

## ***Louisiana Gaming Developments***

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*By William Blake Bennett & Janine V. Hodges*

LISKOW & LEWIS, APLC

### **Harrah's Moves to Acquire Full Ownership of New Orleans Casino**

In late July of 2002 Harrah's Entertainment, Inc. moved to assume full ownership of Harrah's New Orleans casino, when it agreed to purchase the remaining stock held by JCC Holding Co., ending the ongoing legal battle between Harrah's Entertainment and the casino's former bondholders, who had controlled the casino's board since the spring of 2001. Harrah's Entertainment had previously acquired shares in the casino from an investment bank and increased its ownership from 49 percent to 63 percent; the acquisition from JCC Holding Co. will represent the remaining 37 percent. With the full control of the operations, Harrah's Entertainment has announced that it is considering plans to develop the vacant entertainment space on the second floor of the casino, expand the buffet, open a permanent table-service restaurant on the first floor, and possibly develop a hotel to be operated in conjunction with the casino.

### **Expansion of Gaming through Racinos**

Louisiana's first "racino" – a casino with slot machines at a horse-racing track – opened in February of 2002 in the southwest Louisiana town of Vinton. The Delta Downs racino, owned by a Boyd Gaming affiliate, Boyd Racing, LLC, contains 1,492 slot machines, and is located just 11 miles from the Texas state line. The 1997 legislation allowing such racinos permits no more than one licensed live horse-racing

facility in each of St. Landry Parish, Bossier Parish, and Calcasieu Parish to operate slot machines in a designated slot machine area not to exceed 15,000 square feet under certain conditions. Delta Downs, in Calcasieu Parish, is one of three of Louisiana's four horse-racing tracks that are eligible for slots. The other two tracks are Louisiana Downs and Evangeline Downs.

Harrah's Entertainment further extended its investments within Louisiana by agreeing to purchase controlling interests in Louisiana Downs, a racetrack in Bossier City, Louisiana. Harrah's plans to install slot machines at the race track following the proposed acquisition, and it anticipates spending approximately \$157 million for the acquisition, slot installation and other renovations. The facility could begin operations in the summer of 2003, and will be the only land-based gaming facility with slots in northern Louisiana.

Evangeline Downs, recently acquired by Peninsula Gaming Partners, is the third racetrack eligible for a racino license. Evangeline Downs is looking to move its racetrack out of Lafayette Parish and into St. Landry Parish. The new track will be approximately 14 miles from the current track. This move is largely being made to allow for the operation of slot machines and off-track betting. Evangeline Downs first considered moving out of Lafayette Parish when a referendum allowing video poker at the racetrack was rejected by Lafayette Parish voters in 1996 and St. Landry Parish voters voted to approve a racetrack with slot machines a year later. Peninsula has purchased 500 acres of land to build the facility. The new racetrack is estimated to cost somewhere between \$80 million to \$90 million.

Due to the success enjoyed by Boyd's racino and the legislation permitting the operation of slot machines and video poker gaming devices at live horse-racing tracks under certain conditions (although race tracks cannot have both slots and video poker), an increase in applications for new horse-racing tracks has resulted. In response to this increased demand, the legislature has requested that the Louisiana State Racing Commission halt consideration of applications pending an economic impact study. The Racing Commission has decided to honor the legislature's request, based on its apparent belief that there is no economic basis for expanding racing in Louisiana, as there are not enough horses for the tracks currently in operation. More tracks would potentially impair the quality and integrity of live horse-racing in Louisiana, which the "slots at the track" legislation was designed to protect.

### **The Lure of the Texas Border**

The success of the Boyd racino at Delta Downs has in large part been due to its proximity to the Texas border, prompting competing riverboat operators in Lake Charles to consider moving their operations to more strategically placed sites. For example, the Isle of Capri wants to move one of its two Lake Charles riverboat casinos to Cameron Parish to get closer to the Texas border. The company proposed a \$50 million project to the parish, and residents of Cameron Parish who cast ballots on the question favored bringing in a riverboat casino by a margin of nearly 8-to-1. This vote may mean nothing, however, because the Louisiana Supreme court in November of 2002 denied the request to hear the parish's appeal of a decision which struck down the referendum. Cameron Parish Police Jury v. McKeithen, No. 2002-

C-2702, (La. Nov. 2, 2002). The 1st Circuit Court of Appeal had previously ruled that the Louisiana law allowing riverboat casino gambling provides that only the legislature can decide what rivers, streams or lakes can be used for dockside casinos. Cameron Parish Police Jury v. McKeithen, No. 2002-CE-2242, 2002 La. App. LEXIS 3243 (La. App. 1st Cir. Oct. 30, 2002). Thus, the votes cast in the referendum, asking voters to consider allowing a riverboat on the Sabine River, were declared null and void. The court held that a local governing body cannot usurp the legislature's constitutional duty to define and suppress gambling. In order to approve the relocation of a riverboat to an area that has no approved casino gambling, the legislature must first approve the waterway as one on which gaming activities can be conducted on a riverboat; therefore, the local referendum on riverboat gaming issues without such a prior designation by the legislature was found illegal and invalid.

### **Ban on Political Contributions Upheld**

Louisiana's ban on political contributions from the land-based and riverboat casino industry contained in La. R.S. 18:1505.2(L) was upheld by the Louisiana Supreme Court in Casino Association of Louisiana v. State, 820 So. 2d 494 (La. 2002). The industry association had sought to have the statute declared unconstitutional for imposing impermissible restraints on the industry's First and Fourteenth Amendment rights. The court found that while restraints which curtail freedom to associate are subject to the closest constitutional scrutiny, the right to participate in political activities is not absolute, and that the states may significantly interfere with such rights where a sufficiently important state interest is demonstrated, and the means of implementing such restrictions are closely

drawn to avoid any unnecessary abridgement of freedoms. The court noted that since the restrictions only affected certain companies and personnel associated with a single land-based casino and fifteen riverboat facilities, the ban would only minimally affect candidates' ability to amass resources necessary for effective advocacy. The fact that the ban was a complete ban rather than a limit on contributions by the affected persons did not render it per se unconstitutional. The court held that the state's interest in preventing corruption and the appearance of corruption was a constitutionally sufficient justification for the statutory ban on campaign contributions by the industry and upheld the restrictions imposed by the statute.

### **Evolution of Dockside Gambling**

The revised design for Louisiana's 15th and final riverboat casino has been approved by the Louisiana Gaming Control Board, after it rejected a previous design submitted by Pinnacle Entertainment Inc. Though Louisiana riverboat gaming legislation no longer mandates that the vessels actually cruise, and allows for full time dockside operation, the statute still mandates that licensees conduct their gaming operations aboard vessels which are 19th-century type paddlewheelers, that pass Coast Guard inspection, are at least 150 feet long, and have the capacity to hold at least 600 passengers. Pinnacle's first design was a long, flat, open-air vessel that would have been housed in a giant garage that resembled a land-based casino from the outside. Pinnacle's efforts to use that barge-type structure were rejected by the Gaming Control Board, with members noting that the legislature would have to amend the statutory requirements mandating use of paddlewheelers before Louisiana riverboats

could convert their operations to barge-like facilities such as those currently used in Mississippi. The revised design which the Gaming Control Board approved more closely resembles a 19th century riverboat, with an external paddlewheel and a smokestack, and is a two-story covered vessel like other Louisiana riverboats. The vessel is to be part of a \$325 million resort in Lake Charles that would include a 22-story hotel, an 18-hole golf course and the state's largest riverboat casino.

### **Proposed Choctaw Casino Opposed**

The Jena Band of Choctaws filed a request with the U.S. Department of the Interior to have approximately 54 acres of land in DeSoto Parish, Louisiana put into trust for later use as the site of its proposed land-based casino. By building the casino in northwest Louisiana, the Jena tribe hopes to attract gamblers from the Dallas-Fort Worth market. By a one-vote margin, the DeSoto Parish Police Jury voted to support the tribe's bid for a casino. But before the tribe can build a casino, the land must be put in trust by the federal government, declared an initial reservation, and the tribe would need to obtain approval for gambling on the site, including a signed compact from the Governor. An economic study revealed that the proposed Jena Choctaw casino, unregulated by state and local government, would be unfair competition for nearby casinos that are required to comply with rules that do not govern Indian casinos. The report indicated that about \$251.6 million would be generated by the Jena Choctaw casino in the first year of operation, taking away about 15 percent of the gross revenues generated by other casinos in the Shreveport/Bossier City gambling market. Based on the potentially negative impact the Jena Choctaw casino would have on the

local riverboat casinos, the Bossier City Council passed a resolution stating its formal opposition to the proposed casino, adding to the list of local governing bodies that have sent letters or resolutions of opposition to the state and federal governments who have a say in the proposal.

### **Cashless Technology**

The next technological step that the Louisiana gaming industry may take is cashless technology. On January 15, 2002, the Louisiana Gaming Control Board unanimously approved a rule to help define how the gaming industry in Louisiana can implement cashless technology. The cashless technology at issue would allow for gamblers to use an electronic card to place into the machine in lieu of feeding the machine cash. The use of credit cards and debit cards will not be allowed. A gambler must use a prepaid casino card to take advantage of the cashless technology of a gaming machine. Issues of security and regulation need to be resolved before Louisiana can move forward with cashless technology and it is unclear when the cashless technology will be implemented.

### **Status of Riverboat Gaming Licenses and Due Process Rights of License Applicants and Holders**

American International Gaming Association, Inc. v. The Louisiana Riverboat Gaming Commission, No. 2000-CA-2864, 2002 La. App. LEXIS 2756 (La. App. 1st Cir. Sept. 11, 2002) (the "AIGA Case") involved a lawsuit which potentially affected the validity of many outstanding Louisiana riverboat gaming licenses. All fourteen of the originally issued Louisiana riverboat gaming licenses (the 15th only being

awarded to Pinnacle Gaming in 2001) were awarded to companies who had first received "certificates of preliminary approval" from the former Louisiana Riverboat Gaming Commission (the "Commission"). The Commission was a rule and policy-making body established to regulate riverboat gaming in Louisiana with the Gaming Enforcement Division of the Louisiana State Police (the "Division") under the Louisiana Riverboat Economic Development and Gaming Control Act adopted in 1991. The Commission subsequently was abolished by the Louisiana Gaming Control Law adopted by the Louisiana Legislature effective May 1, 1996, which transferred all powers of the Commission to the Louisiana Gaming Control Board (the "Board") established as the exclusive regulatory body overseeing the operations of riverboat casinos in Louisiana.

In State v. Louisiana State Police Riverboat Gaming Enforcement Division, 694 So. 2d 316 (La. App. 1st Cir. 1996), the Louisiana First Circuit Court of Appeal ruled in a proceeding unrelated to the AIGA Case that the former Commission's regulations requiring a potential gaming riverboat licensee to obtain a "certificate of preliminary approval" from the Commission were null and void as they impermissibly infringed upon the licensing authority granted to the Division under the original 1991 riverboat gaming law.

Al Copeland, the inventor of the Popeye's fried chicken recipe, had applied for the certificate of preliminary approval through his company, American International Gaming Association, Inc. to operate a riverboat casino in Kenner, Louisiana. The Commission instead awarded a certificate of preliminary approval for a riverboat casino to be operated at that location to the original Treasure Chest Casino ownership group at a

meeting held on June 18, 1993, at which meeting a total of seven such certificates were awarded. Copeland filed suit through his company in November of 1993 seeking reversal of the Commission's issuance of the certificate to the Treasure Chest. Ultimately the Treasure Chest received a gaming license from the Division on May 17, 1994, and Copeland's company never received a certificate or a license.

Copeland's company was later dissolved and he substituted himself as successor to his former company and filed an amended complaint in the AIGA Case in January of 1999. The amended petition no longer sought reversal of the Commission's actions. Rather, it challenged the Division's award of the license to the Treasure Chest, and sought to have the Treasure Chest's gaming license declared null and void because the Division had issued licenses only to applicants who had received the certificates from the Commission without independently verifying which applicants deserved licenses. Copeland also sought monetary damages, alleging that the Division's actions violated his due process and equal protection rights.

In the AIGA Case, the First Circuit Court of Appeal refused to find the Treasure Chest gaming license invalid, holding that the claim was moot. The Treasure Chest's gaming license, issued by the Division in 1994 had expired in 1999 and had since been renewed by the Board. The court said there would be no practical significance to rendering a judgment on the original license which was no longer in effect. This ruling would appear to offer some comfort to those other riverboat gaming licensees whose original licenses were likewise issued by the Division after receiving an initial award of a preliminary certificate of approval from the Commission.

Copeland's claim for damages for alleged due process violations were also denied (though his claims for equal protection violations were remanded to allow him an opportunity to further amend his petition to state a claim for equal protection violations) on the basis that he lacked any cause of action since applicable state law provides a license applicant with no individual entitlement to a license which is being sought. The court acknowledged authority for the proposition that a license, once issued, may create a constitutionally protected property interest for alleged due process violations, but held that Copeland lacked a protected property interest in the benefits conferred by a license that he did not hold. The author of a concurring opinion further argued that while Louisiana's gaming legislation states that gaming licenses only confer a revocable privilege and not a property right, a license once issued cannot be withdrawn by state action without affording the holders of that license full procedural protection of due process.