

STATE OF FLORIDA  
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION  
DIVISION OF PARI-MUTUEL WAGERING

<b>FILED</b>	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>3/18/2016</b>
File #	

In re: Petition for Declaratory Statement

WEST FLAGLER ASSOCIATES, LTD.,

**DS 2016-020**

Petitioner.

**PETITION FOR DECLARATORY STATEMENT**

West Flagler Associates, Ltd. ("West Flagler" or the "Petitioner"), pursuant to section 120.565, Florida Statutes, and rule 28-105, Florida Administrative Code, requests the issuance of a declaratory statement by the Division of Pari-Mutuel Wagering (the "Division") regarding the application of chapter 551, Florida Statutes, and the administrative rules adopted thereunder, to the Petitioner's particular set of circumstances. In support of this Petition, the Petitioner states the following:

1. The affected agency is the Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering (the "Division"), located at Northwood Centre, 1940 North Monroe Street, Tallahassee, Florida 32399. The Division is the state agency authorized to administer chapter 551, Florida Statutes, including the conduct of pari-mutuel wagering and slot machine operations.
2. The Division has jurisdiction over this proceeding pursuant to section 120.565, Florida Statutes.
3. West Flagler's corporate office is located at 450 NW 37th Avenue, Miami, Florida 33126. For purposes of this Petition, West Flagler's address is that of its undersigned counsel.

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**DBPR Agency Clerk**

4. West Flagler owns and operates permits and licenses to conduct pari-mutuel (specifically, greyhound races and jai alai performances), cardroom, and slot machine operations at its facility in Miami-Dade County. The facility is commonly referred to as the Magic City Casino.

5. In 2004, an amendment to the Florida Constitution outlined specific criteria for certain pari-mutuel facilities in Miami-Dade and Broward Counties to operate slot machines. Specifically, the amendment read:

(a) After voter approval of this constitutional amendment, the governing bodies of Miami-Dade and Broward Counties each may hold a county-wide referendum in their respective counties on whether to authorize slot machines within existing, licensed parimutuel facilities (thoroughbred and harness racing, greyhound racing, and jai-alai) that have conducted live racing or games in that county during each of the last two calendar years before the effective date of this amendment. If the voters of such county approve the referendum question by majority vote, slot machines shall be authorized in such parimutuel facilities. If the voters of such county by majority vote disapprove the referendum question, slot machines shall not be so authorized, and the question shall not be presented in another referendum in that county for at least two years.

§ 23(a), art. X, Fla. Const. Thus, this amendment to the Florida Constitution required two criteria for Miami-Dade and Broward facilities to qualify for authorization under a referendum to conduct slot machines operation: 1) the facilities must exist and be licensed prior to the referendum; and 2) the facilities must have conducted live racing or games for the past two calendar years.

6. Florida conducted a statewide referendum on November 2, 2004, to authorize the above amendment. On January 29, 2008 and pursuant to section 23, article X of the Florida Constitution, the voters of Miami-Dade approved a referendum authorizing slot machine operations in Miami-Dade.

7. As a facility in Miami-Dade County, West Flagler applied for a slot machines license under the provisions of the Florida Constitution because the facility existed and was

licensed prior to the referendum. Additionally, the facility had run greyhound races for the past two years. West Flagler was granted a slot machine license in 2009 and has annually renewed its license each year.

8. The Florida Constitution amendment also authorized the Legislature to adopt legislation implementing this section of the Florida Constitution and to include provisions for the licensure and regulation of slot machines. § 23(b), art. X, Fla. Const. As such, the Legislature provided that an “eligible facility” for slot machine licensing is defined as follows:

“Eligible facility” means any licensed pari-mutuel facility located in Miami-Dade County or Broward County existing at the time of adoption of s. 23, Art. X of the State Constitution that has conducted live racing or games during calendar years 2002 and 2003 and has been approved by a majority of voters in a countywide referendum to have slot machines at such facility in the respective county. . .

§ 551.102(4), Fla. Stat. (emphasis added).

9. The Legislature has outlined other qualifications for an “eligible facility” outside of Miami-Dade and Broward Counties, but these provisions are not at issue here as West Flagler satisfies the statutory criteria herein: West Flagler is an “eligible facility” because the facility conducted (as the statute states, “has conducted”) live racing during 2002 and 2003 and the Miami-Dade voters approved a referendum to have slot machines at the facility.

10. Therefore, in 2009 and under the provisions of section 551.102(4), Florida Statutes, West Flagler obtained a slot machine operations license from the Division. Since that time, West Flagler continues to conduct a minimum number of live greyhound performances in order to renew its annual slot machine license. See Id.

11. The Petitioner intends to seek a pari-mutuel license to conduct at least 150 live jai alai performances at its facility. The Petitioner questions whether, upon receipt of a jai alai license for at least 150 live performances, the facility can discontinue its current operation of

greyhound racing and instead operate a full schedule of jai alai games in order to maintain its current annual slot machine license. The Petitioner further questions whether West Flagler will maintain its "eligible facility" status as it continues to satisfy the requirements in section 551.102(4), Florida Statutes, and section 23, article X of the Florida Constitution, because the facility had conducted greyhound races for the two years prior to the 2004 statewide referendum.

12. The Petitioner seeks a declaratory statement from the Division concerning how the operative provisions of chapter 551, Florida Statutes, or any other provision of Florida law, including any applicable administrative rules, would impact the question presented below regarding the Petitioner's conduct of slot machine gaming operations.

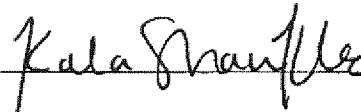
#### **Questions Presented**

Question 1: Whether a qualifying "eligible facility" must continue to run the same type of racing or gaming that first qualified the facility to become an "eligible facility" in 2004.

Question 2: Whether, pursuant to section 23, article X of the Florida Constitution, and section 551.102(4), Florida Statutes, West Flagler may discontinue the operation of greyhound races and instead operate a full schedule of jai alai performances in order to maintain its "eligible facility" status to continue to conduct slot machine operations.

WHEREFORE, the Petitioner requests that the Division issue a Declaratory Statement responding to the above-stated questions.

Respectfully submitted this 18th day of March 2016.

By:  \_\_\_\_\_

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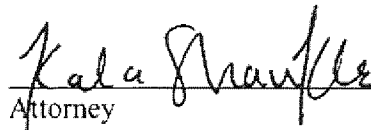
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 18th, 2016, a copy hereof has been furnished by hand delivery to the Agency Clerk, Department of Business and Professional Regulation, 1940 North Monroe Street, Tallahassee, Florida 32301, and by electronic mail to William D. Hall, Chief Attorney of Pari-Mutuel Wagering ([William.hall@myfloridalicense.com](mailto:William.hall@myfloridalicense.com)).

  
Attorney