



State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

RULING ON PETITION FOR DECLARATORY ORDER OF

EL CHICO RESTAURANT # 6

VP0904207925

EL CHICO RESTAURANT # 16

VP0904207911

EL CHICO RESTAURANT # 82

VP0904208564

EL CHICO RESTAURANT # 205

VP0801207829

El Chico Restaurants of America, Inc., the owner of El Chico Restaurant Nos. 6, 16, 82 and 205 seeks a declaratory ruling regarding the applicability of La. R.S. 27:311(G), La. R.S. 27:306 (E), 42 L.A.C. XI.2405(D)(1) and La. R.S. 12:115(C) under the following circumstances: video gaming licenses were initially issued to El Chico Restaurants of Louisiana, Inc., for the placement of video gaming devices at El Chico Restaurant Nos. 6, 16, 82 and 205. On January 3, 2000, El Chico Restaurants of Louisiana, Inc.(owner of the above referenced restaurants) merged with El Chico Restaurants of America, Inc. El Chico Restaurants of America, Inc., is the surviving entity of the merger. The previous owners of 100% of the stock of El Chico Restaurants of Louisiana, Inc., are now the 100% shareholders of El Chico Restaurants of America, Inc. Its officers and directors are also the same. After the merger, "El Chico Restaurants of America, Inc., applied for and was issued Class 'A' - Restaurant permits for the continued sale of alcoholic beverages for on-premises consumption." On May 13, 2000, during the annual video gaming renewal period, in "timely filed

renewal applications for the above [video gaming] licenses El Chico Restaurants of Louisiana, Inc., informed the Video Gaming Division of the corporate merger [by stating]: 'Due to a change in corporate structure, El Chico Restaurants of America, Inc., is the successor licensee. As the renewal applications indicate, there has been no change of ownership due to the corporate reorganization. The officers, directors, and employees of the licensee renewal applicants remain exactly the same.'"¹

La. R.S. 27:306(E) provides as follows:

(1) When a licensed establishment which requires an alcoholic beverage license as a condition of the receipt of a video draw poker device license is sold, the video gaming devices shall be allowed to continue to operate if the **new owner** applies for a state Class "A" license within five days of purchasing the business, and upon issuance of a state Class "A" license, the **new owner applies for a video draw poker license** within five days.

(2) The video draw poker devices shall be allowed to be continued in operation under the **old license until the issuance of a video draw poker license in the name of the owner**, until any of the following occur:

(a) A determination by the division that the **new applicant** is unsuitable.

(b) Denial of the **new license application**.

(c) The passage of one hundred eighty days from submission of the application to the division. (emphasis ours)

42 L.A.C. XI.2405(D)(1) provides:

¹ Counsel for petitioner does not specify which of the two entities filed the renewal applications.

If a change in ownership of a licensed establishment occurs, the division shall immediately be notified, in writing, of the act of sale or lease.

Rule 2405(D)(1) is primarily a notification provision.

La. R.S. 27:306(E) authorizes the continued operation of video gaming devices by a new owner under the license of the previous owner under a narrow set of circumstances for a specific period of time. When an establishment which is licensed for the operation of video gaming devices is sold the **new** owner is statutorily authorized to continue to operate the video gaming devices under the license of the **previous** owner for a maximum of 180 days from the new owner's timely submission of a "new" or original video gaming application. La. R.S. 27:306(E). In order to trigger this provision the new owner must meet the requirements of La. R.S. 27:306(E)(1): the new owner must timely apply for an original Class "A" Restaurant permit and within 5 days of the issuance of the permit, the new owner must file a new or original video gaming application, not an application for the renewal of the video gaming license of the previous owner.

El Chico Restaurants of America, Inc., does not contend that it complied with La. R.S. 27:306(E)(1) by filing for Class "A" Restaurant permits for the sale of alcoholic beverages for on-premises consumption within 5 days of the merger and that it filed original or "new" video gaming applications within 5 days of the issuance of the Class "A" Restaurant permits in compliance with 306(E)(1).² Rather, El Chico Restaurants of America, Inc., contends that on May 13, 2000, four months after the merger, during the renewal period, applications for renewal of the video gaming

² We note that an alcoholic beverage permit is not assignable or heritable. The permit must be returned to the Office of Alcohol and Tobacco Control or surrendered to an agent within 5 days of the occurrence of either of the following: closure of the establishment; transfer of ownership of the business or termination of the business. La. R.S. 26:76(A)(2).

licenses previously issued to El Chico Restaurants of Louisiana, Inc., were filed.

We need not determine whether 42 L.A.C. XI.2405(D)(1) and La. R.S. 27:306(E) are applicable to a merger to authorize the operation of the video gaming devices under the license of the previous owner for the statutorily prescribed 180 day period because under the facts and circumstances presented, the requirements of La. R.S. 27:306(E)(1) were not met.

Petitioner seeks to have the Board determine "whether La. R.S. 27:311(G) applies to prohibit a corporate merger of a video draw poker licensee pursuant to La. R.S. 12:115, assuming all other lawful requirements of Louisiana's Gaming Control Law and/or rules of the Video Gaming Division and Louisiana Gaming Control Board have been met."

This issue was previously addressed by this Board in open meeting on July 18, 2000, in the ruling on the petition for declaratory order (signed July 25, 2000) filed by New Millennium Ventures, L.L.C. Therein we ruled that La. R.S. 27:311(G) is applicable to a merger and that under the facts and circumstances presented in the petition the surviving entity's acquisition of the video gaming license of the formerly licensed entity would constitute a transfer of a license which is prohibited under La. R.S. 27:311(G). La. R.S. 27:311(G) does not prohibit a merger, it prohibits the transfer of a video gaming license to the surviving entity which is not the licensee.

Counsel for El Chico Restaurants of America, Inc., cites La. R.S. 27:68 as a demonstration of the Legislature's intent to vest discretion in this Board to determine whether transfer provisions under the Gaming Control Law have been violated. La. R.S. 27:68 is a specific section of the Riverboat Act (Louisiana Riverboat Economic Development and Gaming Control Act, La. R.S. 27:41 - 114). It is not applicable to video gaming. Regardless, La. R.S. 27:68(A) prohibits the transfer of a license or permit or an interest in a license or permit. The remaining subsections (La.

R.S. 27:68(B) - (E) deal with the methods and procedures for transferring an ownership or economic interest in a legal entity which is the holder of a license and the effect given to the transfer under various facts and circumstances. The video gaming law does not require prior or conditional approval of transfers of ownership interests in a legal entity which is the holder of a license. However, like La. R.S. 27:68(A), La. R.S. 27:311(G) states that a license is personal to the licensee (or legal entity which is the licensee) to whom or to which it was issued and is not transferable. Consequently, when a legal entity holding a license is replaced by a new legal entity, the new entity must apply for and receive a video gaming license in order to operate video gaming devices.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of January 16, 2001:

IT IS THE RULING of the Board that La. R.S. 27:311(G) is applicable to a merger and that under these circumstances, El Chico Restaurants of America, Inc.'s (the surviving entity) acquisition of El Chico Restaurants of Louisiana, Inc.'s video gaming license in the merger would constitute a transfer of the license which is prohibited under La. R.S. 27:311(G).

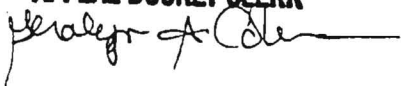
THUS DONE AND SIGNED on this the 22nd day of January, 2001.

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 January 2001
APPEAL DOCKET CLERK





State of Louisiana

Gaming Control Board

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

HILLARY J. CRAIN
CHAIRMAN

RULING ON PETITION FOR DECLARATORY ORDER OF NEW MILLENNIUM VENTURES, L.L.C.

Petitioner, New Millennium Ventures, L.L.C., seeks a declaratory ruling regarding the applicability of La. R.S. 27:311(G) under the following circumstances: a subchapter S corporation, Superior Wraps, Inc. (Superior Wraps), a video gaming licensee, merged with New Millennium Ventures, L.L.C. (New Millennium); New Millennium is the surviving entity of the merger; 100% of the stock of Superior Wraps was owned by an individual stockholder who is also the 100% owner of New Millennium; New Millennium has not been issued a video gaming license. Petitioner seeks to have the Board determine whether, by virtue of the merger, New Millennium has acquired Superior Wraps' interest in the video gaming license; the right to exercise the privileges associated with Superior Wraps' video gaming license; the video gaming license should continue in the name of the surviving entity, New Millennium, and whether this would constitute a transfer of a license under La. R.S. 27:311(G).

APPLICABLE LAW

A merger¹ is formed by the stockholders placing their assets and liabilities into a common

¹ La. R.S. 12:1361 sets forth the effects of merger or consolidation and provides in pertinent part:

A. Consummation of a merger or consolidation has the effects provided in this Section:

(1) The constituent entities party to the agreement of merger or consolidation shall be a single entity which, in the case of a merger, shall be the entity designated in the

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Louisiana Gaming Control Board

pool and forming one single entity wherein the interest of the stockholders or owners of the two corporations or entities are retained in the newly created entity. **McCarthy v. Osborn**, 223 La. 305, 65 So.2d 776 (1953).

La. R.S. 27:311 of the Video Gaming Act provides in pertinent part:

G. Any license issued pursuant to the provisions of this Chapter shall be personal to the licensee to whom it was issued and shall not be transferable.

La. R.S. 27:311(G) is applicable to a merger.

A corporation or limited liability company is a legal entity which is separate and distinct from the individuals who compose it. La. R.S. 12:93 and 1315. One of the effects of a merger is that the separate existence of each entity except for that of the surviving entity ceases. La. R.S. 12:1361(A)(2). The entity which survived the merger, New Millennium, is a separate and distinct legal entity from the licensee, Superior Wraps, regardless of whether New Millennium and Superior Wraps were owned by the same individual. A video gaming license is issued to a person. "Person"

agreement of merger as the surviving entity and, in the case of a consolidation, shall be the new entity provided for in the agreement of consolidation.

(2) The separate existence of each constituent entity, except the surviving entity or the new entity, shall cease.

(3) The surviving entity or the new entity shall thereupon and thereafter possess all the rights, privileges, immunities, powers, and franchises of each constituent entity and shall be subject to all the restrictions, disabilities, and duties of each of such constituent entities to the extent such rights, privileges, immunities, powers, franchises, restrictions, disabilities, and duties are applicable to the form of existence of the surviving entity or the new entity.

4) All property, movable or immovable, and mixed, and all debts due on whatever account, including promises to make capital contributions, subscriptions for shares, and all other choses in action, and all and every other interest of or belonging to or due to each of the constituent entities shall be vested in the surviving entity or the new entity without further act or deed.

is defined in La. R.S. 27:301(B)(11) as: "any individual, partnership, corporation, or other legal entity." The video gaming license was issued to Superior Wraps, not its 100% shareholder and not the entity which survived the merger. Just as a license to practice law or medicine is personal to the licensee and is not transferable to another individual, La. R.S. 27:311(G) provides that so is a video gaming license. If, as an effect of the merger, Superior Wraps no longer exists, neither does its video gaming license. New Millennium Ventures' acquisition of Superior Wraps' video gaming license in the merger would constitute a transfer of the license which is prohibited under La. R.S. 27:311(G). The result would be different had the merger resulted in Superior Wraps being the surviving entity.

ORDER

This matter having been considered by the Louisiana Gaming Control Board in open meeting of July 18, 2000:

IT IS THE RULING of the Board that La. R.S. 27:311(G) is applicable to a merger and that under these circumstances, New Millennium Ventures' (the surviving entity's) acquisition of Superior Wraps' video gaming license in the merger would constitute a transfer of the license which is prohibited under La. R.S. 27:311(G).

THUS DONE AND SIGNED on this the 25th day of July, 2000:

LOUISIANA GAMING CONTROL BOARD

BY:


HILLARY J. CRAIN, CHAIRMAN

LOUISIANA GAMING CONTROL BOARD

LOUISIANA GAMING CONTROL BOARD

LOUISIANA GAMING CONTROL BOARD

I HEREBY CERTIFY THAT A TRUE AND CORRECT COPY OF THIS ORDER WAS SERVED ON

COPY HAS BEEN FORWARDED OR SERVED ON ALL PARTIES THIS 26th DAY OF July 2000

APPEAL DOCKET CLERK

