



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

DECISION OF THE LOUISIANA GAMING CONTROL BOARD

IN RE: KRS, INC.
P81002040A

This is an appeal by KRS, Inc. ("KRS"), Kenneth Schexnider and Brenda Schexnider from the May 7, 2003, decision of the Hearing Officer finding KRS, Inc., Kenneth Schexnider and Brenda Schexnider unsuitable.

FINDINGS OF FACT

The procedural history of this matter is contained in the findings of fact of the Hearing Officer which we adopt in pertinent part with additions as follows:

A group of investors, incorporated as Jebaco, Inc. ("Jebaco"), brokered a deal between the owners of the Lake Charles Downtowner Inn, eventual site of the riverboat berth, and the gaming operator, Players. Jebaco was to receive payments from the berth landlord and the gaming operator as long as the riverboat remained in operation. In November of 1993, Jebaco entered into a "Public Relations/Political Consultant/Minority Affairs Coordinator Agreement" with FYP of Calcasieu, Inc. ("FYP"). Although the contract was signed in November, the stated term was not to commence until the riverboat began operations and would continue until the boat ceased operations or Jebaco ceased to receive its payments. The Lake Charles riverboat began operations on December 8, 1993.

Within seven weeks of the signing of the contract, FYP and KRS, executed a "Public Relations and Minority Affairs Subcontract" which provides that KRS would receive \$0.75 per gaming patron and FYP would receive \$2,500 per month for the first twenty-four months. After twenty-four months, KRS could buy out the consulting contract for a single payment of \$1,000.00. KRS assumed FYP's obligation to Jebaco under the "Public Relations/Political Consultant/Minority Affairs Coordinator Agreement" between FYP and Jebaco. These obligations included, *inter alia*, involvement of the operation in the minority community, education of minority work force about job opportunities, liaison with local business community, monitoring minority involvement on the project, monitoring activities of local public bodies, and providing liaison with the Lake Charles Chamber of Commerce Board of Directors.

After the riverboat began operations, the various factions fell into dispute resulting in multiple lawsuits. On July 27, 1995, Players Lake Charles, Inc., Jebaco, Inc., The Beeber Corporation ("Beeber"), William Woodward, Elizabeth Woodward, Timothy Vaughan, Wayne Ducote, David Ducote, Steven Rittvo and Mart Black entered into a "Settlement Agreement". This new contract took into account that Players would soon be operating a second riverboat in Lake Charles. The term was modified to include a definite ending date, December 7, 2023, unless the boats ceased operations prior to that date. Jebaco was to receive \$1.525 per gaming patron. Patrons of both boats were included.

On September 29, 1995, FYP filed a petition against Jebaco alleging failure to pay. Litigation ended on May 10, 1996, when Jebaco and FYP signed their own "settlement agreement." This contractual arrangement, which resembles and contains

many references to the agreement between Jebaco, Players and Beeber, provided for a reduction of per patron income from \$0.075 to \$0.065, and adopted the termination date of the Jebaco, Players and Beeber agreement. The monies would be paid directly to FYP by Players as per the Assignment of Payment Interest signed by Jebaco for the benefit of FYP.

On July 3, 1996, FYP executed an "Assignment of Payment Interest" in favor of KRS. All rights and payments granted to FYP, by the Assignment of Payment Interest from Jebaco, were transferred to KRS. Players signed the Consent to Assignment of Payment Interest on July 16, 1996, agreeing to pay KRS directly. The term of the Assignment states that the payments continue until 2023 or until the boats cease operation. On March 30, 2000, when Harrah's acquired Players' properties, it continued the payments as dictated by the agreements.

Players/Harrah's paid KRS \$106,322.23 in 1996; \$120,683.78 in 1997; \$107,900.68 in 1998; \$97,290.02 in 1999; \$111,758.90 in 2000; \$115,825.86 in 2001; \$98,771.43 in 2002 and \$21,495.82 for January-March, 2003.

Procedural History

On or about February 20, 2001, KRS received notice from the Division that in order to continue the current contractual relationship between KRS and Harrah's, KRS must obtain a Non-Gaming Supplier Permit. On or about April 11, 2001, KRS submitted a Non-Gaming Supplier Permit Application and subsequently a Level II Casino Gaming Permit Application, Personal History and Financial Record. The investigation revealed that KRS is ineligible for state and federal tax clearance.

On November 30, 2001, the Division issued a Notice of Denial based on KRS' failure to obtain state and federal tax clearances. KRS timely filed for an administrative hearing which was held on April 3, 2002. At this hearing, the Hearing Officer granted a continuance to May 14, 2002, to allow KRS to obtain the required tax clearances. On May 14, 2002, the Hearing Officer issued a decision denying KRS for failure to obtain the required tax clearances.

KRS presented its appeal to the Board on July 16, 2002. On July 17, 2002, the Board issued a decision remanding the matter to the Hearing Officer for clarification regarding the necessity of KRS obtaining a Non-Gaming Supplier Permit. The matter was docketed for September 24, 2002. During the hearing of September 24, 2002, counsel for KRS requested to withdraw the application and the division offered no objection. On September 24, 2002, the Hearing Officer ordered that, in consideration of its motion, KRS be allowed to withdraw its application for a Non-Gaming Supplier Permit.

On October 18, 2002, KRS filed a Petition for Declaratory Relief with the Louisiana Gaming Control Board which was docketed for November 19, 2002. At the meeting, the Board declined to make a factual determination as requested by the petition before them. After being advised that the Division would institute an action in the Administrative Hearing Office, KRS withdrew its Petition for Declaratory Ruling.

On or about January 31, 2003, Ken Schexnider was served with the Division's Notice of Recommendation of Unsuitability. The recommendation was based on KRS' ineligibility to receive state and federal tax clearance. KRS submitted a request for a hearing that was conducted on April 16, 2003. The Hearing Officer overruled KRS'

peremptory and declinatory exceptions and found KRS, Inc., Kenneth Schexnider and Brenda Schexnider unsuitable.

LEGAL ANALYSIS

It is the declared public policy of the state of Louisiana that all persons, locations, practices, associations, and activities related to the operation of licensed gaming establishments be strictly regulated. La. R.S. 27:2. Strict regulation is needed to protect the general welfare of the state's people by keeping the state free from criminal and corrupt elements. *Id.* The Louisiana Gaming Control Board ("Board") was granted all regulatory authority, control and jurisdiction, including investigation, and all power incidental or necessary thereto, over all aspects of gaming activities and operations. La. R.S. 27:15. In furtherance of its duties and responsibilities, the Board is mandated to ensure that there is no material involvement, directly or indirectly, with a licensee by a disqualified person as defined in La. R.S. 27:28. La. R.S. 27:58.

Louisiana Revised Statute 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.

. . .

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

B) The board shall not . . . issue any . . . approval pursuant to the provisions of this Title to any person who is disqualified on the basis of the following criteria:

. . .

(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. (Emphasis added.)

. . .

KRS argues that it cannot be subjected to suitability under La. R.S. 27:28 because it is not an applicant, licensee, casino gaming operator, or permittee. However, the statute also refers to “other persons” who are required to obtain “any other approval.” These other persons referred to in the statute are delineated in L.A.C. 42:XIII.632107(A)(6).¹ That rule provides for a personal history form from any person

¹ Louisiana Administrative Code 42:XIII.2107(A)(6) in pertinent part:

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; 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.**
- (Emphasis Added)

who receives any share or portion of gaming money or who has any contractual agreement with a licensee. KRS meets both criteria.

The Board is mandated to investigate the associations of licensees to ensure their suitability and qualifications. KRS argues that its association with a licensee is simply that of a recipient of payment resulting from a settlement agreement secondary to settlement of litigation. It has also argued that as the payment is an assignment, it has no direct association with a licensee.

KRS was and remains directly associated with Players/Harrah's and its gaming activities and revenues through its past and present contractual agreements whereby it currently receives \$0.065 per gaming patron. The litigation and settlement arose from these agreements. If KRS were free of scrutiny because the payment is an assignment, the door would be open to corrupt and criminal elements profiting from the gaming industry. The board would be able to determine suitability of those furnishing goods or services and receiving money, but unable to determine suitability of those receiving payments but furnishing no services nor selling any goods. That would be a ludicrous result rife with possibilities of abuse.

KRS' association with a gaming licensee requires it to be suitable. KRS and its owners Brenda and Kenneth Schexnider cannot obtain tax clearances after ample time was given to do so. Pursuant to the provisions of La. R.S. 27:28 (B)(3), the Board is prohibited from approving suitability of Brenda Schexnider, Kenneth Schexnider, or KRS when they cannot furnish tax clearances.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of November 18, 2003:

IT IS THE ORDER OF THE BOARD THAT KRS, Inc., Kenneth Schexnider and Brenda Schexnider are not qualified to obtain suitability under the Louisiana Gaming Control Law, La. R.S. 27:1 et seq.

THUS DONE AND SIGNED this the 18 day of November, 2003.

LOUISIANA GAMING CONTROL BOARD

BY:

[Signature]
HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 20 DAY
OF November 2003

[Signature]
APPEAL DOCKET CLERK