



State of Louisiana
Gaming Control Board

BOBBY JINDAL
GOVERNOR

DANE K. MORGAN
CHAIRMAN

RULING ON PETITION FOR DECLARATORY ORDER

Pursuant to LAC 42:III.116, Wayne A. Collier filed a petition for declaratory ruling on the application of La. R.S. 27:306(C)(5)(a) and (b) which provides:

(5)(a)(i) Notwithstanding any provision of law to the contrary, including the prohibited distance provisions provided for in Paragraphs (2), (3) and (4) of this Subsection, no license shall be issued for any truck stop facility unless previously applied for or licensed as of June 1, 2010, located, at the time application is made for a license to operate video draw poker devices, within one mile of any **residential property, any property that is on the National Registry of Historic Places, any public playground, or a building used exclusively as a church, synagogue, public library, or school** unless the applicant for license has applied prior to June 1, 2010, with the local governing authority of the parish where the truck stop is located for a certificate of compliance with applicable zoning ordinances and building codes and a statement of approval for the operation of video draw poker devices at a truck stop facility as required by R.S. 27:324(C) or has applied with the appropriate authority for a building permit prior to June 1, 2010. If a parish or municipality does not have a zoning ordinance which designates certain property within their jurisdiction as residential property, the governing authority of the parish or municipality shall have the authority to designate to certain areas of their jurisdiction as residential districts for the purpose of this Paragraph. The measurement of this distance shall be a straight line from the nearest point of the truck stop facility to the nearest point of the residential property.

(ii) The subsequent construction, erection, development, or movement of **a property on the National Historic Registry, public playground, church, synagogue, public library, or school** which causes the truck stop facility to be located within the prohibited distance as provided in this Paragraph shall not be cause for revocation, withholding, denial of an application, nonrenewal of a license, or issuance of a new license. The subsequent construction, erection, development, or movement of **a property on the National Historic Registry, public playground, church, synagogue, public library, or school** following the application for a license to operate video draw poker devices at a truck stop

facility and the granting of that license which causes the truck stop facility to be located within the prohibited distance as provided in this Paragraph shall not be cause for the revocation, withholding, denial of an application, nonrenewal of a license, or issuance of a new license. (*emphasis added*).¹

(b) "Residential property" shall mean any property which is wholly or partly used for or intended to be used for living or sleeping by human occupants and which includes one or more rooms, including a bathroom and complete kitchen facilities. Residential property shall include a mobile home or manufactured housing, provided that it shall have been in its present location for at least sixty days. Residential property shall not include any hotel or motel.

There are two questions presented in the petition for declaratory ruling.

Fact Scenario and Question One

A proposed site for a truck stop is located in a local zoning district that allows truck stop facilities with video draw poker devices. The proposed site is within one mile of a local zoning district that permits residential use. There is no residential property as defined in La. R.S. 27:306(C) within one mile. The proposed truck stop applies for a video gaming license after June 1, 2010.² Would La. R.S. 27:306(C)(5) prohibit the issuance of a video gaming license to a truck stop under these circumstances?

A license may be issued to a truck stop if, at the time of application, the truck stop is not located within one mile of a residential property and all other requirements for licensure are met. Residential property is defined as "any property which is wholly or partly used for or intended to be used for living or sleeping by human occupants and which includes one or more rooms, including a bathroom and complete kitchen facilities." La. R.S. 27:306(C)(5)(b). Residential property includes a mobile home or

¹ Residential property is included in the list of properties in La. R.S. 27:306 (C)(5)(a)(i) but is not included in the list of properties in La. R.S. 27:306(C)(5)(a)(ii).

² No mention is made in the petition relating to the proposed truck stop making application for a building permit or certificate of compliance and statement of approval prior to June 1, 2010 therefore, for purposes of this ruling, we will not consider this in our analysis.

manufactured housing if it has been in its present location for at least sixty days but does not include a hotel or motel. *Id.*

The prohibition to licensing found in La. R.S. 27:306(C)(5)(a)(i) clearly refers to residential property and not to residential areas or districts. Although the legislature granted a local governing authority the power to designate areas as residential districts for the purpose of La. R.S. 27:306(C)(5)(a)(i), there is no prohibition found to licensing truck stops that are within one mile of a residential district or area, only a residential property.

We find that there is no prohibition to the issuance of a video gaming license to a truck stop which, at the time of application, is not located within one mile of a residential property as defined in La. R.S. 27:306(C)(5)(b) but is located within one mile of a local zoning district that permits residential use.

Fact Scenario and Question Two

Subsequent Construction³ of Residential Property

1. Unlicensed Truck Stop

A residential property, as defined in La. R.S. 27:306(C)(5)(b), is constructed within one mile of a truck stop after the filing of a video gaming application by a truck stop which does not currently hold a video gaming license. Would La. R.S. 27:306(C)(5)(a) prevent the issuance of a video gaming license?

Louisiana Revised Statute La. R.S. 27:306(C)(5)(a) states, in pertinent part, that “no license shall be issued for any truck stop facility ... located, at the time application is

³ The use of the word “construction” herein also includes placement of a mobile home or manufactured housing for at least sixty days prior to application.

made, within one mile of any residential property ...” The relevant time at which to determine whether the Board is statutorily prohibited from licensing a truck stop within one mile of a residential property is at the time of application not issuance. Therefore, if there is no residential property within one mile at the time of application, subsequent construction would not prohibit the issuance of the license.

2. Licensed Truck Stop

A residential property, as defined in La. R.S. 27:306(C)(5)(b), is constructed within one mile of a licensed truck stop. Does La. R.S. 27:306(C)(5) require the revocation of a license or the denial of an application for renewal?⁴

Legislation prohibiting licensure of a truck stop within a certain distance of a residential property, La. R.S. 27:306(C)(5), was enacted in 2009. Louisiana Revised Statute 27:306(C)(5) was amended in 2010. At all times has La. R.S. 27:306(C)(5) contained the following provision:

(a)(ii) The subsequent construction, erection, development, or movement of a **property on the National Historic Registry, public playground, church, synagogue, public library, or school** which causes the truck stop facility to be located within the prohibited distance as provided in this Paragraph shall not be cause for revocation, withholding, denial of an application, nonrenewal of a license, or issuance of a new license. The subsequent construction, erection, development, or movement of a **property on the National Historic Registry, public playground, church, synagogue, public library, or school** following the application for a license to operate video draw poker devices at a truck stop facility and the granting of that license which causes the truck stop facility to be located within the prohibited distance as provided in the Paragraph shall not be cause for the revocation, withholding, denial of an application, nonrenewal of a license, or issuance of a new license. (*emphasis added*).

⁴ The analysis for an existing truck stop that changes ownership wherein the new entity is required to file an original application would be the same as our analysis for a truck stop which has never been licensed. As discussed in this section, the legislature made no exemption for subsequent construction, erection, development or movement of a residential property.

Prior to 2009, La. R.S. 27:306(C) contained a distance requirement between truck stops and public playgrounds, churches, synagogues, public libraries, schools, or properties on the National Historic Registry. The distance requirement between truck stops and residential property was added in 2009. The 2009 legislation contains a provision for subsequent construction of a property on the National Historic Registry, public playground, church, synagogue, public library, or school, and allows renewal if this occurs. La. R.S. 27:306(C)(5)(a)(ii). This provision does not mention residential property thus we must conclude that residential property which is constructed after the initial application and licensure but before application for renewal, would prohibit renewal of the video gaming license. Under the guidelines of statutory construction, this Board cannot read into a statute that which is clearly absent.⁵ Inclusion of residential property in La. R.S. 27:306(C)(5)(a)(ii) must be made by the legislature if it so desires.

⁵ When determining the applicability of a statutory provision, this Board, in interpreting the law, must use the same guidelines of statutory construction established and employed by the courts. The guidelines followed by the Louisiana Supreme Court were articulated in *Louisiana Municipal Association v. State, 04-0227 (La.1/19/05); 893 So.2d 809*, wherein the court recognized:

“Legislation is the solemn expression of legislative will, and therefore, the interpretation of a law involves primarily the search for the legislature’s intent.” The interpretation of a statute starts with the language of the statute itself. When a law is clear and unambiguous and its application does not lead to **absurd consequences**, the law shall be applied as written, and no further interpretation may be made in search of the intent of the legislature.

The laws of statutory construction require that laws on the same subject matter must be interpreted in reference to each other. The legislature is presumed to have acted with deliberation and to have enacted a statute in light of the preceding statutes involving the same subject matter. “Under our long-standing rules of statutory construction, where it is possible, courts have a duty in the interpretation of a statute to adopt a construction which harmonizes and reconciles it with other provisions dealing with the same subject matter.”

A statute must be “applied and interpreted in a manner that is logical and consistent with the presumed fair purpose and intention the Legislature had in enacting it.” In addition, “courts are bound to give effect to all parts of a statute and cannot give a statute an interpretation that makes any part superfluous or meaningless, if that result can be avoided.” *Id at 836-837 (citations omitted)(footnote omitted)(emphasis added).*

The question remains whether the Board must revoke a license because of the subsequent construction of a residential property within one mile of a licensed truck stop. As La. R.S. 27:306(C)(5) is written, consideration of the existence of a residential property is made at the time of application, not licensing. If a truck stop applies for a license and no residential property exists within one mile but is constructed before licensing, we would be required to issue the license. If we found that La. R.S. 27:306(C)(5) requires the revocation of a license for the subsequent construction of a residential property, we would be required to issue a license one day and move to revoke the license the next. This interpretation leads to an absurd result which is prohibited by the guidelines of statutory construction. *Louisiana Municipal Association v. State*, 04-0227 (La.1/19/05); 893 So.2d 809, 836-837.

Although we find that there are no grounds for revocation by the construction of a residential property, we would be prohibited from renewing the license if such property existed at the time of application for license renewal.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of September 15, 2011:

THUS DONE AND SIGNED on this the *15th* day of *September, 2011*.

LOUISIANA GAMING CONTROL BOARD

BY:


DANE K. MORGAN, CHAIRMAN

DKM/gac

LGCB-0950-11

LOUISIANA GAMING CONTROL BOARD
I HEREBY CERTIFY THAT A CERTIFIED
COPY HAS BEEN MAILED OR SERVED ON
ALL PARTIES THIS 16th DAY
OF September, 2011

APPEAL DOCKET CLERK





PETITION FOR DECLARATORY RULING
FILED BY WAYNE A. COLLIER
AUGUST 12, 2011

Pursuant to LA. R.S. 42 Part 3, Section 1116,¹ the following Petition is filed by Wayne A. Collier, 1137 Marina Drive, Slidell LA 70458, 985-788-1704, Fax: 985-201-7211, email:collierwayne@juno.com based upon the following

FACT SCENARIO

1.

An application for a video poker license for a qualified truck stop facility is filed after June 1, 2010. At the time of the application, there is a local zoning district that permits video poker truck stops. There is a local zoning district that permits residential use within one mile. The site proposed for a video poker truck stop is within the local zoning district for video poker truck stops. There is no Residential Property as defined in the state law located within one mile.

2.

Does state law permit a video poker truck stop application and license where local zoning permits a video poker truck stop within one mile of a zoning district that permits residential use reasoning that state law LA R.S. 27:306(C)(5) (a) and (b) would not apply in this Fact Scenario because there is no Residential Property within one mile that would violate state law?

3.

A single property owner constructs a Residential Property after the date of application for a video poker truck stop license.

4.

Does the independent action of a third party to construct a Residential Property after a video poker truck stop application is filed that happens to be within one mile of the site render the application for a video poker truck stop license not in compliance or subject to denial or revocation of an issued license for that reason alone?

¹ §116. Petition for Declaratory Orders and Rulings, Statutes and Rules

A. Any interested person may file a petition for a declaratory order or ruling as to the applicability of any statutory provision or as to the applicability or validity of any rule or order of the Board.

B. Petitions referred to in §116.A shall be in writing and filed with the Board at its office in Baton Rouge.

C. Petitions filed with the Board in accordance with §116 shall be disposed of promptly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 27:1 et seq.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Gaming Control Board, LR 24:695 (April 1998).

NEED FOR DECLARATORY RULING

Applicants need to know whether a site with no Residential Property within one mile may qualify for a license where there is a residential zoning district within one mile but there is no Residential Property within one mile at the time of application.

ARGUMENT

The questions arise from statutory interpretation. The Louisiana Civil Code provides some rules for interpretation of laws that may apply. In this case, Article 10:

“Article 10. Language susceptible of different meanings
When the language of the law is susceptible of different meanings, it must be interpreted as having the meaning that best conforms to the purpose of the law.”

In this FACT SCENARIO, the resolution involves the state law governing the location restrictions for video poker truck stops and local zoning ordinances that govern local zoning for location of video poker truck stops and Residential Property.

LA RS 27:306(C)(5) (a) and (b) are susceptible of different meanings. The purpose of local zoning laws and the purpose of the state law can be interpreted to be in conflict or not be in conflict.

LA R. S. 27:306(C)

(5) (a) (i) Notwithstanding any provision of law to the contrary, including the prohibited distance provisions provided for in Paragraphs (2), (3) and (4) of this Subsection, no license shall be issued for any truck stop facility unless previously applied for or licensed as of June 1, 2010, located, at the time application is made for a license to operate video draw poker devices, within one mile of any residential property, any property that is on the National Registry of Historic Places, any public playground, or a building used exclusively as a church, synagogue, public library, or school unless the applicant for license has applied prior to June 1, 2010, with the local governing authority of the parish where the truck stop is located for a certificate of compliance with applicable zoning ordinances and building codes and a statement of approval for the operation of video draw poker devices at a truck stop facility as required by R.S. 27:324(C) or has applied with the appropriate authority for a building permit prior to June 1, 2010. If a parish or municipality does not have a zoning ordinance which designates certain property within their jurisdiction as residential property, the governing authority of the parish or municipality shall have the authority to designate to certain areas of their jurisdiction as residential districts for the purpose of this Paragraph. The measurement of this distance shall be a straight line from the nearest point of the truck stop facility to the nearest point of the residential property.

(ii) The subsequent construction, erection, development, or movement of a property on the National Historic Registry, public playground, church, synagogue, public library, or school which causes the truck stop facility to be located within the prohibited distance as provided in this Paragraph shall not be cause for revocation, withholding, denial of an application, nonrenewal of a license, or issuance of a new license. The subsequent construction, erection, development, or movement of a property on the National Historic Registry, public playground, church, synagogue, public library, or school following the application for a license to operate video draw poker devices at a truck stop facility and the granting of that license which causes the truck stop facility to be located within the prohibited distance as provided in this Paragraph shall not be cause for the revocation, withholding, denial of an application, nonrenewal of a license, or issuance of a new license.

(b) "Residential property" shall mean any property which is wholly or partly used for or intended to be used for living or sleeping by human occupants and which includes one or more rooms, including a bathroom and complete kitchen facilities. Residential property shall include a mobile home or manufactured housing, provided that it shall have been in its present location for at least sixty days. Residential property shall not include any hotel or motel.

Only if the state law is interpreted to mean that the existence of a zoning district that permits Residential Property is within one mile of the site but which has no Residential Property within one mile of the site invokes the one mile restriction is there a conflict of laws.

In this FACT SCENARIO the local zoning ordinances regulate video poker truck stops and Residential Property by creating Districts for each. The local zoning ordinances do not require a one mile distance from a video poker truck stop and a zone that permits Residential Property. The state law does restrict a video poker truck stop within one mile of Residential Property as a defined term. This FACT SCENARIO would not be in conflict with local zoning laws and would not be in conflict with state law if an application and license is not prohibited.

PURPOSE OF THE LAW

Zoning law is in derogation of private property rights. Zoning laws should be interpreted in such a manner as to be the least restrictive of private property rights. In this FACT SCENARIO, private property rights are least restrictive by recognizing the local zoning for truck stops and residential property and also recognizing the state law distance prohibition from Residential Property.

"A zoning ordinance, being in derogation of rights of private ownership must be construed, when subject to more than one interpretation, according

to the interpretation which allows the least restricted use of property. *City of Kenner v. Normal Life of Louisiana, Inc.*, 483 So. 2d 903 (La. 1986).

There is no loss of a property right to the individual who builds a Residential Property.

There is no loss of a property right of the truck stop facility that is permitted by local zoning. An individual who decides to build a residence within a mile of truck stop makes an informed decision to locate within one mile of a video poker truck stop. The homebuilder's private property right to build a residence is not infringed in any way. The state law applies so that a truck stop facility cannot be licensed for video poker if Residential Property is within one mile.

There is no conflict with local zoning. Local zoning permits video poker truck stops and permits residential property within one mile.

The state law expressly recognizes the overlapping issues of regulation and local zoning law.

LA R S. 27:324. Local zoning ordinances

A. Notwithstanding the provisions of R.S. 27:314, local governing authorities shall be authorized to enact zoning ordinances and building codes to regulate and restrict the placement or use of video draw poker devices, or the location, design, and construction of buildings, structures, and land for licensed video draw poker device operation at qualified truck stop facilities, except that such ordinances shall not exempt any device owner or operator or any other licensee from any of the restrictions on the ownership, operation, use, or location of video draw poker devices as provided in this Chapter.

B. The provisions of this Section shall not be construed as limiting, superseding, or repealing any grant of zoning authority heretofore granted to any governing authority either by statute or home rule charter.

C. (1) No license shall be issued to an applicant unless his application includes a certificate of compliance with applicable zoning ordinances and a statement of the approval for the operation of video draw poker devices at a truck stop facility from the applicable local governing authority.

(2) The provisions of this Subsection shall apply only when the local governing authority has adopted zoning ordinances relative to the location of truck stop facilities or gaming devices pursuant to or consistent with this Section.

If the purpose of the state law is to recognize local zoning AND to prohibit a video poker truck stop within one mile of Residential Property as defined, then there is one interpretation that gives force and effect to both state law and local zoning. An application and license is not precluded in this Fact Scenario.

If state law is interpreted to further restrict property rights by expanding the interpretation of Residential Property to also mean a residential zoning district, then there is a conflict.

SUBSEQUENT CONSTRUCTION OF RESIDENTIAL PROPERTY

The second issue is the effect of a subsequent construction of a Residential Property. LA RS. 27:306(C)(5)(a)(ii) provides a clear answer that subsequent events that place a distance restricted use within the restricted area does not effect the application or license. This provision comes first. There is no expressed provision applicable to the same fact scenario for a subsequently constructed Residential Property that causes the truck stop facility to be located within the prohibited distance. It would be inconsistent with the provisions of (a) (ii) to not apply the same standard to Residential Property that is applied to other uses.

CONCLUSION

Provided that an application is filed for a video poker truck stop license that has no Residential Property within one mile, the location of a local zoning residential district within one mile or the later construction of a Residential Property within one mile which causes the truck stop facility to be located within the prohibited distance as provided in LA R.S. 27:306(5)(a)(i) shall not be cause for the revocation, withholding, denial of an application, nonrenewal of a license, or issuance of a new license.