

MASSACHUSETTS SUPREME JUDICIAL COURT

City of Revere & others v. Massachusetts Gaming Commission

476 Mass. 591 (2017) · No. SJC-12111; SJC-12177 · Decided March 10, 2017

SUMMARY

The Massachusetts Supreme Judicial Court reviewed challenges to the Massachusetts Gaming Commission’s award of a category 1 gaming license to Wynn MA, LLC, rather than to Mohegan Sun Massachusetts, LLC. The court held that the gaming statute generally precluded judicial review under G. L. c. 30A, § 14, but did not bar extraordinary certiorari review. It affirmed in part, reversed in part, and remanded for further proceedings concerning the plaintiffs’ claims and the availability and scope of certiorari review.

CASE DETAILS

COURT	Massachusetts Supreme Judicial Court
WRITING FOR THE COURT	Botsford, J.; Gants, C.J.; Lenk, J.; Hines, J.; Gaziano, J.; Lowy, J.; Budd, J.
JURISDICTION	Massachusetts
DECIDED	March 10, 2017
DOCKET	SJC-12111; SJC-12177
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeals from Superior Court orders dismissing challenges to the Massachusetts Gaming Commission's award of a gaming license to Wynn MA, LLC. The Supreme Judicial Court granted direct appellate review of both the commission's interlocutory appeal and the plaintiffs' appeal from final judgment.
STANDARD OF REVIEW	Orders on motions to dismiss are reviewed de novo, accepting the complaint's allegations and attached exhibits as true and drawing reasonable inferences in the plaintiffs' favor. For certiorari review, the standard depends on the nature of the administrative action: substantial evidence for adjudicatory proceedings with evidence and due-process protections, and arbitrary-or-capricious review for administrative exercises of discretion. Here, review of legally erroneous or unsupported components of the licensing decision is extremely deferential.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	City of Revere, International Brotherhood of Electrical Workers Local 103, Louis Ciarlone, Ronald Hills, Debra A. Santa Anna, Elaine Leto, Mohegan Sun Massachusetts, LLC v. Massachusetts Gaming Commission

TOPICS

judicial review of agency action

writ of certiorari

gambling

standing

appellate procedure

PRACTICE AREAS

administrative law

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QUESTIONS PRESENTED

1. Whether G. L. c. 23K, § 17 (g), precludes judicial review of the commission's gaming-license decision under G. L. c. 30A, § 14.
2. Whether certiorari review remains available notwithstanding § 17 (g).
3. Whether Mohegan Sun's certiorari claim was timely and whether the commission could immediately appeal the interlocutory order allowing that claim to proceed under the doctrine of present execution.
4. Whether Mohegan Sun satisfied the prerequisites for certiorari review.
5. What standard and scope govern certiorari review of the commission's licensing decision.
6. Whether the City of Revere and the union had standing to pursue certiorari or declaratory-judgment claims.
7. Whether the individual plaintiffs plausibly stated a claim that the commission violated the open meeting law.

HOLDINGS

1. General Laws c. 23K, § 17 (g), expressly precludes ordinary judicial review of commission gaming-license decisions under G. L. c. 30A, § 14, including review sought by entities other than applicants whose applications were denied.
2. Certiorari review may be available for a commission gaming-license decision notwithstanding § 17 (g)'s preclusion of ordinary statutory review.
3. The commission could not obtain immediate interlocutory review of the order allowing Mohegan Sun's certiorari claim to proceed.
4. Mohegan Sun satisfied the prerequisites for certiorari review by alleging a quasi-judicial proceeding, the absence of another reasonably adequate remedy, and substantial injury or injustice.
5. Certiorari review of the commission's licensing decision is extremely deferential: highly discretionary policy determinations are effectively unreviewable, while alleged violations of statutory requirements or

legally erroneous, unsupported, arbitrary, or capricious components may be reviewed.

6. The City of Revere and the union lacked standing to pursue certiorari or declaratory-judgment claims challenging the commission's licensing decision.
7. The individual plaintiffs plausibly stated an open meeting law claim based on commissioners' calendar entries suggesting that quorums may have deliberated on matters within the commission's jurisdiction; dismissal of that portion of the claim was improper.

KEY QUOTATIONS

“Although § 17 (g) precludes ordinary modes of judicial review and thereby qualifies, for purposes of G. L. c. 30A, § 14, as a provision rendering review under that statute unavailable, it does not have the same effect with respect to certiorari review, which “is of extraordinary nature” and “is one of the ancient prerogative writs, whose history stretches far back toward the beginnings of the common law.”” (at 12)

“Accordingly, the standard of review for a certiorari action should be extremely deferential to the commission.” (at 25-26)

“In sum, we conclude that the individual plaintiffs have plausibly stated a claim for relief under the open meeting law.” (at 39)

FACTUAL BACKGROUND

The Massachusetts Gaming Commission conducted a two-phase process to award a single category 1 gaming license in region A. Wynn MA, LLC proposed a casino in Everett, while Mohegan Sun Massachusetts, LLC proposed one in Revere, and the commission awarded the license to Wynn in late 2014. Mohegan Sun, Revere, a labor union, and individual plaintiffs alleged that the commission violated statutory requirements, treated the applicants unequally, failed to consider required criteria, and engaged in improper deliberations under the open meeting law.

PROCEDURAL HISTORY

The City of Revere, a labor union, and individual plaintiffs sued the commission in the Superior Court, alleging statutory, constitutional, administrative-law, and open-meeting-law defects in the license award. Mohegan Sun intervened and asserted parallel claims. The Superior Court dismissed nearly all claims, allowing only Mohegan Sun's certiorari claim to proceed and dismissing the individual plaintiffs' open meeting claim. The Supreme Judicial Court affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, including allowing Mohegan Sun's certiorari claim to proceed and allowing the individual plaintiffs' open meeting law claim based on the commissioners' calendar

entries to proceed.

CASES CITED

- Shapiro v. Worcester, 464 Mass. 261, 264-266 (2013)
- Burbank Apartments Tenant Ass'n v. Kargman, 474 Mass. 107, 116 (2016)
- Olmstead v. Department of Telecommunications & Cable, 466 Mass. 582, 588 (2013)
- Swan v. Justices of Superior Court, 222 Mass. 542, 543-544 (1916)
- Indeck v. Clients' Security Board, 450 Mass. 379, 384-385 (2008)
- MacKenzie v. School Committee of Ipswich, 342 Mass. 612, 614 (1961)
- Natick v. Massachusetts Department of Public Welfare, 341 Mass. 618, 620 (1961)
- Marcus v. Newton, 462 Mass. 148, 151-153 (2012)
- Hoffer v. Board of Registration in Medicine, 461 Mass. 451, 455-457 (2012)
- School Committee of Hudson v. Board of Education, 448 Mass. 565, 575-579 (2007)
- Frawley v. Police Commissioner of Cambridge, 473 Mass. 716, 724-728 (2016)
- Pronghorn, Inc. v. Licensing Board of Peabody, 13 Mass. App. Ct. 70, 72 (1982)
- Abdow v. Attorney General, 468 Mass. 478, 487, 493, 495-496 (2014)
- Caesars Massachusetts Management Co., LLC v. Crosby, 778 F.3d 327, 334-335 (1st Cir. 2015)
- Bielawski v. Personnel Administrator of the Division of Personnel Administration, 422 Mass. 459, 464, 467 (1996)
- Saxon Coffee Shop, Inc. v. Boston Licensing Board, 380 Mass. 919, 923 (1980)
- Yerardi's Moody Street Restaurant & Lounge, Inc. v. Selectmen of Randolph, 19 Mass. App. Ct. 296, 300-303 (1985)
- Casa Loma, Inc. v. Alcoholic Beverages Control Commission, 377 Mass. 231, 234 (1979)
- Figgs v. Boston Housing Authority, 469 Mass. 354, 361-362 & n.14 (2014)
- MacLaurin v. Holyoke, 475 Mass. 231, 238 (2016)
- Forsyth School for Dental Hygienists v. Board of Registration in Dentistry, 404 Mass. 211, 218 (1989)
- Ginther v. Commissioner of Insurance, 427 Mass. 319, 322 (1998)
- Massachusetts Association of Independent Insurance Agents & Brokers, Inc. v. Commissioner of Insurance, 373 Mass. 290, 293 (1977)
- Enos v. Secretary of Environmental Affairs, 432 Mass. 132, 135-136 (2000)
- Flemings v. Contributory Retirement Appeal Board, 431 Mass. 374, 375-376 (2000)
- Iannacchino v. Ford Motor Co., 451 Mass. 623, 636 (2008)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Ghiglione v. School Committee of Southbridge, 376 Mass. 70, 72 (1978)
- Foudy v. Amherst-Pelham Regional School Committee, 402 Mass. 179, 184 (1988)
- Gerstein v. Superintendent Search Screening Committee, 405 Mass. 465, 470 (1989)
- McCrea v. Flaherty, 71 Mass. App. Ct. 637, 648-649 (2008)
- Corcoran v. Wigglesworth Machinery Co., 389 Mass. 1002, 1003 (1983)

- Sargeant v. Commissioner of Public Welfare, 383 Mass. 808, 819 (1981)
- Rafferty v. Sancta Maria Hospital, 5 Mass. App. Ct. 624, 628 (1977)

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