WEST VIRGINIA CODE: §29-25-9

§29-25-9. License to operate a gaming facility.

(a) Single license. -- The commission may issue only one license to operate a gaming facility. If the one license limitation in the preceding sentence is found to be unconstitutional in a final, nonappealable order by a court of competent jurisdiction, the commission shall have no authority to issue any license under this article and, in such event, the provisions of this article shall not be severable and any license issued under the provisions of this article prior thereto shall be void. The Legislature intends that no more than one license to operate one gaming facility in this state shall be authorized in any event.

(b) Applicant qualifications. -- The applicant shall be the actual operator of the gaming facility to be located on the premises of an existing historic resort hotel. The applicant may be the owner of the existing historic resort hotel or a person that leases well-defined spaces on the premises of the historic resort hotel in order to operate a gaming facility as defined by this article. The resort hotel shall be located within the jurisdiction of a county approving the operation of a gaming facility in accordance with section seven of this article. The applicant shall meet the qualifications and requirements set forth in this article and rules adopted by the commission. In determining whether to grant a license to operate a gaming facility to an applicant, the commission shall consider:

(1) The character, reputation, experience and financial integrity of the applicant and any controlling person of the applicant;

(2) Whether the applicant has adequate capital to construct and maintain the proposed gaming facility for the duration of a license;

(3) The extent to which the applicant meets standards contained in rules adopted by the commission relating to public safety or other standards; and

(4) The plan submitted by the applicant regarding employment levels and the extent to which the submitted plan demonstrates an ability on the part of the applicant to create at least one hundred full-time equivalent jobs with a salary and benefit package commensurate with existing employees at the historic resort hotel.

(c) Floor plan submission requirement. -- Prior to commencing the operation of any West Virginia Lottery table game in a designated gaming area, the gaming facility licensee shall submit to the commission for its approval a detailed floor plan depicting the location of the designated gaming area in which West Virginia Lottery table game gaming equipment will be located and its proposed arrangement of the West Virginia Lottery table game gaming equipment. If the floor plans for the designated gaming area preserve the historic integrity of the historic resort hotel where the licensed gaming facility is located, then any floor plan submission that satisfies the requirements of the rules promulgated by the commission shall

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be considered approved by the commission unless a gaming facility is notified in writing to the contrary within one month of filing a detailed floor plan.

(d) Management service contracts. --

(1) Approval. -- A gaming facility may not enter into any management service contract that would permit any person other than the licensee to act as the commission's agent in operating West Virginia Lottery table game unless the management service contract: (A) Is with a person licensed under this article to provide management services; (B) is in writing; and (C) the contract has been approved by the commission.

(2) Material change. -- A licensed gaming facility shall submit any material change in a management service contract previously approved by the commission to the commission for its approval or rejection before the material change may take effect.

(3) Prohibition on assignment or transfer. -- A management services contract may not be assigned or transferred to a third party.

(4) Other commission approvals and licenses. -- The duties and responsibility of a management services provider under a management services contract may not be assigned, delegated, subcontracted or transferred to a third party to perform without the prior approval of the commission. Third parties shall be licensed under this article before providing service. The commission shall license and require the display of West Virginia Lottery game logos on appropriate game surfaces and other gaming items and locations as the commission considers appropriate.

(e) License application requirements. -- An applicant for a license to operate a gaming facility shall:

(1) Submit an application to the commission on a form prescribed by the commission, which form shall include:

(A) Information concerning the applicant and of any controlling person of the applicant sufficient to serve as a basis for a thorough background check;

(B) Subject to the provisions of subsection (g) of this section with respect to publicly-traded corporations, the identity of all stockholders or other persons having a financial interest in either the applicant or any controlling person of the applicant and the identity of each director or executive officer of the applicant and of any controlling person of the applicant;

(C) The identity of the historic resort hotel at which the gaming facility is to be located, including identification of the county in which the historic resort hotel is located; and

(D) Any other information designated by the commission as appropriate to assist it in determining whether a license should be issued;

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(2) Pay to the commission a nonrefundable application fee for deposit into the Community-Based Service Fund created in section twenty-seven, article twenty-two-c of this chapter in the amount of $65,000.

(f) Privately held corporations. -- In the event that an applicant or any controlling person of an applicant is a privately held corporation, then the commission may not grant a license until the commission determines that each person who has control of the applicant also meets all of the qualifications the applicant must meet to hold the license for which application is made. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company or subsidiary company of the applicant, but not including a bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business, who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation;

(2) Each person associated with a noncorporate applicant who directly or indirectly holds any beneficial or proprietary interest in the applicant or who the commission determines to have the ability to control the applicant; and

(3) Key personnel of an applicant, including any executive, employee or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

(g) Publicly traded corporations. -- In the event that an applicant or any controlling person of an applicant is a publicly traded corporation, then information otherwise required to be furnished by an applicant with respect to stockholders, directors and executive officers of the publicly traded corporation shall be limited to information concerning only those executive officers of the publicly traded corporation whose ongoing and regular responsibilities relate or are expected to relate directly to the operation or oversight of the gaming facility. "Publicly traded corporation" as used herein means any corporation or other legal entity, except a natural person, which has one or more classes of securities registered pursuant to Section twelve of the Securities Exchange Act of 1934, as amended (15 U.S.C. §78), or is an issuer subject to Section fifteen-d of said act.

(h) Gaming facility qualifications. -- An applicant for a license to operate a gaming facility shall demonstrate that the gaming facility will: (1) Be accessible to disabled individuals; (2) not be located at the main entrance to the historic resort hotel; (3) be licensed in accordance with all other applicable federal, state and local laws; and (4) meet any other qualifications specified by rules adopted by the commission.

(i) Surety bond requirement. -- The licensed gaming facility shall execute a surety bond to be given to the state to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission. The surety bond shall be:

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(1) In an amount determined by the commission to be adequate to protect the state against nonpayment by the licensee of amounts due the state under this article;

(2) In a form approved by the commission; and

(3) With a surety approved by the commission who is licensed to write surety insurance in this state. The bond shall remain in effect during the term of the license and may not be canceled by a surety on less than thirty days' notice in writing to the commission. The total and aggregate liability of the surety on the bond is limited to the amount specified in the bond.

(j) Authorization of license. -- A license to operate a gaming facility authorizes the licensee to engage in the business of operating a gaming facility while the license is effective. A license to operate a gaming facility is not transferable or assignable and cannot be sold or pledged as collateral.

(k) Audits. -– A licensed gaming facility operator shall submit to the commission an annual audit, by a certified public accountant who is, or whose firm is, licensed in the State of West Virginia, or by a nationally recognized accounting firm, of the financial transactions and condition of the licensee's total operations. The audit shall be in accordance with generally accepted auditing principles.

(l) Annual license renewal fee. –- For the second year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee of $250,000. For the third year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee of $500,000. For every year after the third year that it is licensed, the licensed gaming facility shall pay to the commission a license renewal fee that is calculated by determining the annual average gross receipts of the West Virginia pari-mutuel racetracks with table games licenses for the last full fiscal year of adjusted gross receipts available, and dividing that number into the licensed gaming facility operator's adjusted gross receipts for the same full fiscal year of adjusted gross receipts to obtain a percentage, and by multiplying the resulting percentage by $2,500,000: Provided, That the amount required to be paid by the licensed gaming facility shall be not less than $500,000, nor more than $2,500,000.

(m) The licensed gaming facility shall provide to the commission, at no cost to the commission, suitable office space at the gaming facility to perform the duties required of it by the provisions of this article.

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