

COMMENTS AND STAFF RESPONSE FOR PROPOSED REGULATIONS
45-DAY PUBLIC COMMENT PERIOD ENDING JULY 19, 2010
REACTIVATION OF EXPIRED STATE GAMBLING LICENSES;
SURRENDER; ABANDONMENT
CGCC-GCA-2010-01-R

COMMISSION HEARING AUGUST 24, 2010

During the 45-day public comment period from June 4, 2010 – July 19, 2010, comments were received from the following individuals:

Rich Ramirez, City Manager, City of American Canyon
Harlan Goodson, on behalf of Tom Farrage
John W. Lam, Assistant City Attorney, City of Bell Gardens
William D. Ross, on behalf of the City of American Canyon
Mark Kelegian, Crystal Casino
Joy Harn, The Bicycle Casino
David Fried, Oaks Card Club and the California Grand Casino
Alan Titus, Artichoke Joe's

Section 12002(j)

Comment

1. Titus: The provided definition of term "surrender" is inconsistent with Business and Professions Code section 19877, which allows the Commission to deem the failure to timely file a renewal application as a surrender of the license. A "deemed surrender" is not voluntary, so the statute uses the term surrender to include *involuntary* surrender, as well as *voluntary* surrender. The regulation is therefore in conflict with the statute and could cause confusion.

Staff Response: Staff recommends this comment be rejected. The language in section 19877 describes the circumstance of an involuntary surrender, but this does not preclude the manner in which the proposed regulation applies the concepts and consequences of surrender and abandonment.

In the context of section 19877, the phrase "may be deemed" means that the Commission may view or regard the fact that an owner has not filed a timely renewal application as a surrender of the license. It does not limit how the concept of surrender can be defined or applied; it simply provides an explicit basis for the Commission to consider the omission of failing to file a timely renewal as giving up all rights to the license. Rather than characterizing this circumstance as an "involuntary surrender," a term which is not specifically used or defined in the statute, the proposed regulation "abandon," a clear, descriptive, and easily understood term. In addition to defining terminology, the proposed regulation also establishes a process for the voluntary surrender of a license in an effort to provide clarity to the regulated community. The consequences of a surrender or abandonment under Section 12347 of the proposed regulation are identical.

The Commission has the authority to take the actions described in the proposed regulations. Moreover, the terminology used is clearly defined and consistent with the GCA.

Section 12345, subsection (d)

Comment

1. Titus: The regulation requires an applicant for renewal to submit additional deposit with the Bureau if required. The Bureau already has a regulation to address this issue; this regulation is duplicative.

Staff Response: Staff recommends this comment be rejected, as it is not germane to the proposed regulation. The comment is in regards to an existing regulation.

Section 12345, subsection (e)

Comment

1. Titus: The proposed regulation would require the Bureau to submit a written report on its investigation to the Commission, but would make submission of a recommendation permissive instead of mandatory. This is inconsistent with the Act which requires the Bureau to submit a recommendation, whether that be of approval or denial.

Staff Response: Staff recommends this comment be rejected, as it is not germane to the proposed regulation. The comment is in regards to an existing regulation.

Section 12345, subsection (g)

Comment

1. Titus: The requirement that a cardroom must close if an application is submitted late is unnecessarily harsh and contravenes long-standing Commission policy and practice. Presumably, the extra staff report extending the license is fairly basic. In requiring the facility to temporarily shut down, the regulation creates much more work and state expense. It puts people out of work, adds people to unemployment rolls, and increases state expenses for unemployment benefits, all to no end.

Staff Response: Staff recommends this comment be rejected. The Commission will not require every owner licensee that submits a renewal application late to close down operations; this regulation only applies to those owners whose applications are submitted sufficiently late that the Bureau of Gambling Control cannot complete their required review prior to the expiration of the license. Although the Gambling Control Act requires an application for renewal to be submitted 120 days in advance of the license's expiration date, there is no penalty for failure to submit on time. This proposed regulation is intended to provide significant incentive for licensees to comply with their statutory obligations.

The statutory framework requires that a renewal application be filed 120 days prior to the expiration of the existing license. The purpose for this requirement is to ensure that the Bureau and Commission have sufficient time to properly investigate and evaluate the applicant. Failure to comply with this requirement is a violation of the Gambling Control

Act which would subject the licensee to the disciplinary process. The Commission has and will continue to advise a licensee of the renewal deadline 150 days prior to the expiration of the license. This allows the licensee 30 days to submit their renewal application. However, unless the Commission imposes a consequence for the failure to comply with this requirement, licensees will have no incentive to file a timely renewal. The proposed regulation, consistent with the Commission's statutory authority, imposes a clear consequence. It is not fair to those licensees who do comply with the required submission dates to be treated no different from those who do not.

Section 12345, subsection (h)

Comments

1. Titus: The Commission has no authority to authorize the filing of a renewal application up to 10 days past the expiration of the previous license. The Legislature allows for late filings when it wants to. Here, the Legislature has not allowed for late renewal, and the Commission has no power to contravene the Legislature. The fact that Business and Professions Code section 19876 does not allow late renewal cannot be disputed.

Staff Response: Staff recommends this comment be rejected. The Commission is not required to have *explicit* authority in statute in order to adopt a regulation. 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.

Although section 19876 does not explicitly authorize the late filing of an application, subdivision (e) states that "if an owner licensee fails to renew the gambling license as provided in 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." Staff acknowledges that the commenter provided a legislative history of this subdivision, purporting to explain why this subdivision does not actually authorize late renewals. However, the Commission is bound by the language currently in the statute, which *impliedly* permits late renewals.

2. Ramirez & Ross: Both commenters request that the regulation be modified to require the Commission to provide ample notice to the local jurisdiction prior to the cardroom being closed due to late submittal of an application.

Staff Response: Staff recommends these comments be rejected. Local jurisdictions have sufficient authority to obtain information about licensure periods and can initiate communication with the cardroom and the Commission to determine whether a renewal

application has been filed. If this is a matter of interest to the local jurisdiction, they should accept the burden of staying informed.

Section 12347, subsection (a)

Comment

1. Titus: The Act contains no provision authorizing the Commission to require licensing of someone who has closed a cardroom. Business and Professions Code section 19850 authorizes the Commission to license every person who operates a cardroom; section 19852 further enumerates specific individuals that can be licensed. The Commission does not have authority to reject surrender of a license simply because discipline is pending. If license fees continue to be owed to the state, this regulation becomes confiscatory.

Staff Response: Staff recommends this comment be rejected. Nothing in the Gambling Control Act prohibits the Commission from implementing the regulation as proposed. 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.

The statute limits the licensee's claim to a vested right in the license. A state gambling license, once issued, is not the property of the license holder, but is always subject to the discretionary authority granted to the Commission by the Gambling Control Act (Business and Professions Code section 19801(k): "Any license or permit issued, or other approval granted pursuant to this chapter, is declared to be a revocable privilege, and no holder acquires any vested right therein or thereunder."). Refusing to accept the return of a license in order to finalize disciplinary action is within the Commission's authority to protect public safety, health, and welfare, and to ensure the integrity of the gambling industry.

Section 12347, subsection (b)

Comment

1. Titus: Paragraph (3) under subsection (b) is vague and ambiguous. It is not clear what is meant by the "gambling business." The ISOR states that it is not applicable to the assets of the business, but the actual language does not clearly allow sale of assets. The ISOR does not mention the business name; would that asset be saleable? It is not clear why sale of the business needs to be prohibited. The regulations can simply make clear that sale of the business will never include sale of the license. Business sales involve one of two types: either sale of stock (or the equivalent) or sale of assets.

Staff Response: Staff recommends this comment be accepted. The Initial Statement of Reasons notes the following in regards to this provision: "It should

be noted that this provision is not intended to prohibit the sale of the assets of the business, such as gaming tables, equipment, or any real property; it is intended to prevent the future operation of the business as a cardroom licensed by the state.”

Staff agrees with Mr. Titus that the intent expressed in the Initial Statement is not clear in the language of text. If it remains the desire of the Commission to require an active license in order for a buyer to operate the business as a cardroom, staff recommends one of the following options:

- The text of paragraph (3) be deleted and replaced with the following: “*The Commission will not approve an application for a state gambling license from an applicant who obtained a gambling enterprise for which the prior owner licensee’s license was determined by the Commission to have been surrendered or abandoned.*”
- Delete paragraph (3) as the regulation clearly specifies the finality of an abandonment or surrender.
- Delete paragraph (3) with the direction from the Commission to address the policy in the regulations governing transactions.

Section 12348, subsection (a)

Comments

1. Fried: The regulation should be clear that the applicant must be the last owner of "the" gambling establishment, not "a" gambling establishment. The application should be for the same business.

Staff Response: Staff recommends this comment be accepted. Staff has prepared draft clarifying language for the Commission’s consideration. However, staff would note that an owner licensee and the gambling establishment are intertwined. A gambling license is issued to operate a *specific* establishment; it does not allow the holder to operate *any* establishment. A reactivated license would by definition be issued for the same business with which it was previously associated.

2. Lam: The proposed regulation is inconsistent with and in direct conflict with the moratorium. The moratorium prohibits the issuance of new licenses and the reactivation of a surrendered or abandoned right is the legal equivalent of issuing a new license.

Staff Response: Staff recommends this comment be rejected. The moratorium in no way prohibits the issuance of new licenses; in fact, the Commission routinely issues new licenses when a cardroom is purchased. Because a state gambling license cannot be transferred or sold (Business and Professions Code section 19871), when a new owner purchases a cardroom, a new license is issued to that person.

The moratorium prohibits the Commission from issuing a license to operate a gambling establishment, unless that establishment was licensed to operate as of December 31, 1999, or the owner had an application on file prior to September 1, 2000. The regulation would allow the Commission to renew a license to operate a gambling establishment that meets the requirements of section 19963.

We note also that other provisions of the Act anticipate that licenses may expire and not result in an ability of the existing owner of the cardroom to apply for renewal of that license. Section 19876, which deals with renewal, anticipates expiration (non-renewal) and gives the Commission several options, including allowing the license to be renewed. Subdivision (d) provides that an owner-licensee who continues to operate a cardroom after expiration of the existing license “is liable to the state for all license fees and penalties that would have been due upon renewal.” Subdivision (e) provides: “If an owner fails to renew the gambling license as provided in 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.” Section 19877 provides that the commission may deem the failure to renew a license a surrender of the license. Section 19879 provides for the sale of an interest in a gambling establishment upon license denial.

3. Lam: Whether a regulation is consistent with the statute authorizing its adoption depends on whether the regulation alters or amends the governing statute or case law, or enlarges or impairs its scope. If a regulation is not within the scope of authority conferred, it is void.

Staff Response: Staff recommends this comment be rejected. The Commission is vested with very broad rulemaking authority. Because Business and Professions Code section 19963 is silent on many issues, the Commission is well within its authority under the Administrative Procedures Act and the Gambling Control Act to provide an interpretation of the statute.

When considering the limitations of the “moratorium” provisions of the Gambling Control Act, it is important to view the application of those provisions in their full statutory context. As the Third District Court of Appeal has indicated, the language of a statute should be read “in light of the nature and purpose of the statutory scheme.” (*Modesto City Schools v. Education Audits Appeal Panel* (2004) 123 Cal.App.4th 1365, 1375.) In determining the meaning and application of section 19963, it is of paramount importance to carefully read the language of the statute. Nothing in section 19963 requires as a prerequisite for issuance of a license to operate a gambling establishment that the license be current and not expired. What is required is that the establishment had been licensed to operate on December 31, 1999 or had an application for licensure on file prior to September 1, 2000. However, the language cannot be taken absolutely literally for the simple reason that owners, not gambling establishments, are licensed. To give effect to the statute, we propose that it must be read to mean that the Commission may reissue a license to operate a gambling establishment if that gambling establishment had an owner-licensee who was licensed or had a license application on file by the operative dates.

4. Lam: The primary focus of the moratorium is to limit the expansion of gambling. In order to do so, section 19963 establishes a baseline for the total number of cardrooms allowed. Once a license is surrendered or abandoned, the total number of gambling enterprises allowed decreases. No new license may be issued to any entity.

Staff Response: Staff recommends this comment be rejected. This is just one interpretation of section 19963. The Commission considered this interpretation during the lengthy informal rulemaking process, and rejected it for reasons detailed in the Initial Statement of Reasons. Nothing in the statute suggests that the Legislature intended a gradual but inevitable decline in the number of gambling establishments in local jurisdictions. Neither the condition or existence of the physical premises, nor the current status of the license determines whether an applicant was the last licensee of a gambling establishment originally licensed within the parameters of section 19963.

5. Goodson: Sections 19963 and 19962 must be read together to understand intent of 19963. Expansion of gambling is not tied to the person or persons licensed to operate the establishment. The moratorium should be read to establish a baseline number of cardrooms authorized to operate.

Staff Response: Staff recommends this comment be rejected. This interpretation of section 19963 was considered by the Commission during the lengthy informal rulemaking process, and rejected for reasons detailed in the Initial Statement of Reasons. The statute does not mention a “baseline number of cardrooms” but simply focuses on the status of the license associated with a gambling establishment on specified date to determine whether the Commission may grant that establishment a license. While the numerous other statutory factors also come into play, the status of the license on the operative dates specified in section 19963 is a necessary prerequisite. The notion of a “baseline number” has no basis in the statute.

6. Goodson: Limiting the ability to reopen to the original licensee effectively alters what constitutes an expansion of gambling by tying expansion to the “original licensee” and therefore misinterprets the intent of section 19963 which was to establish a base-line number of gambling establishments authorized as of a date certain without placing limitations on ownership or operation.

Staff Response: Staff recommends this comment be rejected. Business and Professions Code section 19961 defines “expansion of gambling” for the purposes of Article 13 of the Gambling Control Act, which includes section 19963. Section 19961 defines “expansion of gambling” as *a change in local gambling ordinance* that results in one of the following:

- (1) An increase of 25 percent or more in the number of gambling tables in the city, county, or city and county.
- (2) An increase of 25 percent or more in the number of licensed card rooms in the city, county, or city and county.
- (3) An increase of 25 percent or more in the number of gambling tables that may be operated in a gambling establishment in the city, county, or city and county.
- (4) The authorization of any additional form of gambling, other than card games, that may be legally played in this state, to be played at a gambling establishment in the city, county, or city and county.

- (5) An increase of 25 percent or more in the hours of operation of a gambling establishment in the city, county, or city and county.

The definition of expansion of gambling is directed solely at local gambling ordinances, not actions by the Commission. Limiting the reactivation of a license to the last licensed owner of a cardroom has no effect on the definition of expansion of gambling.

The proposed regulation is based on a reasonable interpretation of the statute. The fact that other interpretations may exist does not detract from the reasonableness of the Commission's interpretation as reflected in the proposed regulation or from the Commission's discretionary authority to make such an interpretation. The Commission considered alternate interpretations and rejected them during the lengthy informal rulemaking process.

7. Goodson: The authorization of controlled gambling is a matter of local jurisdiction. Local governments and voters have primary authority to authorize or expand gambling.

Staff Response: Staff recommends this comment be rejected. The Gambling Control Act does, in fact, place primary authority to authorize gambling with local governments and voters. However, the moratorium provisions of sections 19962 and 19963 have overridden the ability of local governments to authorize additional gambling in their jurisdictions. The language of section 19963 clearly prohibits the Commission from granting a license to a gambling establishment which does not meet the requirements set forth in that section. While other sections pertain to local authority, this section focuses squarely on the Commission and its authority to grant a state gambling license.

8. Goodson: The determination as to who owns or operates a cardroom is a matter of local control. The Commission only has the authority to determine suitability of an individual selected by the local government. This regulation puts the Commission in the shoes of local government to effectively "choose" who may apply to reopen a closed cardroom.

Staff Response: Staff recommends this comment be rejected. The comment does not cite to any statutory language for support. A fair reading of the statute demonstrates that authority is distributed between state and local governmental entities. Consistent with this allocation of authority and responsibility, the proposed regulation mandates that applicants demonstrate local approval of their submission. However, while local governments have the discretion within their pertinent ordinance to deny an applicant, the Gambling Control Act provides no authority or mechanism requiring a local government to select a candidate to open a cardroom. Furthermore, Business and Professions Code section 19964 prohibits a local government from issuing a gambling license to any person unless that person holds a state gambling license issued by the Commission, clearly establishing the Commission's primary authority to determine who operates a cardroom.

9. Goodson: This regulation fails to acknowledge that the local government retains the statutory authority to authorize the reopening of a cardroom without violating the moratorium.

Staff Response: Staff recommends this comment be rejected. It is unclear to what authority the commenter is referring. The Gambling Control Act provides no authority for a local government to authorize the reopening of a cardroom in a manner which otherwise conflicts with the specific provisions of sections 19960 through 19963.

10. Goodson: The regulation ignores the precedent set by the Outpost case (in which a bankruptcy court declared a specified individual the successor in interest to the previous owner of the cardroom). Mr. Farrage is the successor in interest to the Cibola Club and should be treated in the same manner as the successor in interest to the Outpost Casino.

Staff Response: Staff recommends this comment be rejected. The regulation is not inconsistent with the manner in which the Commission resolved licensure related to the cardroom formerly known as “Outpost Casino.” The “Outpost” matter involved a gambling establishment which had an active license when the owner, Mark Luciano (Luciano) entered the bankruptcy process. The Commission addressed five specific issues and resolved them in the following manner: (1) Luciano had a license when he filed for bankruptcy; (2) Luciano’s license became part of the bankruptcy estate; (3) The automatic stay mandated by federal bankruptcy law stayed actions of the Commission: the police powers exception did not apply. Therefore, Commission actions taken after the bankruptcy filing did not have the effect of terminating Luciano’s license; (4) A business license can become part of a bankruptcy estate; and, (5) the Bankruptcy Court, in approving the sale of the license, was careful to recognize the authority of the Commission to grant or deny the application for a license, based on state law considerations. That case was handled like so many others in which an ownership interest in a gambling enterprise was transferred. The transfer of interest, which permits the entity with that interest to apply for a license, was accomplished in this case by a federal bankruptcy court while the license was active. The case you cite regarding Mr. Tom Farrage and the Cibola Club is easily distinguishable from the Outpost case in that the license is not active and was not active when an application for a license or approval of a transfer of interest was before the Commission. The fact that the license is not now active does not mean that the Commission may not consider an application under the proposed regulation from the last licensee. However, it does limit the relevance of the Outpost case to your case.

11. Goodson: The regulation should be amended to allow either a “person or entity approved by the local government” or “a successor-in-interest to the original licensee” as persons permitted to apply to reactivate a license.

Staff Response: Staff recommends this comment be rejected. This interpretation was considered by the Commission during its lengthy informal comment period, and was rejected for reasons discussed in the Initial Statement of Reasons.

12. Lam: The moratorium does not allow the Commission to issue or reactivate the gambling licenses of “qualified enterprises” (those establishments licensed as of December 31, 1999, or those having an application on file with the department as of September 1, 2000) for an indefinite period of time after the license has been surrendered or abandoned.

Staff Response: Nothing in section 19963 requires as a prerequisite for issuance of a license to operate a gambling establishment that the license be current and not expired. What is required is that the establishment had been licensed to operate on December 31, 1999 or had an application for licensure on file prior to September 1, 2000. However, the language cannot be taken absolutely literally for the simple reason that owners, not gambling establishments, are licensed. To give effect to the statute, we suggest that it must be read to mean that the commission may issue a license to operate a gambling establishment if that gambling establishment had an owner-licensee who was licensed or had a license application on file by the operative dates.

We note also that other provisions of the Act anticipate that licenses may expire and not result in an inability of the existing owner of the cardroom to apply for renewal of that license. Section 19876, which deals with renewal, anticipates expiration (non-renewal) and gives the Commission several options, including allowing the license to be renewed. Subdivision (d) provides that an owner-licensee who continues to operate a cardroom after expiration of the existing license “is liable to the state for all license fees and penalties that would have been due upon renewal.” Subdivision (e) provides: “If an owner fails to renew the gambling license as provided in 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.” Section 19877 provides that the commission may deem the failure to renew a license a surrender of the license. Section 19879 provides for the sale of an interest in a gambling establishment upon license denial

13. Lam: Once surrendered or abandoned, the vested right is permanently lost and the Commission does not have the express or implied authority to enact regulations which would reactivate the vested right. The proposed regulations are inconsistent with legal precedent. Case law rejects the argument that a surrendered or abandoned right may be renewed or reactivated once it has been abandoned

Staff Response: Staff recommends this comment be rejected. The Gambling Control Act (Business and Professions Code section 19801(k)) specifically states that the holder of a gambling license acquires no vested right. In promulgating these regulations, the Commission is not permitting a former license holder to assert any vested right to the license. Rather, the Commission is attempting to address a long-standing situation regarding the status of abandoned, surrendered, or expired license. In order to do so legally, without retroactively assigning consequences to a prior action taken, the Commission must allow a small window of time in which former license holders may reactivate their license. Once that window of time passes, the Commission is assigning consequences to the actions of surrendering or abandoning a license.

The Gambling Control Act does not define a circumstance when a license is abandoned. In fact, the term is not used in the Act. One of the primary objectives of the regulation is to fill this statutory void in a manner that is consistent with the specific provisions of the Act and the pertinent principles of administrative law. The commenter’s argument is

based on the premise that a right was “legally abandoned” without referencing anything in the statute or an existing regulation which establishes abandonment.

Additionally, none of the cases cited by the commenter support the argument that the proposed regulation is prohibited by law. The cited cases simply support the proposition that the Commission has a legal basis to deny an application to reactivate a license.

14. Lam: The fact that the Commission is allowed or order the closure of a gambling enterprise if the license holder fails to renew the license, or order the cessation of gambling activities if the license is not renewed, does not confer the broad, sweeping authority now being asserted.

Staff Response: Staff recommends this comment be rejected. The Commission is not asserting any authority based on the fact that we can order the closure of the gambling establishment or the cessation of gambling activities. The authority asserted by the Commission is based upon the phrase “*until the license is renewed*” (Business and Professions Code section 19876). The statute allows for late renewal, and that renewal is not statutorily limited in any way.

15. Lam: The Commission believes it has implied authority to reactivate any gambling license whether expired, lapsed, surrendered, or abandoned for any period of time, provided that the license was issued to a "qualified enterprise." Such interpretation is in conflict with the moratorium by substantially enlarging the scope of the Commission's authority under the GCA.

Staff Response: Staff recommends this comment be rejected. The moratorium restricts the Commission’s authority in one way only: it limits to whom the Commission can issue a license. Pursuant to the moratorium, the Commission can only issue a license to operate a gambling establishment if that gambling establishment had a licensed owner as of December 31, 1999, or an owner with an application on file prior to September 1, 2000. The Commission’s authority to reactivate or renew an expired gambling license comes from the following sources:

- Business and Professions Code section 19811: “Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the Commission.”
- Business and Professions Code section 19824: “The Commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter...”
- Business and Professions Code 19841(c): The Commission shall adopt regulations to “implement the provisions of this chapter relating to licensing and approvals.”
- Business and Professions Code 19876(e): “If an owner licensee fails to renew the gambling license as provided in 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.*” (emphasis added)

The Commission has very broad authority to implement and interpret the Gambling Control Act. This regulation in no way expands the Commission’s authority beyond that already provided by the Legislature.

16. Lam: The more reasonable interpretation is that the Commission's implied authority to renew or reactivate an expired or lapsed license extends only to those licenses which have not been surrendered or abandoned by its holder and where the holder retains a vested right in the lapsed or expired license. This would occur where the gambling license has expired or lapsed for a reasonable duration, which would not evidence the intent to abandon or is not voluntarily surrendered.

Staff Response: Staff recommends this comment be rejected. The interpretation that the Commission may only renew or reactivate a license which has not been surrendered or abandoned may indeed be a reasonable one. However, it is not the only reasonable interpretation. The interpretation made by the Commission, that for a short period of time, an expired or surrendered license may be renewed or reactivated, is also reasonable and well within the Commission’s authority under the Gambling Control Act.

17. Lam: The Commission’s authority to reissue or renew an expired or lapsed license should be limited to cases where cessation of gambling activity resulted from direct Commission action to stop gambling activity, not where cessation is the result of the voluntary acts of the license holder evidencing an intent to abandon the vested right.

Staff Response: Staff recommends this comment be rejected. Regardless of whether or not the Commission’s authority to renew or reissue an expired or lapsed *should* be limited to only those cases described by the commenter, under the Gambling Control Act in its current form, our authority is not limited to just those cases. At this time, we see no reason to restrict our authority and discretion in the manner described by the commenter.

18. Lam: The proposed regulations would be inequitable to existing gambling enterprises. These cardrooms have endured and survived the worst economic recession since the Great Depression. Those that remained in good standing would be subject to greater competition. Such a result is inequitable and provides an unfair advantage to those establishments allowed to reactivate long abandoned gambling licenses.

Staff Response: Staff recommends this comment be rejected. The proposed regulation explicitly requires the Commission to take into account the potential economic impact on neighboring cardrooms. The Commission would be well within its authority to deny a reactivation of a license if the reopening of the cardroom would cause economic harm to existing gambling establishments. It should also be noted that some gambling establishments that may be eligible for reopening under this proposed regulation may be located in jurisdictions in which there are no competing cardrooms.

19 a. Lam: In order to be considered consistent, lawful, and enforceable, the applicability must be narrowed to those enterprises which have not abandoned or otherwise surrendered their gambling license. Each license holder wishing to reactivate a license should be required to go before the Commission at a public hearing and demonstrate facts showing the license was not legally surrendered or abandoned. The Commission should be required to make finding supported by substantial evidence showing that the holder did not legally surrender or abandon the license. Only if the license was not legally abandoned, then renewal may be permitted.

b. Fried: In cases in which the owner voluntarily surrendered or chose not to renew, no new license should be issued. The owner voluntarily relinquished their license, without an expectation or vested legal right to receive a new license. Granting these persons a license would violate the Act. The regulations should be amended to include: "Persons who voluntarily surrendered or did not renew their prior license, absent extenuating circumstances, are not entitled to a re-issued or new license."

c. Titus: The regulation is inconsistent with expectations of the parties. When former license holders surrendered their licenses or allowed them to expire, they understood they retained no rights to the license. They have no expectation to a right to reactivate their license.

Staff Response: Staff recommends these comments be rejected. To state that a license holder who voluntarily surrendered or abandoned the license is going to now be subject to consequences that did not exist at the time of the surrender or abandonment would inappropriately and illegally assign retroactive consequences to a previous action. The Commission cannot know what was in the minds of individuals that surrendered the license, and it is not reasonable to assume that each person understood that his or her ability to operate a cardroom was permanently revoked. This regulation provides a small window of time in which we will allow the former license holders to attempt to reactivate the license, with the knowledge that if he or she fails to do so, the ability to operate a cardroom is unavailable as long as the moratorium remains in effect.

20 a. Kelegian: The proposed regulation should be amended to exclude renewal of any license that has been denied or revoked by the Commission.

b. Harn: Permitting individual licenses or gambling establishments whose licenses were properly denied, revoked, or otherwise disciplined to now re-apply for a new license or seek to renew their license only encourages those licenses to circumvent the long-standing provisions of the Act. If this were allowed, any licensee whose license was denied or revoked or who intentionally or carelessly failed to petition the Superior Court will now be awarded a "second bite at the apple." The proposed language should be amended to exclude the opportunity for renewal of any license that has been denied or revoked by an order of the Commission.

Staff Response: Staff recommends these comments be rejected. The regulation is limited *only* to licenses that were surrendered or expired without being renewed. Licenses that were denied or revoked are not eligible for reactivation under this proposed regulation.

21. Titus: The proposed regulation is inconsistent with the Act. Business and Professions Code section 19876 limits the term and provides for renewals every two years; section 19873 prohibits transfers; section 19963 imposes moratorium on new licenses. These provisions combine to prohibit licensing of a new operation by calling it "reinstatement" of the former license of a closed facility.

Staff Response: Staff recommends this comment be rejected. Nothing in this proposed regulation is inconsistent with the Commission's authority under the Gambling Control Act. As previously mentioned, the Commission's authority to reactivate or renew an expired gambling license comes from the following sources:

- Business and Professions Code section 19811: "Jurisdiction, including jurisdiction over operation and concentration, and supervision over gambling establishments in this state and over all persons or things having to do with the operations of gambling establishments is vested in the Commission."
- Business and Professions Code section 19824: "The Commission shall have all powers necessary and proper to enable it fully and effectually to carry out the policies and purposes of this chapter..."
- Business and Professions Code 19841(c): The Commission shall adopt regulations to "implement the provisions of this chapter relating to licensing and approvals."
- Business and Professions Code 19876(e): "If an owner licensee fails to renew the gambling license as provided in 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.*" (emphasis added)

The Commission has very broad authority to implement and interpret the Gambling Control Act. Although section 19876 sets the term for a license at two years, subdivision (e) permits the Commission to renew a license past the expiration date. Section 19873 does indeed prohibit the transfer of a license; the proposed regulation limits the reactivation or renewal of an expired license to the last license holder – no license transfer is involved. Section 19963 institutes a moratorium on the creation of new cardrooms; it is not a moratorium on the issuance of new licenses. The Commission routinely issues new licenses when an existing cardroom is purchased. Nothing in section 19963, or any other section of the Gambling Control Act, requires as a prerequisite for issuance of a license to operate a gambling establishment that the license be current and not expired. The sole requirement imposed by section 19963 is that a license was in effect for that gambling establishment as of December 31, 1999, or a license application was on file prior to September 1, 2000.

22. Titus: Some California licensing acts allow for reinstatement of expired licenses and others allow for inactivation and reactivation of 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 B&P Code that allow for renewal or reinstatement of expired licenses and at least 13 instances in the B&P Code where the Legislature has explicitly provided for inactivation of licenses. The Legislature did not authorize either a renewal or reinstatement in this Act. A reinstatement or reactivation of a license can only be allowed if the Legislature explicitly authorizes reinstatement. Without specific authorization to allow reinstatement or reactivation, once a license expires, an owner would have to apply for a new license. Allowing a license which was long ago surrendered or expired would violate the licensing provisions and would constitute issuance of a new license in violation of 19963.

Staff Response: Staff recommends this comment be rejected. 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.

Further, nothing in the Gambling Control Act supports the position that once a license has expired, a person would need to apply for a new license. As previously mentioned on several occasions, the Act impliedly permits late renewals, which provides the Commission sufficient authorization to adopt the regulation as proposed.

24. Titus: It is very clear that once a cardroom closes and goes out of business, any attempt to "revive" the business is really an attempt to open a new business. Only time a new business could be considered a "reopening" would be if it was owned by the same owners (not just entity, but shareholders, partners, etc) under the same name, in the same location, and with no additional tables. Any changes would mean a new business. This regulation allows "reinstatement" but little continuity with the former operation is required. The license could be reactivated by new shareholders, in a new facility at a new location with a new name and new employees, and more tables. That would not be a continuing operation. The proposed regulation requires reactivation by the "last licensed owner" but in the case of a corporate licensee or other business entity, the shareholders need not be the same.

Staff Response: Staff recommends this comment be rejected. The regulation requires that the applicant to renew the license be the last holder of the license. The majority of the licenses under discussion in this regulation were held by sole proprietors. Approximately 10 licenses were held by entities other than a sole proprietor. In these cases, the Commission will consider, pursuant to Section 12348(c)(3) of the proposed regulation, any changes in the legal status or composition of the licensed entity in order to determine, on a case-by-case basis, whether the applicant can be considered “the last licensed owner.”

According to Commission records, there are seven corporations that owned now-closed cardrooms. Four of these corporations were held by one shareholder; one had two shareholders; one had three shareholders; and one had an unknown number of shareholders. To the extent that any of these corporate entities apply to renew their gambling license, the Commission will determine whether they are, in fact, the same entity that previously held the license.

In addition, the suggestion that a cardroom must reopen under the same name, in the same location, and with no additional tables in order to be considered the same cardroom is contrary to long-standing Commission practice. The Commission has always allowed gambling establishments to move locations, change the business name, and add additional tables within the boundaries set by the Gambling Control Act and the applicable local ordinance. To accept the argument that an establishment would be considered a “new cardroom” if it moved locations, changed its name, or added tables, would be to disallow currently operating cardrooms to do any of these things as well.

25. Titus: 19963 was intended to prevent exactly this type of expansion of gaming, as can be seen in the historical context.

Staff Response: Staff recommends this comment be rejected. The proposed regulation would not provide an expansion in gambling over that which is allowed by section 19963. Nothing in the statute suggests that the Legislature intended a gradual but inevitable decline in the number of gambling establishments in local jurisdictions.

26. Titus: The regulation creates internal consistency in the statute. License 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.

Staff Response: Staff recommends this comment be rejected. 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, the difference is not arbitrary, but rather based upon a statutory requirement.

27. Titus: The proposed regulation violates the intent of AB 1416, as demonstrated by the enclosed letter from Senator Perata to Governor Davis dated April 13, 2000. Clearly, the moratorium was intended to apply to what was then called "dormant" cardroom licenses and what is today called "expired" licenses. Activation of a dormant license was equated with opening a new cardroom.

Staff Response: Staff recommends this comment be rejected. The letter referenced by this commenter was sent in April 2000 from Senator Perata, Chair of the Governmental Organization Committee to Governor Davis. The letter described “three levels of legislative/executive action which will assist the cardroom industry to survive and compete in the changed gaming environment in California.” Level 1 priorities were those considered necessary to keep the industry alive; Level 2 priorities were needed to

effectively compete in the short run; and Level 3 priorities were those needed to ensure long term stability and competitiveness.

Extension of the moratorium was considered a Level 2 priority. In regard to the moratorium, the letter reads:

Many of the cardrooms believe that the card player market is finite and will not sustain the addition of new cardrooms. They believe that new cardrooms will result in all cardrooms losing revenue and in some cardrooms losing economic viability. They believe that a moratorium should be placed on new cardrooms or the activation of dormant licenses. This would be a restriction on, rather than an expansion of gaming in California, and would be consistent with your desire to restrict the expansion of gaming in the State.

The letter does not specifically mention AB 1416 in regard to the imposition of a moratorium on new gambling establishments. AB 1416 is mentioned only in the context of the creation of a player-dealer position, an issue considered by Senator Perata to be of Level 1 priority.

If we accept that this letter is an attempt to solicit support from the Governor on AB 1416 specifically in regards to the moratorium on new cardrooms, and not merely a wish list from an industry interested in protecting its monopoly, it is worth noting that at the time the letter was written AB 1416 included a moratorium that was set to expire January 1, 2006 (it was later amended to expire January 1, 2007). In conjunction with the statement that the moratorium was needed to ensure viability of cardrooms *in the short term*, it can be argued that AB 1416 never intended the moratorium to be continually extended, as has happened in practice. To say that this regulation violates the intent of AB 1416 would then be inaccurate, as AB 1416 intended the moratorium on new cardrooms to be a short term measure.

Furthermore, although Senator Perata may have interpreted that the reactivation of dormant licenses was equivalent to the opening of a new cardroom, the intent of the legislation to equate the two is not evident. The language of section 19963 does not equate the two circumstances. The legislative history of the bill, specifically the committee and floor analyses that were available to legislators voting on the bill, never mentions the imposed moratorium, other than a brief summary. The analyses contain no information about the intent, purpose, or expected consequences of implementing a moratorium. This has left the Commission without direction from the Legislature as to the interpretation of an unclear statute. Without such direction, the Commission must rely on its own authority and discretion to implement the provisions of the moratorium. The interpretation chosen by the Commission – that although the establishment of a new cardroom is prohibited by law, the moratorium does not speak to the renewal of an expired or surrendered license – is not contradicted by the moratorium provision or any other provision of the Gambling Control Act.

Section 12348, subsection (b)

Comments

1. Fried: The regulation allows the Commission to take into account the circumstances under which the prior license was surrendered or failed to be renewed, but it does not require the circumstances meet any test or standard. The Commission cannot deny a license for someone on the basis of a "circumstance" when the regulation does not make the circumstance a requirement. Without a test or standard defining why the circumstances of the prior surrender or lapse of the license matter, a Commission decision denying a license or granting a license for lack of extenuating circumstances will be subject to legal attack as arbitrary. An applicant may also attack a decision denying the license as the product of an underground regulation.

Staff Response: Staff recommends this comment be rejected. The Commission has extremely broad authority to determine the suitability of an applicant to hold a gambling license. The circumstances under which the license was surrendered or expired will be given the same consideration as any other information provided to the Commission as a result of the background information, chiefly in regards to determining whether the applicant is a person of good character, honesty, and integrity, as provided for in Business and Professions Code section 19857.

In the Gambling Control Act, the Commission is granted the authority to make determinations as to whether an applicant is a person of good character, honesty, and integrity. The Commission makes these determinations on a case-by-case basis, given the totality of the application presented to it. The Gambling Control Act provides no guidance as to how these qualities shall be determined, and leaves the determination wholly up to the Commission's discretion. The consideration of the circumstances surrounding the surrender or expiration of the prior license will be considered in the same manner as all other information presented as a result of the background investigation.

2. Titus: There is an inconsistency with the language. (b)(4) and (6) refer to "reopening of the gambling establishment" and subsection (c) refers to "reactivation of the license." ISOR also uses this terminology interchangeably. The regulations do not provide for inactivation of a license, so "reactivation" makes no sense. "Reopening the gambling establishment" is inappropriate unless the actual facility is being reopened.

Staff Response: Staff recommends this comment be rejected. The terms are not used interchangeably in the text; the two terms are used to express two different concepts. The Commission action will be to reactivate the license; the reopening of the cardroom is a result of the Commission action, not the direct action by the Commission. Therefore, the use of the phrase reactivation of the license in subsection (c) is appropriate. Furthermore, the Commission's concern regarding the local government officials is that they approve the reopening of the cardroom, hence the requirement in subsection (b) that the chief legal officer of the jurisdiction and the local governing body provide evidence in support of the "reopening of the gambling establishment."

Section 12348, subsection (f)

Comments

1. Titus: Subsection (f) refers to paragraph (4) of subsection (a). No paragraph (4) exists.

Staff Response: Staff recommends this comment be accepted. This drafting error has been changed accordingly in the proposed 15-day changes under Commission consideration.

General

Comment

1. Ross and Ramirez: The City of American Canyon requests that the Commission use its rulemaking authority to require cardrooms to provide 60 days notice of closure to the local jurisdiction.

Staff Response: Staff recommends this comment be rejected. The request made by these commenters is outside of the bounds of this regulatory action.

Late Comment

Comment

1. Rod Blonien: The proposed regulations do not take into consideration what would happen if the previous owner of the gambling establishment was deceased. The Commission should adopt a provision providing for the heirs of the previous owner, or a bona fide purchaser from the heir, to be able to apply for a license.

Staff Response: Staff recommends this comment be rejected. It was received outside of the 45-day public comment period.