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# MICHIGAN GAMING

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Newsletter



## MICHIGAN GAMING CONTROL BOARD RELEASES JUNE 16, 2015 REGULAR PUBLIC MEETING AGENDA

The Michigan Gaming Control Board ("MGCB") will hold its regular public meeting on Tuesday, June 16, 2015 at the MGCB Detroit office, Cadillac Place, 3062 West Grand Blvd., Suite L-700, in Detroit.

The agenda for the meeting includes the following items:

- A. Consider the Licensing & Investigations Division's Recommendations Regarding Level 1 and Level 2 Occupational License Applications
- B. Consider the Executive Director's Report and Licensing & Investigations Division Recommendations Regarding the Pending Supplier License Applications of
  1. Dee Cramer, Inc., Board File No. SL006044-15-001
  2. Diversified Construction Specialists, Inc., Board File No. SL006178-15-001
  3. Johnson and Wood, LLC, Board File No. SL006897-15-001
  4. Mastercraft FC LLC, Board File No. SL006835-15-001
- C. Consider the Executive Director's Reports and Licensing & Investigations Division's Recommendations Regarding the Pending Supplier License Renewal Requests of
  1. Aristocrat Technologies, Inc., Board File No. SL000038-15-001
  2. Dillon Energy Services, Inc., Board File No. SL006242-15-001
  3. Gold Star Equipment, Inc. d/b/a Gold Star Products, Board File No. SL000146-15-001
  4. Helden Shoe Company d/b/a Red Wing Shoes, Board File No.

SL000745-15-001

5. Hercules & Hercules, Inc., Board File No. SL000222-15-001
6. Interblock Luxury Gaming Products D.d. d/b/a Interblock D.d., Board File No. SL005524-15-001
7. Just For Fun, Inc. d/b/a JFF Uniforms, Board File No. SL004577-15-001
8. Kimprint, Inc. d/b/a Progressive Printing, Board File No. SL003439-15-001
9. Konami Gaming, Inc., Board File No. SL001249-15-001  
New Key Persons:  
1)Fumiaki Tanaka  
2)Kaori Yamaguchi
10. Rhianon Creations, Inc. d/b/a Body Bliss, Board File No. SL005380-15-002
11. Thermal-Netics, Inc., Board File No. SL004555-15-001
12. Tier One Marketing, LLC, Board File No. SL005584-15-001
13. Tom Maceri and Son, Inc., Board File No. SL000234-15-001
14. Ultralevel, Inc., Board File No. SL006485-15-001

D. Consider the Executive Director's Report and Licensing & Investigations Division's Recommendation Regarding the Request to Withdraw the Supplier License of

1. WMS Gaming, Inc., Board File No. SL000037-15-001

E. Consider the Executive Director's Report and Licensing & Investigations Division's Recommendation Regarding Suitability of New Key Persons of Casino Licensee Greektown Casino, LLC

1. 1. Daniel B. Gilbert Property Trust u/a/d October 31, 2011 and DG Ohio Ventures LLC, Board File No. GTC-2015-003

The meeting will begin at 9:30 a.m. with the staff briefing, followed immediately by the agenda items. The meeting will take place in the Cadillac Place in Detroit's New Center Area near the John Lodge Freeway (M-10), between Second Avenue and Cass Avenue. The Fisher Building and the Albert Kahn Building are nearby landmarks.

For more information regarding the MGCB, please

visit their website at: [www.michigan.gov/mgcb](http://www.michigan.gov/mgcb)

## APPEALS COURT REAFFIRMS NLRB JURISDICTION OVER LITTLE RIVER BAND CASINO

**O**n Tuesday, June 9, the 6th Circuit Court of Appeals voted 2-1 that the National Labor Relations Board ("NLRB") was correct to assert jurisdiction over the Little River Casino Resort ("Casino"), located in Manistee, Michigan. The decision prohibits the Little River Band of Ottawa Indians ("Little River Band"), owners of the Casino, from enforcing its own labor laws at the facility because certain provisions conflict with the National Labor Relations Act ("Act").

The court's reasoning in the case centers around the fact that most patrons and employees of the casino are not tribal members, so imposing jurisdiction does not infringe the Tribe's sovereignty.

"The right to conduct commercial enterprises free of federal regulation is not an aspect of tribal self-government," the majority decision stated. "And Indian tribes are not shielded from general federal statutes because the application of those statutes may incidentally affect the revenue streams of tribal commercial operations that fund tribal government."

There is much ongoing debate regarding the application of the NLRA and its application to Native American Indian Tribes.

### *Soaring Eagle Casino Resort*

The court's recent ruling against the Little River Band echoes a similar decision reached in March of 2012, which was reaffirmed last year, requiring the Soaring Eagle Casino and Resort to allow its workers to discuss or promote unionization under certain circumstances. Notably, in April of 2013, the NLRB issued [359 NLRB No. 92](#) regarding Soaring Eagle Casino's non-unionization policies.

In the March 2012 ruling, Administrative Law Judge Michael A. Rosas stated that the Act applied to the Saginaw Chippewa Indian Tribe of

Michigan's activities at the casino and that the non-solicitation policy violated certain sections of the federal law. The decision stated, in part, that "applying the Act to the Tribe's casino operations would not interfere with its rights of self-governance or intramural matters" and that portions of the non-solicitation policy were "unlawfully overbroad."

### ***Chickasaw Nation of Oklahoma***

Conversely, on a June 4, 2015, the NLRB issued [362 NLRB No. 109](#), which declines the NLRB authority to assert jurisdiction over the Chickasaw Nation of Oklahoma ("Nation"), in its capacity as operator of the WinStar World Casino. The decision was narrowly tailored to take into account treaty language specific to the Chickasaw Tribe.

Notably, the NLRB Order states that by "[a] applying the test established by the Board in *San Manuel Indian Bingo & Casino* ... we find that application of the Act would abrogate treaty rights, specific to the nation, contained in the 1830 Treaty of Dancing Rabbit Creek."

### ***Senate Bill 248***

In January of this year, U.S. Senator Jerry Moran (R-KS) introduced [S.248](#) — Tribal Labor Sovereignty Act of 2015. If passed into law, S.248 would amend the National Labor Relations Act to provide that any enterprise or institution owned and operated by a Native American Indian tribe and located on its lands is not considered an "employer" under the Act.

On Wednesday, June 10, the bill was reported favorably from the Senate Committee on Indian Affairs.

## **COMPLIANCE SUMMARY: TRANSFER OF INTEREST IN LICENSED SUPPLIERS**

*In addition to its regular coverage of gaming news, The Michigan Gaming Newsletter will be providing compliance updates and summaries of the various legal and regulatory requirements for companies involved in the state's gaming industry. This week, we have included a review of licensee*

*transfer of interest approval requirements. The following is a general discussion of the state's compliance requirements and should not be considered legal advice.*

Those companies that hold a supplier license issued by the Michigan Gaming Control Board ("MGCB") are subject to certain review and approval requirements related to transfers of interest in the licensee's ownership. It is important for licensees to understand these approval provisions, as prior approval is required by the MGCB before executing such transfers, especially as such approvals may require a significant amount of time for regulatory review and approval.

### ***General Requirements***

Part 5 of the MGCB Rules require an application to be filed and Board approval of transfer of interest in supplier licensees that result in a transfer of over 1% of a privately-held company, or over 5% of a public company. Any person or entity that will acquire an ownership interest at or above these thresholds is required to be found qualified and suitable by the MGCB prior to the transfer being completed.

Once a purchase arrangement has been negotiated by the licensee and new potential owner, the new owner must complete and submit the MGCB's Transfer of Interest Application. This form requires the disclosure of the names and addresses of the transformer and transferee, charts showing ownership holdings before and after the transaction, the proposed transfer agreement, and the proposed dates of the transfer.

The MGCB will also require those who meet the definition of a "key person" to complete a Business Disclosure or Personal Disclosure form for a suitability finding. The definition of "key person," contained in Rule 104(c), includes directors, officers, 5% or greater owners, key management officials, and other positions that have significant roles within the entity acquiring the licensee interest. Institutional investors, discussed in more detail below, may however hold up to 10% ownership before being required to file for qualification. These disclosure forms require the applicant to submit detailed personal

background histories, including information on work, criminal, bankruptcy, tax, and family histories.

Regulatory staff will then review the transfer and suitability materials to ensure that the transaction meets the requirements of the Michigan Gaming Control and Revenue Act (“Act”), as well as the MGCB Rules. The process often includes follow-up information requests and communications with gaming staff, and those new to the process will likely find benefit in acquiring legal and regulatory counsel to assist with the approval. After the review has concluded, staff will recommend to the Board either approval or denial of the transfer and related suitability applications for key persons. If a denial is issued, the applicant may request a hearing to review the decision. If the transfer is approved, it may proceed according to the purchase agreements that were approved by the MGCB.

### ***Institutional Investors***

Importantly, certain institutional investors may seek a waiver from the suitability and qualification requirements of the MGCB transfer of interest rules. This type of waiver allows the MGCB to review and approve the transfer without requiring additional suitability findings for the institutional investor or its key persons.

Institutional investors may seek a waiver if the proposed transfer is less than 15% of the total ownership interest in the licensee. To qualify, the investor must meet the definition of “institutional investor” under Act, which includes entities such as pension funds, banks, investment firms, and other traditional financial firms. In addition, the institutional investor must certify that it will only hold the ownership interest in a passive nature and that it will not attempt to affect or influence the business affairs of the licensee.

## **POKAGON BAND ANNOUNCES PARTNERSHIP WITH LAKE MICHIGAN COLLEGE**

**O**n June 9, 2015, the Pokagon Band of Potawatomi Indians (“Pokagon Band”) announced that it has partnered with Lake Michigan College in an initiative to develop educational cohort programs. The Pokagon Band will make five annual donations of \$100,000 to fund the college’s new Hanson Technology Center.

The cohort programs will cover manufacturing, Tribal leadership and development, and gaming, hospitality, and culinary management. Pokagon Citizens, employees, and custodial parents of Pokagon children can take advantage of the partnership with Lake Michigan College. These initiatives are scheduled to be ready for students for the Fall 2017 semester.

- Pokagon Citizens interested in manufacturing can take related courses at Lake Michigan College and earn an associate’s degree or higher. Through this program, they can also receive apprenticeships with Mno Bmadsen’s businesses Accu-Mold and D.A. Dodd, which both require a highly skilled manufacturing work force.
- Those interested in working for Tribal Government can take advantage of a new program that will study Tribal sovereignty, Potawatomi culture, and the intricacies of Tribal law and government-to-government relationships.
- Pokagon Citizens and employees can study gaming, hospitality and culinary management at the college. Four Winds Casinos employees are also eligible.

Lake Michigan College is a 2-year community college offering associate degrees, certificates, and a wide range of continuing education and business and industry training. Campuses are located in Benton Harbor, Niles, and South Haven, Michigan. For more information please visit [www.lakemichigancollege.edu](http://www.lakemichigancollege.edu).