



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

May 30, 2001

**Jim Ryan**

ATTORNEY GENERAL

FILE NO. 01-004

SPORTS AND GAMING:  
Relocation of Riverboat  
Within Community, Off River

Mr. Gregory C. Jones  
Chairman of the Board  
Illinois Gaming Board  
160 North LaSalle Street, Suite 300  
Chicago, Illinois 60601

Dear Mr. Jones:

I have your letter wherein you inquire whether, under the provisions of the Riverboat Gambling Act (230 ILCS 10/1 et seq. (West 1999 Supp.)), the Illinois Gaming Board is authorized to permit one of the three riverboats currently licensed to operate on the Mississippi River to be moored at an inland location within the same community in which the boat is currently docked. For the reasons hereinafter stated, it is my opinion that the Gaming Board does not have the authority to permit such a relocation.

Mr. Gregory C. Jones - 2.

According to the information with which we have been furnished, on November 27, 1990, the Illinois Gaming Board granted preliminary approval for the issuance of an owners license to Rock Island Boatworks, Inc., to operate a riverboat casino to be known as the "Casino Rock Island" from a dock in the city of Rock Island, Illinois. The preliminary application for the license recited that the riverboat would be docked at "[a]pproximately mile 482.5 of the Upper Mississippi River along the Illinois riverbank, in the City of Rock Island, Illinois. The dock will consist of a 120 ft. x 60 ft. landing barge moored to the seawall at approximately the foot of 18th Street, Rock Island, Illinois". The Casino Rock Island currently operates at the location specified in the approved application.

Recently, an "intra-community site modification request" was submitted to the Gaming Board on behalf of the owner of the Casino Rock Island, seeking authorization for the riverboat to be moved from its current docksite to a "basin" located inland from the Mississippi River. The basin is apparently currently in use as a sand and gravel pit and is separated from the River by wetlands and certain undisclosed "man made improvements". The request cites safety issues as justification for a modification of the license, and suggests, inter alia, that recent amendments to the Act permit such an "intra-community

Mr. Gregory C. Jones - 3.

relocation". The history and language of the Act, however, compel a contrary conclusion.

As originally enacted by Public Act 86-1029, effective February 7, 1990, the Riverboat Gambling Act authorized the issuance of up to 10 licenses to conduct riverboat gambling on navigable streams either within the State of Illinois or which constitute a boundary of the State (other than Lake Michigan). The Act further required six of the 10 riverboat casinos to be located on specific rivers: four on the Mississippi River; one on the Illinois River south of Marshall County; and one on the Des Plaines River in Will County. Shortly thereafter, the Act was amended by Public Act 86-1389, effective September 10, 1990, to allocate one of the licenses slated for the Mississippi River to East St. Louis.

Section 11.2 of the Riverboat Gambling Act (230 ILCS 10/11.2 (West 1999 Supp.)), which was added by Public Act 91-40, effective June 25, 1999, authorizes the relocation of one of the four riverboats originally licensed to operate on the Mississippi River to another location selected in accordance with the requirements of the Act. Public Act 91-40 also amended several provisions of the Act to permit licensed riverboats to cease cruising and operate from a permanent mooring, and to allow the continuous ingress and egress of passengers for the purpose of

Mr. Gregory C. Jones - 4.

gambling. Further, since the excursion requirements were deleted and navigability of a waterway is, therefore, no longer necessary, references in the Act to "navigable stream" were changed to "water". As amended by Public Act 91-40, sections 3, 4 and 7 of the Act (230 ILCS 10/3, 4, 7 (West 1999 Supp.)) provide:

"Riverboat Gambling Authorized.

\* \* \*

(c) Riverboat gambling conducted pursuant to this Act may be authorized upon any water within the State of Illinois or any water other than Lake Michigan which constitutes a boundary of the State of Illinois. A licensee may conduct riverboat gambling authorized under this Act regardless of whether it conducts excursion cruises. A licensee may permit the continuous ingress and egress of passengers for the purpose of gambling."

"Definitions. As used in this Act:

\* \* \*

(d) 'Riverboat' means a self-propelled excursion boat or a permanently moored barge on which lawful gambling is authorized and licensed as provided in this Act.

\* \* \*

(230 ILCS 10/4(d) (West 1999 Supp.).)

"Owners Licenses.

\* \* \*

(c) Each owners license shall specify the place where riverboats shall operate and dock.

\* \* \*

(e) The Board may issue up to 10 licenses authorizing the holders of such licenses to own riverboats. In the application for an owners license, the applicant shall state the dock at which the riverboat is based and the water on which the riverboat will be located. The Board shall issue 5 licenses to become effective not earlier than January 1, 1991. Three of such licenses shall authorize riverboat gambling on the Mississippi River, one of which shall authorize riverboat gambling from a home dock in the city of East St. Louis. One other license shall authorize riverboat gambling on the Illinois River south of Marshall County. The Board shall issue 1 additional license to become effective not earlier than March 1, 1992, which shall authorize riverboat gambling on the Des Plaines River in Will County. The Board may issue 4 additional licenses to become effective not earlier than March 1, 1992. In determining the water upon which riverboats will operate, the Board shall consider the economic benefit which riverboat gambling confers on the State, and shall seek to assure that all regions of the State share in the economic benefits of riverboat gambling.

In granting all licenses, the Board may give favorable consideration to economically depressed areas of the State, to applicants presenting plans which provide for significant economic development over a large geographic area, and to applicants who currently operate non-gambling riverboats in Illinois. The Board shall review all applications for owners licenses, and shall inform each applicant of the Board's decision.

\* \* \*

(Emphasis added.)

Mr. Gregory C. Jones - 6.

The duties and powers of the Gaming Board were not significantly altered by Public Act 91-40. An obsolete requirement for a study of gambling patterns was deleted, as was a now redundant requirement that the Board authorize the routes and stops that a boat may make when cruising. Other changes in language were made to reflect the repeal of the excursion requirement. (230 ILCS 10/5 (West 1999 Supp.)) New section 11.2, in authorizing the relocation of one licensed boat, is specific to its circumstances, and does not purport to grant to the Board the authority to approve the relocation of licensees generally. (230 ILCS 10/11.2 (West 1999 Supp.))

In opinion No. 95-011, issued September 1, 1995, I addressed the issue of whether the Gaming Board possessed the authority to permit the relocation of a licensed riverboat gambling operation from one location within the State of Illinois to another. After noting that the Act granted no express power to the Board to permit the relocation of operations which have previously been authorized by an owner's license, or to modify the terms of a license once it has been issued, I concluded:

" \* \* \*

Therefore, in the absence of specific statutory authority for the Board to permit the relocation of licensed gambling operations, or a clear indication from other specific provisions that the General Assembly

Mr. Gregory C. Jones - 7.

intended for the Board to have continuing implied authority to revise the terms of owners licenses after they have been issued, it is my opinion that the Illinois Gaming Board does not have the authority to permit the relocation of licensed gambling operations from one location to another. Therefore, if the Board is to exercise such power, it will require a legislative grant thereof.

\* \* \*

"

The amendments enacted by Public Act 91-40 do not address the earlier construction of the Act with respect to the powers of the Board. Public Act 91-40 does not grant to the Board the discretion to revise the terms of licenses generally. Rather, it has been authorized only to issue a single revised license to a licensee which meets the specific and narrow requirements set out in that section. It is uncontradicted that only one of the 10 licensees meets those requirements, and that it is not the Casino Rock Island.

When the General Assembly amends a statute, but leaves unchanged provisions which have been judicially construed, the unchanged provisions will retain the construction given prior to the amendment. (People v. Agnew (1985), 105 Ill. 2d 275, 280.) It has been held that the same reasoning is applicable to amendatory revisions following the issuance of an Attorney General's opinion. (Bruni v. Department of Registration and Education (1974), 59 Ill. 2d 6, 12.) Because Public Act 91-40

Mr. Gregory C. Jones - 8.

did not revise the statutory provisions upon which opinion No. 95-011 relied, it must be concluded that the General Assembly was in agreement with the construction applied to those terms.

It has been suggested that a change in an owners license to permit a riverboat to be moved from its authorized dock to another location nearby is not a "relocation", as that term was used in opinion No. 95-011. In that opinion, I stated:

" \* \* \*

An owners license, once issued, authorizes the operation of riverboat gambling only on a specific navigable waterway, with all riverboats to dock at a single, specified location. Once a license has been issued, there is no statutory procedure for authorizing a change in the terms of the license, including the location of the permitted operations. Indeed, once the Board has issued all authorized owners licenses, it has apparently exhausted its power to act with respect to those licenses, except to the extent that the Board has been granted the power to renew, suspend, revoke or restrict licenses. (230 ILCS 10/5 (West 1994).) If the Board were to revise a license to permit gambling operations to be relocated to another river and dock, it would be tantamount to issuing a new license without the statutory safeguards being complied with, and without the opportunity for other prospective owners to apply.

\* \* \*

"

(Ill. Att'y Gen. Op. No. 95-011, issued September 1, 1995.)

Therefore, the Board does not have the authority to permit any revision to the terms of a license specifying where a riverboat



Mr. Gregory C. Jones - 9.

will dock, which, pursuant to statute, must be described with specificity.

This conclusion is further supported by reference to the proceedings of the General Assembly. During the debate on Senate Bill No. 1017, which was enacted as Public Act 91-40, the House sponsor of the legislation, Representative Brunsvold, was asked on two separate occasions whether the amendments would allow other boats to be relocated to new sites. Specifically, on May 20, 1999, the following exchange between Representatives Davis and Brunsvold was recorded:

" \* \* \*

Davis, S.: 'One other question. The boats who are currently on the Mississippi River.'

Brunsvold: 'Correct.'

Davis, S.: 'Okay. Under current law, what is the current law regarding the moving of these boats to another site?

And...'

Brunsvold: 'There is no language.'

Davis, S.: 'There is no language. Is there language in this Bill that would require three boats to remain on the Mississippi River?'

Brunsvold: 'Yes, there is. The language was changed to... from four to three, now. And this three is in this... is in this

Mr. Gregory C. Jones - 10.

Bill that would require to be... remain on the Mississippi River.'

Davis, S.: 'I want to make sure, for the record, that...'

Brunsvold: 'There are three boats.'

Davis, S.: '... that is very clear, that three boats will remain on the Mississippi River. That they will not end up in Cook County or in the City of Chicago.'

Brunsvold: 'This is the number that's been in the language all along the process.'

\* \* \*

(Remarks of Reps. Davis and Brunsvold, May 20, 1999, House Debate on Senate Bill No. 1017, at 185-86.)

This colloquy between Representatives Black and Brunsvold was recorded on the following day:

" \* \* \*

Black: '\* \* \* Is there anything in the Amendment, excuse me, the Bill as amended, that could be construed as creating an open-ended provision so that a boat, a year or two from now, could petition the Gaming Board to move to a more lucrative area of the state?'

Brunsvold: 'No, because of the definition.'

Black: 'Yesterday, I asked you, the 1991 Enacting Law you have changed as to the number on the Mississippi, correct?'

Brunsvold: 'Correct.'

Black: 'Did you strike anything in the '91 Enacting Law about a city in some eco-

Mr. Gregory C. Jones - 11.

conomic distress would be the site of said riverboat?'

Brunsvold: 'We did not change that language, Bill. There was an intent inferred there, but we didn't change that portion at all.'

Black: 'All right. So, if... if the boat, in fact, in your area would want to move to a more densely populated area, the boat, let's just say at the location in Metropolis, might also want to move to a more densely populated area. This Bill does not allow them to simply go to the Gaming Board and say, "Look we could do much better for you if we were allowed to move to site A or site B."'

Brunsvold: 'No. It does not.'

Black: 'In fact, would it not take action by the General Assembly if one of the existing boats wants to move a year or two or three from now?'

Brunsvold: 'If we, if we for... You know, if my boat, for example in Rock Island, were to fail, that license would become unused, then we would have to come back to the General Assembly and pass another piece of legislation to move that boat.'

\* \* \*

(Remarks of Reps. Black and Brunsvold, May 21, 1999, House Debate on Senate Bill No. 1017, at 210-11.)

Clearly, the General Assembly did not intend for Public Act 91-40 to empower the Board to revise an owners license to permit a riverboat to be relocated to another site, except in the very specific circumstances set out in new section 11.2 of the

Mr. Gregory C. Jones - 12.

Act. Rather, the purpose of Public Act 91-40 was twofold: firstly, to permit one boat currently licensed to operate on the Mississippi River to be relocated to another site; and secondly, to relieve the other boats of the obligation of conducting gambling only while cruising. Nothing in the amendments, however, suggests that there was any intent to revise the meaning of the provisions left unchanged in the Act.

Even assuming, for purposes of this discussion, that the Board could permit the Casino Rock Island to relocate its dock from one riverfront site within the city of Rock Island to another, the relocation of the riverboat to an artificially created basin which is physically separated from the Mississippi River would not be consistent with the statutory requirement that the boat operate "on the Mississippi River".

There can be no doubt that when the Riverboat Gambling Act was originally enacted, the phrase "on the Mississippi River" was intended to mean precisely that. Because gambling could only be conducted during excursion cruises, a riverboat casino could not comply with the Act's requirements unless it was located on a navigable waterway. Although Public Act 91-40 deleted several references to "navigable stream[s]" in the Act concomitantly with the repeal of the cruising requirements, the language of subsection 7(e) of the Act requiring certain licensees to operate "on"

Mr. Gregory C. Jones - 13.

specified rivers was not changed, nor were any provisions clarifying the meaning of that language added. It must be presumed that if the General Assembly had intended to permit riverboat casinos to dock at a location removed from the designated rivers, it would have made appropriate revisions to the language of the Act.

In this regard, I note that the Missouri Supreme Court, when called upon to construe a constitutional amendment authorizing gaming in that State "only upon the Mississippi River and the Missouri River", concluded that land-locked bodies of water near the rivers were not appropriate venues, stating:

" \* \* \*

In sum, the 1994 constitutional amendment authorizes games of chance to be conducted on excursion gambling boats and floating facilities solely over and in contact with the surface of the Mississippi and Missouri Rivers. Such gambling may occur in artificial spaces that are contiguous to the surface stream (and thus river-based); but not in other artificial spaces that are not contiguous to the surface stream of the river (that are land-based). The mere presence of river water in artificial spaces within 1,000 feet of the channel does not make the gambling 'only upon the Mississippi River and the Missouri River.'

\* \* \*

"  
(Akin v. Missouri Gaming Commission (Mo. 1997), 956 S.W.2d 261, 264.)

Mr. Gregory C. Jones - 14.

While this holding is not controlling with respect to Illinois law, the well-reasoned opinion of the Missouri court pertaining to similar issues provides support for the conclusion that a riverboat operating in a basin separated from the Mississippi River would not be "on the Mississippi River", as required by the Act.

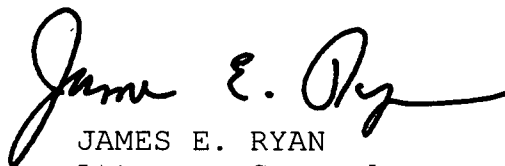
Moreover, I note that the stated purpose of the Riverboat Gambling Act is to assist economic development and promote Illinois tourism. (230 ILCS 10/2 (West 1998).) There was, in the discussion of the original legislation, particular concern expressed with respect to development of tourism related to riverfront areas. (See Remarks of Rep. Giorgi, June 22, 1989, House Debate on Senate Bill No. 572, at 89; Remarks of Rep. Younge, January 11, 1990, House Debate on Senate Bill No. 572, at 38-39.) The relocation of riverboats away from the designated rivers, and thus away from the riverfront areas which their operation was expected to benefit, would be inconsistent with that purpose.

For the reasons stated, it is my opinion that the Illinois Gaming Board is not authorized to permit a licensee to relocate a riverboat gambling operation from its authorized dock

Mr. Gregory C. Jones - 15.

on the Mississippi River to another location inland within the  
same community.

Sincerely,

A handwritten signature in cursive script, reading "James E. Ryan". The signature is written in black ink and is positioned above the typed name and title.

JAMES E. RYAN  
Attorney General