

COMMENTS AND RESPONSE FOR REGULATIONS UNDER DISCUSSION
LIMITATIONS ON REOPENING CLOSED CARDROOMS
COMMISSION WORKSHOP: AUGUST 20, 2009

INFORMAL COMMENT PERIOD

On August 4, 2009, staff distributed to the public a list of six possible options in development of a formal policy and course of action regarding closed cardrooms.

As of August 17, 2009, written comments were received from the following:

Joy Harn, Bicycle Casino
Curtis Gallo, Bruce's Casino
Mark Kelegian, Crystal Casino
Mark Jones, INAG, Inc.
John Nyhan, on behalf of Tom Farrage

The following comments refer to the "Options for Discussion Purposes" dated August 4, 2009.

Option 1

Summary

Limits the ability to reopen a closed cardroom to the last licensed owner.

Comments

(a) Harn: Limiting the ability to reopen to the last licensed owner is an appropriate and preferred limit; however, in its current form, the draft text contains too many variables that work against this option being viable. For example, the regulation needs to specifically exclude prior owners whose license were revoked or whose applications were denied and there is no prioritization of owners in the event the prior license was held by more than one person.

(b) Kelegian: Option 1 contains too much ambiguity and insufficient guidelines to be a workable regulation and should not be considered. There is no basis to allow the last licensee to reactivate the license in situations of voluntary surrender, expiration of the license by operation of law, surrender of the license under threat of adverse action, revocation of the license, or denial of the license application.

Staff Response

There is no need to specifically exclude, in the regulation text, owners whose licenses were revoked or whose applications were denied from applying to reopen a closed cardroom. Reopening a closed cardroom would not be an automatic process; rather, applicants would be subject to the review and approval of the Bureau and the Commission and would be required to meet all qualifications specified in regulation and the Gambling Control Act.

Staff recognizes the need for a prioritization of applicants in the event more than one person owned the cardroom. In the event the Commission selects Option 1, language could be developed to address this concern.

(c) Nyhan: Option 1 is restrictive beyond the intent of Business and Professions Code section 19963. Additionally, allowing a person other than the last licensed owner to reopen a closed cardroom would not violate Business and Professions Code section 19873 (prohibition on the transfer or sale of a state gambling license). Requests consideration of exceptions under exceptional circumstances, such as a revitalization effort. Permitting certain exceptions will have a fairly limited effect, as there are only a small number of cardrooms that might reopen.

Staff Response

It is not conclusive that this option is beyond the intent of the Business and Professions Code, as the moratorium provisions of the Gambling Control Act are murky at best. In addition, staff would note that, as the intent of a regulation regarding closed cardrooms is to provide a uniform policy, it may not be appropriate to allow for exceptions to the regulation.

Option 2

Summary

Limits the ability to reopen a closed cardroom to the last licensed owner plus a successor-in-interest.

Comments

(a) Harn: Contains an ambiguity of when to cut off or how to properly define a “qualified successor-in-interest.” For a successor-in-interest option to work, there would have to be a proposed documented transfer while the license is still in good standing or based upon a will or trust document that names the successor-in-interest. A reasonable timeframe for the submittal of the application is needed.

(b) Kelegian: The only qualified successors-in-interest should be those that obtained their status as successor prior to the closure of the cardroom. This option is also flawed because it does not have the time restrictions and limitations on reasons for closure mentioned under Option 1.

(c) Nyhan: Supportive of this option; however, ambiguity exists as to who qualifies as a successor-in-interest. A qualified successor should include a person with a contract to purchase a previously-closed cardroom, even if that purchase is not yet complete.

Staff Response

In the event this option is selected, the Commission may wish to further define a successor-in-interest.

Option 3

Summary

Allows any interested party to apply for a state gambling license to open a closed cardroom.

Comments

(a) Harn: This option has no support in fact or law, and is not plausible. There is no direction as to who has priority, what time constraints will be placed on reopening a closed club, the priority of a prior owner over a complete stranger, or the reasons why the prior owner closed the club.

(b) Kelegian: There is no basis for this option. Allows someone who has absolutely no nexus to the gambling establishment or the last licensee to be licensed.

Staff Response

It can be argued that nothing in the text of Business and Professions Code Section 19963 requires a nexus to the last licensed owner of the cardroom. Although this section prohibits the Commission from issuing a license to operate a cardroom unless the cardroom had a licensed owner as of December 31, 1999, or the owner had a application on file prior to September 1, 2000, it is silent as to what happens to a cardroom once it ceases operation. It is the responsibility of the Commission to make a reasonable interpretation of Section 19963, in conjunction with the rest of the Gambling Control Act.

(c) Nyhan: Supportive of this option. Concerned that “small town politics” would interfere with the process by which local government officials choose the applicant. Suggest some guidance to local officials as to what criteria should be used in the making of the decision, for example the order of submission or the completeness of the state license application.

Staff Response

If this option were determined to be viable, the intent would be to let local governments have the final say as to which person would have the ability to apply for a state gambling license, rather than have the Commission impose criteria upon the locals.

(d) Jones: Only option that makes sense and takes all the special interest elements out of the equations. The moratorium provided existing cardrooms and the cities in which they operate an unfair advantage. It is time for the State to step back and allow all cities the right to decide this issue.

Staff Response

The Commission does not have the ability to allow all cities to decide whether to allow cardrooms to operate within their jurisdictions. The Gambling Control Act places several restrictions as to which cities may allow cardroom gambling (Business and Professions Code Sections 19961 and 19962). In addition, Section 19963 restricts the licensing of cardrooms to those that had a licensed owner as of December 31, 1999, or whose owner had an application on file prior to September 1, 2000.

Option 4

Summary

Allows any person to apply to reopen a closed cardroom, but states that applications will be accepted in the following priority order: last licensed owner, successor-in-interest, any interested party.

Comments

(a) Harn: Contains the same deficiencies as mentioned in the first three options making it problematic.

(b) Kelegian: Compilation of all three options; it contains all of the flaws inherent in each of these options and cannot be considered.

(c) Nyhan: This option is ambiguous. It is unclear from the text whether the Commission will (1) accept applications from owners for a certain period of time, then successors-in-interest, then from anybody; (2) accept all applications, but only process those from original owners for a certain period of time, then move to successors-in-interest; (3) accept all applications but withhold license decisions until the application period closes; or (4) for each closed club, determine whether the former owner wants to reopen, then determine if there are any successors-in-interest, then if there are no potential applicants, allow anyone to apply. In addition, the Commission should consider rearranging the priorities, as a qualified successor-in-interest should have priority over the last licensed owner.

Staff Response

Option 4 is a compromise that takes into account the major positions under Options 1 (only the last licensed owner), 2 (last licensed owner plus a successor-in-interest), and 3 (open to anybody). If the Commission selects this option, additional language can be developed to address any ambiguities.

Option 5

Summary

Defines an abandoned license as one that has expired or been surrendered. Limits the time in which a license can be reactivated before it is considered abandoned. Once abandoned, a license cannot be reactivated.

Comments

(a) Harn: More workable solution; however, the same problems exist as under Option 1 – what if more than one individual was the last licensed owner of the cardroom. This option also does not take into account the reasons behind the prior closure. In any event where a license was revoked or suspended pending disciplinary action or an application denied, that owner should not be given an opportunity to reactivate a license.

(b) Kelegian: Least objectionable of Options 1-5. The term “abandoned” requires further clarification to include licenses that were revoked or had an application denied. Although the heading state “allows original owner to reactivate,” there is not a reference to the original owner in the proposed text.

(c) Nyhan: Although this option is parenthetically headed “allows original owner to reactivate,” the language does not seem to restrict reactivation of an abandoned license to original owners.

Staff Response

Staff would note that, although there is no specific reference to the original owner or last licensed owner in the draft text, the last licensed owner is the only person to whom the text could apply. There would be no other person with an expired or surrendered license other than the last licensed owner. Staff would also note that there is no need to restrict those whose licenses were revoked or applications were denied from applying to reactivate the license. As previously mentioned, all applications will receive a thorough background investigation from the Bureau and will need to be approved by the Commission. If an application was previously denied due to a disqualifying factor, that factor will still be taken into consideration. Additionally, if an application were denied due to disqualifying factor, such as a misdemeanor conviction within the previous 10 years, that disqualifying factor may no longer exist. It would be unnecessary and inappropriate to preemptively restrict individuals from submitting applications.

Option 6

Summary

Disallows reopening of a closed cardroom.

Comments

(a) Harn: Seems to be the most in line with current law. The Commission has addressed the possibility of a club closing for a limited period of time, but specific language allowing for a temporary closure may be necessary to avoid confusion at a later date.

(b) Kelegian: This is the only option that is both factually correct and can withstand legal challenge based on the language of the Gambling Control Act. There is no legal support for the proposition that a cardroom continues to exist after all licenses have been denied, revoked, surrendered, or expired. No reasonable interpretation of the purpose or intent of the Gambling Control Act can suggest that a cardroom can exist without an owner-licensee.

Staff Response

Staff would note that Section 19876(e) of the Business and Professions Code states that if “an owner licensee fails to renew the gambling license as provided by this chapter, the commission may order the immediate closure of the premises and a cessation of all gambling activity therein until the license is renewed.” This section does not limit the amount of time in which an owner licensee must renew his or her license. It may be the case that this option cannot be implemented.

(c) Nyhan: This option goes far beyond the requirements of the moratorium statute, which provided a snapshot of the number of cardrooms open in 1999, and set that number as the ceiling. The statute does not provide or even suggest that the ceiling should ratchet downward as cardrooms close. In the event this option is given consideration, it should be amendable to exceptions, as mentioned under Option 1.

Staff Response

This is certainly one interpretation of the moratorium provision (Section 19963); however, there is nothing to definitively state that the intent of the moratorium was to allow cardrooms in existence on December 31, 1999, to exist in perpetuity. The purpose of these workshops is to determine a reasonable and appropriate interpretation of the statute.

(d) Gallo: Option 6 is the only viable option. Reactivating a dead license would only serve to put Bruce's Casino out of business and would generate no new revenue for the state.