

July 16, 2010

Volume 16, Issue 23

For more information on Michigan's gaming industry, please visit www.michigangaming.com

Editor in Chief:

David D. Waddell, Esq.

Phone: 517.507.3859

waddell@rmclegal.com

Senior Gaming Analyst
& Editor:

Robert R. Russell, II

Phone: 517.507.3858

russell@rmclegal.com

Reporter

Douglas L. Minke

Phone: 313.221.9380

minke@rmclegal.com

Reporter

Blaine R. DeGracia

Phone: 517.507.3857

degracia@rmclegal.com

Subscription information:

info@michigangaming.com

A publication of

RMC Ventures, LLC

University Place Center
333 Albert Ave, Suite 450
East Lansing, MI 48823
Phone: 517.507.3860
Fax: 517.908.0235
www.rmclegal.com

The MICHIGAN GAMING Newsletter



CASINO EXPANSION INITIATIVES FAIL TO MAKE MICHIGAN BALLOT

Proponents for two separate petitions to expand casino gaming in Michigan have failed to collect the required amount of signatures to be included on the November, 2010, statewide ballot.

Ken Silfven, spokesperson for the Michigan Secretary of State, confirmed last Tuesday that neither casino expansion group submitted signatures to the organization by the July 5, 2010 deadline.

The group, *Michigan Is Yours*, sought to allow a total of seven additional casinos in the cities of Muskegon, Lansing, Detroit, Detroit/Wayne County Metropolitan Airport, Benton Harbor, Flint, and Port Huron. In addition, the plan exclusively authorized C-My-Casino Inc. (or its assignee) to develop and conduct casino gaming at the new casinos. The effort was supported by Benton Harbor Mayor Wilce Cooke and former Detroit gaming commissioner Frank Stella.

A separate petition, headed by the organization, *Racing to Save Michigan*, a group led by Hazel Park Harness Raceway CEO Dan Adkins, sought to amend Michigan's Constitution to authorize eight new casino gaming venues in the state. Specifically, five licenses would have been granted to Michigan's horse racetracks to create 'racinos' and three other licenses would have been given to independent casinos in Michigan under this proposal.

Under the Michigan Constitution, both ballot initiatives required signatures to be collected from Michigan residents totaling ten percent of the votes cast in the last governor's election to amend the constitution. In this case, 380,126 signatures were required to be filed with the state by July 5, 2010.

SECOND MICHIGAN CLUB GAMES LOTTERY BOYCOTT PROCEEDS

This past Saturday and Sunday, and in a second attempt to protest Michigan's statewide smoking ban, "Protect Private Property Rights in Michigan," a Facebook group (<http://www.facebook.com/#!/group.php?gid=201889528790&ref=ts>) encouraged Michigan bars to refuse the sale of Michigan Lottery Club games.

According to the group's facebook page, the organizers of the boycott told the bars and restaurants to continue to operate the machines. The group notified those participating in the boycott to log into the lottery system on Saturday and Sunday, but to not sell Michigan Lottery tickets at their establishments. Notably, a Bureau of State Lottery spokesperson stated that some licensing action may be taken against any bar or restaurant owners who refuse Michigan Lottery sales.

The statewide smoking ban went into effect May 1, 2010 and prohibits smoking in most public places where food or drink are served. The group currently has over 3,200 members.

OHIO COMMERCIAL CASINO UPDATE

In November of 2009, voters in Ohio passed a constitutional amendment allowing for four casinos to operate within the state, one each in the cities of Cincinnati, Cleveland, Columbus, and Toledo, respectively. As part of the constitutional amendment, Penn National Gaming, Inc. (Penn National) and Rock Ventures, LLC (Rock Ventures) will each control two properties in the state with Penn National controlling the Columbus and Toledo sites and Rock Ventures controlling the Cincinnati and Cleveland sites.

On Friday, June 4, 2010, the Ohio General Assembly passed Amended Substitute for House Bill 519 (H.B. 519) setting forth the rules and regulations for Ohio's four commercial casinos. The bill was officially signed into law by Governor Ted Strickland on June 10.

"This legislation establishes a regulatory structure to protect the interests of Ohioans and make sure that casinos are operated with high levels of integrity, while maintaining local control and decision-making authority," Gov. Strickland said in a press release. "I believe it will facilitate the creation of Ohio jobs and economic opportunity in our communities."

The legislation creates a seven-member Ohio Casino Control Commission as well as a separate and permanent, six-member legislative Joint Committee on Gaming and Wagering intended to review gaming laws and rules.

Specifically, H.B. 519 stipulates:

- o A \$2 million application fee to each casino site licensee;
- o Creation of a seven-member state casino commission with each member serving staggered four-year terms;
- o Casino license subject to renewal every three years;
- o Patrons must be at least 21 years of age to gamble;
- o No smoking;
- o No alcohol after 2:30 a.m.;
- o Unlimited number of table games, but no more than 5,000 slot machines per location; and
- o Casino operators are free to set minimum and maximum wagering criteria, upon approval from the state gaming commission.

Gov. Strickland also noted that: "[h]owever, I am disappointed that this bill also creates a new income tax deduction for gambling losses on bets placed at casinos, horse races, bingo halls and other forums, both in state and out of state. This new tax deduction represents a policy shift for the state of Ohio, which has never before used its income tax laws to subsidize losses incurred from gambling." Gov. Strickland stated that the Ohio Department of Taxation estimates that this tax deduction will reduce the state budget by an estimated \$60 million to \$80 million per budget cycle starting in fiscal year 2014.

H.B. 519 officially becomes Ohio law on August 8, 2010.

(Continued on page 3)

For the specific language H.B. 519, please visit http://www.legislature.state.oh.us/bills.cfm?ID=128_HB_519.

LAKES ENTERTAINMENT ANNOUNCES TERMINATION AGREEMENT

On Tuesday July 13, 2010, Lakes Entertainment, Inc. (“Lakes”) announced that it has entered a Termination Agreement with Penn Ventures, LLC (“Penn”), a subsidiary of Penn National Gaming, Inc. Under the terms of the agreement, Penn agreed to pay Lakes \$25 million, and in exchange, Lakes agreed to relinquish all interest it had in the casino projects in both Columbus and Toledo, Ohio. Both of the projects are to be developed by Penn.

As of October 28, 2009, Lakes and Penn had entered into a Funding and Option Agreement. According to the terms, Lakes: (1) agreed to fund 10% of Penn’s costs associated with the Issue 3 referendum; and (2) had the option, but not the obligation, to fund up to 10% of equity needed to develop the casinos. The recent Termination Agreement nullifies the parties’ previous agreement, but does not affect Lake’s investment in relation to the proposed casinos in Cincinnati and Cleveland.

According to Lyle Berman, Chairman and CEO of Lakes Entertainment, “[a]lthough we believe the Toledo and Columbus casinos will be very successful, receiving \$25 million now is a good return on our investment with Penn. We have enjoyed our relationship with Penn and wish them much success with these casinos.”

OHIO VIDEO LOTTERY TERMINAL PROPOSAL TO MOVE FORWARD

According to recent reports, the Ohio Lottery Commission will again attempt to implement Video Lottery Terminals (VLTs) at Ohio’s seven horse racetracks. The Commission is seeking to authorize implementation of 7,500 of the machines at the tracks.

Next Monday, the Ohio Lottery Commission plans to vote on whether to revoke the rules it adopted last year that sought to implement the VLTs. In addition, Gov. Ted Strickland will also be asking an Ohio court for a declaratory judgment outlining the authority that he has on allowing the implementation of the VLTs.

Gov. Strickland’s plan for slot machines at Ohio’s racetracks comes after the announcement that gaming opposition group, Let Ohio Vote, withdrew its challenge to the plan two weeks ago.

Notably, on September 21, 2009, the opposition group successfully argued before the Ohio Supreme Court that Gov. Strickland and the legislature were wrong to expand gambling without allowing a voter referendum.

Under Gov. Strickland’s June, 2009 plan, 15,200 VLTs would have been installed at seven horse racetracks, generating an estimated \$1 billion in net revenue within two years. The state would collect 50 percent of revenue, while the other 50 percent would be split among the seven track owners to pay operational expenses, including payouts to winners.

The ruling, however, did not address whether Gov. Strickland has the authority to authorize the expansion of VLTs to Ohio’s racetracks. The question still remains as to whether Gov. Strickland could authorize the lottery expansion solely, without legislative approval.

It is currently not clear who would oversee the operation of the VLTs. The Ohio Lottery Commission’s move towards a declaratory judgment is the first step in what is being considered a lengthy process to determine the legality of implementing the VLTs.

Any expansion of gaming in the state will likely compete with the recently passed state constitutional amendment to allow four Las Vegas-style casinos in Ohio.