

## **IC 4-33-6.5**

### Chapter 6.5. Riverboat Operating Agent Contract

#### **IC 4-33-6.5-1**

##### **Maximum number of operating agent contracts**

Sec. 1. The commission may enter into one (1) operating agent contract with a person to operate one (1) riverboat on behalf of the commission in a historic hotel district. The commission shall issue a request for proposals and award the contract under IC 5-22-9.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-2**

##### **Applicant requirements for an operating agent contract**

Sec. 2. (a) A person, including a person who holds or has an interest in an owner's license issued under this article, may file an application with the commission to serve as an operating agent under this chapter. An applicant must pay a nonrefundable application fee to the commission in an amount to be determined by the commission.

(b) An applicant must submit the following on forms provided by the commission:

(1) If the applicant is an individual, two (2) sets of the individual's fingerprints.

(2) If the applicant is not an individual, two (2) sets of fingerprints for each officer and director of the applicant.

(c) This subsection applies to an applicant who applies after May 12, 2009, to serve as an operating agent under this chapter. An applicant shall submit for the approval of the commission a written power of attorney identifying the person who, if approved by the commission, would serve as the applicant's trustee to operate the riverboat. The power of attorney submitted under this subsection must:

(1) be executed in the manner required by IC 30-5;

(2) describe the powers that may be delegated to the proposed trustee;

(3) conform with the requirements established by the commission under IC 4-33-4-3(a)(10); and

(4) be submitted on the date that the applicant pays the application fee described in subsection (a).

(d) The commission shall review the applications filed under this chapter and shall inform each applicant of the commission's decision.

(e) The costs of investigating an applicant to serve as an operating agent under this chapter shall be paid from the application fee paid by the applicant.

(f) An applicant to serve as an operating agent under this chapter must pay all additional costs that are:

(1) associated with the investigation of the applicant; and

(2) greater than the amount of the application fee paid by the applicant.

*As added by P.L.92-2003, SEC.31. Amended by P.L.142-2009, SEC.10; P.L.1-2010, SEC.9.*

### **IC 4-33-6.5-3**

#### **Restrictions on issuance**

Sec. 3. The commission may not enter into an operating agent contract with a person under this chapter if:

- (1) the person has been convicted of a felony under Indiana law, the laws of any other state, or the laws of the United States;
- (2) the person has knowingly or intentionally submitted an application under this chapter that contains false information;
- (3) the person is a member of the commission;
- (4) the person is an officer, a director, or a managerial employee of a person described in subdivision (1) or (2);
- (5) the person employs an individual who is described in subdivision (1), (2), or (3); or
- (6) a license issued to the person to own or operate gambling facilities in another jurisdiction has been revoked.

*As added by P.L.92-2003, SEC.31.*

### **IC 4-33-6.5-4**

#### **Factors considered in granting operating agent contract; submission of proposed riverboat design**

Sec. 4. In determining whether to grant an operating agent contract to an applicant, the commission shall consider the following:

- (1) The character, reputation, experience, and financial integrity of the following:
  - (A) The applicant.
  - (B) A person that:
    - (i) directly or indirectly controls the applicant; or
    - (ii) is directly or indirectly controlled by the applicant or by a person that directly or indirectly controls the applicant.
- (2) The facilities or proposed facilities for the conduct of riverboat gambling in a historic hotel district. The applicant must submit to the commission a proposed design of the riverboat.
- (3) The highest prospective total revenue to be collected by the state from the conduct of riverboat gambling.
- (4) The good faith affirmative action plan of each applicant to recruit, train, and upgrade minorities in all employment classifications.
- (5) The financial ability of the applicant to purchase and maintain adequate liability and casualty insurance.
- (6) Whether the applicant has adequate capitalization to operate a riverboat for the duration of the contract.
- (7) The extent to which the applicant provides assurances that the applicant will participate in the funding of:
  - (A) specific economic development programs; or
  - (B) infrastructure improvements;in the county where the riverboat is located.
- (8) The extent to which the applicant exceeds or meets other standards adopted by the commission.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-5**

##### **Requirements of operating agent**

Sec. 5. After selecting the most appropriate operating agent applicant, the commission may enter into an operating agent contract with the person. The operating agent contract must comply with this article and include the following terms and conditions:

- (1) The operating agent must pay a nonrefundable initial fee of one million dollars (\$1,000,000) to the commission. The fee must be deposited by the commission into the West Baden Springs historic hotel preservation and maintenance fund established by IC 36-7-11.5-11(b).
- (2) The operating agent must post a bond as required in section 6 of this chapter.
- (3) The operating agent must implement flexible scheduling.
- (4) The operating agent must locate the riverboat in a historic hotel district at a location approved by the commission.
- (5) The operating agent must comply with any requirements concerning the exterior design of the riverboat that are approved by the commission.
- (6) Notwithstanding any law limiting the maximum length of contracts:
  - (A) the initial term of the contract may not exceed twenty (20) years; and
  - (B) any renewal or extension period permitted under the contract may not exceed twenty (20) years.
- (7) The operating agent must collect and remit all taxes under IC 4-33-12 and IC 4-33-13.
- (8) The operating agent must comply with the restrictions on the transferability of the operating agent contract under section 12 of this chapter.

*As added by P.L.92-2003, SEC.31. Amended by P.L.234-2007, SEC.278.*

#### **IC 4-33-6.5-6**

##### **Bond**

Sec. 6. (a) An operating agent must post a bond with the commission at least sixty (60) days before the commencement of regular riverboat operations in the historic hotel district.

(b) The bond must be furnished in:

- (1) cash or negotiable securities;
- (2) a surety bond:
  - (A) with a surety company approved by the commission; and
  - (B) guaranteed by a satisfactory guarantor; or
- (3) an irrevocable letter of credit issued by a banking institution of Indiana acceptable to the commission.

(c) If a bond is furnished in cash or negotiable securities, the principal shall be placed without restriction at the disposal of the commission, but income inures to the benefit of the operating agent.

(d) The bond:

- (1) is subject to the approval of the commission;
- (2) must be in an amount that the commission determines will adequately reflect the amount that a local community will expend for infrastructure and other facilities associated with a riverboat operation; and
- (3) must be payable to the commission as obligee for use in payment of the riverboat's financial obligations to the local community, the state, and other aggrieved parties, as determined by the rules of the commission.

Any bond proceeds remaining after the payments shall be deposited in the West Baden Springs historic hotel preservation and maintenance fund established by IC 36-7-11.5-11.

(e) If after a hearing (after at least five (5) days written notice) the commission determines that the amount of an operating agent's bond is insufficient, the operating agent shall, upon written demand of the commission, file a new bond.

(f) The commission may require an operating agent to file a new bond with a satisfactory surety in the same form and amount if:

- (1) liability on the old bond is discharged or reduced by judgment rendered, payment made, or otherwise; or
- (2) in the opinion of the commission any surety on the old bond becomes unsatisfactory.

(g) If a new bond obtained under subsection (e) or (f) is unsatisfactory, the commission shall cancel the operating agent's contract. If the new bond is satisfactorily furnished, the commission shall release in writing the surety on the old bond from any liability accruing after the effective date of the new bond.

(h) A bond is released on the condition that the operating agent remains at the site of the riverboat operating within the historic hotel district:

- (1) for five (5) years; or
- (2) until the date the commission enters into a contract with another operating agent to operate from the site for which the bond was posted;

whichever occurs first.

(i) An operating agent who does not meet the requirements of subsection (h) forfeits a bond filed under this section. The proceeds of a bond that is in default under this subsection are paid to the commission and used in the same manner as specified in subsection (d).

(j) The total liability of the surety on a bond is limited to the amount specified in the bond, and the continuous nature of the bond may not be construed as allowing the liability of the surety under a bond to accumulate for each successive approval period during which the bond is in force.

(k) A bond filed under this section is released sixty (60) days after:

- (1) the time specified under subsection (h); and
- (2) a written request is submitted by the operating agent.

*As added by P.L.92-2003, SEC.31. Amended by P.L.234-2007, SEC.279.*

#### **IC 4-33-6.5-7**

##### **Reinvestigations of operating agent**

Sec. 7. (a) An operating agent shall undergo a complete investigation at least once every three (3) years to ensure that the operating agent remains in compliance with this article.

(b) Notwithstanding subsection (a), the commission may investigate an operating agent at any time the commission determines it is necessary to ensure that the operating agent remains in compliance with this article.

(c) An operating agent shall bear the cost of an investigation or a reinvestigation under this section.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-8**

##### **Maximum number of riverboats operated by operating agent**

Sec. 8. An operating agent contract under this chapter permits the operating agent to operate one (1) riverboat on behalf of the commission.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-9**

##### **Other licenses**

Sec. 9. An operating agent may apply to the commission for and may hold licenses that are necessary for the operation of a riverboat, including the following:

(1) A license to prepare and serve food for human consumption.

(2) Any other necessary license.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-10**

##### **Equipment of operating agent; annual inventory report**

Sec. 10. An operating agent may own gambling equipment, devices, and supplies. Each operating agent must file an annual report listing the operating agent's inventories of gambling equipment, devices, and supplies.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-11**

##### **Schools for training occupational licensees**

Sec. 11. This article does not prohibit an operating agent from operating a school for the training of occupational licensees.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-12**

##### **Operating agent contract, transfer, sale, purchase, or voting trust; rules of procedure; prohibitions**

Sec. 12. (a) An operating agent must apply for and receive the

commission's approval before:

- (1) an operating agent's contract is:
  - (A) transferred;
  - (B) sold; or
  - (C) purchased; or
- (2) a voting trust agreement or other similar agreement is established with respect to the operating agent.

(b) The commission shall adopt rules governing the procedure an operating agent or other person must follow to take an action under subsection (a). The rules must specify that a person who obtains an ownership interest in an operating agent contract must meet the criteria of this article and any rules adopted by the commission. An operating agent may transfer an interest in an operating agent contract only in accordance with this article and rules adopted by the commission.

(c) An operating agent or any other person may not:

- (1) lease;
- (2) hypothecate; or
- (3) borrow or loan money against;

an operating agent contract.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-13**

##### **Prohibited terms of contract**

Sec. 13. A contract entered into under this chapter may not include any terms under which the operating agent is required to pay any amount to the state or the gaming commission other than the fees and taxes specifically authorized or required under this article.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-14**

##### **Duties of operating agent**

Sec. 14. Except as otherwise specifically provided by this article, an operating agent is charged with all the duties imposed upon a licensed owner under this article.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-15**

##### **Riverboat operated by operating agent subject to property taxes**

Sec. 15. A riverboat operated under an operating agent contract under this article is not exempt from property taxes imposed under IC 6-1.1.

*As added by P.L.92-2003, SEC.31.*

#### **IC 4-33-6.5-16**

##### **Submission of proposed power of attorney**

Sec. 16. (a) The person holding an operating agent contract on July 1, 2009, shall submit for the approval of the commission a written power of attorney identifying the person who, if approved by the commission, would serve as the operating agent's trustee to

operate the riverboat. The power of attorney submitted under this subsection must:

- (1) be executed in the manner required by IC 30-5;
- (2) describe the powers that may be delegated to the proposed trustee;
- (3) conform with the requirements established by the commission under IC 4-33-4-3(a)(10); and
- (4) be submitted before November 1, 2009.

(b) The commission may not renew an operating agent contract unless the commission:

- (1) receives a proposed power of attorney from the operating agent;
- (2) approves the trustee identified by the power of attorney; and
- (3) approves the power of attorney.

(c) An operating agent must petition the commission for its approval of any changes to a power of attorney approved by the commission.

*As added by P.L.142-2009, SEC.11.*