

BEFORE THE LIMITED GAMING CONTROL COMMISSION

STATE OF COLORADO

Case No. DO 02-02

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ORDER GRANTING DECLARATORY RELIEF

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IN THE MATTER OF:

CASINO OWNERS ASSOCIATION OF COLORADO,

Petitioner.

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This matter comes before the Colorado Limited Gaming Control Commission ("Commission") upon the petition filed by the Casino Owners Association of Colorado ("Petitioner") under Rules 47-601 to - 603 of the Colorado Limited Gaming Regulations, 1 Colo. Code Reg. 207-1. Petitioner seeks a declaratory order that the slot machine known as "The Frog Prince" does not violate the constitutionally-imposed five dollar bet limitation and should be approved for use in limited gaming.

Petitioner initially sought approval of Frog Prince from the Division pursuant to Rule 12 of the Colorado Limited Gaming Regulations, 1 Colo. Code Reg. 207-1. The Division and its Director declined to approve the game based on their conclusion that the game violated the five dollar bet limit.

Petitioner and the Colorado Division of Gaming ("Division") filed prehearing statements in support of their respective positions. The Commission considered the matter *en banc* during its regularly scheduled meeting on July 18, 2002. Commissioner Walters was absent from the hearing and did not participate in the hearing. The Commission rendered its decision during the public meeting portion of its meeting.

Mr. Mark G. Grueskin appeared on behalf of Petitioner. Ms. Ceri Williams appeared on behalf of the Division. Petitioner presented the testimony of Ms. Connie Stafford and Mr. Ron Papson of International Game Technology ("IGT"), and Mr. Stan Triplett of Sodak Gaming. Mr. Papson testified as an expert witness in game design. The Division presented the testimony of Mr. Jim Oatman of Gaming Labs International, and Mr. Tom Kitts, Director of the Division.

Petitioner introduced several exhibits consisting of illustrations concerning the

games of Frog Prince and video poker, game approval letters for the states of South Dakota, Arizona, and Wisconsin concerning other bonus round games, and a memorandum from Phil Wargo to the Commission dated June 12, 2002. The Frog Prince slot machine device was presented as a demonstrative exhibit.

The Division provided a video poker game device as a demonstrative exhibit.

The Commissioners voted unanimously to issue a declaratory order that the slot game of Frog Prince does not violate state law.

The Commission finds, concludes, and orders as follows:

1. The issue presented by the petition for a declaratory order is whether the IGT Frog Prince slot game, which has a maximum coin-in bet of five dollars and provides for a bonus round that allows a player to take credits won and continue playing, is consistent with the five dollar bet limit imposed by Article XVIII, Section 9 of the Colorado Constitution, and should be approved for use in limited gaming in Colorado.

2. Article XVIII, Section 9(4)(b) of the Colorado Constitution defines "limited gaming" to mean "the use of slot machines ... each game having a maximum single bet of five dollars."

3. The Frog Prince game can include one or more bonus rounds. The game begins with a bet that complies with the five dollar maximum imposed by the state constitution. A player has the chance to enter into a bonus round during which he or she has the opportunity to accept a bonus offer. The player may be able to consider more than one bonus; however, the final bonus offer will automatically be credited to the player if all previously offered bonuses are rejected.

4. A "bet" is an amount placed as a wager in a game of chance. § 12-47.1-103(3), C.R.S. (2001).

5. A "wager" is a sum of money or thing of value risked on an uncertain occurrence. Rule 47.1-106(29), Colorado Limited Gaming Regulations, 1 Colo. Code Reg. 207-1.

6. "A specific wager requires two or more persons to stake something of value on an event, the outcome of which is uncertain. Depending upon the outcome, the winning party receives everything that was staked. If only one party risks something of value, there is no wager." Rule 47.1-1613(1), Colorado Limited Gaming Regulations, 1 Colo. Code Reg. 207-1.

7. It is uncontroverted that a player who enters a bonus round cannot lose his or her initial bet. In its prehearing statement under Statement of Claims and Defenses, the Division concedes that a player "keeps the amounts won in the base game no matter what occurs in the bonus round." Division's Prehearing Statement at page 2. As testified to by Mr. Papson, a player entering a bonus round will receive, at a minimum, four times the amount of his or her initial bet.

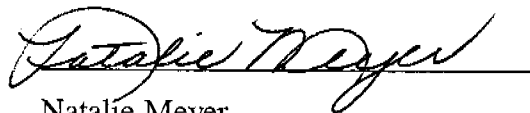
8. Pursuant to Rule 47.1-1613(1), the casino can never take "everything that was staked" when a player progresses to a bonus round. First, the casino does not receive the initial bet placed by a player advancing to a bonus round. Second, even if it is presumed that a player's decision to forego a bonus offer constitutes staking something of value, the casino does not receive the value of any bonus credits offered to, but rejected by, the player. Credits for a bonus offer can accrue only to the player and then only when the player accepts the offer.

9. The Commission concludes that the acceptance or rejection of various offers in the bonus round does not constitute a wager. The Commission therefore determines that the slot game of Frog Prince is consistent with the five dollar bet limit.

10. The Commission therefore grants Petitioner's request for a declaratory order and determines that the slot game of Frog Prince does not violate the constitution, statutes, or regulations of the State of Colorado.

Done this 15th day of August, 2002.

FOR THE COMMISSION:

A handwritten signature in cursive script, reading "Natalie Meyer", written over a horizontal line.

Natalie Meyer  
Commissioner and Chairman of the  
Limited Gaming Control Commission,  
State of Colorado

**NOTICE OF APPEAL RIGHTS**

This Order Granting Declaratory Relief is subject to appeal pursuant to sections 12-47.1-521, C.R.S. (2001) and 24-4-106, C.R.S. (2001). Pursuant to section 24-4-106(11), C.R.S. (2001), judicial review of this decision is commenced by filing a notice of appeal with the court of appeals within forty-five days after the date of the service of this final order, together with a certificate of service of said notice of appeal on the Colorado Limited Gaming Control Commission and on all parties appearing before the Commission in this matter.

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within Order of Dismissal upon all parties herein by depositing copies of same in the United States mail, postage prepaid, at Denver, Colorado, this 15<sup>th</sup> day of August 2002 addressed as follows:

Mark G. Grueskin  
Isaacson, Rosenbaum, Woods & Levy,  
P.C.  
633 - 17<sup>th</sup> Street, Suite 2200  
Denver, CO 80202

and by interagency mail addressed as follows:

Ceri Williams  
Office of the Attorney General  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, CO 80203

Cindy Raiolo