

## **Resolution #1999-02 (Adopted 6/9/99) - Hearing and Appeal rights of Casino License Qualifiers; conditions and restrictions required to transfer/relinquish interest**

**RESOLUTION NO. 1999-02** (Adopted 6/9/99)

A Board Resolution Stating Michigan Gaming Control Board ("MGCB") Policy Regarding The Hearing And Appeal Rights Of Persons Who Must Qualify As Part Of Casino License Applications, And The Conditions And Restrictions Required For Such Persons To Effectively Transfer Or Relinquish Their Interest In A Casino License Applicant In Order To No Longer Be Required To Qualify As Part Of The Casino License Application Under The Michigan Gaming Control And Revenue Act, As Amended, And Administrative Rules Of The MGCB

WHEREAS, The Michigan Gaming Control Board ("MGCB") has identified certain persons who must be found eligible, suitable and qualified ("qualifiers") as part of the pending casino license applications, because of their ownership interest in, control of, or involvement with, an applicant, pursuant to and in accordance with MGCB Rule 304, MR 432.1304; and,

WHEREAS, MGCB Rule 304 mandates that the identified qualifiers for each casino license applicant must be determined by the MGCB to be eligible, qualified and suitable, in accordance with the licensing standards and criteria set forth in the Michigan Gaming Control and Revenue Act, as amended, 1997 PA 69, MCL 432.201 et seq ("the Act") and Administrative Rules of the MGCB, before the MGCB may grant and issue a casino license to the applicant; and,

WHEREAS, the MGCB must provide a public investigative hearing for each casino license applicant, at which the applicant shall have an opportunity to present evidence to establish its eligibility and suitability to be granted a casino license, pursuant to Section 6(7) of the Act and MGCB Rule 307, MR 432.1307; and,

WHEREAS, qualifiers, who acquired their ownership interest and/or position of control in, or became involved with, a casino license applicant before the applicant filed its license application, have inquired whether they have a right to either participate as parties in the public investigative hearing provided for their applicant, or to appeal for judicial review of a MGCB decision from the hearing that they are individually ineligible, unqualified or unsuitable to have an ownership interest in, control of, or involvement with the casino license applicant, under the licensing standards and criteria of the Act and MGCB Administrative Rules; and,

WHEREAS, qualifiers have also inquired what, if any, conditions or restrictions would be required by the MGCB in transferring or relinquishing their interest or control in a casino license applicant either before or after a determination by the MGCB of their ineligibility, lack of qualification or unsuitability, in order to either effectively disassociate themselves from the applicant and/or no longer be considered a qualifier by the MGCB; and,

WHEREAS, the MGCB believes that it is, accordingly, necessary and appropriate to establish by resolution a clear statement of its policies for casino license applicants and their qualifiers regarding

the aforementioned inquiries and issues relating to a qualifier's right to hearing and judicial review on the issue of his/her eligibility and suitability, and the conditions and restrictions that the MGCB will require for qualifiers to transfer or relinquish their interest or control in a casino license applicant, in order to effectively disassociate themselves individually from the applicant and/or no longer be considered a qualifier by the MGCB under the Act and Rules; now therefore,

IT IS RESOLVED, as follows:

#### 1. Procedural Rights of Qualifiers

(a) MGCB Administrative Rule 307(c)(iii), MR 432.1307(c)(iii), clearly states, in pertinent part, that "(o)nly the board and person applying for the (casino) license at issue may be parties at the public investigative hearing (for the applicant) & ". Therefore, individual qualifiers of the casino license applicant may not participate as parties at the public investigative hearing provided for the applicant.

(b) If requested by the casino license applicant, however, the MGCB or its designated hearing officer may permit an attorney representing an individual qualifier to present evidence and argument on behalf of the qualifier at the public investigative hearing, as part of the applicant's case to establish its eligibility and suitability for licensure at the hearing.

(c) Part 5 of the Administrative Rules of the MGCB pertaining to transfers of ownership interest in a person applying for or holding a casino license do not apply to transfers of ownership interests to persons that occurred prior to the filing of the casino license application. Therefore, individual qualifiers who acquired their interest in a casino license applicant prior to the filing of the casino license application do not have an independent right to a hearing, under MGCB Administrative Rule 505, MR 432.1505, on the issue of their eligibility, qualifications and suitability.

(d) Only the casino license applicant may appeal a MGCB determination of ineligibility or unsuitability and order of disassociation entered in the applicant's public investigative hearing with regard to any of its individual qualifiers. The applicant may authorize counsel for the disassociated qualifier(s) to prosecute the appeal on behalf of the applicant.

(e) If the MGCB determines that a qualifier is ineligible, unqualified or unsuitable and enters an order of disassociation upon completion of the public investigative hearing, and the qualifier is not essential to the business or financial suitability of the applicant's casino proposal, then the MGCB may still issue a certificate of suitability and casino license to the applicant conditioned upon compliance with the MGCB's order of disassociation.

(f) A MGCB order of disassociation will mandate that the casino license applicant or licensee not do any of the following:

(i) make any direct or indirect payments or distributions of revenue or other benefits to the ineligible or unsuitable qualifier which are related in any way to the qualifier's interest in the applicant;

(ii) permit the ineligible or unsuitable qualifier to directly or indirectly exercise any voting rights, management authority or control in relation to the applicant or its casino development or operations;

(iii) pay any direct or indirect compensation to the ineligible or unsuitable qualifier for services rendered to the applicant, unless specifically approved and authorized by the MGCB; or,

(iv) fail to promptly pursue all lawful efforts to require the ineligible or unsuitable qualifier to relinquish all securities and other interest in the applicant, including, if necessary, immediate repurchase of all equity interest in the applicant from the qualifier.

(g) Persons who seek to acquire an ownership interest in a casino license applicant from a qualifier that has been determined to be ineligible or unsuitable by the MGCB or from any other person, after the casino license application has been filed, must apply for and receive approval of the transfer and acquisition from the MGCB, pursuant to Part 5 of the Administrative Rules of the MGCB, before they can acquire and hold the interest. If an application for approval of a transfer and acquisition is initially denied by the MGCB, the person seeking approval to acquire and hold the ownership interest in the casino license applicant or licensee may request a hearing pursuant to Rule 506 and Part 7 of the Administrative Rules of the MGCB.

## 2. Transfer Rights Prior To MGCB Determination of Suitability

(a) A qualifier, who acquired an interest in a casino license applicant before the casino license application was filed, may voluntarily transfer or otherwise dispose of the interest to another person(s), before the MGCB completes the public investigative hearing for the applicant and determines the qualifier's eligibility and suitability to continue to hold the interest.

(b) Persons seeking to acquire a qualifier's interest in a casino license applicant or licensee, before the MGCB has completed the public investigative hearing for the applicant and determined the eligibility and suitability of the qualifier, must apply for and receive approval of the transfer and acquisition from the MGCB, pursuant to Part 5 of the Administrative Rules of the MGCB, before they can receive any benefits or exercise any rights associated with the qualifier's interest they seek to acquire in the casino license applicant or licensee.

(c) If the transfer is made before the MGCB has completed the public investigative hearing for the casino license applicant and determined the qualifier's eligibility and suitability, there is no restriction or limit on the amount of the price that the qualifier may receive for the interest.

## 3. Transfer Rights After MGCB Determination of Unsuitability

(a) Qualifiers who are determined by the MGCB to be ineligible or unsuitable to hold their interest in a casino license applicant or licensee will be required by order of disassociation entered by the MGCB to promptly transfer and relinquish their interest in the applicant or licensee and not permitted to receive any benefits or exercise any rights or control associated with their interest in the applicant or licensee and its casino development or operations.

(b) Persons seeking to acquire the interest of a qualifier determined by the MGCB to be ineligible, unqualified or unsuitable must apply for and receive approval of the transfer and acquisition from the MGCB, pursuant to Part 5 of the Administrative Rules of the MGCB, before they can receive any benefits or exercise any rights associated with the qualifier's interest they seek to acquire in the casino license applicant or licensee.

(c) After the MGCB has determined a qualifier to be ineligible, unqualified or unsuitable to hold an interest in a casino license applicant or licensee, the qualifier will be prohibited, by order of the MGCB, from being paid or receiving a purchase price for his or her interest in the applicant or licensee greater than the lesser of the market value of the interest or the amount the qualifier invested or paid to acquire the interest, as required by Part 5 of the Administrative Rules of the MGCB.

## 4. Required Conditions and Restrictions for MGCB Approval of Transfers of Casino-Related Interests by Qualifiers

(a) In determining whether to approve the transfer of an interest in a casino license applicant or licensee by a qualifier to other persons, pursuant to Part 5 of the Administrative Rules of the MGCB, the MGCB will require the following conditions and restrictions:

(i) The transfer must completely divest the qualifier of all authority, influence, control, rights and benefits associated with the interest being transferred.

(ii) The transfer must be irrevocable. However, a transfer agreement may include an option by the qualifier to repurchase or reacquire the interest provided the option is not exercisable for a period of one-year from the date of the transfer and subject to MGCB approval pursuant to Part 5 of the Administrative Rules of the MGCB.

(iii) Any consideration or other benefit to the qualifier as a result of the transfer must result and flow directly from the transfer agreement.

(iv) The transfer agreement shall not accord the qualifier any right of recourse to the assets or revenues of the casino license applicant or licensee in which the transferee seeks to acquire the qualifier's interest.

(v) If the MGCB has determined the qualifier to be ineligible, unqualified or unsuitable, the transfer shall not provide for payment of a transfer price to the qualifier for his or her interest in an amount greater than the lesser of the market value of the interest or the amount invested or paid by the qualifier to acquire the interest being transferred, as required by Part 5 of the Administrative Rules of the MGCB.

(b) The foregoing conditions and restrictions for approval of transfers of interests in casino license applicants or licensees by qualifiers to other persons are provided for general guidance only. In all instances, the MGCB shall retain full discretion to approve or disapprove proposed transfers of interests in casino license applicants and licensees by qualifiers to other persons on a case by case basis based on an assessment of all relevant facts and circumstances, in order to protect the public interest and enforce the requirements and policies of the Act and Administrative Rules of the MGCB.