



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: J-TOWN DAIQUIRIS
License No. VP2703111696
Inspection Report Number: 0001090994

This is an appeal by the Louisiana State Police, Video Gaming Division (Division) from the December 7, 2000, decision of the Hearing Officer.

As a result of an inspection of the establishment conducted on July 5, 2000, a "Notice of Violation" (Inspection Report No. 00010994) was issued to J-Town Daiquiris (J-Town). J-Town was cited for the following violations:

Violation No.	Regulation/Statute	Violation Description	Penalty
1	2407(A)(1)	Devices Not Monitored	\$250.00
2	2407(A)(8)	Designated Representative not present	\$200.00
3	2411(A)(9)	Failure to Maintain Records/Inform Division of Change	\$500.00
4	2407(A)(14)	Signs Restricting Minors	\$250.00
5	2415(D)(2)	Devices Visible to Minors	\$200.00

J-Town requested an administrative hearing contesting the 5 cited violations. The Hearing Officer upheld the citations for violation numbers 1, 2 and 3, but found no violation for numbers 4 and 5.

At the hearing on the merits, the investigating officer, Sgt. James T. Kilburn, testified that

he observed a neon billboard type sign with flashing lights outside the establishment advertising the establishment as a family restaurant and listing a menu of food served that day. The officer also observed children being served food in the restaurant. From the restaurant area the video gaming devices were only partially obscured from view and the signs mandated by Rule 2407(A)(14) were not posted. Apparently, at the time of the inspection, J-Town was operating under a different type of ATC permit than that under which it was originally licensed by the Division, a Class-A General Retail permit.

In finding that J-Town had not violated Rule 2407(A)(14) and 2415(D)(2) the Hearing Officer reasoned that J-Town was licensed as a Type I establishment; Rules 2407(A)(14) and 2415(D)(2) were applicable to Type II establishments, not Type I establishments; thus the licensee could not be in violation of any “provision of a license he does not possess.”

42 L.A.C. XI. 2407 provides in pertinent part:

A. Responsibilities of Licensees

....

14. All licensees shall post signs on the premises of a licensed establishment which admits mixed patronage that restricts the play of video draw poker devices by persons under the age of 21 and restricts the access to areas where gaming is conducted by persons under the age of 18.

42 L.A.C. XI. 2415 provides in pertinent part:

D. Structural Requirements for Licensed Establishments

....

2. Any licensed establishments that allow mixed patronage, shall have devices for play and operation only in designated areas. These gaming areas shall be physically separated by a partition as provided in R.S. 33:4862.2(D)(2) [now La. R.S. 27:302(D)(2)]. The partition shall be permanently affixed and solid except for an opening to allow for player access into the gaming area.

Acts 1996, 1st Ex. Sess., No. 7, enacted Title 27 of the Louisiana Revised Statutes of 1950, comprised of Chapter 1, R.S. 27:1 to 27:3, Chapter 2, R.S. 27:11 to 27:26, and Chapter 3, R.S. 27:31 and 27:32. Pursuant to Section 3 of Acts 1996, 1st Ex. Sess., No. 7, Part V-B of Chapter 14, the Video Draw Poker Devices Control Law, of Title 33 of the Louisiana Revised Statutes of 1950, consisting of R.S. 33:4862.1 to 33:4862.24, was redesignated as Chapter 6 of Title 27, consisting of R.S. 27:301 to 27:324. The subject matter of former La. R.S. 33:4862.2(D)(2) is now contained in La. R.S. 27:302(D)(2) which provides as follows:

Any establishment which allows minors to enter the area where video draw poker devices are located or operated shall separate any video draw poker devices from the sight of any minor by placing a partition of at least five feet in height between the video draw poker devices and any area where a minor may be present.

State law prohibits the holder of a Class-A General Retail permit from intentionally enticing, aiding, or permitting any person under 18 years of age to visit or loiter in or about any place where alcoholic beverages are the principal commodities sold. La.R.S. 26:71.1(1)(d). Additionally, no person under 18 years old is allowed on the premises of an establishment which has been issued a Class-A General Retail permit, a bar or lounge. La. R.S. 26:90(A)(3)(a).

The qualifications of an establishment licensed for the placement of a maximum of three machines are enumerated in La. R.S. 27:306(A)(2). Those establishments are restaurants, bars, taverns, cocktail lounges, clubs or those located within a hotel or motel.

J-Town initially applied for and was issued a license for the placement of a maximum of 3 video gaming devices in an establishment to be operated as a bar or lounge. 42 L.A.C. XI. 2415(A) (a) - (e) categorizes by Type I through V the licenses issued to establishments for the placement of video gaming devices, based on the type of business being conducted. Type I is a bar and Type II

is a restaurant. Regardless of whether a Type I or Type II license is issued, it is a video gaming license for the placement of 3 devices in the establishment and the statutory and regulatory requirements placed on the licensee for the protection of minors must be met. Rule 2415(D)(2) is not specifically applicable only to restaurants. It is applicable to any establishment which allows minors to enter (mixed patronage). Thus, if minors are allowed to enter a bar or lounge, which may be a separate violation of state law, Rule 2415(D)(2) is applicable and the gaming devices should be located in a designated gaming area which is separated from the sight of minors. Rule 2407(A)(14) is also applicable and requires the posting of signs on the premises stating that the play of video gaming devices is limited to persons 21 and older and restricting persons under 18 from accessing areas where gaming is conducted.

A video gaming licensee cannot have it both ways. It either operates as a bar, does not permit the admission of minors on the premises and fulfills the statutory and regulatory requirements of Title 26 and 27 for operation as a bar or lounge; or it can operate as a restaurant, admit minors on the premises, and comply with the video gaming laws and regulations which were enacted for the protection of minors and which are applicable to establishments which allow the admittance of minors. It cannot, however, be licensed as a bar, admit minors, conduct business as a restaurant yet fail to follow the video gaming laws and regulations imposed on businesses which admit minors which were enacted for the protection of minors and the public at large. Nor can a video gaming licensee avoid being held in violation of the video gaming laws and regulations merely because the licensee has failed to notify the Division (either intentionally or unintentionally) that it has changed the type of business it was originally licensed to conduct and has not obtained the applicable type of video gaming license.

Accordingly, the decision of the Hearing Officer should be affirmed in part and reversed in part and the licensee should be held in violation of 42 L.A.C. XI.2407(A)(14) and 2415(D)(2). In addition to the penalty imposed by the Hearing Officer, an additional penalty in the sum of \$450.00 should be imposed.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of February 13, 2001:

IT IS ORDERED that the decision of the Hearing Officer is **AFFIRMED IN PART AND REVERSED IN PART**. In addition to the penalty imposed by the Hearing Officer, a penalty in the sum of \$450.00 is imposed.

THUS DONE AND SIGNED this 22nd day of February, 2001.

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 23rd DAY
OF February, 2001
APPEAL DOCKET CLERK
