

IN THE CIRCUIT COURT OF COUNTY, MISSISSIPPI

APPEAL FROM

APPELLANT

VS.

NO.

APPELLEES

RESPONSE TO MOTION FOR STAY

COMES NOW, appellees in the above captioned action, by and through counsel and responds to the Motion for Stay filed by appellants and would answer, as follows:

1. The matter brought forward on appeal is the revocation of a license by final order of the (" "). The license is a revocable privilege issued as an exercise of the police power of the state and not a right. "Any license issued or other commission approval granted pursuant to the provisions of this chapter is a revocable privilege, and no holder acquires any vested right therein or thereunder." Miss. Code Ann. Section 75-76-29 (1991). Bingo is gambling. The State's power to suppress gambling is practically unrestrained. Bingo is an activity that the State can prohibit altogether, not one which it may merely regulate. Appellant does not have a constitutionally protected right to conduct a bingo game or lease parlor to others to conduct a bingo game. Bingo may only be conducted in accordance with the restrictions imposed by the legislature.

2. The Gaming Control Act does not allow the court to grant a stay of a final order pending appeal. "The initial decision of the commission to deny, limit, condition or restrict a license shall be final." Miss. Code Ann. Section 75-76-29(4) (1991). "Judicial review by the circuit and Supreme Courts afforded in this chapter is the exclusive method of review of the commission's actions, decisions and orders in the disciplinary hearings. Extraordinary common law writs or equitable proceedings are available except where statutory judicial review is made exclusive or is precluded or where the use of those writs or proceedings is precluded by specific statute." Id. at Section 75-76-127(2). "The filing of the petition does not stay enforcement of the decision or order of the commission, but the commission itself may grant a stay upon such terms and conditions as it deems proper." Id. at Section 75-76-121(5). The grant of a stay is an extraordinary equitable proceeding. Equity should not restrain the enforcement of a statute providing a criminal penalty for its violation.

3. If the court finds that it has the power to stay enforcement of the Commission's decision, it is within the discretion of the court to deny the stay. The appellant is unlikely to prevail on the merits of its appeal, appellant will not suffer irreparable harm, the State and other charitable bingo operations will suffer great injury if the order of the Commission is stayed, and a stay would disserve the public interest.

WHEREFORE, PREMISES CONSIDERED, the appellees request this court to deny a stay of enforcement of judgment. Should a stay be granted, the State request that a bond in the

amount of _____ dollars (\$) be posted by _____. Appellee requests such other relief that this court deems just.

Respectfully submitted,

Attorney for

Of counsel:

Telephone:
MSB #
Attorney for