

COMMENTS AND RESPONSE FOR PROPOSED REGULATIONS
REACTIVATION OF EXPIRED LICENSES
COMMISSION WORKSHOP: OCTOBER 29, 2009

INFORMAL COMMENT PERIOD

On October 19, 2009, staff distributed to the public the draft text regarding the reactivation of an expired license, and the surrender and abandonment of state gambling licenses.

As of October 27, 2009, written comments were received from the following:

Bureau of Gambling Control
David Fried, Oaks Card Club
Joy Harn, Bicycle Casino
Mark Kelegian, Crystal Casino
Alan Titus, Artichoke Joe's

The following comments refer to the draft text dated October 19, 2009.

General

Comments

(1) Fried: Several subsections of the regulation [(c), (e), (g), and (i)] conflict with recently approved AB 293, which takes effect January 1, 2010. AB 293 imposes the following requirement on the Commission:

(s) By December 31, 2011, provide procedures, criteria, and timelines for the processing and approval of applications for the licensing, temporary or interim licensing, or findings of suitability for receivers, trustees, beneficiaries, executors, administrators, conservators, successors in interest, or security interest holders for a gambling enterprise so that gambling enterprises may operate continuously in cases including, but not limited to, the death, insolvency, foreclosure, receivership, or incapacity of a licensee.

Staff Response: The regulations required pursuant to AB 293 are directed toward cardrooms in operation at the time of the death, insolvency, and so forth, of the licensee (the regulations are required "*so that gambling enterprises may operate continuously*"). This draft regulation applies only to situations in which the license has been surrendered or has expired, and the cardroom is therefore *not* in operation. These regulations do not conflict with AB 293 because the two sets of regulations will address different circumstances.

(2) Titus: The Gambling Control Act does not allow for reactivation of expired licenses. Some California licensing acts allow for inactivation and reactivation of licenses, and other allow for reinstatement of expired licenses, but the Legislature did not authorize either of those in this Act.

October 27, 2009

Allowing reactivation of licenses that will be surrendered or will expire in the future would be improper. Allowing licenses which long ago were surrendered or expired to now be reactivated, especially to be reactivated by new owners for a new facility in a new location would violate the statewide moratorium on new cardrooms imposed by section 19963 of the Act and raise public concerns about expansion of gambling.

Staff Response: The Commission is well within its authority under the Gambling Control Act and authority provided by state agencies by the Administrative Procedures Act to adopt the proposed regulations. A detailed response to these concerns is provided in the discussion below.

Section 12002 (j)

Comments

(1) Titus: Suggest the use of “relinquish” rather than “give up.”

Staff Response: In the interest of the “plain English” requirement of the Administrative Procedure Act (Government Code section 11346.2(a)(1)), staff recommends that “give up” be retained.

Section 12349, subsection (a)

Comments

(1) Titus: We do not think a license can be surrendered after it has expired or after any grace period has expired. Once a license has expired and there is no vested right to activate it, the licensee possesses no rights and has nothing to surrender.

Staff Response: Staff recommends deletion of the phrase “at any time” to clarify that a license can only be surrendered while in active status.

(2) Bureau: Because the Commission’s proposed language would make the surrender of a state gambling license subject to Commission approval, the Bureau requests that the text be amended to read “An owner-licensee may *propose to* surrender a state gambling license...”

Staff Response: Staff recommends this comment be accepted and the text changed accordingly.

The revised subsection (a) will read “(a) An owner-licensee may propose to surrender a state gambling license. In order to propose a surrender, the owner-licensee must notify the Commission in writing of the request to surrender the license.”

Section 12349, subsection (b)

Comments

(1) Titus: this section is inconsistent with subsection (a). Subsection (a) allows a surrender at any time; subsection (b) treats a surrender as only an offer of surrender and requires Commission approval.

Staff Response: Staff recommends that subsection (a) be amended to clarify that the licensee can *propose* a surrender. Subsection (b) will still require Commission acceptance of the surrender.

(2) Titus: The Commission does not have the authority to license someone who has closed a cardroom and ceased the activity for which the license was expired.

Staff Response: If the State has an interest in pursuing disciplinary action against a licensee, the Commission has the authority to reject a proposed surrender and to require the disciplinary action be seen through to its conclusion. For comparison, Business and Professions Code section 19869 prohibits an applicant from withdrawing his or her application after the Bureau of Gambling Control has made its final report to the Commission, thereby requiring the Commission to take final action in order to have a denial of an application on record. Similarly, the Commission may wish to reject a proposed surrender and continue with any disciplinary proceedings in order to have the outcome on record.

Section 12349, subsection (c)

Comments

(1) Titus: This section is unclear. The subsection is intended to apply only to licenses surrendered or expired after the effective date; however, the wording applies to the reactivations and does not require that the expiration date be after the effective date.

Staff Response: Staff is amenable to changing the language of the text so that the intent is clarified. This subsection is intended to apply only to surrenders or expirations that occur after the effective date of the regulation.

(2) Titus: What time period for reactivation would apply to a license surrendered before expiration? Would reactivation have to occur within 12 months of surrender?

Staff Response: Reactivation requests would need to occur within 12 months after the expiration date of the license, not the date of surrender. Licenses are generally issued for a two-year period. If a license were to be surrendered 6 months into the license period, a 12 month deadline for reactivation from the date of surrender would fall within the period in which the license would otherwise be active. It would be a waste of state resources to require a renewal application to reactivate the license before a renewal application would otherwise be due had the license not been surrendered.

(3) Titus: The phrase “expired by operation of law” is confusing. Licenses expire under the terms under which they were issued, not by operation of law.

Staff Response: Staff is amenable to deleting the phrase “by operation of law.”

(4a) Titus: This section institutes an inactive period for license. There is no statutory authority for this. The Legislature specifies when it intends to allow license holders to inactivate their licenses. The Business and Professions Code specifies at least 13 instances where the Legislature has explicitly provided for inactivation of licenses in various other licensing programs. The Gambling Control Act does not contain similar language authorizing the Commission to adopt such a program.

(4b) Titus: The Act does not authorize the proposed reactivation of “surrendered or expired” licenses. The Legislature specifies when certain licenses can be renewed late or when expired licenses can be reinstated. There are at least 45 licensing programs in the Business and Professions Code that allow for renewal or reinstatement of expired licenses. These statutes specify a time limit and other conditions under which this will be allowed. The Gambling Control Act does not authorize late renewal, reinstatement of expired license, or reactivation of an expired license.

Staff Response: Government Code section 11342.2 provides that a regulation is valid if not in conflict with the statute being implemented and if reasonably necessary to carry out the purposes of the statute being implemented. An Office of Administrative Law regulation, Title 1 CCR section 14(a)(2) includes in an agency’s authority to adopt a regulation any “statutory power that grants a power to the agency which impliedly permits or obligates an agency to adopt, amend, or repeal the regulation in order to achieve the purpose for which the power was granted.” (Emphasis added.) Explicit statutory authority is not required in order for an agency to adopt regulations, as long as the regulations are not in conflict with the statute and are reasonably necessary to carry out the purposes of the statute. The Gambling Control Act refers to a “surrender” of a license, but provides no guidance as to the procedures for surrender or to a surrender’s legal effect. This regulation is necessary to provide clarity to the statute. Furthermore, because the Gambling Control Act provides no guidance as to the expiration of a license, other than to prohibit operation of the cardroom until the license is renewed (Business and Professions Code 19874), regulations are needed to clarify the effect of an expiration. Allowing a reactivation of an expired license does not conflict with any existing statutory provision.

Additionally, the authority granted to the Commission by Business and Professions Code section 19824 is very broad, authorizing the Commission to exercise “all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter...” (emphasis added). This is significantly broader authority than is provided to other licensing boards and commissions, and allows the Commission to implement programs not specifically enumerated in the Gambling Control Act. The fact that other licensing entities have specific statutory authority regarding inactive

licenses in no way diminishes the Commission's authority to implement regulations allowing reactivation of expired licenses or other programs related to late renewals or expired licenses under its broad statutory authority to "carry out the policies and purposes" of the Gambling Control Act.

(5a) Titus: The regulation would not limit reactivation to the original licensee. Rather, a third party with no connection to the original license would also be allowed to reactivate a license. This would violate the moratorium on issuance of new state gambling licenses in Business and Professions Code section 19963.

(5b) Fried: This subsection appears to leave unrestricted who may apply for a surrendered or expired gambling license.

Staff Response: The intent of this subsection was to restrict the ability to reactivate a state gambling license to the last license holder. A state gambling license is issued to a person (either a natural person or a business entity); that person could apply to reactivate the gambling licensure pursuant to this regulation. If the third party did not hold a gambling license, there is nothing to reactivate. It appears that this intent is not clear in the regulation, and staff can clarify this intent if the Commission desires.

(6) Fried: A probate dispute may take more than one year to resolve (which is outside of the time limit specified in the regulation). How can the Commission impose a 12 month limit on the heirs of the business for the issuance of a new license when the probate court has yet to resolve who the heirs are?

Staff Response: Staff does not anticipate that this situation would fall under the purview of this regulation, unless the dispute surrounds a closed cardroom. If the cardroom is still in operation upon the death of the licensee, existing Commission practice to issue the license to the estate would be followed. In addition, the Commission will promulgate regulations in the future to address the licensing of heirs or other beneficiaries as required pursuant to AB 293.

Section 12349, subsection (d)

Comments

(1a) Kelegian: There are no safeguards in determining whether prior conduct should be considered for reactivation under subsection (d) [reactivating an already expired license within 12 months of the regulation effective date]. The included definition of "surrender" does not address these concerns. Suggest that the following highlighted language be included: "A state gambling license ***not under threat of adverse action or ruling that may affect the holder's rights or interests*** that was surrendered or has expired..." The only other alternative to address this concern is to include such language in the definition of surrender.

(1b) Harn: We concur with the comments submitted by [Mr. Kelegian] and request modification of Section 12349(d) as follows: “A state gambling license that was surrendered or expired without being renewed **and which was not under investigation or the subject of disciplinary action....**”

Staff Response: We cannot place the requested restriction into the regulation, as it would retroactively impose a condition upon a license surrender that did not exist at the time the license was surrendered. The new regulations, once they become effective, can state that, *from now on*, a license a license surrendered “under threat of adverse action” cannot be reactivated, but we cannot impose such conditions on licenses that were surrendered before the regulation took effect. A regulation with this condition would likely not pass review by the Office of Administrative Law, and would certainly not hold up in court. However, the Commission will take all relevant factors into consideration, including the circumstances surrounding the surrender, when considering an application (see Business and Professions Code sections 19857 and 19859). Furthermore, the qualifications to hold a license are determined during the application process. Prior circumstances or facts that may have been disqualifying may have changed.

(2) Titus: The Gambling Control Act does not authorize inactivation or expired licenses.

Staff Response: Please see above response under Section 12349, subsection (d), Comment 4b.

(3) Titus: The proposed regulation is inconsistent with the expectation of the parties. When former license holders surrendered their licenses or allowed them to expire, they voluntarily relinquished all rights and interests in the license and understood that they retained no rights to the license. They have no expectation to a right to reactivate their licenses. Similarly, where a license has expired, all rights and interest in the license have expired.

Staff Response: As previously mentioned in the response to Comments 1a and 1b, the Commission cannot retroactively assign a legal consequence to license expiration or surrender that was not known at the time the license expired or was surrendered. Also, the underlying problem is that it is not clear under current law what are the legal consequences of surrender or expiration of a license. This new regulation is needed to provide answers to recurrent questions.

(4) Titus: The regulation does not allow just the former license holder to reactivate the license. It would also allow a third party to reactivate the license. The original license holder would not be involved. Given that the former license holder retained no rights, expects nothing and would not be involved, the proposed “reactivation” of the surrendered and expired licenses legally would constitute issuance of new licenses, and would constitute a flagrant violation of the state moratorium in [Business and Professions Code] section 19963.

Staff Response: As previously mentioned, the intent of this subsection was to restrict the ability to reactivate a state gambling license to the last license holder. A state gambling

license is issued to a person (either a natural person or a business entity); that person could apply to reactivate the gambling licensure pursuant to this regulation. If the third party did not hold a gambling license, there is nothing to reactivate. Staff believes it can clarify this intent if the Commission desires.

(5) Titus: The proposed regulation, by allowance of reactivation of licenses surrendered or expired after 1999, would create internal inconsistency in the statute. Licenses of cardrooms closed during or before 1999 could not be reactivated, but licenses of cardrooms closed after 1999 could be. The difference would be based on an arbitrary date, having nothing to do when the statute was passed or otherwise.

Staff Response: The Legislature established a boundary in Business and Professions Code section 19963. The Commission is obligated by law to abide by this boundary. For the Commission's purposes, it is irrelevant how the statutory deadline was determined. If a cardroom did not have a licensed owner as of that date (or an owner with an application on file prior to September 1, 2000), the Commission is prohibited by section 19963 from issuing a state gambling license.

(6) Titus: The proposed interpretation of section 19963 allowing reactivation of licenses further violates the intent of AB 1416, which was to limit expansion of gaming. The Commission would essentially be allowing illegal expansion of gambling.

Staff Response: The Gambling Control Act (Business and Professions Code section 19963) limits the number of cardrooms in California to those which satisfy one of two alternative criteria: (1) those licensed to operate on December 31, 1999 or (2) those concerning which an application was on file with the Bureau on September 1, 2000. Thus, section 19963 sets a temporary limitation on the maximum number of California cardrooms. The number of cardrooms may not be "expanded" beyond those cardrooms that satisfied one of the two date-specific statutory criteria. There is nothing in section 19963 that requires the Commission to interpret that section as mandating the "contraction" of gaming. In short, while it is true that section 19963 prohibits cardroom gaming from "expanding" in terms of the number of cardrooms, there is nothing in that section that mandates "contracting" cardroom gaming by decreasing the number of cardrooms. In the end, the Commission must be guided by the express terms of section 19963—not by creative intent arguments concerning provisions that could have been, but were not, enacted into law by the Legislature.

(7) Fried: There is no reference to the prior license having been in effect in December 1999 or an application having been then filed as required in the Gambling Control Act § 19963. The regulation should incorporate that date or refer to the Act.

Staff Response: The Commission is bound by the requirements of the Gambling Control Act. Strictly speaking, there is no need to repeat the requirement of 19963 in the regulation, just as there is no need to repeat the other qualifications required by the Gambling Control Act. When reviewing an application to reactivate, if the application

does not meet the requirements of section 19963, the application will be denied. However, if the Commission desires, clarifying language can be added to the regulation.

(8) Harn: Additional safeguards regarding who will be permitted to apply to operate a closed gambling establishment (included in Option 1 of the August 20 workshop text) should be incorporated in the current draft. These provisions could be incorporated in 12349(c) by adding subsection (1) as follows:

(c)(1) The last licensed owner of a gambling establishment with a licensed owner as of December 31, 1999, or that had an owner with a license application on file with the department prior to September 1, 2000, may submit an application for a state gambling license in order to operate the gambling establishment associated with the previously held license, even if the gambling establishment subsequently closed. For purposes of this section, "person" includes only the natural person or persons and any entity or entities that were actually licensed or registered as the owner-licensee approved to operate the gambling establishment or, as applicable, that would have been issued such a license if approved, and does not include natural persons or entities that were or would have been merely endorsed on the license certificate issued to the owner licensee.

Staff Response: As noted immediately above, if the Commission wishes, staff could—in response to the first part of this comment—add language expressly stating that the two statutory criteria apply. In response to the second part of this comment, staff believes that this issue is dealt with adequately in subsection (f)(3), which requires the applicant to provide a "copy of the last license issued by state authorizing the applicant to operate the gambling establishment, which may include either a provisional license or a state gambling license." Staff could, in addition, change "or a state gambling license" to "an owner-licensee's state gambling license." Staff believes that endorsees were listed on state gambling licenses, but not on provisional licenses. There would, thus, appear to be no need for the definition of person proposed in the comment.

Section 12349, subsection (e)

Comments

(1) Titus: Subsection (e)(3) provides that the license holder of the abandoned license "may not sell the business." It is not clear what this means. A cardroom could close and surrender their license and still have the assets of the business that need to be sold. This may include real estate, personal property, trademarks and tradename, gambling equipment, or goodwill. Since the new owners could not operate a gambling establishment without a state gambling license, this would not be a sale of the gambling business. There is no reason to prohibit this, and once the gambling operation is closed, the Commission would have no authority over the sale of the remaining business or the assets. We suggest that this subsection be deleted.

Staff Response: Subsection (e) is intended to clarify the effects of abandoning a license, including a loss of the ability to sell the cardroom as a gambling operation (thereby allowing the purchaser to apply for a state gambling license as in current Commission

practice). It is not intended to prohibit the sale of any assets or property of the owner. If the Commission desires, clarifying language can be included.

(2) Bureau: (e)(4) contains a typographical error.

Staff Response: Staff notes the error (“in” and “or” are transposed) and will change the text accordingly.

Section 12349, subsection (f)

Comments

(1) Fried: Under subsection (f)(3), a person seeking to reopen an already closed card room must supply “a copy of the last license issued by the state authorizing the applicant to operate the gambling establishment.” It does not require that the applicant was the last licensee for the establishment. It should require “that the last license issued by the state for the gambling establishment was issued to the applicant.” Otherwise, if the club was sold in 1996, both the seller and the buyer would each have the last license issued to them for the same establishment.

Staff Response: Staff appreciates this concern, and will draft clarifying language.

(2) Bureau: Subsection (f)(6) as written is essentially silent regarding who is deemed the authorized applicant to reactivate an expired license. Therefore, to avoid the possibility of multiple, unrelated parties as potential local licensees, the Bureau suggests that alternative wording be considered to require the resolution to specify that the jurisdiction would be willing to license only that applicant, or related applicants.

Staff Response: Staff recommends this comment be accepted, and will work with the Bureau to draft appropriate language.

Section 12349, subsection (g)

Comments

(1) Fried: This subsection applies four new criteria to any application to reopen a card room that is now licensed. Three of these criteria do not relate to the applicant, but instead relate to whether the card room should operate at all. Why should the Commission impose these new conditions or criteria on the heirs reopening an existing cardroom?

Staff Response: The text states that this subsection applies to applicants applying pursuant to subsection (c); this is a drafting error. This subsection is intended to apply to applicants applying pursuant to **subsection (d)**. The text will be changed accordingly.



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October 26, 2009

Mr. Jim Allen
Regulatory Actions Coordinator
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833

RE: CGCC Proposed Action – Reactivation of Expired Licenses Regulation

Dear Mr. Allen:

The Bureau of Gambling Control appreciates the opportunity to comment on the Commission's draft regulations regarding Reactivation of Expired Licenses. We have reviewed the draft regulations dated October 19, 2009, and respectfully submit the following comments.

California Code of Regulations: Title 4. Business Regulations, Division 18, Chapter 6. State Gambling Licenses and Approvals for Gambling Establishments and Owners; Portable Key Employee Licenses.

Section 12349. State Gambling License; Surrender, Reactivation; Abandonment.

Because the Commission's proposed language would make the surrender of a state gambling license subject to Commission approval, the Bureau requests that the proposed language be amended in subsection (a) to read:

“(a) An owner-licensee may *propose to* surrender a state gambling license. . . .”

Subsection (e) (4) provides

In order to correct what appears to be a typographical error, the Bureau suggests that the proposed language in subsection (e)(4) be amended to read:

“*The moratorium provision of the Gambling Control Act precludes that cardroom from being reopened in that jurisdiction or in any other jurisdiction. . . .*”

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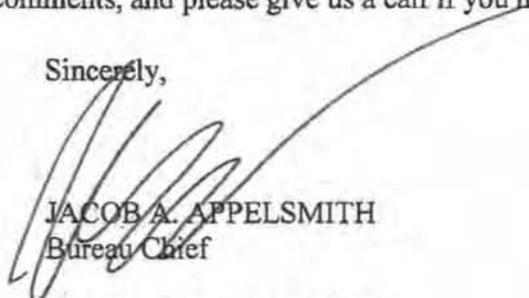
Subsection (f) (6) provides:

"A copy of a formal resolution or other evidence satisfactory to the Commission, adopted by the applicable city council, board of supervisors, or other local governing authority, dated no more than 90 days prior to the submission of the application, which clearly states a willingness to issue a local license to the applicant, contingent upon issuance of a state license;"

As written, this regulation is essentially silent regarding who is deemed the authorized applicant to reactivate an expired license. Therefore, to avoid the possibility of multiple, unrelated parties as potential local licensees, the Bureau suggests that alternative wording be considered to require the resolution to specify that the jurisdiction would be willing to license only that applicant, or related applicants.

Thank you for considering our comments, and please give us a call if you have any questions.

Sincerely,



JACOB A. APPELSMITH
Bureau Chief

For EDMUND G. BROWN JR.
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October 26, 2009

Via Email

Jim Allen
Shannon George
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833-4231

re: Closed Cardrooms §12002 October 29, 2009 Hearing

Dear Jim and Shannon:

On behalf of the Oaks Card Club, I am submitting these comments on the draft Closed Card room regulations. I hope these comments will be helpful in drafting regulations on a complicated and difficult subject.

Existing Card Rooms

Past workshop discussions have focused on card rooms that were licensed in 1999, but ceased being licensed after that date.

In contrast, section 12349(c) proposes new rules to apply to card rooms that are currently licensed, but after the effective date of the regulations either surrender their license or have their license expire. There are several problems with this and related sections.

1. Subsection (c) appears to leave unrestricted who may apply for a surrendered or expired license.

For example, suppose the cause for expiration of the license is that the owner has died, and there is no heir who can be licensed immediately. Under subsection (c), there does not appear to be any restriction on who can apply for the license. There is no limitation to heirs or successors in interest of the business. However, there should be. The heirs or successor in interest to the card room business should be the only person or entity allowed to apply for the license. A stranger should not be able to apply for the license merely because the owner has died.

In addition, if a license now in effect is later surrendered under subsection (a), why should anyone be allowed to apply for the license under subsection (c)? A license that is voluntarily surrendered under the new regulation should be ineligible for reactivation by anyone. Moreover, if many persons do apply within the time allowed, there is no basis for distinguishing among the conflicting applications for a single license.

2. Subsection (c) imposes a 12 month limit on reactivating a license. Under subsection (e), a license not issued within 12 months can never be reactivated. But suppose there is a probate dispute that takes more than a year to resolve. How can the Commission impose a 12 month limit on the heirs of the business for the issuance of a new license when the probate court has yet to resolve who the heir(s) is/are?

3. Subsection (g) applies four new criteria to any application to reopen a card room that is now licensed. Three of these criteria do not relate to the applicant, but instead to whether the card room should operate at all. But where a license has expired within the last 12 months due to death of the licensee, why should the Commission impose these new conditions or criteria on the heirs reopening an existing card room? In that case, the Commission should not be reweighing the merits of having a card room at all. The Commission should only determine if the heir is qualified to be licensed. What is the legal authority for subsection (g)?

4. Finally, this regulation conflicts with new legislation, AB 293, which takes effect January 1, 2010. AB 293 recognizes temporary licenses and successors in interest.

§ 19841 as amended will provide:

(s) By December 31, 2011, provide procedures, criteria, and timelines for the processing and approval of applications for the licensing, temporary or interim licensing, or findings of suitability for receivers, trustees, beneficiaries, executors, administrators, conservators, successors in interest, or security interest holders for a gambling enterprise so that gambling enterprises may operate continuously in cases including, but not limited to, the death, insolvency, foreclosure, receivership, or incapacity of a licensee.

As explained above, subsections (c), (e) and (g) all conflict with AB 293. In addition, subsection (i), which prohibits temporary licenses for any applicant, also conflicts with AB 293.

Closed Cardrooms

1. Under subsection (d), with respect to the reopening of card rooms closed since 1999, there is no reference to the prior license having been in effect in December 1999 or an application having been then filed as required in the Gambling Control Act, §19963. The regulation should incorporate that date or refer to the Act.

2. Under subsection (f)(3), a person seeking to reopen an already closed card room must supply "a copy of the last license issued by the state authorizing the applicant to operate the gambling establishment." It requires the "last license issued to the applicant" but not that the applicant was the last licensee for the establishment. It should require "that the last license issued by the state for the gambling establishment was issued to the applicant." Otherwise, if the club was sold in 1996, both the seller and buyer would each have the last license issued to them for the same establishment.

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I hope these comments will be helpful.

Sincerely,

/s/
David M. Fried

Cc Aisha Martin-Walton (email)
Marty Horan (email)

THE BICYCLE CASINO

October 26, 2009

Via Email: sgeorge2@cgcc.ca.gov

Shannon George
Regulatory Actions Unit
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833

Re: CGCC Proposed Action - Reactivation of Expired Licenses

Dear Ms. George:

The Bicycle Casino acknowledged and thanks the Commission and Commission staff for the continued efforts at developing regulations regarding expired licenses. We take this opportunity to provide our comments on the most recent draft regulations.

Initially, we continue to support what was previously drafted as option 6 which deems any surrendered or expired license to operate a gambling establishment abandoned at the time of surrender or expiration and precludes any such license from being reactivated at any time. This course is the only one supported and in line with current law and regulation as has been explained in prior comments submitted by the Bicycle Casino and others.

In the alternative, we concur with the comments submitted by Celebrity Casinos, Inc. regarding the potential reactivation of previously surrendered licenses. A minor modification of Section 12349 (d) would solve the issue and establish the same protection of the public interest and restrictions on licenses surrendered prior to these regulations, as subsection (b) places on proposed surrenders considered after the effective date of these regulations. The following additional language is an alternative to that proposed by Celebrity Casinos, Inc. and will insure both uniformity necessary precautions in treatment of surrendered licenses.

“(d) A state gambling license that was surrendered or expired without being renewed and which was not under investigation or the subject of disciplinary action prior to the effective date of this section may be reactivated within 12 months of the effective date of this section.”

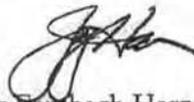
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Additionally, as is reflected in the minutes of the August 20, 2009 regulation hearing, during which 6 different proposed options were discussed, the Commission directed staff to prepare a further draft that would incorporate options 1, 5(?) and 6. The additional safeguards regarding who will be permitted to apply to operate a closed gambling establishment found in option 1 should be incorporated in the current draft. These provisions could easily be incorporated in 12349 (c) by adding subsection (1) as follows:

“(c)(1) Only the last licensed owner of a gambling establishment with a licensed owner as of December 31, 1999, or that had an owner with a license application on file with the department prior to September 1, 2000, may submit an application for a state gambling license in order to operate the gambling establishment associated with the previously surrendered or expired license. For purposes of this section, “person” includes only the natural person or persons and any entity or entities that were actually licensed or registered as the owner-licensee approved to operate the gambling establishment or, as applicable, that would have been issued such a license if approved, and does not include natural person or entities that were merely endorsed on the license certificate issued to the owner licensee.”

We appreciate the work you have done and will continue to do as we move forward in the development of these important regulations.

Very truly yours,
THE BICYCLE CASINO



Joy Fennbach Harn
V.P. & General Counsel

Encls.

Crystal Casino

October 20, 2009

Via email sgeorge2@cgcc.ca.gov and via facsimile (916) 263-0499

Shannon George
Associate Governmental Program Analyst
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833-4231

Re: Moratorium Workshop October 29, 2009

Dear Ms. George:

On behalf of Celebrity Casinos Inc. we take this opportunity to discuss the proposed regulation set for the October 29, 2009 workshop.

Upon review, our lone comment is in regards to §12349(d).

While there are protections and safeguards in subsection (g) in regards to granting or denying an application made pursuant to subsection (c), there are no similar considerations or safeguards present in determining whether the prior conduct should be considered for re-activation under subsection (d). Instead, we are left solely with the definition of "surrender" which does not fully address these concerns.

Accordingly, we respectfully submit that the simplest way to incorporate the necessary safeguards under subsection (d) is by inserting the following highlighted language:

"A state gambling license *not under the threat of an adverse action or ruling that may affect the holder's rights or interests* that was surrendered or has expired...."

It is respectfully submitted that the only other alternative is to re-draft the definition of "surrender" to include this language.

Finally, we look forward to receiving the Comment's response prior to the workshop. As always, if you should have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Mark Kelegian
President

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BOARD OF LEGAL SPECIALIZATION

October 26, 2009

Ms. Shannon George
Gambling Control Commission
2399 Gateway Oaks Drive, Suite 220
Sacramento, CA 95833

Re: Regulations for Reactivation of Expired Licenses

Dear Ms. George:

I write on behalf of Artichoke Joe's with comments on the October 19, 2009 draft of regulations for reactivation of expired licenses (previously called the Closed Cardroom Regulations).

The Gambling Control Act (the "Act") does not allow for reactivation of expired licenses. Some California licensing acts allow for inactivation and reactivation of licenses, and others allow for reinstatement of expired licenses, but the Legislature did not authorize either of those in this Act (or the hybrid concept here of "reactivation of expired licenses"). Allowing reactivation of licenses that will be surrendered or will expire in the future would be improper. Allowing licenses which long ago were surrendered or expired to now be reactivated, especially to be reactivated by new owners for a new facility in a new location would violate the statewide moratorium on new cardrooms imposed by section 19963 of the Act and raise public concerns about expansion of gambling.

I comment on specific provisions of the proposal below:

12002. General Definitions

Subsection (j) would define the term "surrender" to mean "to voluntarily give up all legal rights and interests." We suggest use of the term "relinquish" in place of the more colloquial "give up."

12349. State Gambling License; Surrender; Reactivation; Abandonment

Subsection (a)

Subsection (a) would allow surrender of a state gambling license "at any time." We do not think a license can be surrendered after it has expired and after any grace period has expired. Once a license has expired and there is no vested right to activate it, the licensee possesses no rights and has nothing to surrender.

Subsection (b)

Subsection (b) would allow the Commission to reject surrender of a license and would make surrender ineffective until acceptance by the Commission. This section has two problems.

First, this provision contravenes subsection (a). Subsection (a) allows surrender of a license anytime. Subsection (b) treats a surrender as only an offer of surrender and requires another step, namely Commission approval. These sections are inconsistent.

Second, this provision attempts to confer a power on the Commission that is not granted in the Act. The Act does not grant the Commission the power to license an operation once it has been closed. Section 19850 of the Act authorizes the Commission to license every person who operates a cardroom, but there is no provision authorizing licensing of someone who has closed the cardroom and ceased the activity for which the license was required.

The Commission has some authority to license a former owner where the cardroom remains open, but this is limited. Section 19852 requires licensing of persons who continue to have some relationship or financial interest in a cardroom, but only if they have power to exercise a significant influence over the gambling operation. Section 19853 allows the Commission to require others to have gambling licenses but only if the others have certain specified business relationships or have the power to exercise significant influence over the cardroom. The Commission has no authority to license a former owner simply because discipline is pending.

Subsection (c)

Subsection (c) would allow the reactivation of licenses "surrendered or expired by operation of law." Reactivation would have to occur within 12 months of the expiration of the license.

There are a number of drafting issues. First, this subsection is intended to apply only to licenses surrendered or expired after the effective date of the regulation. However, the wording ("Beginning with the effective date of this section...") applies to the reactivations and does not require that the expiration be after the effective date. Second, it is not clear what time period for reactivation would apply to a license surrendered before expiration. Would reactivation have to occur within 12 months of surrender? Third, the phrase "expired by operation of law" is confusing. Licenses expire under the terms under which they were issued, not by operation of law.

Aside from the drafting issues, there is a much more serious issue of legality. This section would institute a program for inactivation of licenses. However, there is no statutory authorization for this. The Legislature specifies when it intends to allow license holders to inactivate their licenses. There are at least 13 instances in the Business & Professions Code where the Legislature has explicitly provided for inactivation of licenses in various other licensing programs. A list of code sections and the subject licenses follows:

700	Health professionals
1940	Dental hygienists
2570.11	Occupational therapists and occupational therapist assistants
2734	Nurses
2988	Psychologists
3636	Naturopathic doctor
4200.5	Pharmacists
4846.5	Veterinarians
4989.44	Educational psychologists
4997	Clinical Social Workers
6003	Members of the State Bar
7076.5	Contractors
8024.7	Shorthand reporters

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In addition, Health & Safety Code 1416.42 allows for an inactive license for nursing home administrators.

There is at least one licensing statute where the Legislature did not institute inactive licenses but authorized certain licensing agencies to authorize inactive licenses. Business & Professions Code Section 462. However, that does not apply here, and the Gambling Control Act does not contain similar language authorizing the Commission to adopt such a program.

The proposed regulation does not refer to inactivation of licenses. Rather, it proposes reactivation of "surrendered or expired" licenses. This is not authorized by the Act either. The Legislature specifies when certain licenses can be renewed late or when expired licenses can be reinstated. (The language used is "reinstate" not "reactivate.") There are at least 45 licensing programs in the Business & Professions Code that allow for renewal or reinstatement of expired licenses, as listed in my June 22, 2009 letter to the Commission on these regulations. These statutes specify a time limit and other conditions under which this will be allowed. Again, the Gambling Control Act does not authorize late renewal, reinstatement of expired licenses, or for that matter reactivation of an expired license.

Clearly, the Legislature authorizes reinstatement (or reactivation) when it wants to. Because the Gambling Control Act does not allow for anything like that with respect to gambling licenses, once a license expires or is surrendered, the license holder has no further rights to the license. This is especially true where the licensee ceases the licensed activity and closes or sells any ancillary bar or restaurant business.

The regulation would not limit reactivation to the original licensee. Rather, a third party with no connection to the original licensee would also be allowed to reactivate a license. This would violate the moratorium on issuance of new state gambling licenses in section 19963. Subdivision (a) of section 19963 reads:

"In addition to any other limitations on the expansion of gambling imposed by Section 19962 or any provision of this chapter, the commission may not issue a gambling license for a gambling establishment that was not licensed to operate on December 31, 1999, unless an application to operate that establishment was on file with the department prior to September 1, 2000."

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The attempt to allow reactivation of a license by a third party clearly violates this section. The regulation calls this reactivation but there is no continuity with the former license holder. The license could be reactivated by new owners, in a new facility and a new location with a new name and new employees. The new cardroom would not constitute a continuing operation but would constitute a new cardroom and issuance of a license to it would constitute an expansion of gaming.

Subsection (d)

Subsection (d) would allow the reactivation of all state gambling licences that have ever been surrendered or have expired by operation of law. This is inconsistent with the law and with the expectation of the parties who surrendered their licenses, and would pose an even more blatant severe violation of the section 19963 moratorium.

As detailed above, the Gambling Control Act does not authorize inactivation of expired licenses. The Legislature includes these type of provisions in a licensing act when it wants to, and the fact it did not include such provisions here means that once a license is surrendered or expired, the license holder has no further rights to the license.

This is also inconsistent with the expectation of the parties. When former license holders surrendered their licenses or allowed them to expire, they voluntarily relinquished all rights and interests in the license and understood that they retained no rights to the license. They have no expectation to a right to reactivate their licenses. Similarly, where a license has expired, all rights and interest in the license have expired.

The regulation does not allow just the former license holder to reactivate the license. Rather it would also allow a third party to reactivate a license. The original license holder would not be involved. Given that the former license holder retained no rights, expects nothing and would not be involved, the proposed "reactivation" of the surrendered and expired licenses legally would constitute issuance of new licenses, and would constitute a flagrant violation of the state moratorium in section 19963.

Section 19963 was intended to prevent exactly this type of expansion of gaming, as can be seen in the historical context. In 1983, the Legislature passed the Gaming Registration Act in part to prevent uncontrolled expansion of gaming.

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At the time, there were about 350 cardrooms in the state, and new mega-cardrooms were opening in the Los Angeles area (Commerce Club in 1983 and Bicycle Club in 1984). In order to prevent expansion of gaming, the Legislature enacted section 19819, prohibiting local jurisdictions that did not have cardrooms from legalizing cardrooms except with voter approval.

In the mid-1990s, concerns about expansion intensified, and enlarged to cover existing cardrooms. There were fewer cardrooms than a decade before, only about 250, but the number of tables in the state was increasing. By 1995, the number of tables had increased to 1,945 from 1,500 in 1992. Many promoters were trying to open new bigger cardrooms and many cities were being subjected to elections where the promoters could afford to spend much money, and local opposition would be financially outmatched. The Legislature enacted a moratorium, prohibiting cities that did not authorize gaming from doing so and prohibiting cities that did authorize gaming from authorizing any expansion of that gaming effective January 1, 1996.

In 1997, the Gambling Control Act was passed, to take effect on January 1, 1998, and the moratorium was left in place. After the Act took effect, a number of businesses that offered card games chose to close their cardroom operation rather than to submit to the rigors and expense of state regulation.

By 2000, the number of licensed cardrooms had fallen to about 140 and there was concern that the numerous licenses authorized under local laws would allow for significant expansion of cardrooms in the state. There were as many as 200 available licenses in local jurisdictions around the state. In order to prevent a potentially sizeable expansion of gaming, the Legislature passed AB 1416 enacting section 19963. This moratorium applied at the state level, prohibiting issuance of state licenses to new cardrooms. At the time, the Legislature clearly wanted to prohibit cities in which cardrooms had closed from reissuing those licenses during the term of the moratorium.

Application of section 19963 to cardrooms closed before 2000 is very clear. If the cardroom was not licensed as of December 31, 1999, the state is not allowed to issue the license now. Thus, under section 19963, the 200 or so authorized but unissued local licenses were effectively put on hold during the moratorium.

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The proposed regulation, by allowance of reactivation of licenses surrendered or expired after 1999, would create internal inconsistency in the statute. Licenses of cardrooms closed during or before 1999 could not be reactivated, but licenses of cardrooms closed after 1999 could be. Further, the difference would be based on an arbitrary date, having nothing to do with when the statute was passed or otherwise. There is no good reason to force inconsistency on the statute.

The proposed interpretation of section 19963 allowing reactivation of licenses further violates the intent of AB 1416 which was to limit expansion of gaming. The Commission would essentially be allowing illegal expansion of gambling.

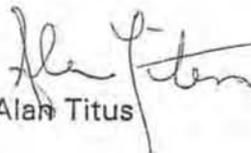
Subsection (e)

Subsection (e)(3) provides that the license holder of an abandoned license "may not sell the business." It is not clear what this means. A cardroom could close and surrender their license and still have assets of the business that need to be sold. This may include real estate, personal property, trademarks and tradename. It may even include gambling equipment. It further may include goodwill. Since the new owners could not operate a gambling establishment without a state gambling license, this would not be a sale of the gambling business, though it could include sale of personal property used in the gambling operation. There is no reason to prohibit this, and once the gambling operation is closed, the Commission would have no authority over the sale of the remaining business or the assets. We suggest that this subsection be deleted.

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We appreciate your consideration of these comments.

Sincerely,


Alan Titus