holding a security of a person, or a holding or intermediary company of a person, holding a license, casino operating contract, permit, or other approval of the board issued pursuant to the provisions of this Title or remain as a manager, officer, director, or partner of a licensee or permittee.

J. Except for video poker manufacturers, the provisions of this Section shall not apply to persons licensed pursuant to the provision of the Video Draw Poker Devices Control Law as provided in Chapter 6 of this Title.

La. R.S. 27:3(7)

(7) "Economic interest" means any interest in a contract, license, or permit from which a person receives or is entitled to receive by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest, or other benefit.

Knowledge of persons having a substantial economic interest in an applicant as well as knowledge of the persons with whom an applicant is associated and whether those persons are suitable or pose a threat to the integrity of gaming in this state are important factors in determining an applicant's suitability to be permitted as a gaming manufacturer.

The beneficiary of a trust which owns 59.95% of the stock of a gaming manufacturing company and who, by the terms of the trust, is authorized to receive a distribution (although at the sole discretion of the trustee) from the trust, has an economic interest in the gaming manufacturer and also meets the criteria of a person who is associated with the applicant; likewise is the adult child of the trustee/beneficiary of a marital trust which owns 12.49% of the stock of a gaming manufacturer and who, by the terms of the trust, is authorized to inherit the trust principal upon the death of the trustee.

The Division has the authority to request James E. Crabbe, Jr., Michael D. Crabbe and Amy Huson Fisher to submit to suitability. To hold otherwise may result in attempts by an unscrupulous applicant to circumvent gaming laws and regulations by placing the economic interest of an unsuitable person in trust and thereby attempting to deprive the Board of its jurisdiction to strictly regulate gaming as well as attempting to

deprive the Division of its authority to enforce the gaming laws and regulations.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of April 15, 2002:

IT IS THE RULING of the Board that James E. Crabbe, Michael D. Crabbe and Amy Huson Fisher comply with the Division's request to submit to suitability.

THUS DONE AND SIGNED on this the 15th day of April, 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 April 2002

APPEAL DOCKET CLERK
