

**STATE OF MAINE
CUMBERLAND, ss**

**SUPERIOR COURT
CIVIL ACTION
DOCKET NO. PARSC-AP-26-04**

FIRST TRACKS INVESTMENTS, LLC,)
)
)
Petitioner,)
)
v.)
)
MILTON CHAMPION, in his official)
Capacity as Director of the Maine)
Gambling Control Unit, and)
MICHAEL SAUSCHUCK, in his official)
Capacity as Commissioner of Public Safety,)
)
Respondents)

**VERIFIED
COMPLAINT AND
PETITION FOR 80C
REVIEW AND STAY OR
PRELIMINARY INJUNCTION**

First Tracks Investments, LLC (“FTI”), by and through the undersigned, hereby complains against Milton Champion, in his official capacity as Director of the Maine Gambling Control Unit (“Director”), and Michael Sauschuck, in his official capacity as the Commissioner of Public Safety (“Commissioner”), and alleges as follows:

INTRODUCTION

1. This action seeks to stay a Decision of the Director dated January 17, 2025 and preserve the status quo pending the completion of an administrative appeal authorized by Maine law. A true and correct copy of the Decision is attached hereto as **Exhibit A**.
2. Without immediate relief, FTI is facing ruinous injury from an abrupt change in legal interpretation by the Director with respect to its business operations.
3. FTI also submits herewith a Motion of a Temporary Restraining Order in order to provide sufficient time to address the Decision in an orderly manner.

Parties

4. Petitioner FTI is a Maine limited liability company which operates as “Oddfellahs” pursuant to filings with the Maine Secretary of State. Relevant to this matter, FTI operates at 55 Market Street, Portland, Maine.

5. Respondent Milton Champion is the Director of the Maine Gambling Control Unit and Respondent Michael Sauschuck is the Commissioner of Public Safety. Both are named in their official capacities.

Jurisdiction and Venue

6. This Court has jurisdiction pursuant to M. R. Civ. P. 80C and 5 M.R.S. §11002. Venue is appropriate in Cumberland County under 5 M.R.S. §11002(1)(A) as FTI’s principal place of business is in Cumberland County.

Facts

7. On or about December 18, 2023, the Maine State Harness Racing Commission issued a Decision and Order granting FTI a license to operate as a commercial track for Calendar Years 2024 and 2025 (the “Track License”).

8. From January through July 2024, FTI communicated with the Director and his agents concerning a forthcoming application for a facility sports wagering license, communicating FTI’s intent to seek licensure for a location in Portland.

9. In or around August 2024, Director’s agents – Deputy Director Matthew Motti and Sports Wagering Inspector Kyle Bourget – visited the location FTI was preparing to submit for a facility sports wagering licenses. This was at 55 Market Street, Portland (the “Operating Location”). Both individuals complemented FTI on the facility.

10. FTI thereafter submitted an application for a facility sports wagering license to the Director for the Operating Location. FTI represented it was applying under the Track License.

11. FTI also contracted with Caesars Sportsbook to provide risk management services under the applicable law.

12. On or about August 31, 2024, the Director issued a Temporary Sports Wagering Facility License for FTI to conduct in-person sports wagering at the Operating Location (the “Wagering License”) and authorized the contract with Caesars Sportsbook.

13. On or about September 10, 2024, the Director visited the Operating Location and met with representatives of FTI and Caesars Sportsbook. The Director complemented the facility and operation.

14. FTI then commenced sports wagering operations, with the first ceremonial wager placed by Portland Mayor Mark Dion.

15. On or about September 19, 2024, having issued the Wagering License, the Director requested information concerning the Track License. FTI provided such information without delay.

16. From September 20, 2024 through January 17, 2025, FTI received no communication or complaint from the Director or his agents concerning FTI’s eligibility to hold the Wagering License or identifying any issue therewith.

17. On Saturday, January 18, 2025, the Director sent an email to FTI attaching the Decision. FTI immediately contacted the Director on the next business day.

18. On January 21, 2025, FTI sent an emergency petition to the Commissioner requesting a STAY of the Decision pending administrative appellate review. A true and correct copy of the request, with cover email, is attached hereto as **Exhibit B**.

19. In this emergency petition, FTI noticed its right to an appeal of the Decision under Maine law (the “Appeal”) and requested an administrative stay in accordance with 5 M.R.S. §11004 (the “Administrative Stay”).

20. On January 22, 2025, the Commissioner denied the Administrative Stay on the grounds that 5 M.R.S. §11004 does not authorize the Commissioner to grant a stay (“Denial”). A true and correct copy of the Denial, with associated correspondence, is attached hereto as

Exhibit C.

21. FTI now seeks relief from this Court due to the severe irreparable injury it faces should the Decision be enforced notwithstanding its errors of law or violation of fundamental principles of equity.

22. As outlined in Exhibit B, the traditional four-elements of a stay or preliminary injunction all favor grant of the instant relief.

23. Further, in a phone conversation with the Director, FTI inquired whether the Director would oppose the request of a stay to the Commissioner. The Director indicated he did not intend to take a position. This further demonstrates the absence of harm to the public or Director in granting the requested relief.

COUNT I
REVIEW OF AGENCY ACTION AND GRANT OF STAY

1. Petitioner hereby repeats and incorporates by reference all foregoing paragraphs.
2. Pursuant to Maine law, eligible applicants for sports wagering facility licenses include “commercial tracks...not located in Bangor.” 8 M.R.S. §1206(2)(A). Under the Track License, FTI is eligible to apply for a facility sports wagering license.
3. Pursuant to Maine law, “[a] facility sports wagering license granted by the director pursuant to this section grants a licensee lawful authority to conduct sports wagering in

which wagers are placed within a physical location controlled by the licensee in the State...” 8 M.R.S. §1206(3); *see also* 8 M.R.S. §1202(7)(A). The Operating Location is a physical location in Maine controlled by FTI.

4. The Decision confuses and conflates these two separate, plain language provisions of Maine law. Further, in interpreting the applicable statutes, the Decision fails to acknowledge or apply several statutory interpretation canons or the historic construct of wagering statutes in Maine. In sum, the Decision’s conclusions err as a matter of law.

5. This error threatens severe irreparable injury to FTI.

THEREFORE, FTI requests this Court immediately STAY the Decision pending the outcome of the Appeal or, in the alternative, review the Decision and VACATE the same and REMAND for further proceedings with authoritative guidance concerning FTI’s eligibility, together with all such other relief as may be just and equitable and permitted by law.

COUNT II EQUITABLE ESTOPPEL

1. Petitioner hereby repeats and incorporates by reference all foregoing paragraphs.

2. Prior to issuing the Wagering License, the Director was legally required to determine FTI that was eligible to receive the license. *See* 8 M.R.S. §1206(6) (“If the director determines that the applicant is qualified under subsection 2...[and] is not aware of any reason the applicant is ineligible for a license,” he may issue the license).

3. In other words, the Director represented to FTI that it was eligible to receive a facility sports wagering license by issuing FTI the Wagering License.

4. “To prove equitable estoppel against a governmental entity, the party asserting it must demonstrate that (1) the governmental official or agency made misrepresentations, whether by misleading statements, conduct, or silence, that induced the party to act; (2) the party relied

on the government's misrepresentations to his or her detriment; and (3) the party's reliance was reasonable." *State v. Brown*, 2014 ME 79, ¶14, 95 A.2d 82 (citations omitted).

5. While FTI continues to assert it is eligible to receive the Wagering License, in the alternative, in the event FTI was not eligible to receive a license for the Operating Location, then the Director's issuance of the Wagering License was a misrepresentation concerning FTI's eligibility.

6. FTI acted on the Director's representation and expended money, hired staff, and contracted for services in support of the activities authorized by the Wagering License.

7. It is reasonable for Maine businesses to rely on licenses granted by State agencies.

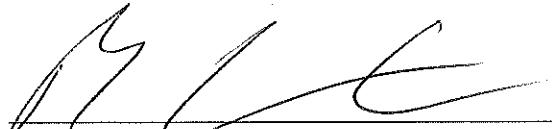
8. The Director is thus estopped from determining *post hoc* that FTI is not eligible for the Wagering License.

THEREFORE, FTI requests this Court immediately ENJOIN Director from enforcing the Decision or otherwise contesting the eligibility of FTI to hold a Wagering License at the Operating Location, except as may be authorized by law for reasons other than organizational eligibility or location.

[SIGNATURE AND VERIFICATION PAGE FOLLOWS]

Dated: January 22, 2025

Respectfully Submitted,



Michael Cianchette, Esq. (ME Bar #4788)
Manager, First Tracks Investments, LLC
42 Market Street
Portland, ME 04101
mcianchette@portlandproperties.com
207.774.1000

VERIFICATION

I, Michael Cianchette, hereby affirm under the penalties of perjury as follows:

1. I am over the age of 18 and otherwise competent to testify. I am the Manager of First Tracks Investments, LLC.
2. The factual allegations in the foregoing Verified Complaint are, to the best of my knowledge and belief, true and accurate.

Dated: January 22, 2025



Michael Cianchette

**STATE OF MAINE
CUMBERLAND, ss**

**SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____**

FIRST TRACKS INVESTMENTS, LLC,)
Petitioner,)
v.)
MILTON CHAMPION, in his official)
Capacity as Director of the Maine)
Gambling Control Unit, and)
MICHAEL SAUSCHUCK, in his official)
Capacity as Commissioner of Public Safety,)
Respondents)

CERTIFICATE OF SERVICE

The undersigned represents that he has served a copy of the Verified Complaint via electronic mail to the following addresses: attorney.general@maine.gov, Michael.Sauschuck@maine.gov, and Milton.F.Champion@maine.gov and via certified mail, return receipt requested, pursuant to 5 M.R.S. §11003, to the following addresses:

Maine Gambling Control Unit
Department of Public Safety
87 State House Station
Augusta, ME 04333

Department of Public Safety
104 State House Station
Augusta, ME 04333

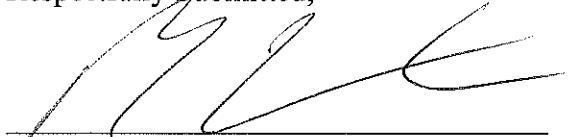
Office of the Attorney General
Attn: 80C Appeals
6 State House Station
Augusta, ME 04333

[SIGNATURE PAGE FOLLOWS]

RECD BY CLERK 01/22/2024
10:25 PM 1:01

Dated: January 22, 2025

Respectfully Submitted,



Michael Cianchette, Esq. (ME Bar #4788)
Manager, First Tracks Investments, LLC
42 Market Street
Portland, ME 04101
mcianchette@portlandproperties.com
207.774.1000

Exhibit A

STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY
GAMBLING CONTROL UNIT

In Re:)	
)	DECISION
First Tracks Investment, LLC)	CERTIFIED MAIL
d/b/a Oddfellahs)	#9589 0710 5270 1495 8902 65
)	
)	

INTRODUCTION

First Tracks Investments, LLC (“First Tracks”), applied for a facility sports wagering (“FSW”) license pursuant to 8 M.R.S. § 1206 to conduct sports wagering at a restaurant operated by First Tracks under the name “Oddfellahs” in Portland, Maine. Because the Oddfellahs restaurant is not one of the facility types listed in § 1206(2), it is not eligible for a sports facility license, and its application is accordingly denied.

FACTS

On July 29, 2024, Oddfellahs filed its application for an FSW license to conduct sports wagering at 55 Market Street in Portland. Oddfellahs is owned and operated by First Tracks, which holds a commercial track license to conduct commercial harness racing events at a racetrack in Cumberland. Its commercial track operation is referred to as “Cumberland First Tracks.” Oddfellahs provided a copy of a decision and order from the Maine Harness Racing Commission awarding First Tracks a commercial track license to conduct 53 races for calendar year 2024 at its Cumberland racetrack.

On or about August 31, 2024, the GCU issued a temporary FSW license to Oddfellahs pursuant to 8 M.R.S. § 1206(6). Thereafter, Oddfellahs, in contract with Caesars Entertainment, offered in-person sports wagering.

On September 19, 2024, the Director of the GCU requested Oddfellahs’ position on its eligibility under § 1206(2). On or about September 19, 2024, Oddfellahs filed a memorandum indicating that First Tracks Investments, LLC should be considered a commercial track and that an owner of a commercial track or a casino, but not an offtrack betting facility, may receive FSW licenses to conduct sports wagering in any physical location controlled by the owner within the state.

ANALYSIS

Oddfellas asserts that it is eligible for a FSW license because First Tracks holds a commercial track license pursuant to 8 M.R.S. § 271 to conduct harness racing at a track located in Cumberland. I do not agree. As explained below, Oddfellahs is not a commercial track facility as defined by 8 M.R.S. § 275-A and is therefore not eligible for an FSW license.

According to § 275-A, “commercial track” means *any harness horse racing track* that is a for-profit business and *is licensed under this chapter to conduct harness horse racing* with pari-mutuel wagering that is not associated with an agricultural fair as defined in Title 7, section 81.” (emphasis added). A commercial track license is tied to the physical racing track at which the licensee conducts harness racing with pari-mutuel wagering. See 8 M.R.S. § 271. This is evidenced by the fact that commercial track licenses “must set forth the name of the licensee, the place where the races or race meets are to be held and the specific race dates and time of day or night during which racing may be conducted by the licensee,” (*Id.*) and by the fact that “If the [harness racing] commission determines that the location where a commercial track is licensed to conduct races is unavailable, it may permit a licensee to transfer its license to another location.” *Id.*

Consequently, if the owner of a commercial track license under § 271 receives an FSW license, the license only allows sports wagering at the premises of the licensed commercial track facility. The same is true for “a casino licensed under section 1011” and “[a]n off-track betting facility licensed under section 275-D or Public Law 2019, chapter 626, section 16” – FSW licensees granted to these facilities authorizes sports wagering at those facilities only.¹

Accordingly, because Oddfellahs is not one of the listed facility types listed in 1206(2), it’s FSW application is **DENIED**.

APPEAL RIGHTS

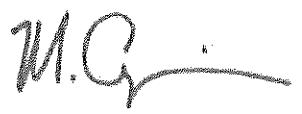
Oddfellahs may request an adjudicatory hearing on its application and this decision with the Commissioner of the Department of Public Safety. 8 M.R.S. § 1205(2). The request must be made within 30 days of receipt of this decision. *Id.* Oddfellahs must discontinue sports wagering operations because this decision stands until the Commissioner issues a decision upholding, modifying or overruling the director’s decision. *Id.*; *see also* 16 C.M.R. 633, ch. 52 § 3(3).

¹ The legislature’s intent to restrict sports wagering to the facilities listed in § 1206(2) is clear in the legislative record. According to the enacted bill’s legislative findings and purpose:

The Legislature finds and declares, with respect to the regulatory structure established for sports wagering in Part J of this Act, that:

...

4. Off-track betting facilities, commercial tracks and casinos are well suited to conduct facility-based sports wagering because of their infrastructure and experience with the conduct of wagering in the State.

A handwritten signature in black ink, appearing to read "M.G." with a stylized line underneath.

January 17, 2025

Exhibit B

Joel J. Dube

From: Michael Cianchette
Sent: Tuesday, January 21, 2025 10:41 AM
To: Michael.Sauschuck@maine.gov
Cc: Champion, Milton F; Gunner LaCour
Subject: EMERGENCY REQUEST - GCU Decision
Attachments: 2025.01.21 Stay and Hearing re FTI GCU.pdf

Importance: High

Commissioner:

Please see attached for a requested STAY of a Decision of the Gambling Control Unit pursuant to the APA. I discussed with the Director this morning and he indicated that he did not intend to take a position on this request.

In addition to the reasons in the attached, there are numerous members of the public who hold active tickets or vouchers that will land in limbo in the absence of a stay. Further, it is First Tracks' intent to file suit in the absence of a stay and seek a stay from the Superior Court pending the outcome of the APA appeal. Given timelines, we would need to file Wednesday afternoon to try and obtain relief before Friday. We would also need to make the public and Legislature aware of this situation. Our strong preference is to avoid all of that and maintain the status quo so we can work through this in a much more structured manner.

I am available for a call at your convenience if there is a time that works should you wish to discuss prior to deciding. My cell is 207.838.0147. Respectfully request your favorable consideration.

Sincerely,

Michael Cianchette
Manager, First Tracks Investments, LLC

STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY

In re:)
First Tracks Investments, LLC) **EMERGENCY PETITION**
d/b/a Oddfellahs) **FOR HEARING AND**
) **TEMPORARY STAY**
)
)

Now comes First Tracks Investments, LLC d/b/a Oddfellahs (“FTI”), and petitions the Commissioner of Public Safety (“Commissioner”) for a hearing of the Decision of the Director of the Gambling Control Unit (the “Director”) dated January 17, 2025 (the “Decision”) and for stay or a modification of the Decision for the reasons stated herein.

1. On or about August 31, 2024, the Director issued a Temporary Sports Wagering Facility license (the “License”) to FTI for a facility located at 55 Market Street, Portland, Maine, 04101.
2. FTI commenced sports wagering operations in September 2024 and, to the best of its knowledge and belief, has met all the operating requirements of the Gambling Control Unit in the conduct of its business.
3. In issuing the License, the Director was legally required to determine that FTI was “qualified under subsection 2” of the facility sports wagering statute. 8 M.R.S. §1206(6).
4. Accordingly, the Director originally determined that FTI is eligible to receive the License.
5. FTI relied upon this determination and made investments, hired personnel, and undertook numerous other activities based upon the issuance of the License.
6. However, in the Decision, the Director has now repudiated his prior conclusion as to FTI’s eligibility. Absolutely nothing has changed in the substance of FTI’s operation,

and the Decision offers no explanation about what new factual information led the Director to determine his prior conclusion was in error.

7. The Commissioner is empowered to “uphold, modify or overrule the director’s decision.” 8 M.R.S. §1205(2).
8. The Administrative Procedures Act permits an agency to stay a decision. 5 M.R.S. §11004.
9. If the Commissioner fails to either stay or modify the Decision pending the hearing, FTI will suffer irreparable harm, and many Mainers will be placed out of work in the hospitality industry in Portland at a moment when numerous restaurants are closing. *See generally* <https://www.portlandfoodmap.com/category/closings/>
10. Enclosed herein is a Memorandum of Law outlining the applicable stay standard at law and the application of the same to this situation, as well as a draft Order.

Accordingly, FTI hereby requests the Commissioner (i) immediately STAY the Decision or, in the alternative, MODIFY the Decision to permit FTI to retain its License until either the Commissioner or a court of competent jurisdiction enters a final, unappealable judgment determining FTI ineligible to offer sports wagering, (ii) order a hearing on the Decision pursuant to 8 M.R.S. §1205(2), and (iii) grant such other relief as may be just and proper.

21 JAN 2024

Date



Michael Cianchette, Esq. (ME Bar #4788)
Manager, First Tracks Investments, LLC
42 Market Street
Portland, ME 04101
mcianchette@portlandproperties.com
207.774.1000

STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY

In re:)
First Tracks Investments, LLC) **MEMORANDUM OF LAW**
d/b/a Oddfellahs) **FOR STAY OR MODIFICATION**
) **OF DECISION**
)
)

FTI¹ has requested a hearing on the Decision in accordance with 8 M.R.S. §1205(2). The Commissioner is empowered to “uphold, modify or overrule the director’s decision.” 8 M.R.S. §1205(2). The Administrative Procedures Act permits an agency to stay a decision. 5 M.R.S. §11004. For the following reasons, the Commissioner should stay the Decision and preserve the status quo pending resolution of the hearing and any subsequent proceedings.

APPLICABLE STANDARD

The legal standard used in Maine for preliminary injunctions is well-known. An injunction is warranted when “(1) [the] plaintiff will suffer irreparable injury if the injunction is not granted, (2) that such injury outweighs any harm which granting the injunctive relief would inflict on the defendant, (3) that plaintiff has exhibited a likelihood of success on the merits (at most, a probability; at least, a substantial possibility), (4) that the public interest will not be adversely affected by granting the injunction.” *Dep’t of Env’t Prot. v. Emerson*, 563 A.2d 762, 768 (Me. 1989). These “criteria are not to be applied woodenly or in isolation from each other; rather, the court of equity should weigh all of these factors together in determining whether injunctive relief is proper in the specific circumstances of each case.” *Id.* (“Clear evidence of irreparable injury should result in a less stringent requirement of certainty of victory; greater

¹ Capitalized terms have the same meaning as in the Emergency Petition.

certainty of victory should result in a less stringent requirement of proof of irreparable injury") (citation omitted).

Under the Maine Administrative Procedures Act, these same substantive standards apply. 5 M.R.S. §11004 (the agency "may issue a stay upon a showing of irreparable injury to the petitioner, a strong likelihood of success on the merits, and no substantial harm to adverse parties or the general public."). Application of these factors to the instant matter weighs strongly in favor of a stay or modification of the Decision akin to a preliminary injunction.

ANALYSIS

1. FTI will suffer severe irreparable injury in the absence of a stay

The Director granted FTI the License and FTI relied upon that License to order its affairs, including investing money, hiring staff, ordering materials, contracting for services, and the like. To the best of FTI's knowledge, this is not in dispute.

Two of the largest American sports in terms of viewership and wagering are football and basketball. Each sport has "seasons" and "off-seasons." The National Football League is nearing the end of its season, with its Conference Championship games scheduled for this upcoming weekend and the Super Bowl shortly thereafter. Further, depending on the schedule for the hearing, college basketball tournament games, known as "March Madness," will soon occur. In the absence of a stay, there is no way for FTI to recoup the lost opportunity if the Decision is reversed and the Director's original legal conclusion – FTI is an eligible applicant – is reinstated. Without a stay, the games will have concluded, and the opportunity for FTI will be gone along with them. FTI's prospective injury is significantly irreparable.

2. Harm to the Director (the “adverse party”) is, at most, *de minimis*

Staying or modifying the Decision to preserve the status quo – which has existed for nearly 5 months – would create minimal harm to the Director. FTI will continue to remit its monthly taxes to fund the Gambling Control Unit’s operations as well as the other important causes which sports wagering taxes support. Sports wagering – and time spent regulating it – will continue in Maine irrespective of the Decision, given the online wagers accepted by the four federally recognized Indian tribes. Therefore, there is no material harm created by maintaining the status quo through issuance of a stay.

3. The public is not adversely affected by a stay

As noted *supra*, sports wagering is present throughout Maine via online wagering applications. Those platforms represent more than 90% of the wagering market in Maine and can be accessed anywhere in the state at any time. *See generally* Gambling Control Unit Revenue Reports. FTI’s operations are minuscule in comparison. Further, the Decision was solely based on the Director’s reversal concerning FTI’s eligibility. It was not based on any claim or finding that FTI’s operations somehow were harming the public or violating house rules or internal controls. The Decision identifies no harm that the public will suffer from a stay.

Additionally, upon information and belief, other interested parties – including but not limited to the out-of-state corporations who own Maine’s casinos, Caesars Sportsbook, and the Penobscot, Mi’kmaq, and Maliseet Nations – will likely seek to be heard at the hearing given the Decision’s impact on the sports wagering market generally. Issuance of a stay gives the Commissioner sufficient time to provide notice and schedule an orderly multi-party hearing (supporting the public interest) without further compounding the injury inflicted upon FTI through a long delay.

4. FTI is likely to succeed on the merits

The Decision ignores several core Maine canons of statutory interpretation. "The fundamental rule in statutory construction is that words must be given their plain meaning." *Paradis v. Webber Hospital*, 409 A.2d 672, 675 (1979). "'If the meaning of this language is plain, we must interpret the statute to mean exactly what it says.'" *Rowe v. Chapman Trucking*, 629 A.2d 1224, 1226 (Me.1993) (quoting *Concord Gen. Mut. Ins. Co. v. Patrons Oxford Mut. Ins. Co.*, 411 A.2d 1017, 1020 (Me.1980)). Further, the Decision ignored both the canon against surplusage and the canon of *expressio unius est exclusion alterius*, not even acknowledging their existence.

Under the plain language of the sports wagering statute, the Decision is in error. And, where the Director already legally determined FTI was eligible, he is equitably estopped from issuing the Decision based on nothing but a new legal theory. At the very least, there is a substantial possibility that the Decision is in error, and the gravity of the irreparable injury faced by FTI supports the issuance of a stay. *Emerson*, 563 A.2d at 768.

(a) FTI is an eligible applicant

8 M.R.S. §1206(2) identifies persons who are eligible to apply for a sports wagering facility license. ("To be eligible to receive a facility sports wagering license, an **applicant** must be...") (emphasis added). FTI is eligible to be an **applicant** pursuant to 8 M.R.S. §1206(2)(A) since it is a "commercial track...not located in Bangor." *See* Decision and Order, Maine State Harness Racing Commission, Dec. 18, 2023. This is undisputed. In fact, when the Director issued the License in the first instance, he was required by law to confirm FTI's qualification. *See* 8 M.R.S. §1206(6) ("If the director determines that the applicant is qualified under subsection 2," he may

issue a temporary license). The Decision provides no explanation for the Director's sudden recanting of his prior determination. *See infra* Sec. 4(e).

The Decision states "Oddfellahs is not a commercial track facility as defined by Section 275-A." *Decision at 2*. This is legal error for two reasons. First, "commercial track facility" is not a defined term under either the sports wagering or harness racing statutes. "Commercial track" is a defined term, and, as noted *supra*, the Director already confirmed FTI is such a track. Second, "Oddfellahs" is simply an assumed name of FTI adopted through appropriate filings with the Maine Secretary of State. The Decision errs as a matter of law to the extent it attempts to legally distinguish "FTI" from "Oddfellahs" -- they are one-and-the-same. 31 M.R.S. §1510.

For these reasons, to the extent that the Decision holds that FTI d/b/a Oddfellahs is not an eligible applicant under 8 M.R.S. §1206(2), it is legal error under the undisputed facts. This error supports a stay.

(b) The Decision confuses "facilities" and "applicants"

The Decision states "Oddfellahs is not one of the listed facility types listed in 1206(2)." *Decision at 2* (emphasis added). As noted *supra*, 8 M.R.S. §1206(2) does not govern facilities; it governs eligible applicants. FTI is an eligible applicant under that portion of the statute.

It is 8 M.R.S. §1206(3) which governs sports wagering locations. "A facility sports wagering license granted by the director pursuant to this section grants a licensee lawful authority to conduct sports wagering in which wagers are placed within a **physical location controlled by the licensee** in the State..." *Id.* (emphasis added). It is undisputed that 55 Market Street in Portland is "a physical location." It is undisputed that 55 Market Street in Portland is "controlled by" FTI, the licensee. The Decision appears to ignore these undisputed facts and the plain language of the statute.

The Decision states facility sports wagering “licensees [sic] granted to these facilities” described in 8 M.R.S. §1206(2) “authorizes sports wagering at those facilities only.” *Decision at 2.* But that is not what the statute provides; licenses are provided to **applicants**. Once an applicant becomes a licensee, they are permitted “to conduct sports wagering in which wagers are placed within a physical location controlled by the licensee in the State” subject to applicable rules. 8 M.R.S. §1206(3); *see also* 8 M.R.S. §1202(7)(A) (A facility license allows the licensee “to conduct sports wagering in which wagers are placed within a physical location in this State.”)

The Decision does not apply the undisputed facts to the plain language of the statute, instead opting for a novel interpretation limiting the statute beyond the language the Legislature intentionally chose.² Additionally, nowhere in the rules adopted by the Gambling Control Unit does this strict “existing locations only” limit exist. Its first appearance in Maine law is the Decision.

For all these reasons, the Decision’s failure to apply the plain language of the statute supports FTI’s request for a stay.

(c) The Decision’s construction of the statute violates the canon against surplusage

The Decision’s interpretation of the law also violates the canon against surplusage. “Nothing in a statute may be treated as surplusage if a reasonable construction supplying meaning and force is otherwise possible.” *Labbe v. Nissen Corp.*, 404 A.2d 564, 567 (Me. 1979); *see also* *Home Builders Ass’n v. Town of Eliot*, 2000 ME 82, ¶8, 750 A.2d 566 (“Surplusage occurs when a construction of one provision of a statute renders another provision unnecessary or without meaning or force.”).

² If the Legislature wanted to limit locations to existing facilities, it could have easily said “within the licensee’s physical location described in subsection 2” instead of “within a physical location controlled by the licensee in the State.” It did not.

The sports wagering statute restricts each **off-track betting facility** (“OTB”) to a single sports wagering facility license. 8 M.R.S. §1206(2) (“Each off-track betting facility may receive only one facility sports wagering license under this section.”) (the “OTB Provision”). This provision of law is surplusage under the Decision, as the Director’s interpretation means that every eligible applicant under 8 M.R.S. §1206(2) is restricted to a single license since they may only operate within pre-existing facilities. *Decision at 2* (licenses “granted to [tracks, casinos, and OTBs] authorizes sports wagering at those facilities only.”). There is no explanation in the Decision on how the Director addressed this core³ statutory canon when there is a construction of the statute – put forward by FTI – which renders the OTB Provision meaningful instead of surplusage. Once again, this is legal error and supports the grant of a stay.

(d) If the statute is ambiguous, legislative history supports FTI on the merits

While it is unclear whether the Director determined the sports wagering statute is ambiguous, assuming *arguendo* he did, legislative history surrounding gaming further undermines the Decision. One example arises in the historic structure of gaming statutes. Maine’s original slots law authorizing commercial tracks to open slot facilities also split the questions of “eligibility” and “location.” *See* P.L. 2003, ch. 687, §A-5.

The original slot law authorized regulators to “accept applications for a license to operate slot machines from any person who is licensed to operate a commercial track” subject to certain qualifications. *Id.* The location where an applicant could operate, upon issuance of a license, was a separate question: “A slot machine operator license authorizes a licensee to own or lease slot machines operated at a licensed gambling facility.” *Id.* This is the exact same model as the sports

³ The Decision also violates the statutory canon of “expressio unius est exclusion alterius, which is regarded as ‘well recognized in Maine.’” *Lee v. Massie*, 447 A.2d 65, 68 (Me 1982)(internal citation omitted). Why did the Legislature **remove** casinos and commercial tracks from the “single license only” OTB Provision? *Compare* LD 1352 (130th Legis. 2022) *with* LD 585 (130th Legis. 2022). The Decision has no answer.

wagering law, with questions about “applicant eligibility” separate from authorized “locations” from which the eligible applicant can operate upon receipt of a license. *See supra* Sec. 4(b). Again, in assessing the legal error in the Decision, all of these provisions – and others – support FTI’s position on the merits and counsels in support of a stay.

(e) The Director is equitably estopped from changing his mind on eligibility

It is undisputed that, as a matter of law, the Director was legally required to determine that FTI was eligible to receive a license for its 55 Market Street location prior to issuance of the License. *See* 8 M.R.S. §1206(6) (“If the director determines that the applicant is qualified under subsection 2,” he may issue a temporary license). This gives rise to a claim for equitable estoppel from FTI. “To prove equitable estoppel against a governmental entity, the party asserting it must demonstrate that (1) the governmental official or agency made misrepresentations, whether by misleading statements, conduct, or silence, that induced the party to act; (2) the party relied on the government’s misrepresentations to his or her detriment; and (3) the party’s reliance was reasonable.” *State v. Brown*, 2014 ME 79, ¶14, 95 A.2d 82 (citations omitted).

In this case, (1) the Director made a representation concerning FTI’s eligibility by issuing the License, (2) FTI relied on that representation to make investments, hire staff, contract for services, and the like, and (3) it is reasonable for FTI to accept the Director’s issuance of the License at face value. If there was an eligibility question, it should have been considered and addressed prior to the issuance of the License. Accordingly, FTI has a strong claim for equitable estoppel irrespective of the strong statutory claims, which all supports the grant of a stay.

5. All the Stay factors support granting of a stay

Without a stay, FTI will suffer severe irreparable injury having relied on the Director’s initial grant of the License. There is no material harm to the Gambling Control Unit through a

stay maintaining the status quo. The public is not only not harmed by a stay, but rather their involvement in the appeal hearing will be greatly enhanced through an orderly, structured process in lieu of a sprint to protect FTI's due process rights. Finally, FTI is likely to succeed on the merits of its appeal. The questions are primarily legal in nature and the plain language of the statute – “a physical location controlled by the licensee in the State” – supports FTI’s position. In the alternative, the Director is equitably estopped due to FTI’s good faith reasonable reliance on his prior representations.

For all these reasons, the Commissioner should STAY the Decision immediately.

21JAN2024

Date



Michael Cianchette, Esq. (ME Bar #4788)
Manager, First Tracks Investments, LLC
42 Market Street
Portland, ME 04101
mcianchette@portlandproperties.com
207.774.1000

STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY

In re:)
First Tracks Investments, LLC) ORDER STAYING
d/b/a Oddfellahs) DECISION DATED
) JANUARY 17, 2025
)
)

On petition of First Tracks Investments, LLC (“FTI”), pursuant to the authority vested in me under Maine law, including but not limited to 5 M.R.S. §11004 and 8 M.R.S. §1205(2), the Decision of the Director of the Gambling Control Unit dated January 17, 2025 is hereby STAYED pending resolution of FTI’s appeal of the Decision or further order of the undersigned. FTI may continue to conduct sports wagering activities in accordance with the Temporary License issued on August 31, 2024 and applicable laws and rules.

Date

Commissioner

Joel J. Dube

From: Sauschuck, Michael <Michael.Sauschuck@maine.gov>
Sent: Wednesday, January 22, 2025 11:11 AM
To: Michael Cianchette
Cc: Champion, Milton F; Gunner laCour; Mantis, Philip; Hayton-Hull, Reid
Subject: RE: EMERGENCY REQUEST - GCU Decision

Thanks for the heads up Mike I appreciate it...Mike

From: Michael Cianchette <MCianchette@thergency.com>
Sent: Wednesday, January 22, 2025 10:51 AM
To: Sauschuck, Michael <Michael.Sauschuck@maine.gov>
Cc: Champion, Milton F <Milton.F.Champion@maine.gov>; Gunner laCour <GunnerL@oddfellahs.com>; Mantis, Philip <Philip.Mantis@maine.gov>; Hayton-Hull, Reid <Reid.Hayton-Hull@maine.gov>
Subject: RE: EMERGENCY REQUEST - GCU Decision

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Commissioner,

Thank you for the response. FTI will file with the Cumberland County Superior Court requesting a stay.

Mike

From: Sauschuck, Michael <Michael.Sauschuck@maine.gov>
Sent: Wednesday, January 22, 2025 10:42 AM
To: Michael Cianchette <MCianchette@thergency.com>
Cc: Champion, Milton F <Milton.F.Champion@maine.gov>; Gunner laCour <GunnerL@oddfellahs.com>; Mantis, Philip <Philip.Mantis@maine.gov>; Hayton-Hull, Reid <Reid.Hayton-Hull@maine.gov>
Subject: RE: EMERGENCY REQUEST - GCU Decision

Mr. Cianchette,

Thanks for reaching out to me with your concerns and request. Please see the attachment for my response. Thanks...Mike

From: Michael Cianchette <MCianchette@thergency.com>
Sent: Tuesday, January 21, 2025 10:41 AM
To: Sauschuck, Michael <Michael.Sauschuck@maine.gov>
Cc: Champion, Milton F <Milton.F.Champion@maine.gov>; Gunner laCour <GunnerL@oddfellahs.com>
Subject: EMERGENCY REQUEST - GCU Decision
Importance: High

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Commissioner:

Please see attached for a requested STAY of a Decision of the Gambling Control Unit pursuant to the APA. I discussed with the Director this morning and he indicated that he did not intend to take a position on this request.

In addition to the reasons in the attached, there are numerous members of the public who hold active tickets or vouchers that will land in limbo in the absence of a stay. Further, it is First Tracks' intent to file suit in the absence of a stay and seek a stay from the Superior Court pending the outcome of the APA appeal. Given timelines, we would need to file Wednesday afternoon to try and obtain relief before Friday. We would also need to make the public and Legislature aware of this situation. Our strong preference is to avoid all of that and maintain the status quo so we can work through this in a much more structured manner.

I am available for a call at your convenience if there is a time that works should you wish to discuss prior to deciding. My cell is 207.838.0147. Respectfully request your favorable consideration.

Sincerely,

Michael Cianchette
Manager, First Tracks Investments, LLC



Janet T. Mills
Governor

STATE OF MAINE
Department of Public Safety
104 State House Station
Augusta, Maine
04333-0104



Michael J. Sauschuck
Commissioner

STATE OF MAINE
DEPARTMENT OF PUBLIC SAFETY

In Re:)

First Tracks Investment, LLC)
d/b/a Oddfellahs)

)
)
)
)
)

**DECISION ON MOTION
FOR TEMPORARY STAY**

INTRODUCTION

First Tracks Investments, LLC (FTI) has requested a hearing on the decision to deny FTI's application for a facility sports wagering license issued by the director of the Gambling Control Unit (GCU).

Contemporaneous with the request, FTI seeks a stay of the director's decision.

The Department acknowledges FTI's request and will schedule a hearing in due course.

In regard to its motion for a temporary stay, FTI asserts that the Commissioner has the authority to issue the requested stay pursuant to 8 M.R.S. § 1205(2) and 5 M.R.S. § 11004.

Because the Commissioner does not have the authority to stay the director's decision, the motion is denied.

DISCUSSION

I. The Commissioner does not have the authority to stay a decision under 8 M.R.S. § 1205(2).

An applicant may request a hearing before the Commissioner on the director's denial of an application for a sports wagering license. The request is due within thirty (30) days after the decision is issued. Upon timely request, the Commissioner must hold an adjudicatory hearing pursuant to the 5 M.R.S. chapter 375 and shall issue a decision to "uphold, modify, or overrule the director's decision." 8 M.R.S. § 1205(2). However, the director's decision to deny an application must stand until a new decision is issued by the Commissioner. *Id.*

In the present matter, the director determined that FTI is ineligible for the license. To avoid the effect of this decision, which is to cease sports wagering activities pursuant to the

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Central Maine Commerce Center
45 Commerce Drive
Augusta, Maine 04333

(207) 626-3800 (Voice)

(207) 287-3659 (Fax)

(207) 287-3659 (TTY)

temporary license, the Commissioner would have to overrule the director's determination, which cannot be done without a hearing. Accordingly, the director's determination that FTI is ineligible for a facility sports wagering license must stand until a different decision is reached after an adjudicatory hearing.

II. The Commissioner may only stay final agency action under 5 M.R.S. § 11004.

Subchapter 7 of the Maine Administrative Procedure Act sets forth the procedures for review of *final* agency action. 5 M.R.S. § 11001 *et seq.* (emphasis added). Those aggrieved by final agency action may file a petition for review with a court of competent jurisdiction pursuant to 5 M.R.S. § 11004. The filing of a petition for review does not automatically stay the underlying final agency action. *Id.* Rather, the petitioner may request a stay of final agency action with the respective agency. If the agency denies the request, the request may be made with the court.

Final agency action is "a decision by an agency which affects the legal rights, duties or privileges of specific persons, which is dispositive of all issues, legal and factual, *and for which no further recourse, appeal or review is provided within the agency.*" 5 M.R.S. § 8002(4) (emphasis added).

Here, the director's decision is not final agency action because it is appealable, and has been appealed, within the agency. Therefore, the Commissioner does not have the authority to stay the director's decision pursuant to 5 M.R.S. § 11004, because the decision is not final agency action.

CONCLUSION

For the reasons mentioned above, FTI's motion for a temporary stay is **DENIED**.



Michael Sauschuck
Commissioner
Department of Public Safety

January 22, 2025
DATE

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45 Commerce Drive
Augusta, Maine 04333

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This summary sheet and the information it contains do not replace or supplement the filing and service of pleadings or other papers as required by the Maine Rules or by law. This form is required for the Clerk of Court to initiate or update the civil docket. The information on this summary sheet is subject to the requirements of M. R. Civ. P. 11.

I. COUNTY OF FILING OR DISTRICT COURT JURISDICTION ("X" the appropriate box and enter the County or location)

Superior Court County: CUMBERLAND
 District Court Location (city/town): _____

II. NATURE OF THE FILING

Initial Complaint
 Third-Party Complaint
 Cross-Claim or Counterclaim
 Reinstated or Reopened case

Docket No.: _____

If filing a second or subsequent Money Judgment Disclosure, give the docket number of the first disclosure.)

III. REAL ESTATE OR TITLE TO REAL ESTATE IS INVOLVED

IV. MOST DEFINITIVE NATURE OF ACTION

("X" in ONE box. If the case fits more than one nature of action, select the one that best describes the cause of action.)

GENERAL CIVIL

Constitutional/Civil Rights

Constitutional/Civil Rights

Contract

Debt Collection brought by a debt collector as defined by 32 M.R.S. § 11002 (*Contract Case Cover Sheet (CV-261) must be attached*)

Other Contract (*Contract Case Cover Sheet (CV-261) must be attached*)

Declaratory/Equitable Relief

Declaratory Judgment
 General Injunctive Relief
 Other Equitable Relief

Non-Personal Injury Torts

Auto Negligence
 Libel/Defamation
 Other Negligence
 Other Non-Personal Injury Tort

Personal Injury Torts

Assault/Battery
 Auto Negligence
 Domestic Tort
 Medical Malpractice
 Other Negligence
 Other Personal Injury Tort
 Product Liability
 Property Negligence

Statutory Actions

Freedom of Access
 Other Statutory Action
 Unfair Trade Practice

Miscellaneous Civil

Administrative Warrant
 Appointment of Receiver
 Arbitration Awards
 Common Law Habeas Corpus
 Drug Forfeiture
 Foreign Deposition
 Foreign Judgments
 HIV Testing
 Land Use Enforcement (80K)
 Minor Settlements
 Other Civil
 Other Forfeiture/Property Libel
 Pre-Action Discovery
 Prisoners Transfers
 Shareholders' Derivative Action

REAL ESTATE

Foreclosures

Foreclosure (ADR exempt)
 Foreclosure (Diversion eligible)
 Foreclosure (Other)

Title Actions

Boundary
 Easement
 Eminent Domain
 Quiet Title

Miscellaneous Real Estate

Abandoned Road
 Adverse Possession
 Equitable Remedy
 Mechanics Lien
 Nuisance
 Other Real Estate
 Partition
 Trespass

APPEALS (ADR EXEMPT)

Administrative Agency (80C)
 Governmental Body (80B)
 Other Appeal

CHILD PROTECTIVE CUSTODY

Non-DHHS Protective Custody

SPECIAL ACTIONS

Money Judgment Disclosure

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V. M.R. Civ. P. 16B ALTERNATIVE DISPUTE RESOLUTION (ADR)

I certify that pursuant to M.R. Civ. P. 16B(b), this case is exempt from a required ADR process because ("X" one box below):

It falls within an exemption listed above (it is an appeal or an action for non-payment of a note in a secured transaction).

The plaintiff or defendant is incarcerated in a local, state, or federal facility.

The parties have participated in a statutory pre-litigation screening panel process with (name of panel chair) _____ that concluded on (date of panel finding - mm/dd/yyyy) _____.

The parties have participated in a formal ADR process with (name of neutral) _____ on (date - mm/dd/yyyy) _____.

The plaintiff's likely damages will not exceed \$30,000, and the plaintiff requests an exemption.

The action does not include ADR pursuant to M.R. Civ. P. 16(a)(1).

There is other good cause for an exemption and the plaintiff has filed a motion for exemption.

VI. PARTY AND ATTORNEY CONTACT INFORMATION

If you need additional space, list additional parties on an attachment and note "see attachment" in the appropriate section.

Please note: If a party is a government agency, use the full agency name or the standard abbreviation. If the party is an official within a government agency, identify the agency first and then the official, giving both name and title.

(a) PLAINTIFF(S)

("X" the box below to indicate the party type associated with the filing)

Plaintiff(s)
 Third-Party Plaintiff(s)
 Counterclaim Plaintiff(s)
 Cross-Claim Plaintiff(s)

Is the plaintiff a prisoner in a local, state, or federal facility? Yes No

Name (first, middle initial, last): FIRST TRACKS INVESTMENTS, LLC

Mailing address (include county): 42 MARKET STREET
 PORTLAND, ME 04101

Telephone: 2077741000

Email: mcianchette@portlandproperties.com

Name (first, middle initial, last):

Mailing address (include county):

Telephone:

Email:

(b) ATTORNEY(S) FOR PLAINTIFF(S)

If there are multiple attorneys, indicate the lead attorney. *If all counsel do not represent ALL plaintiffs, specify which plaintiff(s) the listed attorney(s) represents.*

Name and bar number: MICHAEL CIANCHETTE 4788

Firm name: FIRST TRACKS INVESTMENTS, LLC

Mailing Address: 42 MARKET STREET
 PORTLAND, ME 04101

Telephone: 2077741000

Email: MCIANCHETTE@PORTLANDPROPERTIES.COM

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Language Services: For language assistance and interpreters, contact a court clerk or interpreters@courts.maine.gov.

Name and bar number: _____
Firm name: _____
Mailing Address: _____

Telephone: _____
Email: _____

(c) DEFENDANT(S)

(“X” the box below to indicate the party type associated with the filing)

Defendant(s)
 Third-Party Defendant(s)
 Counterclaim Defendant(s)
 Cross-Claim Defendant(s)

Is the defendant a prisoner in a local, state, or federal facility? Yes No

Name (first, middle initial, last): **MILTON CHAMPION, DIRECTOR**
Mailing address (include county): **87 STATE HOUSE STATION**
AUGUSTA, ME 04333

Telephone: _____
Email: **Milton.F.Champion@maine.gov**

Name (first, middle initial, last): **MICHAEL SAUSCHUCK, COMMISSIONER**
Mailing address (include county): **104 STATE HOUSE STATION**
AUGUSTA, ME 04333

Telephone: _____
Email: **Michael.Sauschuck@maine.gov**

(d) ATTORNEY(S) FOR DEFENDANT(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL defendants, specify which defendant(s) the listed attorney(s) represents.

Name and bar number: _____
Firm name: **OFFICE OF THE ATTORNEY GENERAL**
Mailing Address: **6 STATE HOUSE STATION**
AUGUSTA, ME 04333

Telephone: _____
Email: **attorney.general@maine.gov**

Name and bar number: _____
Firm name: _____
Mailing Address: _____

Telephone: _____
Email: _____

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(e) PARTIES IN INTEREST

Name (first, middle initial, last): _____
Mailing address (include county): _____

Telephone: _____
Email: _____

Name (first, middle initial, last): _____
Mailing address (include county): _____

Telephone: _____
Email: _____

(f) ATTORNEY(S)

If there are multiple attorneys, indicate the lead attorney. If all counsel do not represent ALL parties in interest, specify which parties in interest the listed attorney(s) represents.

Name and bar number: _____
Firm name: _____
Mailing Address: _____

Telephone: _____
Email: _____

Name and bar number: _____
Firm name: _____
Mailing Address: _____

Telephone: _____
Email: _____

VII. RELATED CASE(S) IF ANY

Case name: _____
Docket Number: _____
Assigned Judge/Justice: _____

Date (mm/dd/yyyy): 01/22/2025

► 
Signature of Plaintiff or Lead Attorney of Record

Michael Cianchette
Printed Name of Plaintiff or Attorney

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