

**IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
CIVIL DIVISION**

<b>ROBERT HOULE,</b>	□	<b>CASE NUMBER 13CV-04-3758</b>
	∥	
<b>APPELLANT,</b>	□	<b>JUDGE CAIN</b>
	∥	
<b>vs.</b>	□	<b>MAGISTRATE MCCARTHY</b>
	∥	
<b>OHIO CASINO CONTROL COMMISSION</b>	□	
	∥	
<b>APPELLEE</b>	□	
	∥	

**DECISION TO AFFIRM AND JUDGMENT ENTRY**

**Cain, J.**

This matter is now before the court on appellant’s appeal from appellee’s adjudication order of February 1, 2013, denying appellant’s application for a license to be a gaming establishment employee. This appeal is controlled by R.C. 119.12 which, in relevant part, provides thus:

The court may affirm the [adjudication] order of the agency complained of in the appeal if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence and is in accordance with law. In the absence of this finding, it may reverse, vacate, or modify the order or make such other ruling as is supported by reliable, probative, and substantial evidence and is in accordance with law.

By way of relevant background, in June 2012, appellant submitted his application for a casino gaming employee license. In response thereto, appellee conducted a background investigation on appellant as it was required to do by law. This resulted in a discovery of numerous run-ins with the law and numerous convictions for acts involving antisocial behavior.

In November 2012, appellee sent to appellant correspondence advising him that it intended to deny him the license because of what his background check turned up. Specifically, it was found appellant had been convicted of one or more criminal offenses that had elements of moral turpitude – a disqualifying characteristic for applicants for gaming employees licenses.

By way of that letter, appellant was informed of his right to an evidentiary hearing on the issues raised. Appellant requested such a hearing. In response, a hearing was held before a hearing examiner on December 17, 2012. That hearing resulted in a finding by the hearing examiner that appellant was disqualified from being a recipient of a gaming employee license because of the effects of his criminal past. The hearing officer recommended to appellee that appellant's application for the license be denied. Upon a consideration by appellee, it issued an adjudication order denying appellant's application. This administrative appeal results from that administrative decision.

Appellant raises a number of issues in challenge to the adjudication order. He first contends the adjudication order is not supported by reliable, probative, and substantial evidence and is not in accordance with law. In considering this matter on appeal, this court is limited to determining whether appellee's adjudication order is supported by sufficient evidence in the record and whether it is lawful.

A court of common pleas is bound to uphold an order of the Ohio Casino Control Commission if that order is supported by reliable, probative, and substantial evidence. See, *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St. 3d 619, 621; *Hayes v. State Med. Bd. of Ohio* (2000), 138 Ohio App. 3d 762, 767. Further,

a common pleas court should generally defer to administrative resolution of evidentiary conflicts. *Gen. Motors Corp. v. Joe O'Brien Chevrolet, Inc.* (1997), 118 Ohio App. 3d 470, 482. Thus, as long as there is reliable, probative, and substantial evidence that supports the commission's findings, the common pleas court may not substitute its judgment as to disputed facts. *Id.*

Appellee's construction and application of its regulations and requirements must be accomplished on a case-by-case basis. Due deference must be accorded to the decisions of an administrative agency. *VFW Post 8586 v. Ohio Liquor Control Comm.* (1998), 83 Ohio St. 3d 79. It has been noted that "an administrative agency's construction of a statute that the agency is empowered to enforce must be accorded due deference." *Ciriello v. Bd. of Embalmers and Funeral Directors of Ohio*, 105 Ohio App. 3d 213, 218, citing *Leon v. Bd. of Psychology* (1992), 63 Ohio St. 3d 683 and *Chaney v. Clark Cty. Agr. Soc., Inc.* (1993), 90 Ohio App. 3d 421. However, the findings of the agency are not conclusive. *Univ. of Cincinnati v. Conrad* (1980), 63 Ohio St.2d 108, 110-111.

Here, appellant takes the position that alcohol related driving offenses and misdemeanor assault offenses do not possess a moral turpitude element (a requisite finding for denial of the application). In terms of the established factual background, it is the case that in July 2002, appellant was indicted on two felony counts of assaulting two Upper Arlington police officers. He pleaded guilty to the two reduced charges of misdemeanor assault on the police officers.

In August 2003, appellant was indicted for one count of causing physical harm to a Crawford County sheriff's deputy. The charge was ostensibly reduced to obstructing official business and a conviction on this charge resulted.

The alcohol related driving convictions include: October 2000 first degree negligent driving, December 2001 OMVI, May 2002 OMVI and two misdemeanor assaults, and March 2005 OMVI. Other aspects of appellant's criminal record include a March 2006 no ops and possession of drug paraphernalia, and in 2010 a charge of disorderly conduct. Further, in January 2006 a stalking protection order was granted against appellant in connection with a house break-in and choking incident.

Appellant disputes the existence of a moral turpitude component to his convictions. Moral turpitude is generally defined as an: " \*\*\* act or behavior that gravely violates moral sentiment or accepted moral standards of [the] community and is a morally culpable quality held to be present in some criminal offenses as distinguished from others. \*\*\* " Black's Law Dictionary (6 Ed.1991) 698.

Questioned acts must be measured against the accepted standards of morality, honesty, and justice prevailing upon the community's collective conscience, as distilled by a similarly principled judiciary. *Disciplinary Counsel v. Burkhart* (1996), 75 Ohio St. 3d 188, 191. Where moral turpitude is disputed, however, an independent review of the circumstances underlying criminal conviction is necessary to determine if it manifests the requisite lack of social conscience and depravity beyond any established criminal intent. *Disciplinary Counsel v. King* (1988), 37 Ohio St.3d 77, 78,

Recently, the court in *Maga v. Ohio State Med. Bd.*, 2012 Ohio 1764, 2012 Ohio App. LEXIS 1549 (Ohio Ct. App., Franklin County, Apr. 19, 2012) noted that in analyzing the surrounding circumstances, repetitive instances of particular criminal conduct may be considered on the issue of moral turpitude. Thus, with

an already established criminal background, additional instances of criminal conduct may be found that amount to instances of depravity of social conscience. Under some circumstances social mores may endure a breach of the law and justly deal with it in routine manner. Forgiveness and justification are notions recognized in our social fabric. However, where, as here, repeated instances of dangerous, anti-social behavior are present, it is clear to see the actor has continually chosen to dismiss considerations of public welfare by repeatedly disobeying the law and intentionally placing citizens and public officials in harm's way.

After an accumulation of anti-social violations, the repeated convictions that follow are imbued with an ever-increasing serious moral component. A conviction or perhaps two may not implicate serious societal concerns, but a collection of convictions followed by yet another may be sufficient to turn blue litmus paper red on the issue of moral turpitude. In other words, the criminal history of an applicant becomes a part of the overall circumstances that must be considered by appellee in making its determinations on the issues of depravity, social conscience and moral turpitude.

Upon consideration, it is found appellee's findings in this regard are supported by reliable, probative, and substantial evidence and are in accordance with law.

Appellant raises a second issue. He asserts that appellee erred by finding that appellant did not meet his burden to prove, by clear and convincing evidence, on the issue of his suitability for licensure as a casino gaming

employee.<sup>1</sup> Upon consideration, the court finds appellant did not meet his burden of proving his suitability for appellee's approval of licensure. This, for the reasons mentioned above.

Upon a full consideration of the issues, it is found that appellee's subject adjudication order is supported by reliable, probative, and substantial evidence and is in accordance with law. It is therefore affirmed. Judgment in favor of appellee. Costs to be paid by appellant.

Copies to:

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Counsel for Appellant

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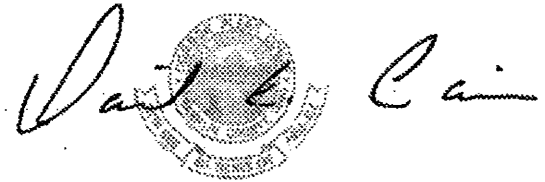
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<sup>1</sup> Appellant urges that because some of the offences are "far removed in time," they could be discounted in importance because he is now "a different person." This circumstance is one of the many that must be considered by appellee when it makes its determinations on the issues raised. Appellee was aware of the entirety of appellant's record and must be presumed to have considered all of the relevant factors that go into making its decisions. Moreover, this court may not substitute its judgment for that of appellee on the weight to be given to the evidence and the inferences to be drawn from the evidence.

Franklin County Court of Common Pleas

**Date:** 08-23-2013  
**Case Title:** ROBERT HOULE -VS- CASINO CONTROL COMMISSION  
**Case Number:** 13CV003758  
**Type:** DECISION

It Is So Ordered.



/s/ Judge David E. Cain

Court Disposition

Case Number: 13CV003758

Case Style: ROBERT HOULE -VS- CASINO CONTROL  
COMMISSION

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes