

# ARKANSAS REGISTER

## Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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**For Office**

**Use Only:**

Effective Date \_\_\_\_\_ Code Number \_\_\_\_\_

Name of Agency Arkansas Racing Commission

Department Department of Finance and Administration

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Statutory Authority for Promulgating Rules Amendment 100 to Arkansas Constitution

**Rule Title:** Rule 18 Supervision

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(Check One)

**Date**

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02-21-19

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Byron Freeland

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03-01-19

Contact Person

E-mail Address

Date

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Byron Freeland  
Signature

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Title

03-01-19

Date

## **RULE 18 SUPERVISION**

**18.010 Authority.**

**18.020 Policy.**

**18.030 Determination to seek supervisor.**

**18.040 Qualifications of supervisor.**

**18.050 Termination.**

**18.060 Distribution of earnings to former legal owners.**

**18.020 Policy.** The Commission finds and hereby declares that the continuation of a Casino gaming establishment's gaming operation following surrender, lapse, suspension or revocation of a license essential to such operation presents significantly enhanced dangers to the public health, safety, morals, good order and general welfare of the inhabitants of the State of Arkansas and should only be permitted when:

1. The possible adverse economic impact of closure of the gaming operations upon the specific community in which the establishment is located and upon the state generally is significant; and
2. Continued gaming operation pursuant to a supervisorship would facilitate speedy transfer of ownership of the establishment in a manner that does not unreasonably endanger the public health, safety, morals, good order and general welfare.

**18.030 Determination to seek supervisor.**

1. Only the Commission is empowered to petition ex parte for court appointment of a supervisor if the license of any person whose license is essential to the operation of a gaming establishment:

- (a) Is revoked by the Commission;
- (b) Is suspended by the Commission;
- (c) Lapses; or
- (d) Is surrendered because the gaming establishment or the ownership thereof has been conveyed or transferred to a secured party who does not possess the licenses necessary to operate the establishment.

2. The decision to file such a petition is discretionary with the Commission, and in determining whether such a petition shall be filed, the Commission shall consider, at any time following issuance of an order revoking, suspending or allowing surrender or lapse of a Casino license:

- (a) The nature of the violation which resulted in the revocation, suspension, surrender or lapse;
- (b) The ability and actions taken, if any, for a removal by licensees in good standing of persons who committed the violation;
- (c) The involvement during a proposed supervisorship in any operation of the establishment of persons whose licenses were revoked, suspended, surrendered or lapsed;
- (d) The economic impact of closure of the gaming operations upon the community in which the establishment is located;
- (e) The economic impact of closure of the gaming operations upon the State of Arkansas;
- (f) The prior efforts, if any, to sell the establishment;
- (g) The involvement, if any, of undisclosed interests in the establishment;

(h) The presence, if any, of a publicly traded holding company and the public trading that would occur during a supervisorship;

(i) The current status of all fees and taxes applicable to the operation;

(j) The adequacy of existing financing for the operation, if continued, and the suitability of the source of such financing;

(k) The impact upon public confidence and trust that gaming operations in Arkansas are conducted honestly, competitively and free from criminal and corruptive elements;

(l) The ownership of the gaming establishment premises or an interest therein by persons other than the offending, surrendering or lapsed licensee;

(m) Any other matter material to a full and complete consideration of the particular circumstances presented;

(n) The availability of two or more persons qualified and willing to assume the position of supervisor for the establishment in question, unless, in the opinion of the Commission, only one person is available who is qualified to serve, in which case the Commission may name only that person.

3. The Commission may decline to petition for appointment of a supervisor if satisfied that because of any or all of the above considerations or for any other reason, a continuation of the gaming operation would not be in the best interest of the State of Arkansas, the gaming industry, or both.

4. The Commission will not petition for a supervisor to continue gaming operations at any establishment if:

(a) A rehearing has been granted by the Commission to the licensee on the revocation or suspension of his or her license and the rehearing has not been concluded; or

(b) The gaming establishment has never been in operation and opened to the public; or

(c) The gaming establishment is, or reasonably appears to be, insolvent; or

(d) Gaming operations ceased at the establishment for any reason prior to revocation, suspension or lapse of an essential license.

#### **18.040 Qualifications of supervisor.**

1. Should the Commission petition for appointment of a supervisor, the Commission shall include the names of two or more persons who the Commission believes are suitable and qualified to manage the gaming establishment involved and who are available for appointment by the court, unless, in the opinion of the Commission, only one person is available who is qualified to serve, in which case the Commission may name only that person.

2. The Commission shall not petition for appointment of any person unless first satisfied that the person meets the following qualifications:

a) An application to receive a license or be found suitable must not be granted unless the Commission is satisfied that the applicant is:

i. A person of good character, honesty and integrity;

ii. A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this State or to the effective regulation and control of gaming or charitable lotteries, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and activities in the conduct of gaming or charitable lotteries or in the carrying on of the business and financial arrangements incidental thereto; and

- iii. In all other respects qualified to be licensed or found suitable consistently with the declared policy of the State.
  - b) A license to operate a gaming establishment or an inter-casino linked system must not be granted unless the applicant has satisfied the Commission that:
    - i. The applicant has adequate business probity, competence and experience, in gaming or generally; and
    - ii. The proposed financing of the entire operation is:
      - A. Adequate for the nature of the proposed operation; and
      - B. From a suitable source.
- Any lender or other source of money or credit which the Commission finds does not meet the standards set forth in subsection 2 may be deemed unsuitable.

3. The Commission may petition for the appointment of more than a single individual, such as a management team, association or company, where such an appointment would better meet the circumstances and the needs of the establishment.

#### **18.050 Termination.**

1. Once a license essential to a continuation of the gaming operations has been revoked, suspended, surrendered or has lapsed, there is no right or interest in any person to further conduct gaming at the establishment, and the Commission may seek termination of a supervisorship for any cause deemed reasonable by the Commission.

2. Without limiting the foregoing, the Commission may seek termination whenever:

- (a) License fees and taxes are not paid when due;
- (b) The establishment enters into voluntary or involuntary bankruptcy proceedings;
- (c) The establishment's debts exceed the value of its assets or the establishment cannot meet its debts as they become due;
- (d) The Commission determines that a violation of the Rules enacted pursuant thereto, relating to the establishment has occurred subsequent to the supervisorship;
- (e) A former owner, the former owner's agent, employee or representative are determined by the Commission to have violated any statute or regulation relating directly or indirectly to gaming or the administration of the supervisorship, other than the violation, if any, which resulted in the revocation, suspension, surrender or lapse;
- (f) The death, disability, or removal of the supervisor;
- (g) Closure of gaming operations at the establishment for any reason, regardless of fault; or
- (h) Any circumstances which, in the determination of the Commission, renders continued operations under the supervisorship impractical or detrimental to the interests of the State of Arkansas, or licensed gaming, or both.

#### **18.060 Distribution of earnings to former legal owners.**

1. A supervisor shall not distribute earnings of the gaming establishment to the former licensed owners thereof, until deduction is made for:

- (a) The costs of the supervisorship, including compensation and expenses incurred by the supervisor and those engaged by the supervisor to aid in the supervisor's duties, then due and owing;
- (b) Amounts deemed necessary by the supervisor for continuing the operation of the establishment, including, but not limited to, bankroll, salaries, and foreseeable operating expenses;

(c) Amounts deemed necessary by the supervisor to preserve the assets of the gaming establishment; and

(d) A reserve fund sufficient, in the determination of the supervisor, to facilitate continued operation in light of pending civil litigation, disputed claims, contractual obligations, taxes, fees and any other contingency known to the supervisor which may require payment by the establishment.

2. The supervisor is subject to the provisions of these Rules, and shall not distribute any earnings of the gaming establishment in contravention of any provision thereof.

**End – Rule 18**