

MEMORANDUM

To: Game Operator Employer Licensees

From: John Conforti, Chief Compliance Officer, New Hampshire Lottery Commission 

Date: September 2, 2021

Re: Transfer of Game Operator Employer licenses under RSA 287-D:4

The New Hampshire Lottery Commission (“Lottery”) was recently asked to issue a declaratory ruling with respect to whether and to what extent sale of equity and voting interest of an LLC holding a Game Operator Employer (GOE) license would violate restrictions on transfers of that license pursuant to RSA 287-D:4. Because this question has general application to the licensees outside of the party seeking the declaratory judgment, we are issuing this general memorandum explaining the Lottery’s position on this issue.

LEGAL BACKGROUND

Lottery issues five categories of “Game of Chance” licenses under RSA 287-D: charitable organization licenses (RSA 287-D:6), facilities licenses (RSA 287-D:7), game operator employer licenses (RSA 287-D:8), primary game operator licenses (RSA 287-D:9), and secondary game operator licenses (RSA 287-D:10). New England Gaming and Consulting, LLC (“NEGC”) holds a game operator employer (“GOE”) license. Under RSA 287-D:4, III, “No license shall be transferrable.” Neither the statute nor administrative rules define specifically what constitutes a transfer of a license. Accordingly, the Lottery requested a legal opinion from the New Hampshire Department of Justice on whether ownership changes within a licensed LLC or other corporate entity would constitute a transfer of a license.

ANALYSIS

RSA 287-D contemplates that some ownership changes may take place in a licensed entity. Specifically, an applicant for a GOE license must include “[t]he name, residence address, and nature of ownership interest . . . of every person who possesses an ownership interest in the entity.” RSA 287-D:11, II(a). For any director, officer, or holder of 10% or more interest in the applicant, the written statement must also include that individual’s “name, address, present principle occupation or employment.” RSA 287-D:11, II(b). In addition, the licensee must provide the Attorney General with an updated written statement every five years. RSA 287-D:11, II. The licensee must also “notify the attorney general and the lottery commission of any change of [this] information . . . within 10 days of such change.” RSA 287-D:11, II(d).

The language of RSA 287-D:11 indicates that ownership changes within a licensed entity, including ownership changes of 10% could occur and therefore would not constitute a transfer of the license. That language does not address whether changes of a majority of ownership or control would be permitted. Lottery had previously taken the position that a change of majority ownership or control of an LLC would in effect be a transfer of the license in violation of RSA 287-D:4. This position was consistent with the express statutory language in

RSA 284:16 for a racing license and it was our position that the restrictions on transfers of GOE licenses were analogous to the more defined restrictions set forth in the racing statute. After review and consultation with the Department of Justice, we believe that conclusion was in error.

In reviewing the meaning of a statute, we must interpret legislative intent from the statute as written and cannot consider what the legislature might have said or add language that the legislature did not see fit to include. In this case, the legislature chose not to place the same majority ownership/control transfer restrictions that they imposed in RSA 284:16. Therefore, based on the plain language of the statute, a change in ownership and control of a GOE licensed entity must be considered separate from a transfer of a GOE license.

This conclusion is consistent with other state granted licenses which permit changes of ownership or control of the licensed entity, subject to review and approval. See, e.g., RSA 178:3, IX (liquor licenses), RSA 399-D:9 (debt adjustment service licenses), RSA 384-F:23 and RSA 384-F:28 (foreign banks); RSA 397-A:6, VI and RSA 397-A:10, II (non-depository mortgage bankers, brokers, and services); RSA 143-A:6, IV, He-P 2304.02(k), He-P 2301.01(h), He-P 2304.08, and He-P 2305.01(c)(3) (food service licenses); RSA 162-H:5 and Site 301.17 (energy facility siting certificates); RSA 147-A:4, IV, Env-Hw 304.28, and 40 C.F.R. § 270.40(b) (Hazardous waste operator permits).

This conclusion is also supported by federal case law which differentiates a sale of stock in a corporation from a transfer of a license from one corporate entity to another. Institut Pasteur v. Cambridge Biotech Corporation, 104 F.3d 489 (1st Cir. 1997). The only exception to this rule appears to be cases where the license (or contract) is held by a defunct or shell entity whose *only* asset is the license or contract. See, e.g., In Re Alltech Plastics, Inc., 1987 WL 123991 (W.D. Tenn. Dec. 30, 1987) Westinghouse Electric & Mfg. Co. v. Radio-Craft Co., Inc., 291 F. 169 (D.N.J. 1923). In such cases, a change of a controlling interest of the defunct entity can be considered a transfer of the license held by that entity.

CONCLUSION

Based on the analysis of the language of RSA 287-D, similar State of New Hampshire licensing statutes, and applicable case law, the transfer of ownership interests, stock or control of a licensed corporate entity does not constitute a transfer of a license in violation of RSA 287-D:4, III.¹²

¹ This determination presumes that the licensed entity is not defunct or operating as a shell company where its only asset is a New Hampshire gaming license.

² This decision does not expressly address the transferability of historic horse racing licenses. The Lottery intends to provide direction on the transferability of these licenses at or around the time that they are issued.