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BEFORE THE COLORADO LIMITED GAMING CONTROL COMMISSION

STATE OF COLORADO

Case No. DO-01-002

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## FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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IN THE MATTER OF:

Bruce Schmalz, Individually and as Alderman-elect for Central City,

and

The City of Central City,

Petitioners.

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### INTRODUCTION

This matter is before the Colorado Limited Gaming Control Commission ("Commission") upon the petitions for declaratory order filed by Mr. Bruce Schmalz and the City of Central City. The Commission considered the petitions at regularly scheduled meetings on January 18, 2001 and again on February 15, 2001.

Ceri Williams, Assistant Attorney General, represented the Division of Gaming ("Division"). Brian J. Pinkowski, Esq., represented Mr. Schmalz and Central City. John D. Baird, First Assistant Attorney General, appeared as conflicts counsel for the Commission. The hearings were recorded by electronic recording device provided by the Division.

The Commission received the Petition for Declaratory Order of "Bruce Schmalz and the City of Central City and its Citizens that voted in the November 7, 2000 election for Alderman of the City of Central," the petition for declaratory order of Guerin Lee Green, a letter from Al Thelin to Ken Salazar, Colorado Attorney General, dated January 12, 2001, and the Division's responses to the petitions. Mr. Green subsequently withdrew his petition for declaratory order.

Guerin Green, Bruce Schmalz, Clara Aucoin, Betty Mahaffey, William Wiman, Marvin Skagerberg, Patrick Hughes, and Ann Dodson presented statements. After hearing argument from the petitioners and the Division, the Commission deliberated in executive session pursuant to section 12-47.1-522(1)(d), C.R.S., and returned to public session to act upon the petitions. The Commission determined that additional information was required and, pursuant to Rule 47.1-602 of the Colorado Limited Gaming Regulations, ordered that the petitioners provide

additional information to the Division by January 31, 2001. The Commission also ordered that the Division consider the additional information and provide its recommendations to both the petitioners and the Commission.

The petitioners subsequently filed their "Brief and Amended Request for Declaratory Order." The Division filed its corresponding response. The Commission also received a letter from Bruce Schmalz to Tom Kitts, Director of the Division, dated January 29, 2001.

The matter next came before the Commission at its regularly scheduled meeting on February 15, 2001. After hearing additional argument and statements from the parties, the Commission deliberated in executive session. The Commission returned to public session and by a unanimous vote concluded that Mr. Schmalz currently has a financial interest in a limited gaming license as evidenced by his liability for loans secured by real property that includes a lease to a licensed casino.

Based upon the evidence and arguments presented at hearing, together with the pleadings, responses, and other filings in the record, the Commission therefore enters the following:

#### **FINDINGS OF FACT**

1. Mr. Schmalz is an owner of the Dostal Alley Casino in Central City, Colorado.
2. Dostal Alley Casino operates under a retail gaming license issued by the Commission.
3. Mr. Schmalz is liable on promissory notes secured by real property leased to the Dostal Alley Casino.

#### **CONCLUSIONS OF LAW**

4. The Commission has jurisdiction over Mr. Schmalz and the subject matter of this action.
5. A declaratory order is an appropriate remedy to afford relief from uncertainty and insecurity. Colorado State Bd. of Optometric Examiners v. Dixon, 165 Colo. 448, 493, 440 P.2d 287, 290-91 (1968). Mr. Schmalz is faced with real questions as to what constitutes an interest in a gaming license. However, declaratory relief is not available to render advisory opinions on hypothetical issues. National Inst. Of Nutritional Educ. v. Meyer, 855 P.2d 31, 32-33 (Colo. App. 1993). The Commission must therefore consider the petitions for declaratory relief in the context of the facts as they presently exist.
6. Section 12-47.1-804(1), C.R.S., prohibits certain individuals from having "any interest, direct or indirect, in any license involved in or with limited gaming." At present, Mr. Schmalz is an owner of Dostal Alley Casino. As an owner of a casino Mr. Schmalz has interests in a gaming license. See Lorenz v. State, 928 P.2d 1274, 1285 (Colo. 1996)(financial interest in business owning gaming license constitutes indirect interest).

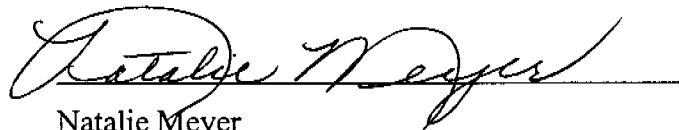
7. In addition, Mr. Schmalz is liable on loans secured through mortgages on gaming properties. As a debtor of these loans his stake in the affairs of a licensed gaming establishment is far from tenuous. For example, in the event of default on the loans secured by property involving Dostal Alley, Mr. Schmalz may have a right to cure under section 38-38-104, C.R.S. and a right to redeem under section 38-38-302, C.R.S., in the event of a foreclosure. Mr. Schmalz's interests in loans secured against property involving a licensed gaming establishment constitute an interest in a license involved in or with limited gaming.

### ORDER

It is the unanimous decision of the Commission that Mr. Schmalz's liability for loans secured against gaming property constitutes an interest in a limited gaming license for the purposes of section 12-47.1-804(1), C.R.S.

Done and signed this 22 day of February 2001.

FOR THE COMMISSION:



Natalie Meyer  
Commissioner and Chairman of the  
Limited Gaming Control Commission  
State of Colorado

### NOTICE OF APPEAL RIGHTS

This Findings of Fact, Conclusions of Law, and Order is subject to appeal pursuant to sections 12-47.1-521, C.R.S. and 24-4-106, C.R.S. Pursuant to section 24-4-106(11), judicial review of this decision is commenced by filing a notice of appeal with the court of appeals within forty-five days after the date of the service of this final order, together with a certificate of service of said notice of appeal on the Colorado Limited Gaming Control Commission and on all parties appearing before the Commission in this matter.