

ORDER 2007-74

**AN ORDER OF THE INDIANA GAMING COMMISSION
CONCERNING THE REQUEST FOR WAIVER OF
FELONY DISQUALIFICATION OF GREGORY E. STATEN
FW-07-08**

The Indiana Gaming Commission having reviewed this matter and the attached Findings of Fact hereby **ADOPTS THE RECOMMENDATION** of the review officer granting Mr. Staten's request for a waiver of his felony disqualification.

IT IS SO ORDERED, THIS THE 13th DAY OF SEPTEMBER, 2007.

THE INDIANA GAMING COMMISSION:


William W. Barrett, Chair

ATTEST:


Tim Murphy, Vice Chair

**INDIANA GAMING COMMISSION
REQUEST FOR WAIVER OF FELONY CONVICTION DISQUALIFICATION
OF GREGORY E. STATEN
FW-07-08**

FINDINGS OF FACT AND RECOMMENDATION

Ronald H. McClain, Staff Attorney for the Indiana Gaming Commission ("Commission") and review officer for the request for a felony waiver of Mr. Gregory E. Staten makes the following report:

LEGAL AND PROCEDURAL BACKGROUND

1. Petitioner, Gregory E. Staten, on October 19, 2006 received a temporary level 2 occupational license as a table games supervisor at French Lick Resort • Casino.
2. Mr. Staten disclosed in his application that he was arrested for misdemeanor battery in Clark County, Nevada in 2001. He did not disclose that he was convicted of the felony of attempt robbery in Nevada in 1979 and a felony charge of DUI in Nevada in 1984. These arrests were discovered during a background investigation by Commission staff. Mr. Staten was asked to submit court documents indicating the disposition of the charges. The documents provided by Mr. Staten confirmed he had two (2) felony convictions in Nevada.
3. Pursuant to Indiana Code 4-33-8-3, the Commission may not issue a license to an individual who has been convicted of a felony. On that basis, Commission staff revoked Mr. Staten's temporary license and informed him the staff would recommend his permanent license be denied.
4. On or about August 8, 2007, Mr. Staten submitted a felony waiver application to the Commission staff.
5. On August 6, 2007, Connie Jackson, Director of Human Resources for French Lick Resort • Casino, sent an e-mail message to Commission staff in satisfaction of 68 IAC 2-4-1 and Indiana Code 4-33-8-11(c)(10).
6. Executive Director Ernest Yelton appointed the undersigned, an attorney on the Commission's staff, to serve as the review officer in this matter.
7. On August 15, 2007, the undersigned conducted a hearing regarding Mr. Staten's petition.

8. At the hearing, Mr. Staten appeared *pro se*. He offered his testimony and the testimony of two witnesses, Peggy Staten, his wife of 14 years, and Linda Parrin, Director of Casino Finance for French Lick Resort • Casino.
9. The undersigned recorded the hearing. The resulting digital file is part of the record in this matter.
10. The Commission may only waive a felony disqualification if the individual qualifies for a waiver in accordance with Indiana Code 4-33-8-11. Mr. Staten qualifies for a waiver under subsection (e) of that section in that his felony is not among those listed for a lifetime disqualification and it has been at least ten (10) years since the discharge of his latter sentence.
11. Pursuant to Indiana Code 4-33-8-11 (b), the Commission may only waive a felony disqualification if the individual has demonstrated by clear and convincing evidence the individual's rehabilitation.
12. In accordance with Indiana Code 4-33-8-11 (c), in determining whether the Petitioner has demonstrated rehabilitation, the commission shall consider the following factors:
 - a. The nature and duties of the position applied for by the individual.
 - b. The nature and seriousness of the offense or conduct.
 - c. The circumstances under which the offense or conduct occurred.
 - d. The date of the offense or conduct.
 - e. The age of the individual when the offense or conduct was committed.
 - f. Whether the offense or conduct was an isolated or a repeated incident.
 - g. A social condition that may have contributed to the offense or conduct.
 - h. Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational education, successful participation in a correctional work release program, or the recommendation of a person who has or has had the individual under the person's supervision.
 - i. The complete criminal record of the individual.
 - j. The prospective employer's written statement that:
 - i. the employer has been advised of all of the facts and circumstances of the individual's criminal record; and
 - ii. after having considered the facts and circumstances, the prospective employer will hire the individual if the commission grants a waiver.

FINDINGS OF FACT

1. Mr. Staten is forty-nine years old. He was born in Seymour, Indiana, on December 5, 1957. He moved to Nevada with his father in 1970 when his

parents divorced. He worked in the gaming industry in Nevada from 1980 to 2004 when he moved back to Indiana for family reasons.

2. Mr. Staten has not sought other employment, hoping to return to French Lick Resort • Casino as a table games supervisor upon favorable Commission action. He has worked in the gaming industry his entire adult life and plans to continue to do so.
3. On August 6, 2007, Connie Jackson, Human Resources Director at French Lick Resort • Casino, wrote a letter to Commission staff indicating that French Lick Resort • Casino will employ Mr. Staten if the commission grants a waiver of the felony disqualification.
4. Gregory Staten was convicted of attempt robbery in Clark County, Nevada, in 1979. Mr. Staten pled guilty to attempt robbery and was sentenced to four (4) years, all suspended, and three (3) years of probation. While on probation he underwent drug rehabilitation and was required to seek and maintain legitimate employment. Mr. Staten completed table games training at his own expense and began work in the Nevada gaming industry. He successfully completed probation and his probation was closed in 1982. Mr. Staten was twenty (20) years old when he committed the attempt robbery.
5. Gregory Staten was convicted of a felony charge of operating a vehicle while intoxicated in Clark County, Nevada in 1984. Mr. Staten pled guilty to driving under the influence of intoxicating liquor and was sentenced to two (2) years in the Nevada State Prison. He completed his sentence and was released in 1985. Mr. Staten was twenty-five (25) years old when he committed the DUI.

RECOMMENDATION

Based on the foregoing, Mr. Staten has demonstrated by clear and convincing evidence that he has been rehabilitated and should be granted a waiver of his felony disqualification. The statutory guidelines provide a useful framework for evaluating the facts of Mr. Staten's case.

1. The nature and duties of his position will require him to interact with resort customers, primarily gamblers. French Lick Resort • Casino has a zero tolerance drug policy, supported by random drug testing. Mr. Staten is emphatic that he does not use drugs and will have no problem complying with the company drug policy.
2. The nature of each of his convictions was serious. Mr. Staten received no executed jail time and successfully completed probation for his attempt robbery conviction. He received a sentence of two (2) years executed for his DUI conviction.

3. In 2000, Mr. Staten retained an attorney and had his criminal record sealed, as permitted by Nevada law. On the advice of his attorney, he did not disclose his felony convictions on his application. His arrests were discovered during the background investigation. When Mr. Staten was instructed to submit court documentation of the disposition of his cases, he complied immediately. His failure to disclose felony arrests does not appear to be deceptive.
4. Members of the Legal Division of the Commission staff thoroughly discussed the propriety of denying Mr. Staten's application for license based upon convictions in a record that had been sealed. Nevada law allows the Nevada Gaming Commission and the Nevada State Gaming Control Board to inspect otherwise sealed criminal records to determine the suitability of a person to hold a state gaming license. The Commission staff concluded that Indiana law requires an inquiry where a felony conviction is indicated.
5. The Commission staff requested Mr. Staten's work history from the Nevada Gaming Commission. The records received in response indicate he held a gaming work permit from at least 1995 until the present. Records prior to 1995 were not readily available. Mr. Staten states he completed table games training during his rehabilitation after his first conviction and has worked in gaming in Nevada from 1980 until returning to Indiana in 2004. From 2004 to 2006 he was self-employed in the flea market trade under a retail merchant's license.
6. Mr. Staten's entire criminal history is related in this report. The 2001 battery arrest in Nevada was a summons complaint which was dismissed.
7. Mr. Staten provided testimony about his rehabilitation. He left home to live on his own when he was sixteen years old and finished high school on his own initiative. He states he was wild and foolish for few years resulting in drug use and the arrests discussed herein. Mr. Staten believes his prison term was a positive factor in his life in that it forced him to receive drug treatment and helped him define some positive goals. He has always been gainfully employed, often holding supervisory positions in the gaming industry. He currently supports an extended family including his children and grandchildren.
8. French Lick Resort • Casino's letter states that they are aware of the facts and circumstances of Mr. Staten's record and that they will employ him if he is granted a felony waiver.

Therefore, I recommend that the Commission grant a waiver of felony disqualification to Gregory E. Staten.

Respectfully Submitted,



Ron McClain
Staff Attorney

DATE: 9-13-07