

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA GAMBLING CONTROL BOARD

In the Matter of the Lawful  
Gambling License of the  
American Legion Post 108,  
LeCenter, License No. 00587

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 10:00 a.m. on April 12, 1994 at the Office of Administrative Hearings, Minneapolis, Minnesota. The record closed at the conclusion of the hearing.

E. Joseph Newton, Assistant Attorney General, Suite 1200, NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, appeared on behalf of the Minnesota Gambling Control Board (Board). Don Hayden, Commander of Post 108, R.R. #2, Box 57A, LeCenter, Minnesota 56057, appeared on behalf of the Licensee, American Legion Post 108. The Gambling Manager for the Licensee, Lyle Blaschko, also appeared.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61 the final decision of the Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days, and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Board. Exceptions to this Report, if any, shall be filed with the Gambling Control Board, Rosewood Plaza South, Third Floor, 1711 West County Road B, Roseville, Minnesota 55113.<sup>1</sup>

STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Licensee submitted a complete application for the renewal of its license at least 60 days before the expiration of its existing license.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

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<sup>1</sup>The parties stipulated that if this recommendation could be submitted prior to the Board's meeting on April 18, 1994, the

Board could make a final decision on that date and that the ten-day period to file exceptions would be waived.

## FINDINGS OF FACT

1. The Licensee, American Legion Post 108, License No. 00587, held a license to conduct lawful charitable gambling with an expiration date of March 31, 1994. Pursuant to Minn. Rule 7861.0020, subp. 8A, a complete renewal application was required to be submitted by the Licensee on or before January 30, 1994.

2. In mid-October 1993, a form notice was sent to the Licensee by the Board which included a preprinted renewal application and specific information concerning the necessity of submitting a complete application for renewal at least 75 days prior to license expiration.<sup>2</sup> The notice sent to the Licensee specifically stated that its application was due on January 15, 1994.

3. On December 17, 1993, the Board received the Licensee's renewal application which was complete in all respects except for the fact that it did not contain a revenue and expense calculation sheet for the 21-month period through December of 1993. This revenue and expense information for the applicable 21-month period is specifically required to be submitted with the renewal application pursuant to Minn. Rule 7861.0020, subp. 8A. The information submitted by the Licensee to the Board on December 17, 1993 contained a revenue and expense calculation, but only for a 19-month period, through October of 1993, rather than the 21-month period ending December 31, 1993.

4. On December 28, 1993, the Board sent a letter to the Licensee informing it that the revenue and expense sheet did not have all of the required information. The letter stated that the calculations must cover the period ending with the 21st month after the effective date of the current license which was through December 1993. The reason that the Board requires revenue and expense calculation information is that there is a statutory prohibition against a licensed charitable gambling organization spending more than 50% of its income for non-authorized purposes.

5. On January 3, 1994, the Licensee sent the November 1993 revenue and expense calculations to the Board along with a note from the Gambling Manager, Lyle Blaschko, stating that the December 1993 calculations were not completed yet but would be sent as soon as they were done.

6. On January 19, 1994, the Licensee's bookkeeper, Janice Welckle, did a computer printout of the 21-month revenue and expense sheet required by the Board. Additionally, she did a printout of two other documents required by the Minnesota Department of Revenue. She left these documents for Mr. Blaschko to mail later that day. Mr. Blaschko mailed the revenue and expense calculation to the Board on January 19, 1994 and the other documents to the Minnesota Department of Revenue.

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<sup>2</sup>The form mailed to the Licensee contained a 75-day requirement, rather than 60 days. This time period was changed by

rule in November of 1993. The 60-day requirement is applicable to this proceeding as stipulated to by the parties.

7. The Board never received the 21-month revenue and expense calculation mailed by Mr. Blaschko on January 19, 1994. Consequently, on March 4, 1994, the Board mailed a "final notice" to the Post Commander, Donald Hayden, informing him that the December 1993 expense calculation had never been submitted. The letter stated that:

Please return the requested information along with a copy of this letter to this office within 15 days of the date of this letter. For those organizations which are applying for renewal, if you fail to submit the requested information 60 days prior to the expiration of your current license, this may result in a lapse in the issuance of your renewed license.

8. After receipt of the March 4, 1994 letter from the Board, the Licensee immediately made a copy of the 21-month calculations and mailed it to the Board. It was received by the Board on March 9, 1994.

9. Prior to receiving the 21-month calculations, the Board sent a letter to Donald Hayden dated March 7, 1994 informing him that the Licensee's charitable gambling license would not be renewed when it expired due to the fact that a complete license renewal application had not been received by the Board. The notice further stated that the renewal would not be issued until the first day of the month following the expiration of 60 days after the Board had received the completed application. The notice further informed the Licensee that an appeal of the decision to not renew could be filed by the Licensee which would result in a contested case hearing before an Administrative Law Judge. A timely appeal was filed by the Board.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Minnesota Gambling Control Board have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 349.151, and 349.16 (1992) and pursuant to Minn. Rule 7861.0020, subp. 8D.

2. The Notice of and Order for Hearing in this case were proper and all relevant substantive and procedural requirements of law or rule have been complied with by the Board.

3. Minn. Rule 7861.0020, subp. 8A states:

To renew a license at the end of a term, an organization must submit to the board a complete renewal application on a form prescribed by the board at least 60 days before the expiration of the organization's existing license. A renewal application is not complete until it contains the information required by subparts 3 and 5 and a completed expense calculation [through the 21st month after the effective date of the organization's current license, Minn. R. 7861.0120, subp. 5B(2)(d) (Supp. 1992)] on a form prescribed the board.



Complete applications received by the board less than 60 days before the expiration of the applicant's existing license will be considered pursuant to this part but, if the applicant is entitled to a renewed license, the license will not be renewed by the director until the first day of the month following the expiration of 60 days after the board has received the completed application. An organization shall not continue gambling after the expiration of its license unless and until it receives a renewed license.

4. The Board did not receive a complete renewal application at least 60 days before the expiration of the Applicant's existing license due to the Licensee's failure to provide revenue and expense calculations through December of 1993. Consequently, the above-referenced rule was not complied with.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Minnesota Gambling Control Board affirm its decision to delay the issuance of a license to conduct lawful gambling to American Legion Post 108 until June 1, 1994.

Dated this 14th day of April, 1994.

\_\_\_\_\_ s/ Peter C. Erickson

PETER C. ERICKSON  
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape Recorded, No Transcript Prepared.

MEMORANDUM

The applicable rule in this proceeding, Minn. Rule section 7861.0200, subp. 8D, states clearly that a complete application must be received by the Board not less than 60 days before the expiration of the applicant's existing license. A completed application must contain revenue and expense calculations for the 21-month period after the effective date of the Licensee's current license. If the 60-day time period is not met, the license will not be renewed



until the first day of the month following the expiration of 60 days after receipt of the completed application.

In this case, the Judge has found Mr. Blaschko's testimony to be credible and determined that the revenue and expense calculation for the appropriate period was mailed to the Board on January 19, 1994. However, the Judge has also determined that the Board did not receive the calculation worksheet mailed by Mr. Blaschko on January 19, 1994. Consequently, the legal effect of mailing and non-receipt must be analyzed.

In the case of Nafstad v. Merchant, 228 N.W.2d 548 (Minn. 1975), the Minnesota Supreme Court stated:

We start with the presumption, in the absence of proof to the contrary, that mail properly addressed and sent with postage prepaid is duly received by the addressee. [citations omitted] The presumption of receipt is based on the regularity and certainty with which, according to common experience, the mail is carried. [citations omitted] Defendants, by denying receipt of two of plaintiff's letters, put the burden of proof on the plaintiff to prove timely mailing by a fair preponderance of the evidence. To do so plaintiff was required to show evidence of habit or custom with respect to mailing from the sender's office, coupled with some evidence showing compliance with the custom in the particular instance. [citations omitted]

Nafstad, at 550.

In Nafstad, the Supreme Court held that there was adequate evidence to uphold a jury finding that the addressee actually received the letters sent.

This "mailing" rule was clarified by the Minnesota Court of Appeals in Thomas v. Fey, 405 N.W.2d 450 (Minn. App. 1987):

It is well-established that a presumption of receipt by an addressee is created when the sender demonstrates proper mailing of the document through evidence of habit or custom coupled with some evidence that the procedures were complied with in the particular instance. [citing Nafstad] The presumption is rebuttable by showing that the document was not, in fact received. [citation omitted]

Fey, 450 N.W.2d at 454.

In most situations where statutory time periods are prescribed for the submission of documents, receipt of the document is the operative element, not mailing. See, Salminen v. Frankson, 245 N.W.2d 839, 840-41 (Minn. 1976); Wise v. Bix, 434 N.W.2d 502 (Minn.App. 1989). Mailing is the operative time element only when the statute or rules provide for that specifically. Wise, supra.

In this case, the Judge has found that the Licensee did in fact mail the necessary information to the Board on January 19, 1994. However, the Judge has also found that this information was not received by the Board despite the mailing. Consequently, because receipt of the expense calculation by the Board is required by the applicable rule, and the Judge has found that the Board did not receive the mailing, the presumption of receipt established by the Licensee has been rebutted. Fey, id. Therefore, the result of this analysis is that the Licensee did not comply with the requirements of Minn. Rule 7861.0200, subp. 8D.

P.C.E.

