

Casino siting ripe with potential conflicts

Written by Administrator

Monday, 26 January 2015 01:33 -



This architectural rendering image provided by Lago Resort and Casino shows an exterior view of their proposed casino in Tyre, Seneca County. (Photo: AP)

Story Highlights

- Five casino bidders, including three winners, disclosed dealings with law firm hired by the state.
- "Taft (the law firm) had no direct input into decision making of the board members," the state said.
- The commission is doing background checks of the applicants. No licenses have been issued yet.

When a Chicago law firm ended its 1¹/₂-year relationship with a partner in the Lago Resort & Casino project last March, it had another big client waiting in the wings.

That month, the firm, which specializes in representing the gambling industry and also advising governments on gaming legislation and regulation, signed on with the New York Gaming Facility Location Board.

Taft, Stettinius & Hollister LLP, which merged with law firm Shefsky & Froelich last year, became the state board's lead gambling consultant under a one-year, \$4.9 million contract.

In December, the board recommended Lago's site, in Tyre, Seneca County, for a commercial casino license. Montreign Resort Casino and Rivers Casino & Resort at Mohawk Harbor also got recommendations. Key officials involved in all three projects had previously used the Taft firm in their businesses.

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These potential conflicts of interest were disclosed to the Gaming Facility Location Board in applications submitted last summer, yet the board continued to use the firm as its gambling-services consultant. The board contends that the past associations between the selected bidders and Taft had no bearing on its recommendations.

Of the 16 casino bids evaluated, five, including the three winning bidders, identified dealings with the Taft firm as a potential conflict of interest in their applications. Two of those five bidders — Hudson Valley Casino & Resort in Newburgh, Orange County, and Live! Hotel & Casino New York in South Blooming Grove, Orange County — were not recommended for a license. The board decided not to recommend an Orange County bidder.

Web of relationships

Potential conflicts of interest listed in New York's casino applications show a national gambling sector that is a complex web of long-standing relationships among law firms, consultants, gambling companies, investors and government regulators.

For example, the Shesky & Froelich law firm came under scrutiny in 2012 after the Chicago firm was hired as the casino consultant for the city of Springfield, Mass., and it was revealed that the firm was a registered lobbyist in Illinois for Penn National, which at the time was seeking casino development rights in Springfield.

In New York, state officials emphasized throughout the application and consequent selection process that the five location board members were not gaming experts, freeing them of any potential conflict of interest with the casino industry. With that in mind, officials said, the board was statutorily mandated to contract with an outside consultant to provide gambling industry analysis and support the board's review and evaluation of the casino applications.

In a statement, Gaming Facility Location Board spokesman Lee Park said Taft compiled applicant submissions and state agency materials into useful, comparable summaries. Taft also used subcontractors to provide economic-forecasting data, which Park said was used in conjunction with state-produced figures to review relevant markets.

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"Taft had no direct input into decision-making of the board members," Park said in the statement.

Search for a consultant

The hunt for a gaming-services consultant began three weeks after New York voters in November 2013 approved a constitutional amendment to expand casino gambling.

On Nov. 26, 2013, the Gaming Commission issued a Request for Proposals for gaming advisory services.

"The Gaming Advisory Services RFP specifically anticipated respondents who had previously worked in the gaming industry," Park said in his statement. "Accordingly, the RFP also contemplated that a winning bidder might have conflicts of interest."

Specifically, Park stated, the RFP says the contract bidder "must identify, and bring to the attention of the Commission, real or apparent conflicts of interest as knowledge of such conflicts arise."

By the Dec. 19, 2013, deadline, proposals were received from Shefsky & Froelich, HLT Advisory Services, Cantor Fitzgerald & Co., Spectrum Gaming Group LLC and Marquette Advisors.

Shefsky & Froelich merged with Taft on Jan. 2, 2014.

According to the award memorandum, dated Jan. 17, 2014, the proposals submitted by HLT, Cantor Fitzgerald, Spectrum Gaming and Marquette Advisors were found to be "non-responsive, as they failed to include a litigation bond with their proposal." The RFP required that each bidder submit a \$1 million litigation bond with its proposal.

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So the Evaluation Committee, made up of five Gaming Commission staff members and one member from the state Division of the Budget, recommended that the Gaming Commission, on behalf of the future Gaming Facility Location Board, award the contract to Taft.

On Feb. 6, 2014, the Gaming Commission named the first three members of the Gaming Facility Location Board: Paul Francis, Stuart Rabinowitz and Bill Thompson. The trio were formally appointed on March 12, 2014.

Taft signed the gaming advisory services agreement on Feb. 13, 2014. The Gaming Facility Location Board then signed it on Feb. 24, with the Attorney General's Office signing off on it Feb. 27.

An amendment to the agreement that required Taft to disclose any conflict of interest or potential conflict of interest that arose during its work was signed March 21, 2014. The state Comptroller's Office approved the agreement that same day.

The contract started March 21, 2014, and runs through March 20 of this year.

In his statement, Park said Taft disclosed potential conflicts of interest in a timely manner.

"Extensive review by counsel found that no matters constituted a conflict of interest," Park said. "Regardless, Taft timely mitigated any potential or perceived conflicts of interest."

On March 24, 2014, the location board announced the selection of Taft to provide gaming advisory services. It was also announced that Taft was subcontracting with the following entities: financial advisory firm Christiansen Capital Advisors, investment bank Houlihan Lokey Capital Inc. and gaming facility consultant Macomber International Inc.

As the primary contractor, Taft is the project contact and is responsible for all services provided by the subcontractors.

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According to the award memorandum, the Taft team was expected to be paid \$375,000 to assist the board in the development of the Request for Applications, or RFA, and evaluation instrument; \$4.4 million for the evaluation of applications and advisory summary; and about \$109,000 for other engagements.

The roughly 80-page RFA was issued March 31, 2014, which contained details about the minimum license fee for each region and the illustration of local support. The mandatory \$1 million application fee was then due by April 23, with applications due by June 30.

There were 17 casino bids sent to the state by the deadline. That figure was narrowed to 16 after the location board in early August disqualified the Florida Acquisition Corp. proposal in the Capital Region.

Gaming Facility Location Board members Kevin Law and Dennis Glazer weren't appointed to the board until July 7, with Law becoming chairman July 28.

When casino applications were posted online Aug. 1, Lago's conflict of interest paperwork was redacted from the application package. The information, according to Lago's application, was exempt from disclosure by "federal and/or state law" and, if released, would constitute an "unwarranted invasion of personal privacy."

Lago's information was the only conflict of interest disclosure redacted from all of the casino applications.

In his statement, Park said the first legal review of the applicants' redactions was completed in October. Following this review, he said, additional non-redacted applicant information — including Lago's conflict of interest documentation — was made available online in late October.

And, following five meetings, two days of casino applicant presentations and three days of public hearings, the board on Dec. 17 in Albany recommended Lago, Montreign and Rivers Casino for commercial casino licenses.

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The Gaming Commission now is in the process, with the New York State Police, of completing background checks of the selected applicants and their principal officers.

"The commission is moving as expeditiously as possible with its review and has set no deadline for license issuance," Park said.

Lago's relationship

Key officials in Lago, a \$425 million project, dealt with the Shesky & Froelich law firm for nearly 1¹/₂ years, according to the project's conflict of interest document.

Starting in October 2012, Peninsula Pacific, a Los Angeles-based firm that is partnering with Rochester-based Wilmore on Lago, used the legal services of the Shesky & Froelich law firm for general corporate representation.

Cezar Froelich, formerly Shesky & Froelich chairman who is now chairman of Taft's Chicago office, served as the billing partner and provided legal advice as part of the engagement. Prior to that, Froelich served on Peninsula Gaming Partners' Compliance Committee for a period in 2010.

According to the gaming advisory services documentation from the state, Froelich served as project contact and worked at a discounted hourly rate of \$801.

When reached by phone, Froelich referred all questions to the Gaming Commission, citing his firm's policy not to comment while still under contract.

Shesky & Froelich's relationships with both the casino industry and governments that regulate and license them previously was questioned in August 2012 in Springfield, Mass. The firm, which was hired as Springfield's casino consultant, was the registered lobbyist in Illinois for MGM Resorts International and Penn National Gaming, which were both seeking casino

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development rights in Springfield.

But in mid-September 2012, the Massachusetts Ethics Commission cleared Shefsky & Froelich of a possible conflict of interest.

Froelich [told the *Albany Times Union* in March 2014](#) that most of Shefsky & Froelich's clients likely wouldn't be relevant in New York.

In March 2014, Peninsula Pacific concluded its involvement with Shefsky & Froelich, by that time known as Taft, according to Lago's conflict of interest document.

The document shows that after concluding its business with the law firm, Peninsula Pacific officials still crossed paths with them. On April 15, 2014, Peninsula Pacific founder and Chairman Brent Stevens and Christian Morris attended a social dinner in Chicago with Froelich.

Officials from Peninsula Pacific and its affiliates also conducted three phone calls with Froelich related to a recommendation for the engagement of gaming counsel in New York and a brief administrative question about locating a copy of the Peninsula Gaming Compliance Program.

A couple of months later, on June 25, 2014, Wilmorite announced a new name (Lago), a partner (Peninsula Pacific), casino operator (JNB Gaming) and a larger investment figure (\$425 million).

JNB Gaming is owned and operated by Stevens, Jonathan Swain and Natalie Schramm, all of whom were officers and owners of Peninsula Gaming, which owned five casinos — one in Kansas, and two each in Iowa and Louisiana — before Peninsula's sale to Boyd Gaming Corp. in November 2012.

On June 25, Swain told the *Press & Sun-Bulletin* that JNB Gaming became involved with Wilmorite about two months before the partnership announcement.

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Two days after the June 25 announcement, Lago delivered its application, which filled up 37 boxes adding up to more than 120,000 pages, to the state. That delivery was three days ahead of the application deadline of June 30.

Montreign's relationship

Montreign, an approximately \$1 billion investment for Thompson, Sullivan County, is a project of Empire Resorts Inc. and EPR Properties.

EPR was also set to provide \$160 million in mortgage loan financing for Tioga Downs' original expansion proposal submitted to the state.

Montreign's conflict of interest documentation is about 4¹/₂ pages. Empire Resorts declined to comment for this story.

The potential conflicts of interest disclosed in Montreign's application include:

- Emanuel R. Pearlman, chairman of Empire Resorts, has had a personal relationship with a Taft attorney since 1990. That attorney has also represented Pearlman personally and through other companies in which Pearlman has been involved since 1990. At the time of submission, Pearlman had no business dealings with Taft.

- Also, Pearlman had personal relationships with multiple members of Houlihan Lokey Capital over the past 20 years. Taft subcontracted with Houlihan Lokey, among other entities, in the casino-siting project.

- During the last five years, Empire Resorts CEO Joseph D'Amato had contact with three employees of Houlihan Lokey concerning a possible acquisition of two casinos outside of New York. Laurette Pitts, Empire Resorts CFO and COO, also had contact with Houlihan Lokey about the potential acquisition.

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- In July 2013, EPR Properties, a Kansas City, Mo.-based specialty real estate investment trust, signed an engagement letter with Froelich regarding contacting gaming regulatory bodies in nine states, including New York, to discuss the need for EPR and its officers to be licensed or found suitable in the applicable states. Shefsky & Froelich then provided a brief, written memorandum to EPR dated July 22, 2013, which summarized the firm's research for the nine states.

- On or about Dec. 5, 2013, Froelich advised EPR that he was interested in consulting with New York state regarding the new licenses to be issued. EPR then agreed to no longer use Shefsky & Froelich for advice about New York.

- The last work performed for EPR by Froelich was on Jan. 22, 2014, which was related to licensing in Indiana and Missouri. And in March 2014, EPR consulted Taft in connection with a potential financing opportunity in Florida. Taft ceased representing EPR in March 2014.

Rivers Casino's relationship

Rivers Casino, an approximately \$300 million project for Schenectady, is a project from Capital Region Gaming, Rush Street Gaming and The Galesi Group.

The potential conflicts of interest in Rivers Casino application revolve around the companies of Rush Street Gaming Chairman Neil Bluhm.

Bluhm is also co-founder and managing partner of Walton Street Capital, and co-founder and president of JMB Realty Corp.

The potential conflicts include:

- The owner of Rivers Casino in Pittsburgh, Pa., an affiliate of Capital Region Gaming, engaged Houlihan Lokey in 2010 as a financial adviser.

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- A JMB Realty Corp. affiliate leases commercial space to Houlihan Lokey for its headquarters in Los Angeles.

- A JMB Realty Corp. affiliate hired Shesky & Froelich regarding encroachment/title work at a Chicago property in 2011.

- More than five years ago, Walton Street Capital or its affiliates have records of hiring Taft, Stettinius & Hollister.

- Also more than five years ago, the owner of SugarHouse Casino in Philadelphia, an affiliate of Capital Region Gaming, engaged Macomber International in 2005-06 to prepare a marketing plan related to its application to the Pennsylvania Gaming Control Board for a license in Philadelphia. Taft subcontracted with Macomber International, among other entities, in the casino-siting project.

In a statement, Rush Street Gaming said, "We stand by the contents of our application and have nothing further to add at this time."

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