

ORIGINAL

BEFORE THE LIMITED GAMING CONTROL COMMISSION

STATE OF COLORADO

Case No. DEC 98 001

DECLARATORY ORDER

IN REGARD TO THE JOINT PETITION OF KEN PETERSON ENTERPRISES, INC.
AND TIVOLINO TELLER HOUSE, INC.

THIS MATTER comes before the Commission en banc upon the joint petition for declaratory order of Ken Peterson Enterprises, Inc. (KPE) and Tivolino Teller House, Inc. (Tivolino). The issue as presented by the petitioners is:

Whether the Colorado Limited Gaming Act of 1991, as amended, and the rules and regulations promulgated thereunder: (1) render the agreement between the petitioners void and unenforceable after May 16, 1997; or (2) required Tivolino to cancel, terminate, or cease performance under said agreement after May 16, 1997; or (3) required cancellation, termination, or discontinuation of performance of said agreement after May 16, 1997, even if KPE doing business as International Casino Services, Inc. had employed individuals other than Ken Peterson with the requisite gaming licensees necessary for performance of KPE's obligations under the contract.

The petitioners have filed briefs and replies. The Division has filed an amicus brief. The Commission heard argument the morning of June 18, 1998.

The Commission believes the following matters are not in dispute:

1. Ken Peterson (Peterson) once held a "support license"¹

¹ A "support license" is required for all persons employed in the field of limited gaming and by all gaming employees. No person required to hold a support license shall be an employee of, or assist, any licensee until such person obtains a valid support license. Persons licensed as key employees need not obtain support licenses. The commission may deny a support license to any

which was revoked by the Commission pursuant to a stipulation on or about May 16, 1997.

2. Peterson applied for a "key employee license"² and that application was denied by the Commission on or about February 4, 1997.

3. Tivolino holds a "retail gaming" license.³

4. KPE has never been licensed by the Commission.⁴

5. The petitioners entered into a contract for drop and count services (contract) on or about November 7, 1996. The one year contract was to begin December 1, 1996.

6. On June 4, 1997, Tivolino attempted to cancel the contract after learning that Peterson's support license had been revoked by the Commission.⁵

7. KPE sued Tivolino for breach of contract and the matter was set for a trial to begin January 13, 1998.

person discharged for cause from employment by any licensed gaming establishment in this or any other country. Each support license issued shall expire two years from the date of its issuance but may be renewed upon the filing and approval of an application for renewal.

² Every retail gaming licensee shall have a person in charge of all limited gaming activities available at all times when limited gaming is being conducted. Such person in charge shall hold a "key employee license". Each key employee license issued shall expire two years from the date of its issuance but may be renewed upon the filing and approval of an application for renewal.

³ A "retail gaming" license is required for all persons permitting or conducting limited gaming on their premises. A retail gaming license may only be granted to a retailer. Each person licensed as a retailer shall have and maintain sole and exclusive legal possession of the entire premises for which the retail license is issued. Each retail gaming license issued shall expire one year from the date of its issuance but may be renewed upon the filing and approval of an application for renewal. Persons holding retail gaming licenses are not required to have an operator license.

⁴ Pursuant to §12-47.1-501(1), C.R.S. the Commission is authorized to issue five kinds of licenses: slot machine manufacturer or distributor license, operator license, retail gaming license, support license, and key employee license.

⁵ §12-47.1-837, C.R.S. requires a licensee to terminate the appointment or employment of any person whose license has been revoked or has expired.

8. On motion of KPE, a Denver county court ordered the petitioners to submit a joint petition for a declaratory order to the Commission and such a petition was filed with the Commission on March 31, 1998.

9. KPE is a limited liability company. KPE is doing business as International Casino Services, Inc. KPE offers slot machine drop services to licensed casinos as an independent contractor.

10. According to KPE's Articles of Organization, Peterson is the managing member of KPE. Peterson's wife Trisha, is an organizing member of KPE.

11. Peterson's wife, Trisha, holds a support license.

12. KPE is not engaged in business as a casino, or as an operator, manufacturer or distributor of slot machines.

Ruling

This case presents issues of first impression for the Commission. This ruling is based only upon the facts as presented by the petitioners.

It is the Commission's opinion that Colorado's Limited Gaming Act of 1991 requires business entities like KPE which are employed in the field of limited gaming to have support licenses. §12-47.1-501(1)(d), C.R.S. Such entities are properly considered "persons" under the Act. §12-47.1-103(21), C.R.S.

In reaching this conclusion, the Commission notes that §12-47.1-814(1), C.R.S. prohibits a licensee from employing any person to work in the field of limited gaming, or to handle any of the proceeds of limited gaming, unless such person holds a valid key employee or support license issued by the Commission.

All agreements, contracts, leases, or arrangements in violation of the Act or Commission Rules and Regulations are void and unenforceable. §12-47.1-833, C.R.S.

In issuing this ruling, the Commission is mindful of the legislative declaration found at §12-47.1-102(1)(b), C.R.S. that states that public confidence and trust in limited gaming can be maintained only by strict regulation of all persons, locations, practices, associations, and activities related to the operation of licensed gaming establishments and the manufacture of gaming devices and equipment.

The Commission declines to opine further.

DATED:

6-18-98

COLORADO LIMITED GAMING CONTROL COMMISSION

By:



DANIEL R. HYATT, Chairman

File Tivolino