

**STATE OF OHIO
CASINO CONTROL COMMISSION**

In re: :
 : Case No. 2014-LIC-015
REBECCA PRIEST, :
CASINO GAMING EMPLOYEE LICENSEE :
 :
 Respondent. :

ORDER REVOKING CASINO GAMING EMPLOYEE LICENSE

On March 1, 2012, Rebecca Priest filed with the Ohio Casino Control Commission (“Commission”) a Casino Gaming Employee License Application (“Application”). The Commission conducted a suitability investigation of Priest to determine her eligibility for such a license. Having found Priest suitable for licensure, the Commission issued a Casino Gaming Employee License (“License”) to Priest on April 18, 2012.

During an administrative investigation of Priest, the Commission discovered sufficient derogatory information to warrant issuance of a Notice of Opportunity for Hearing (“Notice”), dated March 7, 2014. (Hr’g Ex. A.) Priest received the Notice, sent via certified mail, on March 11, 2014. (Hr’g Ex. B-1 and B-2.)

Pursuant to R.C. 119.07 and 3772.04, Priest had the right to a hearing if requested within 30 days of the Notice’s mailing. Priest so requested March 12, 2014 (Hr’g Ex. C), and the Commission scheduled a hearing for March 25, 2014; and upon its own motion, the Commission continued the hearing until April 1, 2014, (Hr’g Ex. D). Priest appeared at the hearing without counsel. Accordingly, the Commission held the hearing, as scheduled, before Hearing Examiner Ronald Alexander (“Examiner”).

After presentation and submission of the evidence at the hearing, the Examiner agreed to close the record. (Tr. 35-36.) The Examiner prepared a Report and Recommendation (“R&R”), which he submitted on May 13, 2014. Therein, the Examiner concluded that: 1) Priest failed to report her October 2012 arrest and charges consisting of three first-degree misdemeanors, including a DUI charge, in violation of Ohio Adm. Code 3772-8-04(A)(5) and (B); and 2) notwithstanding the prior conclusion, Priest is neither unqualified nor unsuitable to hold a License as a result of her April 2013 DUI conviction and sentence stemming from the related arrest and plea of the October 2012 DUI charge. (R&R 6, 9.) As a result of his findings and conclusions, the Examiner recommended that the Commission revoke Priest’s License because of her failure to report. (R&R 10.)

On May 16, 2014, the Commission sent Priest, via certified mail, a copy of the R&R. (App. #1; App. #2.) Priest received the R&R on May 21, 2014, (App. # 3), giving her until June 20, 2014, to file objections, *see* R.C. 3772.04(A)(2). Priest did not do so, however.

In accordance with R.C. 119.07 and 3772.04, the matter was submitted to the Commission on August 20, 2014, for final adjudication.

WHEREFORE, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission **ADOPTS IN PART AND MODIFIES IN PART** the Examiner's R&R.

The Notice stated the Commission's intent to take administrative action against Priest's License, including revocation, based on the allegations that she: (1) failed to notify the Commission of her October 2012 DUI arrest and resulting charges and related 2013 no-contest plea to, conviction of, and sentencing for a DUI offense, in violation of Commission rules; and (2) is no longer suitable for licensure as a Casino Gaming Employee in this state, as required by law. (Hr'g Ex. A.) During the hearing, the Commission proved both allegations by a preponderance of the evidence; thus, both violations justify revocation. However, because the Examiner reached incorrect legal conclusions as to the terms "suitable" and "suitability," and as to the duty-to-update requirement under Ohio Adm. Code 3772-8-04(A)(8), his Recommendation lacked certain justifications, and thus the Commission modifies his R&R accordingly.

Conclusions of Law

The Meaning of "Suitable" and "Suitability"

The Examiner's R&R states that the words "suitable" (the adjective) and "suitability" (the noun) are not expressly defined under R.C. 3772.01 or Ohio Adm. Code 3772-1-01, and that no definition of either was offered during the administrative hearing. (R&R 5.) While this may be true, the Examiner failed to define them for purposes of analyzing this case. (*See id.*) In fact, the Examiner missed the opportunity to provide their common and ordinary meaning, which is appropriate when a word is not otherwise defined by law. *See* R.C. 1.42 ("Words and phrases shall be read in context and construed according to the rules of grammar and common usage."). Had he done so, the Examiner would have defined the terms generally as "fit and appropriate." *Black's Law Dictionary* 1476 (8th Ed.2004).

Starting with this basic definition, the Examiner correctly concludes that the terms are augmented by certain statutes—R.C. 3772.10(A) (listing nine mandatory factors the Commission is to consider when determining suitability) and R.C. 3772.10(B) (establishing a "clear and convincing" standard for proving suitability)—and that an *in pari materia* reading establishes the criteria necessary for determining a person's suitability. (R&R 5.) The Examiner, however, failed to include all of the relevant statutes that must be considered as part of a suitability analysis. (*See* R&R 5.) Other factors not mentioned by the Examiner include those found under R.C. 3772.04(B) and R.C. 3772.10(D), which provide numerous considerations the Commission may look to when reviewing a person's suitability.

Therefore, the Commission modifies the R&R to include the general meaning of "suitable" and "suitability" and the additional factors the Commission may consider as part of a suitability analysis.

Priest's Failure to Notify the Commission

In his Conclusions of Law related to Priest's failure to notify the Commission of her no-contest plea, conviction, and sentence related to the October 2012 DUI offense, the Examiner misframes the issue, leading him to an incorrect conclusion related to Priest's duty to update the Commission per Ohio Adm. Code 3772-8-04(A)(8) and (B). (See R&R 7-8.)

The Examiner framed the issue presented as "whether [Priest's] conviction for the October 2012 DUI would affect her suitability to maintain a casino gaming license." (R&R 7.) In so doing, the Examiner concluded that Priest did not violate her duty to update under Ohio Adm. Code 3772-8-04(A)(8) because she proved her suitability in 2012 when she was licensed despite having a prior DUI conviction in 2010.¹ Consequently, according to the Examiner, there is no probative reason the April 2013 DUI conviction should constitute information that otherwise affects her suitability, and thus Priest did not have a duty to update the Commission as to her no-contest plea, conviction, or sentence. (R&R 7-8.)

Because the issue misses the mark, so does the conclusion. The issue is better framed as whether pleas, convictions, and sentences in criminal matters, other than minor traffic offenses, constitute information that affects a licensee's suitability to maintain their license. Simply put, and for the reasons that follow, the answer is yes.

First, licensees are required to provide the Commission with information about changes to their criminal history, including any dispositions and sentences. As part of a suitability determination, R.C. 3772.10(A)(4) requires the Commission to evaluate whether a person has been "indicted, convicted, [or] pleaded guilty or no contest . . . concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations." For this reason, the Application requires applicants (and after issuance, licensees) to disclose their criminal history, if any, to the Commission. (Hr'g Ex. G.) This mandatory criterion aims directly at whether a person is suitable to obtain or maintain a license issued under R.C. Chapter 3772. R.C. 3772.10(A)(4). Moreover, the Application informs both "applicants and licensees" that they "have a continuing duty to update changes to *any* of the information the applicant or licensee is required to provide or has provided to the Commission." (Hr'g Ex. G.) As a result, Priest was required to provide the Commission with information about her October 2012 DUI incident, including the disposition and sentence, just as she was required to (and in fact did) disclose a 2010 DUI offense in her initial Application.

Second, the Commission's initial suitability determination concerning Priest does not prohibit the agency from reviewing derogatory information that subsequently affects her suitability, even if the information is similar to that disclosed on an initial application. While Priest initially established her suitability for licensure and obtained a License, the issuance thereof does not secure an irrevocable right in that License or set a precedent that prevents the Commission from reconsidering its determination. Quite the contrary; for example, the Commission "may reopen a licensing investigation at any time," R.C. 3772.091(A), and "shall continue to observe the conduct of all licensees . . . to ensure that licenses are not issued to or held by . . . an unqualified, disqualified, or unsuitable person." R.C. 3772.10(D)(1). Which makes sense since a license issued

¹ Notably, the Examiner correctly concluded that Priest's failure to notify the Commission of her October 2012 arrest and charges related to the DUI incident constituted a violation of Ohio Adm. Code 3772-8-04(A)(5) and (B).

under R.C. Chapter 3772 “is a revocable privilege” and “[n]o licensee has a vested right in or under any license issued under this chapter.” R.C. 3772.10(D)(3). Hence, notwithstanding the Examiner’s conclusion, Priest’s two convictions should not be viewed through the same lens because the latter conviction and sentence calls into question her continued suitability, requiring her to disclose that information to the Commission per Ohio Adm. Code 3772-8-04(A)(8) and (B).

By failing to disclose this information at all (let alone in writing and within 10 calendar days of the triggering event) Priest violated Ohio Adm. Code 3772-8-04(A)(8) and (B). Therefore, the Commission modifies the R&R to conclude as a matter of law that subsequent criminal dispositions and sentences, other than minor traffic violations, must be reported to the Commission in accordance with Ohio Adm. Code 3772-8-04(A)(8) and (B).

Priest’s Unsuitability

Despite the Examiner’s conclusions related to Priest’s continued suitability, the record demonstrates and the law supports the conclusion that Priest is no longer suitable to maintain her License.

In the Notice, the Commission alleged, among other things, that Priest is not suitable for licensure anymore because of the October 2012 DUI arrest and resulting charges and related 2013 no-contest plea, conviction, and sentence and because of her failure to notify the Commission about any part thereof. (Hr’g Ex. A.) Mistakenly, the Examiner concluded that Priest’s second DUI conviction had no impact on her continued suitability and that she had no duty to update the Commission on the disposition of or sentence rendered in the criminal matter.² (R&R 7-8.) This conclusion is neither supported by the record nor the law.

The Commission proved by a preponderance of the evidence that, in October 2012, Priest was arrested in connection with, and faced charges related to, a DUI incident. (*See* Hr’g Ex. I-1 and I-2; R&R 3.) She subsequently pled no contest and was convicted of a DUI and sentenced as described in the Notice. (*See id.*) Moreover, in contravention of Ohio Adm. Code 3772-8-04(A)(5), (8), and (B), Priest failed to notify the Commission of any of this. (R&R 2-4.) As a result, Priest violated Ohio law (both criminal and administrative) and in so doing rendered herself unsuitable.

In addition, the Examiner erred when he concluded that because Priest’s 2010 DUI conviction did not render her unsuitable to hold a License neither did her 2013 DUI conviction. (*See* R&R 7, 9.) As indicated above, the Commission’s initial determination is not outcome determinative and subsequent criminal conduct calls into question a licensee’s continued suitability. Here, Priest’s two DUI convictions are distinguishable. From a temporal standpoint, the second occurred post-licensure while the first occurred before she submitted her Application; from a numeric standpoint, this is Priest’s second DUI conviction; and from a disclosure standpoint, she did not disclose any information about the second offense whereas she disclosed

² The Examiner compounded this mistake by concluding that Priest remains suitable even though she committed a “clear violation” of Ohio Adm. Code 3772-8-04(A)(5) when she failed to update the Commission regarding her October 2012 DUI arrest and related charges. (*See* R&R 10.) This violation alone is sufficient to conclude that Priest is no longer suitable for licensure under R.C. Chapter 3772.

the first. (R&R 2-4.) Accordingly, the record contained sufficient evidence to differentiate between the Commission's initial determination and this one.

The Examiner further erred when he concluded that R.C. 3772.10(B) and (C)(5) and (7) could not be used to justify revocation because those provisions only speak in terms of "applicants" and not "licensees." (See R&R 8-9.) An *in pari materia* reading of R.C. 3772.10 requires a different result, otherwise absurd results would abound and portions of the statute would be rendered meaningless. See R.C. 1.47(C) (providing that "[i]n enacting a statute, it is presumed that . . . [a] just and reasonable result is intended"); *Mishr v. Poland Bd. of Zoning Appeals*, 76 Ohio St.3d 238, 240, 667 N.E.2d 365 (1996) (declaring that "[i]t is a cardinal rule of statutory construction that a statute should not be interpreted to yield an absurd result"); *State ex rel. Carna v. Teas Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶19 (quoting *State ex rel. Myers v. Spencer Twp. Rural School Dist. Bd. of Edn.*, 95 Ohio St. 367, 373, 116 N.E. 516 (1917)) (stating "the court should avoid that construction which renders a provision meaningless or inoperative").

To be eligible for licensure, an applicant must demonstrate their suitability by clear and convincing evidence. R.C. 3772.10(B). This critical requirement, however, does not end once the applicant becomes a licensee. In fact, the Commission is required "to observe the conduct of all licensees . . . to ensure that licenses are not issued to or held by . . . an unqualified, disqualified, or unsuitable person." *Id.* (D). To do this, the Commission must consider the factors listed in R.C. 3772.10(A) and (C) and may consider those listed in R.C. 3772.04(B). And to ensure the Commission has the ability to do so, the General Assembly provided the agency with the authority to "reopen a licensing investigation at any time." See R.C. 3772.091(A). Consequently, R.C. 3772.10(B) and (C)(5) and (7) apply when the Commission is investigating the suitability of applicants and licensees.

Both her second DUI and her failure to report anything about this offense to the Commission render Priest unsuitable for licensure under R.C. Chapter 3772. Therefore, the Commission modifies the R&R by concluding that: 1) Priest is no longer suitable for licensure because of the October 2012 DUI arrest and resulting charges and related conviction and sentence and because of her failure to notify the Commission about any of it; and 2) R.C. 3772.10(B) and (C)(5) and (7) can justify revocation and in this case do.

Recommendation

Based on the record and the above-mentioned revisions, the Commission modifies the Examiner's Recommendation to include the following additional justifications for revoking Priest's License:

1. Priest violated Ohio Adm. Code 3772-8-04(A)(8) and (B) when she failed to notify the Commission, in writing and within 10 calendar days of the occurrence, that she pled no contest to a DUI offense in Berea Municipal Court on March 19, 2013, and that, as a result of the plea and the Court's finding of guilt, she was sentenced on April 25, 2013, to the terms described in the Notice; and

2. Because of her failures to notify the Commission and her arrest, charges, conviction, and resulting sentence related to the October 2012 DUI offense, Priest is no longer suitable for licensure, as required by R.C. 3772.10(B), (C)(5) and (7), and (D)(1).

WHEREFORE, in consideration of the foregoing and upon a quorum and majority vote of the members, the Commission **ORDERS** as follows:

- 1) Priest's Casino Gaming Employee License is **REVOKED**;
- 2) Priest shall immediately **SURRENDER** her license credential to the Commission;
- 3) Priest is **PROHIBITED** from working or otherwise serving in any capacity that requires a license under R.C. Chapter 3772;
- 4) Priest is **PROHIBITED** from reapplying for licensure under R.C. Chapter 3772 for three years from the date this Order is served upon her, absent a waiver granted by the Commission commensurate with Ohio Adm. Code 3772-1-04; and
- 5) A certified copy of this Order shall be served upon Priest, via certified mail, return receipt requested, and her counsel of record, if any, via ordinary mail.

IT IS SO ORDERED.



Jo Ann Davidson, Chair
Ohio Casino Control Commission

NOTICE OF APPEAL RIGHTS

The Respondent is hereby notified that pursuant to R.C. 119.12, this Commission Order may be appealed by filing a Notice of Appeal with the Commission setting forth the Order that the Respondent is appealing from and stating that the Commission's Order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. The Notice of Appeal may also include, but is not required to include, the specific grounds for the appeal. The Notice of Appeal must also be filed with the appropriate court of common pleas in accordance with R.C. 119.12. In filing the Notice of Appeal with the Commission or court, the notice that is filed may be either the original Notice of Appeal or a copy thereof. The Notice of Appeal must be filed within 15 days after the date of mailing of this Commission Order.