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STATE OF ILLINOIS

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FILE NO. 95-011

SPORTS AND GAMING:
Power of Illinois Gaming Board to Authorize
Relocation of Riverboat Gambling Operations

The Honorable James "Pate" Philip
Senate President
327 State Capitol
Springfield, Illinois 62706

Dear Senator Philip:

I have your letter wherein you inquire whether the Illinois Gaming Board has the authority to permit the relocation of licensed riverboat gambling operations from one location within the State of Illinois to another. For the reasons herein-after stated, it is my opinion that the Board does not have the authority to change the specified location for operations after a license has been issued. Following the expiration or termination of the licenses initially authorized, however, the Illinois Gaming Board may issue owners licenses for different locations in accordance with the criteria established by the Riverboat Gambling Act (230 ILCS 10/1 et seq. (West 1994)).

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You have stated that the owners of the Silver Eagle Riverboat Casino, which is now operating on the Mississippi River and docking in Jo Daviess County, wish to relocate the operations to the Vermilion River at Danville. At issue is whether the current statutes governing the powers of the Gaming Board require amendment in order to enable the Board to authorize the relocation.

Section 5 of the Riverboat Gambling Act (230 ILCS 10/5 (West 1994)) creates the Illinois Gaming Board and sets forth its powers generally. The Board is given overall responsibility for the implementation of the Act, including the issuance of owners licenses authorizing riverboat gambling operations under section 7 of the Act (230 ILCS 10/7 (West 1994)), which provides, in pertinent part:

"(a) The Board shall issue owners licenses to persons, firms or corporations which apply for such licenses upon payment to the Board of the non-refundable license fee set by the Board, upon payment of a \$25,000 license fee for the first year of operation and a \$5,000 license fee for each succeeding year and upon a determination by the Board that the applicant is eligible for an owners license pursuant to this Act and the rules of the Board. * * *

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(b) 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 * * *.

* * *

(2) the facilities or proposed facilities for the conduct of riverboat gambling;

(3) the highest prospective total revenue to be derived by the State from the conduct of riverboat gambling;

* * *

(c) Each owners license shall specify the place where riverboats shall operate and dock.

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(e) The Board may issue up to 10 licenses authorizing the holders of such licenses to own riverboats. In the application for an owners license, the applicant shall state the dock at which the riverboat is based and the navigable stream on which the riverboat will operate. The Board shall issue 5 licenses to become effective not earlier than January 1, 1991. Four of such licenses shall authorize riverboat gambling on the Mississippi River, one of which shall authorize riverboat gambling from a home dock in the city of East St. Louis. The other license shall authorize riverboat gambling on the Illinois River south of Marshall County. The Board shall issue 1 additional license to become effective not earlier than March 1, 1992, which shall authorize riverboat gambling on the Des Plaines River in Will County. The Board may issue 4 additional licenses to become effective not earlier than March 1, 1992. In determining the navigable streams upon which riverboats will operate with licenses effective on or after March 1, 1992, the Board shall consider the economic

benefit which riverboat gambling confers on the State, and shall seek to assure that all regions of the State share in the economic benefits of riverboat gambling.

* * *

(f) The first 10 owners licenses issued under this Act shall permit the holder to own up to 2 riverboats and equipment thereon for a period of 3 years after the effective date of the license. Holders of the first 10 owners licenses must pay the annual license fee for each of the 3 years during which they are authorized to own riverboats.

(g) Upon the termination, expiration or revocation of each of the first 10 licenses, which shall be issued for a 3 year period, all licenses are renewable annually upon payment of the fee and a determination by the Board that the licensee continues to meet all of the requirements of this Act and the Board's rules.

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Although you have not specifically so stated, it is my understanding that the Silver Eagle was one of the four riverboats initially licensed to operate on the Mississippi River. Further, all ten authorized licenses have been issued, and no license has been revoked or otherwise terminated.

It is a fundamental principle that because an administrative agency is a creation of statute, any power which is claimed by it must find its source within the provisions of the statute by which it is created. (Granite City Division of National Steel Company v. Illinois Pollution Control Board (1993), 155 Ill. 2d 149, 171.) No express power has been granted

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to the Board to permit the relocation of operations which have previously been authorized by an owners license, or to modify the terms of a license once it has been issued. Therefore, if such power exists, it must arise as a necessary incident to other powers which have been expressly granted. See Leonard v. Board of Education of Fairfield (1978), 57 Ill. App. 3d 853, 863.

Clearly, it was the intent of the General Assembly that the Gaming Board would give due consideration to all applications for owners licenses and, based upon the criteria established in the Act, issue licenses to the qualified applicants whose proposals best satisfied those criteria. Each applicant selected the area in which its riverboat gaming operations were to be conducted, and the location at which the riverboat or riverboats would dock. Each applicant was in competition with others to secure one of the authorized owners licenses. In making its determination on which proposals to accept, the Board was required to give favorable consideration to applicants who proposed locating in economically depressed areas of the State and who presented plans for significant economic development over a large geographic area. Further, the governing body of the municipality or county where the riverboat would dock must have approved the docking in its territory. Presumably, the Board also considered the location of other licensees and the area to be served by each. Six of the ten licenses issued were required by statute to be located

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on specified rivers. Thus, the location of the proposed operations was one of the most important factors in the licensing determination.

An owners license, once issued, authorizes the operation of riverboat gambling only on a specific navigable waterway, with all riverboats to dock at a single, specified location. Once a license has been issued, there is no statutory procedure for authorizing a change in the terms of the license, including the location of the permitted operations. Indeed, once the Board has issued all authorized owners licenses, it has apparently exhausted its power to act with respect to those licenses, except to the extent that the Board has been granted the power to renew, suspend, revoke or restrict licenses. (230 ILCS 10/5 (West 1994).) If the Board were to revise a license to permit gambling operations to be relocated to another river and dock, it would be tantamount to issuing a new license without the statutory safeguards being complied with, and without the opportunity for other prospective owners to apply.

Therefore, in the absence of specific statutory authority for the Board to permit the relocation of licensed gambling operations, or a clear indication from other specific provisions that the General Assembly intended for the Board to have continuing implied authority to revise the terms of owners licenses after they have been issued, it is my opinion that the Illinois

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Gaming Board does not have the authority to permit the relocation of licensed gambling operations from one location to another. Therefore, if the Board is to exercise such power, it will require a legislative grant thereof.

This does not necessarily mean that an owner will be precluded, in all circumstances, from applying for and receiving a license for a different location. Under section 7 of the Riverboat Gambling Act, the first ten owners licenses were issued for a three year period. Subsection 7(g) specifically provides that, upon termination, expiration or revocation of a license, it is renewable upon payment of a fee and a determination by the Board that the licensee continues to meet all the requirements of the Act and the Board's rules. Thus, licenses are not subject to automatic renewal, nor are they valid for an indefinite period. Consequently, if a licensee fails to comply with the Act, or fails to tender an annual fee, the license may be revoked or terminated; an owner may also voluntarily surrender a license. In that event, since ten licenses are authorized by the Act, another license could be issued in accordance with the provisions of the Act.

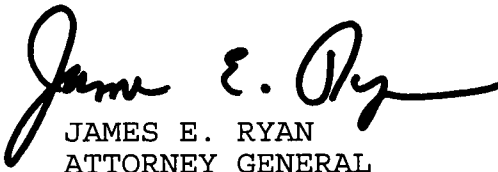
Each application for a license must state the dock at which the riverboat will be based and the river upon which it will operate. The Board authorizes the route and stops which the riverboat may make. Therefore, while each license must be for a

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particular dock and river, it is my opinion that, upon the expiration or termination of any license, an owner may apply for, and the Board may issue, a new license for some other dock, route and navigable stream within the requirements of the Act. Since other applicants may also be competing for the license, however, there can be no assurance that a current owner will be successful in obtaining a new license.

I would note, however, that as section 7 is currently written, it appears to require that four riverboats be licensed to operate on the Mississippi River, one on the Illinois River south of Marshall County and one on the Des Plaines River in Will County. There is nothing in the Act that indicates that licenses issued subsequent to the initial licenses are exempt from that requirement. Consequently, in issuing new licenses, the Gaming Board will have to ensure that the statutorily-imposed balance is maintained, unless it is repealed or modified legislatively.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL