
GAMING REGULATORY JURISDICTION: THE
DUAL CRITERIA OF LOCATION
ACCEPTABILITY AND APPLICANT
SUITABILITY

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I. OVERVIEW

Gaming laws in the United States commonly require regulators to evaluate and approve two criteria before authorizing a casino to conduct gaming operations. The first is “location acceptability,” which requires the casino’s location, size, structure, physical characteristics, and amenities to conform to all applicable local and state rules and regulations.¹ Some jurisdictions, including Iowa, also require the applicant to have a contractual relationship with a nonprofit community organization to meet location acceptability requirements.² The second criterion is “applicant suitability,” which requires the operator of the proposed casino to satisfy and maintain strict background and financial probity requirements established by local and state law.³

This Article examines how Iowa law requires the Iowa Racing and Gaming Commission (IRGC) to follow this process by applying these two distinct gaming license requirements of location acceptability and applicant suitability. The requirements are imposed by Iowa Code sections 99F.5 and 99F.6 and related administrative rules, which provide the IRGC with broad authority to exercise licensing discretion and promote the best interests of the state.⁴ Specific state laws from sister gaming jurisdictions are also

1. *E.g.*, IOWA CODE § 99F.5 (2013); IOWA ADMIN. CODE r. 491-1.7(1), (3)–(5) (2013).

2. *E.g.*, IOWA CODE § 99F.5; IOWA ADMIN. CODE r. 491-1.7(1), (3)–(5).

3. *E.g.*, IOWA CODE §§ 99F.6, 99F.7(8)–(9); IOWA ADMIN. CODE r. 491-1.7(2), 491-5.1.

4. IOWA CODE §§ 99F.5–6; *see also* § 99F.4 (endowing the IRGC with a

discussed to demonstrate how other jurisdictions have applied statutes with similar requirements. The Article's analysis draws from various state gaming laws and administrative regulations, as well as the Authors' own experience in the practice of gaming law.

II. AUTHORITY

The IRGC has express statutory authorization to exercise its licensing authority and discretion to promote the best interests of the state without fear of repercussion. Pursuant to section 99F.4, the IRGC has full jurisdiction over and power to “investigate applicants and determine the eligibility of applicants for a license and to select among competing applicants for a license the applicant which best serves the interests of the citizens of Iowa.”⁵ Licensees are required to “accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license.”⁶ Moreover, an administrative regulation provides that licensees “covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.”⁷

In exercising this power over applicants, the IRGC may pursue the state's interest by denying, or declining to renew, licenses to applicants based on *either* a lack of applicant suitability or a lack of location acceptability.⁸ Accordingly, the IRGC's denial of an initial license or

host of powers through which to exercise “full jurisdiction over . . . all gambling operations”); IOWA ADMIN. CODE r. 491-1.7 (detailing licensing criteria, including whether economic benefits will inure to the state and any “other factors as may arise”).

5. IOWA CODE § 99F.4(1).

6. IOWA ADMIN. CODE r. 491-5.1.

7. *Id.*

8. *See* IOWA CODE § 99F.7 (listing terms and conditions that, if violated or not satisfied, may be grounds for denying or revoking the license); *see also* IOWA ADMIN. CODE r. 491-1.7 (providing licensing criteria the IRGC may consider, including factors indicative of both applicant suitability and location acceptability). The IRGC reviewed 10 license applications for a new excursion gambling boat in 2004 before granting a license to the Clarke County Development Company/Herbst Gaming, Inc. to operate a riverboat in Osceola. *Chronology of the Iowa Racing and Gaming Commission*, Iowa Racing & Gaming Comm'n, <http://www.iowa.gov/irgc/CommChronology.htm> (last visited Feb. 25, 2014). Moreover, in 2010, the IRGC granted a license to Lyon County Resort & Casino, LLC/Lyon County Riverboat Foundation, Inc. while denying the license applications of three other applicants. *Id.* The IRGC denied a license to Webster County Gaming, LLC/Heart of Iowa Foundation in Fort

refusal to renew an existing license for lack of location acceptability or lack of applicant suitability are both instances entirely within the IRGC's authority.⁹

III. LOCATION ACCEPTABILITY VERSUS APPLICANT SUITABILITY

A. Iowa Code

Location acceptability is commonly recognized by gaming regulators throughout the United States as a separate and distinct requirement from applicant suitability that must be satisfied during initial licensure and maintained through subsequent license renewals.¹⁰ The distinction between these requirements is evidenced in the state of Iowa by the structure of Iowa Code sections 99F.5 and 99F.6, which lay out a two-pronged evaluation of location acceptability and applicant suitability.

Specifically, section 99F.5 sets forth several requirements for location acceptability and for an operating agreement between a qualified sponsoring organization and the gaming operator.¹¹ To establish eligibility for licensure, section 99F.5 requires the applicant to enter into an operating agreement with a qualified sponsoring organization and to “identify the excursion gambling boat upon which gambling games will be authorized . . .

Dodge; Ingenus of Iowa, LLC/River Hills Riverboat Authority in Ottumwa; and Signature Management Group of Iowa, LLC/Tama County Community Enrichment, Inc. in Tama. *Id.*

9. See IOWA CODE §§ 99F.4(1), 99F.5–6; see also IOWA ADMIN. CODE r. 491-1.7 (providing standards delineating the IRGC's statutory authority).

10. Compare, e.g., 230 ILL. COMP. STAT. ANN. 10/7(b)(2), (7) (West 2013) (providing that the Illinois Gaming Board must consider facilities when deciding whether to grant an initial license, and may also adopt additional standards that could relate to location acceptability), and STATE OF NEVADA, REGULATIONS OF THE NEVADA GAMING COMMISSION & STATE GAMING CONTROL BOARD § 3.010 (2013) (describing unsuitable locations for licensing applications), with 230 ILL. COMP. STAT. ANN. 10/7(g) (“[A]ll licenses are renewable . . . [if the gaming board determines] that the licensee continues to meet all of the requirements of this Act and the Board's rules.”), and NEV. REV. STAT. § 463.270(1), (3) (2013) (requiring licensees to apply for renewal rather than allowing automatic renewal). For an example of location acceptability in action in Illinois, see *Arch-View Casino Cruises, Inc. v. Ill. Gaming Bd.*, 636 N.E.2d 42, 44–45 (Ill. App. Ct. 1994) (affirming a refusal to issue a license when the proposed site lacked nearby hotel rooms; was in close proximity to “places where women entertainers remove their clothes,” but not to other forms of entertainment; and was within 12,000 feet of two hazardous waste sites).

11. See IOWA CODE § 99F.5.

[and] the exact location where the excursion gambling boat will be docked.”¹² Section 99F.5 also establishes a minimum occupancy requirement of 250 persons to qualify as a suitable excursion gambling boat or gambling structure licensee.¹³

Conversely, while addressing general requirements for qualified sponsoring organizations and certain racetracks, section 99F.6 primarily addresses character suitability requirements of individual applicants and therefore serves as a separate qualification criteria for licensure.¹⁴ It is the initial and ongoing satisfaction of section 99F.5’s location acceptability and operating agreement requirements that establishes standing for applicant suitability and ultimate licensure.¹⁵

12. *Id.*

13. *Id.*

14. *See id.* § 99F.6.

15. *See id.* § 99F.5(1). While the statute does not explicitly require location acceptability approval prior to applicant suitability consideration, as a practical matter certain location acceptability factors must be satisfied before the IRGC will consider applicant suitability. For example, organizational sponsorship—a factor found in Iowa Code section 99F.5 and as part of the location acceptability analysis—is a prerequisite to filing a gaming license application in Iowa. *See IOWA RACING AND GAMING COMM’N, INSTRUCTIONS FOR THE IOWA RACING AND GAMING COMMISSION APPLICATION PROCESS TO ESTABLISH A GAMBLING STRUCTURE 4*, available at <http://iowa.gov/irgc/Greene%20County%20Application%202013.pdf> (“Any gambling structure operator that enters into a gambling games operation agreement or management contract with a qualified sponsoring organization as defined in Section 99F of the Iowa Code may apply to the Commission for a license to operate an approved gambling structure.”). Failing to maintain ongoing compliance with Iowa Code Section 99F.5’s Location Acceptability requirements also voids a licensee’s standing for Applicant Suitability and license renewal, as evidenced by a current dispute between the Belle of Sioux City, L.P. (“Belle”) and the IRGC. Specifically, in June 2012, Belle was unsuccessful in renegotiating its operating agreement with Missouri River Historical Development, Inc. (“MRHD”), the qualified sponsoring organization for Belle’s gambling riverboat in Sioux City. As a result of Belle’s failure to preserve its standing for license renewal by meeting the Location Acceptability requirements of Iowa Code § 99F.5, the IRGC voted to accept new applications for a land-based gaming facility. Shortly thereafter, the IRGC issued the license to Sioux City Entertainment, Inc., (“SCE”) as operator and to the nonprofit entity MRHD as the Qualified Sponsoring Organization. Belle filed suit challenging several decisions of the IRGC, including issuance of the Woodbury County gaming license to SCE. As of March 2014, the dispute is ongoing. *See generally* Dave Dreeszen, *Busy Week Ahead for Sioux City Casino Issues*, SIOUX CITY J., Mar. 1, 2014, http://siouxcityjournal.com/news/local/busy-week-ahead-for-sioux-city-casino-issues/article_9172e720-a2bc-5dfd-a84c-d119620ce840.html.

The twin criteria of location acceptability and applicant suitability are further demonstrated by licensing procedures in Nevada and Mississippi. The following sections will discuss how in these states, like in Iowa, the failure to establish and maintain the requisite location acceptability prevents an applicant or licensee from qualifying for licensure on account of applicant suitability.

B. Nevada Location Acceptability

Like the location acceptability requirements set forth in Iowa Code section 99F.5, a prospective resort hotel applicant in Nevada must satisfy specific occupancy and amenity requirements to be eligible for licensure under the Nevada Gaming Control Act.¹⁶ To qualify as a licensable resort hotel, the establishment must be maintained and held out to the public as a hotel and must provide the following minimum accommodations:

1. In a county whose population:
 - (a) Is 700,000 or more, more than 200 rooms available for sleeping accommodations; or
 - (b) Is 100,000 or more, and less than 700,000, more than 300 rooms available for sleeping accommodations;
2. At least one bar with permanent seating capacity for more than 30 patrons that serves alcoholic beverages sold by the drink for consumption on the premises;
3. At least one restaurant with permanent seating capacity for more than 60 patrons that is open to the public 24 hours each day and 7 days each week; and
4. A gaming area within the building or group of buildings.¹⁷

In addition, the Nevada Gaming Control Act authorizes counties, cities, and towns to require resort hotels to satisfy ancillary local standards as a condition to issuing a gaming license.¹⁸ Accordingly, satisfaction of such local standards serves as an additional requirement to establish

16. NEV. REV. STAT. §§ 463.01865, 463.1605 (2013); *see* IOWA CODE § 99F.5(1) (requiring a minimum capacity of 250 persons).

17. NEV. REV. STAT. § 463.01865.

18. *Id.* § 463.1605(2).

eligibility for ultimate licensure.¹⁹ Moreover, like an Iowa licensee that loses its operating agreement or whose excursion gambling boat's occupancy or location becomes unacceptable,²⁰ a Nevada resort hotel licensee that fails to retain its property in compliance with the requirements of the Nevada Gaming Control Act and any applicable local standards loses its qualification for licensure and standing to maintain its license, which could result in closure of the property.²¹

The deleterious effect of a failure to comply with location acceptability requirements in Nevada was demonstrated by the Siena Hotel Casino's (Siena) narrow escape from the loss of consideration of its new license application, following the property's closure in 2010 and subsequent reopening in 2011.²² The Siena is located in Reno's Truckee River Arts District (Reno District), which was organized after the Siena's opening in 1956 and is no longer zoned for gaming establishments.²³ In October 2010, the Siena closed and it was sold in a bankruptcy auction the following month.²⁴

Similar to Iowa Code section 99F.5's concern for location acceptability, Nevada Gaming Commission regulation 3.010 expressly provides that certain "[p]remises located in a place where gaming is contrary to a valid zoning ordinance of any county or city" may be deemed unacceptable.²⁵ An exception may be made, however, "upon a sufficient showing by the applicant that the premises [were] used for licensed gaming prior to the effective date of the zoning ordinance and that there is good cause why [gaming operations] should be allowed to continue."²⁶ Specifically, Nevada Revised Statutes section 463.1605 allows certain gaming operations to retain their "grandfather" gaming license if the

19. *See id.*

20. *See* IOWA CODE § 99F.5(1).

21. *See* NEV. REV. STAT. §§ 463.01865, 463.1605(1)–(2).

22. *See infra* notes 23–36 and accompanying text.

23. RENO, NEV., ANNEXATION & LAND DEV. CODE § 18.08.405(a)(3) (2013) (setting standards for the Downtown Reno Regional Center (DRRC) overlay district, which includes the Truckee River District); *id.* tbl.18.08-6-A (providing that, while hotels with gaming operations can exist in other areas of the DRRC with a special-use permit, the same is not true for the Truckee River District).

24. Martha Bellisle, *Siena Auctioned Off for \$3.9 Million in Reno*, RENO GAZETTE-J. (Nov. 11, 2010), available at 2010 WLNR 23189726.

25. STATE OF NEVADA, *supra* note 10, § 3.010(2).

26. *Id.*

licensee procured a license before a specified date.²⁷ However, to qualify for the grandfather-license exception, the gaming establishment must concurrently maintain compliance with the local jurisdiction's operating requirements.²⁸ Thus, despite its apparently unacceptable location in the Reno District, the Siena was able to maintain eligibility pursuant to Nevada Gaming Commission regulation 3.010 and local zoning exceptions, the latter of which allow gaming establishments that do not cease operations for six months or longer to be grandfathered into an otherwise unsuitable location.²⁹

Consequently, prior to its review and approval of the Siena's application in April 2011,³⁰ the Nevada Gaming Control Board required confirmation that the Siena was eligible to seek a license by verifying compliance with Reno's grandfather provisions.³¹ The Siena was able to provide this confirmation because it had, in fact, reopened right before the six-month window elapsed.³² However, had the Siena not been able to resume operations within that six-month window, the location would have failed to satisfy the exception afforded by the grandfather provisions, thereby nullifying its eligibility for licensure.³³ If that had occurred, the Siena's license application would have been denied before consideration of applicant suitability solely because location acceptability had not been maintained.³⁴

27. See NEV. REV. STAT. § 463.1605(3) (2013).

28. See *id.* § 463.1605(2).

29. RENO, NEV., ANNEXATION & LAND DEV. CODE § 18.08.502(c).

30. See Nev. Gaming Comm'n, Agenda for the Nevada Gaming Control Board Meeting 6 (Apr. 21, 2011), available at <http://gaming.nv.gov/modules/showdocument.aspx?documentid=5905>.

31. See RENO, NEV., ANNEXATION & LAND DEV. CODE § 18.08.502(a), (c).

32. *Siena Reopens Doors, Casino Opens Thursday*, RENO GAZETTE-J. (Apr. 19, 2011), <http://www.rgj.com/article/20110419/BIZ04/104190314/>; see Tammy Krikorian, *Rapid Siena Closure Surprises Guests, Employees in Reno*, RENO GAZETTE-J. (Oct. 22, 2010), available at 2010 WLNR 21245276.

33. See RENO, NEV., ANNEXATION & LAND DEV. CODE § 18.08.502(c).

34. In practice, the Nevada Gaming Commission requires satisfaction of location acceptability before proceeding to address applicant suitability. For example, the proposed property must be located in a gaming enterprise district or an area that is otherwise zoned to allow local gaming use. See NEV. REV. STAT. § 463.0158 (2013). A gaming application for a proposed location that does not fall within a gaming enterprise district would not progress to the stage of applicant suitability review.

C. Mississippi Location Acceptability

Similarly, under Mississippi's gaming-licensing regime, a finding of location acceptability is a prerequisite to being able to later show applicant suitability and for subsequent licensure and license renewals.

Like the regulatory framework in Iowa—which requires applicants and licensees to show location acceptability in order to appear before the commission for licensing consideration—the Mississippi gaming regulations require applicants to procure gaming site approval before they are deemed eligible to even apply for a gaming license.³⁵ As with a deficiency in the location or operating agreement requirements of Iowa Code section 99F.5, a failure to establish acceptability in Mississippi precludes a prospective licensee from acquiring eligibility for licensure, even when the applicant can demonstrate that they otherwise satisfy the applicant suitability requirements. This was demonstrated by the Mississippi Gaming Commission's (MGC) rejection of Multi Gaming Management and Horseshoe Gaming's proposal to build a casino on the Big Black River in Warren County, Mississippi.³⁶

In 1996, Multi Gaming Management and Horseshoe Gaming applied to the MGC for approval of a location along the Big Black River “as a legal and suitable site for gaming.”³⁷ At the time of the application, Horseshoe Gaming was an existing Mississippi gaming licensee in good standing for another location in Tunica, Mississippi, and therefore was in compliance

35. Specifically, the Mississippi regulation provides:

With respect to gaming site approval, approval constitutes only the Commission's finding that the location complies with applicable gaming laws and regulations. Gaming site approval does not entitle the recipient to approval to proceed with development, nor does it constitute a license to engage in gaming or a right to a gaming license.

13-2.1 MISS. CODE R. § 1.4 (LexisNexis 2013). In addition, the regulation clarifies the Mississippi Gaming Commission's authority to review and approve each prospective location for compliance with the acceptability requirements. *Id.* The two-step nature of the regulation is further evidenced in section 1.3, which provides: “The Commission may, in its discretion, grant approval of gaming sites. The Commission has divided the approval process into two separate phases: 1. Gaming site approval; and 2. Approval to proceed with development.” *Id.* § 1.3(h). In practice, site approval constitutes the first phase.

36. Harrah's Vicksburg Corp. v. Pennebaker, 812 So. 2d 163, 169–70 (Miss. 2001).

37. *Id.* at 166.

with the MGC's applicant suitability requirements.³⁸ However, after conducting a public site assessment hearing, the MGC ruled that the Big Black River site was unacceptable for gaming operations pursuant to section 75-76-77 of the Mississippi Code.³⁹ The MGC's decision that the site was not acceptable for gaming was based on several factors, including "analysis of the adverse effects the project would have on the historical and archeological sites along the river," "evidence of the adverse economic impact of the project," and "evidence of the detrimental impact the project would have on employment opportunities and tourism."⁴⁰

As a result, Multi Gaming Management and Horseshoe Gaming were unable to establish the prerequisite qualifications for the MGC's applicant suitability review and proceed with an application for licensure. The fact that Horseshoe Gaming was in compliance with the applicant suitability provisions of the Mississippi Gaming Control Act for another property in Mississippi had absolutely no bearing on the MGC's location acceptability determination, which further manifests the divergent and separate nature of location acceptability and applicant suitability requirements.⁴¹

IV. APPLICANT SUITABILITY

In contrast to location acceptability requirements, the issue of applicant suitability initially arises following an applicant's establishment of eligibility for licensure for new casino projects. It may also become a concurrent factor when licensing renewals come due for existing casinos, as addressed in Part V below.

A clear example of a licensing determination based on lack of

38. See MISS. GAMING COMM'N, HISTORY OF LICENSURE FOR OPERATING CASINOS (2013), available at http://www.msgamingcommission.com/images/uploads/r_o_hist_licensees.pdf.

39. See *Harrah's Vicksburg*, 812 So. 2d at 168–70.

40. *Miss. Gaming Comm'n v. Pennebaker*, 824 So. 2d 522, 556 (Miss. 2002).

41. Indeed, neither published opinion even makes mention of the Tunica location, or that Harrah's otherwise satisfied applicant suitability requirements. In the legal battle that ensued after the MGC's determination, the Mississippi Supreme Court concluded that the MGC did not exceed its authority in exercising discretion with regard to location acceptability. *Id.* at 555. While acknowledging that the MGC's location acceptability determination was supported by substantial evidence, the Mississippi Supreme Court noted that "any' evidence would have sufficed" because the MGC was acting within the scope of its authority. *Id.* The Mississippi Supreme Court's ruling demonstrates the deference afforded to the licensing decisions of gaming regulators.

applicant suitability in an initial application is the 10th casino license issued in Illinois, which remained unused for nearly 14 years as a result of licensee malfeasance.⁴² Although the 10th license had been dormant since the closure of the Silver Eagle Casino in 1997, the Illinois Gaming Board allowed Emerald Casino Inc. (Emerald) to file an application for licensure in 1999 following legislative maneuvering that directed the license to be used near Chicago.⁴³ At the time, Emerald was the only applicant that was eligible for a license application and approval of relocation under the Illinois statute—which requires (1) that the applicant was not conducting riverboat gambling on January 1, 1998 and (2) that the applicant procure approval from the new municipality or county to which the licensee wishes to relocate.⁴⁴ However, in 2001, the Illinois Gaming Board issued a written notice denying Emerald’s license renewal application and relocation request⁴⁵ due to applicant suitability issues.⁴⁶ Specifically, information surfaced that Emerald representatives had lied during the license investigation process, while others associated with Emerald had confirmed ties to organized crime.⁴⁷ Thus, although satisfying the Illinois statute’s riverboat gambling and location acceptability requirements—thereby establishing eligibility to proceed with the licensing process—Emerald’s applicant suitability shortcomings ultimately led the Illinois Gaming Board to deny the application.⁴⁸

V. CONDITIONAL LICENSES

A. *The Impact of Conditions*

Iowa Administrative Code rule 491-5.1 confirms the conditional nature of gaming licenses, as well as a licensee’s ongoing obligation to

42. See *Illinois’ 10th Casino License Finally in Use After 14 Years*, ROCKFORD REG. STAR (July 19, 2011), <http://www.rrstar.com/x121483546/Illinois-10th-casino-license-finally-in-use-after-14-years>.

43. Ameet Sachdev, *Emerald Casino Saga Continues with Trial of Former Directors*, CHI. TRIB. (Nov. 9, 2010), http://articles.chicagotribune.com/2010-11-09/business/ct-biz-1109-chicago-law--20101109_1_final-casino-license-emerald-casino-unused-license.

44. *Emerald Casino, Inc. v. Ill. Gaming Bd.*, 880 N.E.2d 217, 219 (Ill. App. Ct. 2007) (quoting 230 ILL. COMP. STAT. ANN. 10/11.2(a) (West 2004)).

45. *Id.*

46. Sachdev, *supra* note 43.

47. *Id.*

48. *Id.*

remain in good standing for licensure by satisfying certain suitability requirements.⁴⁹ This section provides:

[T]he requirements placed upon an applicant shall become a requirement to the licensee once a license to . . . operate a gaming facility has been granted. Every license is granted *upon the condition* that the license holder shall accept, observe, and enforce the rules and regulations of the commission. . . . The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times.⁵⁰

Although the implications of a limited and conditional license are not expressly addressed in the Iowa Administrative Code, the Colorado State Administrative Procedure Act, which governs the rulemaking and licensing actions of the Colorado Division of Gaming and Colorado Limited Gaming Control Commission,⁵¹ does clarify its impact on a licensee and is thus instructive as to the meaning of an Iowa conditional license grant. Pursuant to Colorado Revised Statutes section 24-4-104(11), “[a] limitation, unless consented to by the applicant, on a license applied for shall be treated as a denial.”⁵² Thus, under Colorado administrative law, a conditional license is technically a denial that does not go into effect so long as the licensee continues to satisfy the condition.

Applying this rationale to Iowa’s gaming license regime, a licensee’s failure to fulfill either its ongoing location acceptability or applicant suitability obligation may be deemed to trigger an automatic revocation of the license or, absent appropriate redress, supports the denial of a subsequent application for renewal.

Moreover, this discretionary authority afforded to the IRGC with regard to licensing decisions is inherent in Iowa’s regulatory regime.⁵³ When the Iowa legislature legalized gambling, it determined that it was in the public interest to require license renewals, thereby granting to the IRGC the authority to issue conditional licenses or withhold licensure

49. IOWA ADMIN. CODE r. 491-5.1 (2013).

50. *Id.* (emphasis added).

51. See COLO. REV. STAT. § 24-4-107 (2013) (providing that the Colorado State Administrative Procedure Act “applies to every agency of the state having statewide territorial jurisdiction”).

52. *Id.* § 24-4-104(11).

53. See IOWA CODE § 99F.4 (2013).

altogether to protect the best interests of the state.⁵⁴ Unlike the event-based gaming licensure system of Nevada, which effectively results in perpetual licensure until another license-triggering event obligates the licensee to apply for a new approval,⁵⁵ Iowa—like every other state that has subsequently legalized gambling since Nevada—followed New Jersey’s licensing model whereby licensees must seek periodic renewal.⁵⁶

All jurisdictions that have adopted the periodic-renewal model, including Iowa, have codified the license-renewal concept as well as the respective gaming commissions’ authority to evaluate the suitability of applicants.⁵⁷ Thus, absent express limitations, the policy underlying the periodic license renewal system—to promote the best interests of the state—affords gaming regulators full authority to withhold a license or a renewal for any reason, including lack of maintaining either location acceptability or applicant suitability.

Notably, the licensing decisions of state gaming authorities in Missouri, Pennsylvania, Indiana, and Mississippi are commonly made with an eye toward the public interest as well as license conditions that, if unsatisfied, justify revocation or denial of a renewal application. As noted above, such license revocations and denials are within the discretionary authority of the respective gaming regulatory agency. Each of the license revocations and conditions summarized below evidence a gaming regulatory agency’s broad authority to revoke, condition, or decline to renew licenses for reasons aside from malfeasance or applicant suitability factors, including location acceptability.

54. *See id.* §§ 99F.4(1), 99F.7.

55. *See* NEV. REV. STAT. § 463.270 (2013).

56. IOWA CODE § 99F.7(1) (setting the maximum license duration at three years); *see also* N.J. STAT. ANN. 5:12-87.1 (West 2012) (requiring documentation of compliance with the licensing requirements to be submitted every five years).

57. CAL. BUS. & PROF. CODE §§ 19857, 19876 (West 2008 & Supp. 2013); 230 ILL. COMP. STAT. ANN. 10/7 (West 2013); IND. CODE ANN. §§ 4-35-4-1(b)(4), 4-35-5-4 (LexisNexis 2008); IOWA CODE § 99F.7; LA. REV. STAT. ANN. §§ 27:233, 27:250 (2011); ME. REV. STAT. ANN. tit. 8, §§ 1011, 1016(2)–(3), 1018(2) (Supp. 2013); MICH. COMP. LAWS ANN. §§ 432.204a(1)(a), 432.206(8) (West 2001); MO. ANN. STAT. §§ 313.805(1), 313.807(1) (West 2011 & Supp. 2013); NEV. REV. STAT. §§ 463.170, 463.270(1)–(2); N.J. STAT. ANN. §§ 5:12-63(1)(a), 5:12-87.1, 5:12-95; OHIO REV. CODE ANN. §§ 3772.10, 3772.15 (LexisNexis 2012 & Supp. 2013).

B. Missouri License Revocation—Financial Performance

The authority to revoke a gaming license for reasons other than malfeasance was exercised by the Missouri Gaming Commission in 2010 when it effectively revoked Pinnacle Entertainment's license for the President Riverboat Casino.⁵⁸ As justification for the license revocation, the Missouri Gaming Commission cited the drastic financial decline of the property, stating that the President Riverboat Casino was "performing at a level that is unacceptable. It's below those levels of even the rural casinos. It's less than half of other metropolitan area casinos, and there's no reason to believe that it's going to change."⁵⁹ The facility in question was an older riverboat casino and did not have the related infrastructure or amenities (factors in location acceptability) to compete effectively with other larger Missouri casinos.⁶⁰

Although it rescinded a gaming license for reasons other than malfeasance, the Missouri Gaming Commission was nevertheless acting within its discretionary licensing authority. Moreover, the President Riverboat Casino's license revocation had no effect on Pinnacle Entertainment's gaming licenses for its River City and Lumière Place Casino properties, also in Missouri, nor on other Pinnacle licenses in other states,⁶¹ lending further support for the independent inquiries and licensing requirements applicable to location acceptability and applicant suitability.

C. Pennsylvania License Revocation—Project Financing

Similar to the eligibility requirements for licensure in Iowa, which require applicants and licensees to meet and maintain the location acceptability and operating agreement requirements set forth in section 99F.5 of the Iowa Code,⁶² the Pennsylvania Gaming Control Board

58. While Pinnacle Entertainment eventually surrendered the license, the Missouri Gaming Commission induced Pinnacle's decision by moving to strip the license based on the property's weak financial performance. Tim Logan, *Pinnacle, State Reach Deal to Close President Casino*, ST. LOUIS POST-DISPATCH (Mar. 11, 2010), http://www.stltoday.com/business/pinnacle-state-reach-deal-to-close-president-casino/article_d0107707-67b7-5627-8dd4-63a858e63e4f.html.

59. See Mo. Gaming Comm'n, Meeting Minutes 8 (Jan. 27, 2010), available at http://www.mgc.dps.mo.gov/minutes_agendas/2010_ma/01-27-2010.pdf.

60. See *id.*; Logan, *supra* note 58 ("[T]he President [Riverboat Casino] . . . was due for a July hull inspection that it was widely expected to fail.").

61. See Logan, *supra* note 58.

62. IOWA CODE § 99F.5.

(PGCB) requires applicants and licensees to satisfy ongoing financial suitability obligations.⁶³ The PGCB regards the licensee's financial suitability for the proposed project "as a key component of the privilege to hold a casino license in Pennsylvania."⁶⁴

Accordingly, in 2010, the PGCB revoked the slot machine license of Philadelphia Entertainment and Development Partners, L.P., commonly referred to as Foxwoods, as a result of the licensee's failure to meet construction financing conditions associated with its proposed casino project.⁶⁵ Specifically, the PGCB revoked Foxwoods's license for the following reasons, none of which involved misconduct: (1) failing to submit architectural renderings and other documents relating to construction of a facility substantially similar to that which the board had previously approved (location acceptability); (2) failing to submit definitive financial documents for the Foxwoods Casino project (applicant suitability); (3) failing to secure and maintain the requisite financing (applicant suitability); (4) failing to submit a project timeline for commencement and completion of all phases of the facility (applicant suitability); and (5) Foxwoods's inability to complete the project by the approved deadline (applicant suitability).⁶⁶

In the litigation that followed the PGCB's licensing determination, the court rejected an appeal lodged by Foxwoods's investors and deferred to the licensing discretion of the Pennsylvania gaming regulators.⁶⁷ The fact that the revocation decision was based on factors unrelated to malfeasance did not detract from the PGCB's licensing authority nor did it affect the decision, which was deemed to be within the proper discretion of the Pennsylvania gaming authorities.⁶⁸ Hence, this action was based on what would be considered location acceptability and applicant suitability factors as defined in this Article.

63. 4 PA. CONS. STAT. ANN. § 1313(a) (West 2008).

64. Suzette Parmley, *Judges Reject Foxwoods' Appeal of Its Casino License Revocation*, PHILA. INQUIRER (Nov. 11, 2011), http://articles.philly.com/2011-11-11/news/30387345_1_philadelphia-entertainment-foxwoods-casino-license (quoting Doug Harbach, a spokesman for the PGCB) (internal quotation mark omitted).

65. *See* Phila. Entm't & Dev. Partners, L.P. v. Pa. Gaming Control Bd., 34 A.3d 261, 263–64, 267 (Pa. Commw. Ct. 2011).

66. *See id.* at 264–67.

67. *See id.* at 279–80.

68. *See id.* at 267–68.

D. Indiana Conditional License Transfer

In addition to licensing decisions based on factors aside from misconduct or applicant suitability, gaming authorities customarily place conditions on licensees for reasons unrelated to acts of malfeasance. For instance, in 2011, the Indiana Gaming Commission (IGC) placed conditions on a gaming licensee that had not engaged in any wrongdoing but was undergoing a transfer of ownership.⁶⁹ In that case, the Majestic Star Casino appeared before the IGC for approval to transfer a 48 percent ownership interest to a third party as part of its bankruptcy plan.⁷⁰ Contesting the transfer of ownership, the City of Gary argued that the Majestic Star Casino had failed to perform under its local development agreements and was, therefore, in breach of its gaming license.⁷¹ As a result, the city argued that the Majestic Star Casino should be found unsuitable for purposes of licensure and the transfer at issue (a location acceptability factor).⁷²

Notwithstanding the city's objection, the IGC approved the Majestic Star Casino's transfer of ownership.⁷³ However, the IGC imposed three conditions that it regarded as "standard" for license transfers that arise as part of a gaming licensee's Chapter 11 plan of reorganization: (1) the financing must close; (2) the commission must receive all the financing documents; and (3) all the key players must remain in full compliance with the gaming laws.⁷⁴ In addition, the IGC imposed two licensee-specific conditions: (1) Majestic Star Casino, the acquiring entity, and any other relevant affiliates would not contest the transfer fee due; and (2) Majestic Star Casino would continue to pay under the local development agreement and to negotiate in good faith with regard to issues raised by the city.⁷⁵

69. Ind. Gaming Comm'n, Order No. 2011-256, at 2 (Nov. 10, 2011), available at <http://www.in.gov/igc/files/2011-256-order.pdf>.

70. *Id.* at 1.

71. See Ind. Gaming Comm'n, Business Meeting Minutes 11 (Nov. 10, 2011), available at <http://www.in.gov/igc/files/2011-11-10-Min.pdf>.

72. *See id.*

73. Ind. Gaming Comm'n, *supra* note 69, at 2.

74. *Id.*

75. *Id.* The Indiana Code imposes the transfer fee:

A transfer fee is imposed on a licensed owner who purchases or otherwise acquires a controlling interest, as determined under the rules of the commission, in a second owner's license. The fee is equal to two million dollars (\$2,000,000). The commission shall collect and deposit a fee imposed under

Thus, while the Majestic Star Casino had not engaged in any act of malfeasance, it was nevertheless subject to license conditions related to location acceptability factors.⁷⁶ Moreover, had the Majestic Star Casino failed to satisfy the conditions, the IGC most likely would have revoked its approval for the ownership transfer at issue or revoked the Majestic Star Casino's gaming license.

E. Mississippi Conditional/Limited Renewals

In Mississippi, the MGC has similarly placed conditions on gaming licenses—including conditions on extensions and renewals of such licenses—for reasons entirely unrelated to acts of malfeasance and applicant suitability, but rather based on location acceptability factors.⁷⁷ Specific examples of such conditions ordered by the MGC include, but are not limited to, those relating to licenses issued to the Sheraton Casino, the Treasure Bay Casino Biloxi, and the Lady Luck Casino.⁷⁸

1. Sheraton Casino (*Sheraton Tunica Corporation*)

In 1996, when the Sheraton Casino (Sheraton) came up for its license renewal, the MGC requested the Sheraton appear before the MGC on a bimonthly basis and provide them with a status update regarding the entity's infrastructure and its ongoing compliance with Mississippi gaming requirements related to location acceptability issues.⁷⁹ Specifically, the MGC required Sheraton to build a hotel adjacent to its casino barge to be eligible for its license renewal.⁸⁰ In addition to conditions related to compliance with Mississippi law and the Gaming Control Act, the MGC

this subsection in the state general fund.

IND. CODE ANN. § 4-33-4-21(d) (LexisNexis 2008).

76. See Ind. Gaming Comm'n, *supra* note 69, at 2.

77. See, e.g., Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting 4-5 (June 20, 1996) [hereinafter MGC Minutes June 1996], available at http://www.msgamingcommission.com/files/minutes_archive/M960620.pdf.

78. See *id.* at 15-16; Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting, 17-18 (Mar. 26, 1998) [hereinafter MGC Minutes March 1998], available at http://www.msgamingcommission.com/files/minutes_archive/M980326.pdf; Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting, 5-6 (Aug. 15, 1996) [hereinafter MGC Minutes August 1996], available at http://www.msgamingcommission.com/files/minutes_archive/M960815.pdf.

79. MGC Minutes June 1996, *supra* note 77, at 16.

80. See *id.*; see also 13-2.1 MISS. CODE R. § 1.5(a) (LexisNexis 2013) (defining infrastructure as requiring a minimally sized hotel or limited other options).

conditioned the Sheraton's license renewal on the successful completion of certain infrastructure development plans within a specific time frame.⁸¹ The MGC imposed identical conditions, for the same reason, on Circus Circus's gaming license renewal in 1996, further evidencing gaming regulators' authority to impose conditions, revoke licenses, or deny renewals not for licensee malfeasance, but rather for location acceptability factors.⁸²

2. *Treasure Bay Casino Biloxi*

Similarly, the MGC has repeatedly granted the Treasure Bay Casino Biloxi (Treasure Bay) a one- to three-year gaming license subject to its compliance with various conditions, including the establishment of a compliance review and reporting system and agreement to adjudicate all issues relating to the license in Mississippi courts.⁸³ Additionally, the MGC imposed the following conditions on Treasure Bay during its license hearings in 1994, 1996, 1998, and 2003: (1) continued compliance with Mississippi law, particularly the Mississippi Gaming Control Act, along with all policies, rules, and regulations adopted by the MGC;⁸⁴ (2) no opening to the public or conducting any "gaming until an inspection of the vessel and infrastructure is completed; and a review of the license file is completed; and commission approval is granted;"⁸⁵ (3) continued compliance "with the definition of navigable waters . . . in the Miss. Code of 1972, as amended;"⁸⁶ and (4) the conditional license could only be granted "[p]ending receipt of satisfactory agency checks of key principal."⁸⁷

81. MGC Minutes June 1996, *supra* note 77, at 16.

82. Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting 5-6 (July 18, 1996) [hereinafter MGC Minutes July 1996], *available at* http://www.msgamingcommission.com/files/minutes_archive/M960718.pdf.

83. *E.g.*, MGC Minutes March 1998, *supra* note 78, at 17; Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting 10 (Mar. 19, 2003) [hereinafter MGC Minutes March 2003], *available at* http://www.msgamingcommission.com/files/minutes_archive/M030319.pdf.

84. *E.g.*, Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting 11 (Apr. 21, 1994) [hereinafter MGC Minutes April 1994], *available at* http://www.msgamingcommission.com/files/minutes_archive/M940421.pdf; MGC Minutes March 1998, *supra* note 78, at 17; MGC Minutes March 2003, *supra* note 83, at 10.

85. *E.g.*, MGC Minutes April 1994, *supra* note 84, at 11.

86. MGC Minutes March 1998, *supra* note 78, at 17.

87. MGC Minutes April 1994, *supra* note 84, at 11; *see also* MGC Minutes March 1998, *supra* note 78, at 17; MGC Minutes March 2003, *supra* note 83, at 10.

3. *Lady Luck Casino*

In 1996, the MGC issued the Lady Luck Vicksburg casino a two-year gaming license conditioned upon eight requirements, including one that prohibited the Lady Luck from opening its doors to the public or conducting any gaming operations until an inspection of the vessel and its infrastructure was completed, the licensee's gaming file was reviewed, and the commission granted approval.⁸⁸ Moreover, the commissioners requested that Lady Luck Biloxi, Inc. meet with a MGC representative every month and appear before the MGC every three months to provide status reports with regard to its compliance and progress with the MGC's conditions.⁸⁹ Comparable conditions were imposed on Lady Luck in its subsequent licensing approval in 1998.⁹⁰

Thus, granting a license to an applicant who agrees to comply with corresponding conditions fits squarely within the discretionary licensing power of gaming authorities. Moreover, granting a license with conditions is neither required nor does it deprive the regulator of its authority to revoke that license later for failing to comply with the license conditions or for other reasons aside from malfeasance. As illustrated by the Colorado State Administrative Procedure Act and the licensing decisions of numerous other states, a licensee's failure to fulfill either its ongoing location acceptability or applicant suitability obligations supports both an immediate revocation and the denial of a subsequent application for renewal.

VI. CONCLUSION

The Iowa gaming regulatory scheme imposes dual requirements of location acceptability and applicant suitability, which the IRGC may

88. MGC Minutes August 1996, *supra* note 78, at 5.

89. MGC Minutes July 1996, *supra* note 82, at 12.

90. See Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting 13–14 (July 16, 1998), available at http://www.msgamingcommission.com/files/minutes_archive/M980716.pdf. Similarly, the MGC approved multiple 2 to 3 year gaming licenses for the Las Vegas Casino that were conditioned upon several of the general requirements referenced above for other Mississippi gaming licensees. See, e.g., Miss. Gaming Comm'n, Minutes of the Regular Monthly Meeting 4–5 (Jan. 31, 1996), available at http://www.msgamingcommission.com/files/minutes_archive/M960131.pdf. In 1996, however, the MGC also imposed a condition that required the Las Vegas Casino to complete infrastructure development plans within stated time lines as a condition of its license. *Id.* at 5.

enforce in the exercise of its broad discretionary powers. Section 99F.5 of the Iowa Code imposes an initial location acceptability requirement on applicants⁹¹ and, pursuant to section 491-5.1 of the Iowa Administrative Code, an ongoing suitability requirement on licensees.⁹² As evidenced by the decisions of gaming regulators in numerous other jurisdictions, location acceptability is relevant both as a preliminary licensing inquiry and as an ongoing suitability determination. Accordingly, licensing decisions based on compliance with location acceptability as well as applicant suitability are patently within the IRGC's scope of authority and may be considered in its discretion to promote the best interests of the state.

91. IOWA CODE § 99F.5 (2013).

92. IOWA ADMIN. CODE r. 491-5.1 (2013).