

BEFORE THE
CALIFORNIA GAMBLING CONTROL COMMISSION

In the Matter of the Application for a Key
Employee License Regarding:

MARK JOSEPH PICKENS
Applicant.

BGC Case No. BGC-HQ2016-00006SL
CGCC Case No. CGCC-2016-0623-10B

DECISION AND ORDER

Hearing Date: January 25, 2017
Time: 10:00 a.m.

This matter was heard by the California Gambling Control Commission (Commission) pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, California Code of Regulations (CCR) section 12060(b), in Sacramento, California, on January 25, 2017.

Paras Hrishikesh, Deputy Attorney General, State of California, represented complainant Wayne J. Quint, Jr., Chief of the Bureau of Gambling Control (Bureau), Department of Justice, State of California.

Attorney Jarhett Blonien represented Applicant Richard Mark Joseph Pickens (Pickens).

During the administrative hearing, Presiding Officer Jason Pope took official notice of the following:

- (a) Notice of Hearing and Prehearing Conference with enclosures, dated September 14, 2016, served by certified mail, return receipt requested;
- (b) Conclusion of Prehearing Conference letter dated December 7, 2016.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by the Bureau:

- (1) Copies of Statement to Respondent, Statement of Particulars filed and served by the Bureau, Business and Professions Code Sections 19870 and 19871, California Code of Regulations, Title 4, section 12060, Declaration of Service by Certified Mail and Return Receipt dated November 16, 2016, signed Domestic Return Receipts dated November 18, 2016 (Pickens) and November 21, 2016 (Blonien), Completed Notice of Defense dated July 7,

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2016; and document and witness disclosure letter dated December 5, 2016 to Designated Agent Jarhett Blonien, Bates Nos. 0001-0023;

- (2) Copies of Commission documents: Conclusion of Prehearing Conference letter dated December 7, 2016, Notice of Evidentiary Hearing dated September 14, 2016 with attachments, letter dated June 24, 2016 regarding referral of application to evidentiary hearing, and Commission Licensing Division memorandum regarding application for initial portable personal key employee license of Mark Pickens dated June 23, 2016, Bates Nos. 0024-0044;
- (3) The Bureau’s Cardroom Key Employee Background Investigation Report, Level II, for Mark Joseph Pickens, The Saloon and the Tavern at Stones Gambling Hall dated May 2016, Bates Nos. 0045-0053;
- (4) Bureau licensing staff phone contact sheet dated May 18, 2016 to Mark Pickens regarding nondisclosure of Hit and Run conviction and email response from Mark Pickens, Bates Nos. 0054-0055 ;
- (5) Reno Municipal Court facsimile response dated April 27, 2016 with attached documents regarding case number 07 TR 23056 21, Bates Nos. 0056-0069;
- (6) Washoe County Sheriff records regarding report number 05-1265 dated February 7, 2005, Bates Nos. 0070-0073;
- (7) Email correspondence between Bureau licensing staff and Mark Pickens dated April 6, 2016 regarding additional questions, response dated April 8, 2016, regarding January 10, 2008 conviction of Hit and Run – Failure to Stop and Render Aid (Reno Municipal Court Case No. 07 TR 23056 21), Bates Nos. 0074-0075;
- (8) Reno Police Department Records response dated April 9, 2016 regarding Bureau licensing staff request for information dated April 6, 2016, Bates

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- Nos. 0076-0077);
- (9) Nevada Gaming Control Board response dated March 16, 2016 to the Bureau licensing staff's request for information; Bates Nos. 0078-0080;
- (10) Bureau licensing staff additional information request response from Pickens dated March 13, 2016, Bates Nos. 0081-0082;
- (11) Criminal History Information dated November 12, 2014 furnished pursuant to fingerprints, Bates Nos. 0083-0085;
- (12) Pickens' Application for Gambling Establishment Key Employee License Renewal dated April 7, 2016, Pickens' Application for Gambling Establishment Key Employee License dated August 4, 2014, Pickens' Application for Interim Key Employee License dated June 23, 2014, Bates Nos. 0086-0107;
- (13) Pickens' employment application to Stones Casino dated May 21, 2014, Bates Nos. 0108-0110;
- (14) California Department of Justice – Leaweb Message Response regarding Nevada DMV response for query on Pickens dated February 12, 2016, Bates Nos. 0111-0113;
- (15) Google Maps search of 1555 Ridgeview Drive, Reno, Nevada location, Bates No. 0114.

During the administrative hearing, Presiding Officer Jason Pope accepted into evidence the following exhibits offered by Pickens:

- A. Sixteen letters
 - i. Letter signed by Sean Grimsman dated January 3, 2017;
 - ii. Letter signed by Amire Holmes dated January 3, 2017;
 - iii. Letter signed by San Derek Saechao dated January 11, 2017;
 - iv. Letter signed by Akiesha Webb dated January 5, 2017;
 - v. Letter signed by Justin Kuraitis dated December 31, 2016;

- 1 vi. Email letter signed by Michael Love dated January 6, 2017;
- 2 vii. Letter signed by Thu Patuch [sic] dated January 3, 2017;
- 3 viii. Letter signed by Brian Rogers not dated;
- 4 ix. Letter signed by David Shurley not dated;
- 5 x. Letter signed by Vince Raciti not dated;
- 6 xi. Letter signed by Brittany Hudson dated January 17, 2017;
- 7 xii. Letter signed by Jack Mushyan dated January 17, 2017;
- 8 xiii. Letter signed by Lo Ching Saechao dated January 19, 2017;
- 9 xiv. Email dated January 24, 2017 containing an unsigned letter from
- 10 Kyle Colmar dated January 23, 2017;
- 11 xv. Letter signed by John Chmielewski dated January 23, 2017;
- 12 xvi. Letter signed by Khanh Trinh undated.

13 During the administrative hearing, Presiding Officer Jason Pope accepted into evidence
14 Commission Exhibit 1 totaling 12 pages containing Pickens' Application For Finding of
15 Suitability, Tribal Key Employee dated October 22, 2013 with the Tribal Key Employee
16 Supplemental Background Investigation Information.

17 The matter was submitted on January 25, 2017.

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19 **FINDINGS OF FACT**

20 1. Pickens was previously employed by Graton Resort and Casino starting sometime in
21 October or November of 2013 and through June 2014

22 2. On or about August 22, 2013, Pickens completed and signed an Application for
23 Finding of Suitability – Tribal Key Employee and a State Gaming Agency Tribal Key Employee
24 Supplemental Background Investigation Information (Tribal Key Application).

25 3. Pickens' abandoned his Tribal Key Application in June 2014 when he accepted a
26 position at The Saloon and The Tavern at Stones Gambling Hall, (Stones Gambling Hall) a
27 gambling establishment licensed by the Commission

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- 1 4. Pickens is currently employed as a Casino Shift Manager at Stones Gambling Hall.
- 2 5. A Casino Shift Manager is a key employee position that requires the applicant to
- 3 submit an application for a key employee license with the Commission.
- 4 6. On or about July 1, 2014, the Bureau received an Application for Interim Key
- 5 Employee License from Pickens (Interim Key Application).
- 6 7. The Commission granted Pickens an interim key employee license, license number
- 7 GEKE-002011 on July 9, 2014.
- 8 8. On or about August 4, 2014, the Bureau received a State Application for Gambling
- 9 Establishment Key Employee License and Key Employee Supplemental Background
- 10 Investigation Information form Pickens (Key Employee Application) and on April 19, 2016, the
- 11 Bureau received a renewal Application for Gambling Establishment Key Employee License from
- 12 Pickens (Renewal Application).
- 13 9. At its June 23, 2016 meeting, the Commission voted to refer the matter of Pickens’
- 14 Key Employee Application and Renewal Application to an evidentiary hearing to be conducted
- 15 pursuant to Business and Professions Code sections 19870 and 19871 and Title 4, CCR section
- 16 12050(b)(2).
- 17 10. On or about June 24, 2016, the Commission notified Pickens that his Key Employee
- 18 Application and Renewal Application were referred to an evidentiary hearing and provided a
- 19 Notice of Defense form.
- 20 11. Pickens submitted a signed Notice of Defense dated July 7, 2016
- 21 12. On or about September 14, 2016, the Commission served a Notice of Hearing and
- 22 Prehearing Conference on Pickens and the Bureau.
- 23 13. On or about November 16, 2016, the Bureau filed a Statement of Particulars with the
- 24 Commission, with a copy sent to Pickens and Attorney Jarhett Blonien via certified mail.
- 25 14. On or about December 6, 2016, the noticed Prehearing Conference was held before
- 26 Presiding Officer Jason Pope, Attorney III of the Commission. Deputy Attorney General Paras
- 27 Modha attended on behalf of the Bureau. Attorney Jarhett Blonien appeared on behalf of Pickens.
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1 15. On or about December 7, 2016, the Commission served a Conclusion of Prehearing
2 Conference letter on Pickens and the Bureau.

3 16. The Commission heard Case No. CGCC-2016-0623-10B on January 25, 2017. The
4 Bureau was represented throughout the pendency of the hearing by Deputy Attorney General
5 Paras Modha. Pickens was represented throughout the pendency of the hearing by Attorney
6 Jarhett Blonien.

7 17. On or about April 6, 2005, Pickens was convicted of violating Nevada Offense Code
8 section 01045, driving under the influence, a misdemeanor (DUI), (Washoe County, Nev., 2005,
9 No 05-1265).

10 18. On or about November 12, 2007, Pickens was cited under the Reno Municipal Code
11 for failing to stop and leave information after hitting an unoccupied parked truck with his vehicle
12 and failing to maintain travel lane (citation number R25572713770). Pickens was not arrested and
13 was not taken into custody.

14 19. Pickens did not pay the citation fine.

15 20. On or about January 10, 2008, the Reno Municipal Court, County of Washoe, State of
16 Nevada held a traffic hearing for citation number R25572713770 where the court assessed fines
17 and fees against Pickens and set a time for Pickens to pay. Pickens did not attend the hearing and
18 did not pay his fines or fees.

19 21. On or about January 28, 2008 and again on March 4, 2008, the court made delinquent
20 payment notifications. Pickens still did not pay his fines or fees. Pickens testified that he did not
21 have any money at the time.

22 22. On or about May 5, 2008 the court issued a Marshall Warrant for Pickens.

23 23. On or about May 21, 2008 Pickens was arrested and taken into custody.

24 24. A custody arraignment was held on or about May 22, 2008 at the Reno Municipal
25 Court where Pickens plead no contest to violating Reno Municipal Code sections 06.06.045(2) -
26 Hit and Run, Duty to Give Name and Address (Hit and Run) and 06.06.105B - Failure to
27 Maintain Travel Lane. The court assessed fines and fees against Pickens totaling \$850.
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1 25. At the custody arraignment, Pickens also admitted to failing to pay his fines and was
2 found in contempt of court for which the court sentenced him to 8 days in jail. Pickens testified
3 that he spent a total of 3 days in jail.

4 26. The record is unclear whether Pickens' Hit and Run under the Reno Municipal Code is
5 a traffic infraction or a misdemeanor conviction.

6 27. It has been over 9 years since Pickens was cited for his Hit and Run and almost as
7 long since his contempt of court finding. Pickens testified that he has not been arrested or
8 convicted of any crimes since 2008, which is supported by the record.

9 28. Pickens' actions in 2005, 2007, and 2008 showed poor judgment but do not reflect his
10 character and judgment today.

11 29. Pickens has demonstrated a sufficient level of rehabilitation from his DUI and Hit and
12 Run.

13 30. Both the Tribal Key Application and the Key Employee Application ask "*Have you*
14 *ever been convicted of a crime or pled guilty, or pled nolo contendere (no contest) to a crime?*"
15 Pickens checked the box marked YES on both applications, but disclosed only the DUI. Pickens
16 did not disclose the Hit and Run.

17 31. On or about May 21, 2014, Pickens signed an employment application for Stones
18 Gambling Hall, which asks "*Have you ever been convicted of a criminal offense (felony or*
19 *serious misdemeanor)?*" Pickens checked the box marked NO.

20 32. Pickens testified that he did not disclose the Hit and Run because he believed it was a
21 "moving violation" or "ticket" and not responsive to the criminal conviction question. While the
22 record is unclear whether Pickens' Hit and Run under the Reno Municipal Code is a traffic
23 infraction or a misdemeanor conviction, his perception is generally supported by the record.
24 Pickens' testimony on this issue was credible and at the very least, Pickens had a reasonable
25 belief that the Hit and Run was not a felony or misdemeanor conviction.

26 33. When initially applying for employment at Stones Gambling Hall, Pickens submitted
27 only a resume to Stones Gambling Hall and was not given the application to complete until the
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1 time of his interview. Pickens was very excited at the time he completed the application and
2 completed it in haste to get on with the interview process. In addition, Pickens testified that he did
3 not consider a DUI a “serious” misdemeanor.

4 34. Pickens later testified that he considered a DUI serious in the context of the potential
5 outcomes, but not in the context of an employment application. Pickens also testified that in his
6 experience a DUI conviction is a misdemeanor in Reno and is common among licensed
7 employees in the casino business. Pickens’ perception that DUI convictions are relatively
8 common among licensed employees in the casino business is supported by other testimony in the
9 record.

10 35. Pickens was careless with the Stones Gambling Hall application but was not
11 attempting to mislead.

12 36. Pickens was not required to disclose any criminal convictions on his Interim Key
13 Application nor on his Renewal Application.¹

14 37. Donald Kevin Schayltz (Schayltz), Casino Manager at Stones Gambling Hall,
15 interviewed and hired Pickens in 2014 and has worked with Pickens since then. Schayltz testified
16 that other than on Pickens’ employment application, Schayltz has never had an issue with
17 Pickens’ honesty or integrity and is confident in Pickens’ ability to protect the public and the
18 integrity of the controlled gambling at Stones Gambling Hall.

19 38. Art Van Loon (Van Loon), General Manager at Stones Gambling Hall, testified that
20 Pickens was extremely responsible, contrite and owned up to his mistakes. Van Loon understood
21 Pickens’ reason for not disclosing the DUI or Hit and Run on the Stones Gambling Hall
22 application. Van Loon believes that Pickens was not trying to hide anything but might have been
23 naïve at the time. Van Loon believes that Pickens is a person of good character, honesty and
24 integrity.

25 39. Pickens produced 16 letters and emails from co-workers who identify him as a fair,
26 honest, trustworthy, and responsible person with integrity, professionalism and good moral

27 ¹ The Interim Key Application does not ask for any criminal conviction disclosure and the Renewal
28 Application asks only for criminal convictions since the prior application.

1 character. The letters are favorable toward Pickens' character and in support of his applications.

2 40. The record reflects that Pickens has never been written up or disciplined in his
3 employment at Stones Gambling Hall and that he is competent and performs his job well.

4 41. Pickens has demonstrated that he is a person of good character, honesty and integrity.

5 42. Given the remoteness and nature of Pickens' DUI conviction and Hit and Run, the
6 lack of any criminal convictions since 2008, the credible and satisfactory explanations of his
7 failure to disclose items, and his positive work history, Pickens is a person whose prior activities,
8 criminal record, reputation, habits and associations do not pose a threat to the public interest of
9 the State of California or to the effective regulation and control of controlled gambling.

10 43. The matter was submitted for Commission consideration on January 25, 2017.

11 LEGAL CONCLUSIONS

12 44. Division 1.5 of the Business and Professions Code, the provisions of which govern the
13 denial of licenses on various grounds, does not apply to licensure decisions made by the
14 Commission under the Gambling Control Act. Business and Professions Code section 476(a).

15 45. Public trust and confidence can only be maintained by strict and comprehensive
16 regulation of all persons, locations, practices, associations, and activities related to the operation
17 of lawful gambling establishments and the manufacture and distribution of permissible gambling
18 equipment. Business and Professions Code section 19801(h).

19 46. At an evidentiary hearing pursuant to Business and Professions Code sections 19870
20 and 19871 and Title 4, CCR section 12060(b), the burden of proof rests with the applicant to
21 prove his or her qualifications to receive any license under the Gambling Control Act. Title 4,
22 CCR section 12060(i).

23 47. No person may be issued a key employee license unless the person would qualify for a
24 state gambling license. Business and Professions Code section 19854(b).

25 48. The burden of proving his or her qualifications to receive any license from the
26 Commission is on the applicant. Business and Professions Code section 19856(a).

27 49. An application to receive a license constitutes a request for a determination of the
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1 applicant's general character, integrity, and ability to participate in, engage in, or be associated
2 with, controlled gambling. Business and Professions Code section 19856(b).

3 50. In reviewing an application for any license, the Commission shall consider whether
4 issuance of the license is inimical to public health, safety, or welfare, and whether issuance of the
5 license will undermine public trust that the gambling operations with respect to which the license
6 would be issued are free from criminal and dishonest elements and would be conducted honestly.
7 Business and Professions Code section 19856(c).

8 51. The Commission has the responsibility of assuring that licenses, approvals, and
9 permits are not issued to, or held by, unqualified or disqualified persons, or by persons whose
10 operations are conducted in a manner that is inimical to the public health, safety, or welfare.
11 Business and Professions Code section 19823(a)(1).

12 52. An "unqualified person" means a person who is found to be unqualified pursuant to
13 the criteria set forth in Business and Professions Code section 19857, and "disqualified person"
14 means a person who is found to be disqualified pursuant to the criteria set forth in Business and
15 Professions Code section 19859. Business and Professions Code section 19823(b).

16 53. The Commission has the power to deny any application for a license, permit, or
17 approval for any cause deemed reasonable by the Commission. Business and Professions Code
18 section 19824(b).

19 54. No gambling license shall be issued unless, based on all of the information and
20 documents submitted, the Commission is satisfied that the applicant is a person of good character,
21 honesty and integrity. Business and Professions Code section 19857(a).

22 55. No gambling license shall be issued unless, based on all of the information and
23 documents submitted, the Commission is satisfied that the applicant is a person whose prior
24 activities, criminal record, if any, reputation, habits, and associations do not pose a threat to the
25 public interest of this state, or to the effective regulation and control of controlled gambling, or
26 create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in
27 the conduct of controlled gambling or in the carrying on of the business and financial
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1 arrangements incidental thereto. Business and Professions Code section 19857(b).

2 56. No gambling license shall be issued unless, based on all of the information and
3 documents submitted, the Commission is satisfied that the applicant is a person that is in all other
4 respects qualified to be licensed as provided in this chapter. Business and Professions Code
5 section 19857(c).

6 57. Pickens has met his burden of proving that he is a person of good character, honesty
7 and integrity pursuant to Business and Professions Code section 19856(a). Therefore, Pickens is
8 qualified for licensure pursuant to Business and Professions Code section 19857(a).

9 58. Pickens' prior activities, criminal record, reputation, habits and associations do not
10 pose a threat to the public interest of the State of California or to the effective regulation and
11 control of controlled gambling. As a result, Pickens is qualified for licensure pursuant to Business
12 and Professions Code section 19857(b).

13 59. Pickens is qualified to be licensed in all other respects pursuant to Business and
14 Professions Code section 19857(c).

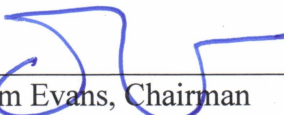
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ORDER

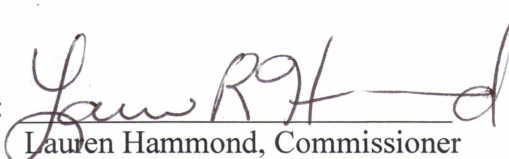
1. Mark Joseph Pickens' for Key Employee Application and Renewal Application are APPROVED.
2. No costs are to be awarded.
3. Each side to pay its own attorneys' fees.

This Order is effective on Mar 8, 2017.

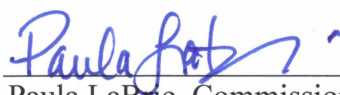
Dated: 3/8/2017

Signature: 
Jim Evans, Chairman


Dated: 3/8/2017

Signature: 
Lauren Hammond, Commissioner

Dated: 3/8/2017

Signature: 
Paula LaBrie, Commissioner

Dated: 3/8/17

Signature: 
Trang To, Commissioner