

# ILLINOIS GAMING BOARD



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March 6, 2001

## **VIA HAND DELIVERY**

Mr. Kevin Larson  
President  
Emerald Casino, Inc.  
120 North LaSalle  
Chicago, Illinois 60602

Re: Notice of Denial of License Renewal for Emerald Casino, Inc.

Dear Mr. Larson:

On January 30, 2001, the Illinois Gaming Board (the "Board"), pursuant to Sections 5(b), 7(a), 7(b) and 7(g) of the Riverboat Gambling Act (the "Act") and Section 3000.236 of the Board's Adopted Rules (the "Rules"), issued its initial decision and directed the Administrator to issue a Notice of Denial to Emerald Casino, Inc. ("Emerald") denying Emerald's application for renewal of its Owner's License (the "License"). This document constitutes the Notice of Denial.

## **Procedural History**

Pursuant to Section 11.2 of the Act, Emerald, formerly named HP, Inc., has applied for renewal of its Owner's License and for the relocation of its riverboat gaming operation to Rosemont, Illinois. The Board received Emerald's Renewal Application on September 24, 1999. Upon receiving Emerald's Renewal Application, the Board initiated an investigation of Emerald, its management, its Key Persons, and its prospective Key Persons and shareholders.

Throughout the investigation, the Board, with and through its staff, requested Emerald to be over-inclusive when providing information to the Board and notified Emerald and its counsel of the areas in Emerald's management and operations that raised concerns about Emerald's suitability to hold an Owner's License and Mr. Donald F. Flynn's and Mr. Kevin F. Flynn's suitability as Key Persons. Members of the Board's staff met with Emerald's counsel on multiple occasions to discuss a number of these issues. Moreover, Emerald's shareholders, directors and managers, by and through their counsel and others, provided the Board with sworn testimony, oral statements and documentation relating to many of these areas of concern. All information generated by the pending investigation to date has been extensively reviewed and analyzed by the Board, with and through its staff.

The information gathered and analyzed to date through the Board's investigation provides a sufficient basis for the Board's initial decision to issue this Notice of Denial. Nevertheless, because the Board's investigation of certain issues and Key Persons continues, the Board expressly reserves its right to supplement its Notice of Denial with any additional instances of improper conduct that are uncovered through the Board's continuing investigation. Any additional information that the Board intends to use as further support for this Notice of Denial will be timely provided to Emerald.

### **The Board's Statutory Authority and Applicable Standards**

The Act and the Rules set exacting standards for those seeking a license to operate a riverboat casino in Illinois. Pursuant to Sections 3000.222(e), 3000.230(c)(2), 3000.236(a)-(b) and 3000.425(a) of the Rules, the party seeking an Owner's License must demonstrate by "clear and convincing evidence" that it is suitable for licensing, it and its Key Persons have maintained suitability under the Act and it has "met the standards of Section 7 of the Act." Thus, the party seeking the Owner's License must meet the requirements of "character, reputation, experience and financial integrity" expected of a licensee. Section 7(b)(1) of the Act. Under Section 3000.230(c)(2)(B) of the Rules, the applicant must also be "a person or entity whose background, reputation and associations will not result in adverse publicity for the State of Illinois and its Gaming industry."

Each of these factors and considerations must be considered in light of the Act's stated purpose "to benefit the people of the State of Illinois," which the legislature recognized can only be successfully accomplished "if public confidence and trust in the credibility and integrity of the gambling operations and regulatory process is maintained." Sections 2(a), (b) of the Act. The Act further provides that the regulatory provisions are "designed to strictly regulate the facilities, persons, associations and practices related to gambling operations." Section 2(b) of the Act.

For its License to be renewed, Emerald must demonstrate that it continues to meet all the requirements of the Act and the Rules. The Act requires the Board to consider, among other things, the character, reputation, experience, and financial integrity of both Emerald and Mr. Donald F. Flynn and Mr. Kevin F. Flynn as Key Persons of Emerald. The authority for the Board's determination of Emerald's application for renewal of its Owner's License is set forth in Section 5 of the Act. The relevant standards for the Board's determination of Emerald's application for renewal of its Owner's License are set forth in Section 7 of the Act and Sections 3000.230 and 3000.236 of the Rules. This includes, but is not limited to:

#### *Section 7(b) of the Act:*

In determining whether to grant an owners license to an applicant, the Board shall consider:

- (1) the character, reputation, experience and financial integrity of the applicants and of any other or separate person that...controls, directly or indirectly, such applicant;...

(7) the extent to which the applicant exceeds or meets other standards for the issuance of an owners license which the Board may adopt by rule.

Section 7(g) of the Act:

...[A]ll licenses are renewable annually upon...a determination by the Board that the licensee continues to meet all of the requirements of this Act and the Board's rules...

Section 3000.230(c)(2) of the Rules:

An applicant must satisfy the Board by clear and convincing evidence that the applicant:

- A) Has met those requirements of Section 7 of the Act;
- B) Is a person or entity whose background, reputation and associations will not result in adverse publicity for the State of Illinois and its Gaming industry;
- C) Has adequate business competence and experience to be a holder of an Owner's License;
- D) Has demonstrated that the proposed funding of the entire operation shall be adequate for the nature of the proposed operation and be from a suitable source; and
- E) Has satisfied the Board as to any other information deemed necessary for licensure.

Section 3000.236(b) of the Rules:

The Board shall base its renewal of an Owner's License upon:

- (1) The timeliness and responsiveness of the information submitted by the holder of a license as required pursuant to Section 3000.236;...
- (2) The Board's analysis of the owner licensee's gaming operations, including the nature, frequency, extent and any pattern of past violations of the Act and this Part;...
- (4) Information on the background, character and integrity of the Key Persons, owners, directors and partners of the entity;...
- (7) The overall adherence of the licensee to all requirements of the Act and this Part; and
- (8) Any other information the Board deems appropriate.

With regard to Section 3000.236(b)(8) of the Rules, the Board considers, among other things, an applicant's and a Key Person's associations, history of regulatory compliance and business practices when determining whether to renew an Owner's License or approve a Key Person.

### **Reasons for Denial**

The Board based its January 30, 2001 determination on three initial findings: (1) Emerald's continued failure to meet all of the requirements of the Act and the Rules; (2) Mr. Donald F. Flynn's unsuitability as a Key Person of Emerald; and (3) Mr. Kevin Flynn's unsuitability as a Key Person of Emerald. The Board's determination is based on a *prima facie* conclusion of a continuous pattern by the Flynn's and Emerald of providing false and misleading information to the Board and its staff, as well as a pattern of improper and irregular conduct by Emerald and its management. The factual framework relating to this pattern of improper and irregular conduct by Emerald is more fully set forth in paragraphs 8 through 46 of Disciplinary Complaint DC-01-04. The aforementioned conduct forms the basis for the Board's preliminary findings that Donald Flynn, Kevin Flynn and Emerald have failed to establish by clear and convincing evidence that they have met the standards set forth under Sections 7(a) and 7(b) of the Act and the Rules. Set forth below are specific instances of the aforementioned misrepresentations and improper conduct:

A) Regulatory Compliance Issues.<sup>1</sup>

- 1) Violation of the Rules by failing to cooperate with Board staff by disclosing, truthfully and accurately, the facts and circumstances surrounding:
  - a) a meeting in or about 1997 between Mayor Donald Stephens of Rosemont, Illinois and Kevin Flynn regarding the possible relocation of the Emerald Casino to Rosemont, Illinois;
  - b) a meeting on or about October 28, 1998 between Richard Duchossois, Arlington International Racetrack's ("Arlington") owner, certain members of Arlington's management and Donald Flynn, Kevin Flynn and Joseph McQuaid, Emerald's Vice President and Director of Compliance, regarding possible legislative action and the future of Emerald;
  - c) a November 25, 1998 meeting attended by Joseph McQuaid, Mayor Donald Stephens and Michael Colleran (Vice President of the Davis

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<sup>1</sup> For purposes of clarity and organization only, the cited specific instances of improper conduct have been categorized as either "Regulatory Compliance Issues" or "Financial Integrity and Business Practices" issues. Each category lists specific instances of conduct that, as noted above, serve as the basis for the Board's initial determination under the applicable provisions of the Act and the Rules.

Companies (“Davis”)) regarding ownership interests in Emerald for Davis;

- d) meetings on or about December 1, 1998 between (i) Kevin Flynn and Michael Colleran and (ii) Kevin Flynn and Richard Duchossois regarding ownership interests in Emerald for Davis and Richard Duchossois;
  - e) a meeting in February 1999 between Donald Flynn and Mayor Donald Stephens regarding the relocation of Emerald’s Owner’s License to Rosemont;
  - f) the selection, by Emerald, of Rosemont, Illinois as the site for relocation of the Owner’s License from East Dubuque, Illinois, including, but not limited to, Emerald’s failure to timely, fully and accurately disclose to the Board agreements reached with the Village of Rosemont regarding the construction of a casino in Rosemont;
  - g) Donald Flynn’s sale of shares in Emerald to 12 investors and Mr. Flynn’s subsequent purchase of shares from six original Emerald (HP) shareholders;
  - h) the degree of involvement of Kevin Flynn in various Emerald activities, including, but not limited to, Emerald’s selection of Rosemont, Illinois as the site for relocation of its Owner’s License and the alleged agreement to sell ownership interests to Davis and to offer an option to Richard Duchossois to acquire an ownership interest in Emerald; and
  - i) Kevin Flynn’s ownership interest in Field Street Incorporated, a company that entered into a consulting contract with Boyd Gaming Incorporated whereby Kevin Flynn stands to receive a minimum of \$2.5 million for providing consulting services to Boyd Gaming.
- 2) Violation of the Rules by failing to submit a complete, truthful and accurate application for renewal of its Owner’s License, including, but not limited to: (i) Emerald’s failure to accurately disclose whether any public officials or their relatives had a financial interest in Emerald, as required by the renewal application; (ii) Emerald’s failure to conduct required due diligence regarding its shareholders and/or proposed new shareholders; and (iii) Emerald’s failure to disclose the existence of the July 21, 1999 Letter of Intent and other letter agreements between Emerald and the Village of Rosemont;

- 3) Violation of the Rules by failing to timely, fully and accurately disclose to the Board certain agreements relating to: (i) construction of a casino in Rosemont, Illinois; and (ii) ownership interests in Emerald; and
  - 4) Violation of the Rules by the failure of a Key Person of Emerald to maintain his suitability under the Act. Specifically, Donald Flynn demonstrated his unsuitability under the Act by, among other things: (i) failing to provide truthful and accurate information during the Board's investigation; (ii) entering into agreements to purchase and sell shares in Emerald without properly disclosing the agreements to the Board or requesting the Board's approval of the agreements; and (iii) entering into agreements to sell shares in Emerald without conducting any due diligence as to those individuals who were purchasing those shares.
- B) Financial Integrity and Business Practices.
- 1) Failure to conduct usual and customary due diligence regarding any prospective shareholders resulting in, among other problems, Emerald and Donald Flynn entering into agreements to sell shares in Emerald to the Sherry Boscarino Trust and Joseph Salamone, who are associated with persons who have been identified as members and associates of organized crime.
  - 2) Commencing construction of a casino in Rosemont, Illinois and expending approximately \$25 million on the construction of the casino without first obtaining the necessary regulatory approval from the Board;
  - 3) Entering into an agreement that allows the Village of Rosemont to waive the requirement that Emerald first obtain the necessary regulatory approval from the Board prior to commencing construction of the casino;
  - 4) Execution of a lease and development agreement with Rosemont, Illinois that commits Emerald to fund the construction of a parking garage, even though Emerald did not have sufficient financing dedicated to do so, and that fails to provide Emerald with the ability to exercise appropriate supervision or control over the management of the contractor and subcontractors for the casino and parking garage construction project; and
  - 5) Failure to control, direct, manage or supervise construction of the casino project in Rosemont, Illinois, by allowing the selection and hiring of a contractor who has been identified as having connections to organized crime to work on the parking garage construction project.

There is *prima facie* evidence that Emerald has repeatedly demonstrated, through the actions of certain of its shareholders, Key Persons, directors and managers, an inability or unwillingness to comply with and act in accordance with statutory and regulatory requirements

concerning the gaming industry. Emerald and certain of its shareholders, Key Persons, directors and managers have also demonstrated a propensity to engage in improper financial and business relationships that cannot be adequately justified and show a lack of financial integrity. In addition, Donald Flynn and Kevin Flynn have demonstrated, by their actions and misrepresentations, their unsuitability as Key Persons. Individually and collectively, the aforementioned matters evidence that, pursuant to Section 3000.236, Emerald is not suitable for renewal of its Owner's License.

**Emerald's Right To A Hearing**

In accordance with the Act and Section 3000.405 of the Rules, Emerald has the right to appeal the Board's findings by requesting, within five (5) business days of delivery of this Notice of Denial, an administrative hearing before an Administrative Law Judge appointed by the Board. Pursuant to Sections 3000.236(d)(2) and 3000.405(b), if Emerald does not request a hearing within five (5) business days of delivery of this Notice of Denial, the aforementioned decision shall become the Final Order of the Board regarding Emerald's application for license renewal. Please be advised that, pursuant to Sections 3000.400 and 3000.425(a), any hearing requested will be a *de novo* proceeding in which Emerald bears the burden, at all times, of showing by clear and convincing evidence that it is suitable for licensing. Pursuant to 5 ILCS 100/10-65(b), Emerald's "existing license shall continue in full force and effect until the [Board's] final... decision on the application has been made." A copy of the Subpart D of the Rules is enclosed herein.

Please call the legal division of the Board at the telephone number appearing above should you have any questions.

Sincerely,

Sergio E. Acosta  
Administrator

cc: Michael Ficaro, Esq.