

Arkansas panel must issue 4 casino licenses

Written by Administrator
Wednesday, 20 February 2019 04:23 -

The Arkansas Racing Commission must issue four casino licenses or be in breach of the state constitution, attorneys for a proposed multimillion-dollar casino in Pope County said in a document provided Tuesday.

Gulfside Casino Partnership says in the 15-page document that if the proposed-rules draft on governing casino operations in the state is adopted in its current form, the company has a right to sue in circuit court.

"As we stated, the intent of Amendment 100 is clear. The state 'shall' establish four casinos, including one in Pope County," said Casey Castleberry, Gulfside's attorney. "If the Racing Commission adopts rules that thwart this explicit purpose, Gulfside will consider its legal options to challenge those rules."

Scott Hardin, spokesman for the state Department of Finance and Administration, which oversees the Racing Commission, said the commission is unable to comment on litigation "as we allow the courts to resolve it."

At issue is Rule 2.13 in the 340-page draft of proposed rules. Rule 2.13 essentially invalidates endorsements from Pope County and Russellville officials who, just before leaving office at the end of December, submitted letters of support for the Gulfside proposal to build a 600-room, \$254 million hotel and casino in Russellville.

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Current officials, who took office Jan. 1, are opposed to a casino there and said they will not endorse the Gulfside proposal.

Amendment 100, overwhelmingly passed by voters in the November general election, allows casino licenses to be issued for Pope and Jefferson counties, as well as two casinos at the race tracks in Hot Springs and West Memphis.

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Voters in Pope County rejected the amendment, and many county residents have since vehemently lobbied against a casino license being issued there.

Amendment 100 requires the endorsement of local officials, but does not specify when the letters must be submitted.

On Jan. 10, the Racing Commission voted to amend the proposed Rule 2.13 to allow endorsements only from sitting officials and only at the time of a casino application. No applications can be made until the rules are finalized and adopted.

Castleberry said in Gulfside's response that the change directly contradicts a decision made by the Racing Commission at its Dec. 26 meeting to accept a Nov. 19 letter from then-Jefferson County County Judge Booker T. Clemons in support of a proposal from Downstream Development Authority to build a casino there.

Clemons had been elected to finish the term of former County Judge Hank Wilkins, who resigned amid controversy in March. Clemons left office in December.

In that meeting, Racing Commission attorney Byron Freeland called attention to Rule 2.13 and advised the commission that Clemons' endorsement met the mandate of Amendment 100.

The commission passed the text of Rule 2.13, which at the time, stated that letters of support and resolutions by the Quorum Court should be dated after the effective date of the amendment, which was Nov. 14.

Freeland told an *Arkansas Democrat-Gazette* reporter after that meeting that under the proposed rule, Clemons' letter would satisfy the requirement for local support.

Castleberry said in the document that because Amendment 100 uses the language of "shall," the Racing Commission is required to issue four licenses for casinos in the state, one of which

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"must be located in Pope County."

He pointed to the 1986 case of *Loyd V. Knight*, in which the state Supreme Court said, "The word 'shall' when used in a statute means that the legislature intended mandatory compliance with the statute unless such an interpretation would lead to an absurdity."

"Any rule promulgated by the Racing Commission which results in the issuance of less than four casino licenses is in direct conflict with Amendment 100 and is, therefore, unconstitutional," Castleberry wrote in the document.

Castleberry also cited the 2006 case of the *Department of Human Services and Child Welfare Agency Review Board v. Howard* in which the Review Board passed a rule that prohibited a person from serving as a foster parent if any member of the person's household was homosexual.

In that case, the state Supreme Court said the rule change was in opposition to the law and outside of the Review Board's authority.

The requirements detailed in Amendment 100 -- such as the application fee and providing detailed information about the casino operators -- cannot be legally changed or added to, Castleberry said in the document.

"The Racing Commission has no discretion on these points. The Racing Commission is empowered to decide which applicant is entitled to receive a casino license. However, when presented with at least one applicant who meets the minimum requirements set out by Amendment 100, it cannot decide that no applicant may receive a license," Castleberry said. "As in *Howard*, the proposed Rule 2.13 is not intended to effectuate the agency's mission, but, rather, to exclude a qualified applicant from receiving a license. Thus, Rule 2.13 is constitutionally infirm."

Castleberry also suggested that the proposed rules be modified to allow for a full refund of the application fee -- proposed to be \$250,000 -- in the event the application is rejected for failure to

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meet minimum requirements. Half of the application fee should be refunded if the applicant is rejected for any other reason, Castleberry said.

Also on Tuesday, Rep. Joe Cloud along with Sen. Breanne Davis, both Republicans of Russellville, filed House Bill 1517, which would prohibit the Racing Commission from issuing a Pope County casino license unless an election is held to approve casino gambling there.

If the voters approve the measure and such an election is held, the letters of support required by Amendment 100 must come from local officials current at the time and be submitted at the time of the application, HB1517 says.

HB1517 claims the attempt to amend Amendment 100 is allowable under Arkansas Constitution Article 5, which means "the General Assembly may amend such measures with a two-thirds vote of each house."

Whether a constitutional amendment can legally be changed or clarified by the Legislature is up for debate, Alex Gray, an attorney who helped draft Amendment 100 for the Driving Arkansas Forward ballot committee, said last month.

Anyone offering input on the Racing Commission's draft of proposed rules can appear in person at a public hearing set for 11 a.m. Thursday in the fifth-floor conference room at 1515 W. Seventh St. in Little Rock.

At that time, the commission can vote to adopt, modify or reject the proposed rules, which will then be sent to a legislative committee for approval.

Hardin said that, while not required, the final draft of the rules will be sent to Gov. Asa Hutchinson for review.

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