SUPREME COURT OF LOUISIANA

Nos. 98-C-1122, 98-C-1133 and 98-C-1134

SENATOR J. LOMAX "MAX" JORDAN

Versus

LOUISIANA GAMING CONTROL BOARD
and
MURPHY J. "MIKE" FOSTER, JR.

Consolidated With

SENATOR RONALD C. BEAN

Versus

LOUISIANA GAMING CONTROL BOARD
and
RIVERGATE DEVELOPMENT CORPORATION

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,
1ST CIRCUIT, PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA

JOHNSON, Justice[*]

The parties involved in this dispute seek a determination as to which entity has the authority to bind the state to the amended casino operating contract pending before a bankruptcy judge. The plaintiffs argue that the latest contract essentially is a "new" contract and, accordingly, that under *La. R.S. 27:224 (E),* the legislature is empowered with the authority to approve the contract on behalf of the state. The defendants argue that the latest contract pending before the bankruptcy judge is not a new contract, but is rather a renegotiation of the original contract and that, therefore, the Louisiana

[*] Victory, J., not on panel. Rule IV, Part 2, § 3.

Gaming Control Board has the independent authority to renegotiate and execute the renegotiated contract under *La. R.S. 27:245*. Defendants further argue that, contrary to plaintiffs' contention, *La. R.S. 27:245(A)* has not been impliedly repealed. For the reasons that follow, we hold that the Board does have the independent authority to renegotiate and execute the casino operating contract without gubernatorial or legislative approval.

FACTS AND PROCEDURAL HISTORY

On July 15, 1994, the State of Louisiana, through the Louisiana Economic Development and Gaming Corporation (hereinafter "LEDGC"),[2] executed a casino operating contract with Harrah's Jazz Company (hereinafter "HJC") for a period of twenty years with a ten-year extension option. HJC is a Louisiana general partnership formed in 1993 for the purpose of owning and operating a land-based casino in New Orleans, Louisiana, on the site of the former Rivergate Convention Center. HJC was formed by three partners: Harrah's New Orleans Investment Company (a Nevada corporation), New Orleans Louisiana Development Corporation (a Louisiana corporation), and the Grand Palais Casino, Inc. (a Delaware corporation). Thereafter, HJC paid to LEDGC $125 million dollars and, pursuant to the agreement, began operating a temporary casino at the Municipal Auditorium in New Orleans while the permanent casino was under construction.

On November 21, 1995, HJC closed the temporary casino and suspended construction of the permanent casino. On November 22, 1995, HJC filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code. HJC is currently the debtor-in-possession in the case entitled, "In Re: Harrah's Jazz Company,

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[2] The LEDGC was created in La. R.S. 27:210 and granted all powers necessary to perform the functions for which it was created, including the power of granting an exclusive contract to operate a casino gambling establishment.

Debtor," United States Bankruptcy Court for the Eastern District of Louisiana, No. 95-14545 TMB.

On May 1, 1996, pursuant to La. *R.S. 27:11*,[3] *27:15*[4] and *27:31*,[5] the legislature formed the Louisiana Gaming Control Board (hereinafter "Board") to replace and succeed the LEDGC, as it proved unworkable to have a regulatory agency, the former LEDGC, funded by the entity that it regulates. The Board statutorily assumed all of the

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[3] *La. R.S. 27:11* provides in part:

"The Louisiana Gaming Control Board is hereby created...."

[4] *La. R.S. 27:15* provides in part:

"A. The board shall regulate all gaming activities and operations in the state as more specifically provided in this Title and other applicable laws.

B. The board shall:

(1) Have all regulatory authority, control, and jurisdiction, including investigation, licensing, and enforcement, and all power incidental or necessary to such regulatory authority, control, and jurisdiction over all aspects of gaming activities and operations as authorized pursuant to the provisions of the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act...except as otherwise specified in this Title...."

[5] *La. R.S. 27:31* provides in part:

"A. (1) Beginning May 1, 1996, the board established in this Title shall undertake and become the sole and exclusive regulatory and supervisory board for gaming operations and activities authorized by the Louisiana Riverboat Economic Development and Gaming Control Act, the Louisiana Economic Development and Gaming Corporation Act, and the Video Draw Poker Devices Control Law....

(2) Effective May 1, 1996, the Riverboat Gaming Commission is abolished.

(3) Effective May 1, 1996, the Louisiana Gaming Control Board shall assume control of the affairs of the Louisiana Economic Development and Gaming Corporation.

(B) Effective May 1, 1996, all powers, duties, functions, and responsibilities of the regulatory entities designated in Paragraph (2) and (3) of Subsection A of this Section are transferred to and shall be performed and exercised by the Louisiana Gaming Control Board. In addition, all of the obligations of those entities are transferred to the Louisiana Gaming Control Board. Upon the transfer of the powers, duties, functions, and responsibilities accomplished by this Section, any pending or unfinished business of those regulatory entities shall become the business of and be completed by the Louisiana Gaming Control Board with the same power and authority as the entity from which the functions are transferred...."

authority that had been granted to its predecessor, including the authority to renegotiate the provisions of any casino operating contract of a casino operator that is in bankruptcy.

On January 29, 1998, the bankruptcy court confirmed HJC's Third Amended Joint Plan of Reorganization. This plan called for the formation of Jazz Casino Company, L.L.C. (hereinafter "JCC"), a limited liability company, to succeed HJC. Under the plan, JCC would be wholly owned by JCC Holding Company, a publicly traded company. The Official Bondholders Committee, a committee appointed by the bankruptcy trustee, would own approximately 52% of JCC Holding Company, and the remaining stock would be owned by the three partners who had formed HJC. The plan further provided that on the effective date of the renegotiated contract, all of HJC's rights, title, and interest in any and all property, including all present and future claims, causes of action, real and personal property, movables and immovables, shall transfer and vest in the JCC, free and clear of all liens, claims, and encumbrances and that JCC shall be deemed to be the successor to HJC.

Thereafter, the Board renegotiated the casino operating contract that was to be transferred to the successor JCC. After the Attorney General rendered an opinion on March 16, 1998, stating that the Board had the authority to do so, the Board approved the renegotiated contract by resolution in a 7-1 vote on March 20, 1998. The Board has not yet, however, executed the renegotiated contract.

Prior to the Board's approval of the renegotiated contract, Senator Ronald C. Bean filed a petition in the Nineteenth Judicial District Court for the Parish of East Baton Rouge, naming the Board as the defendant on March 18, 1998. Also on March 18, 1998, Senator J. Lomax Jordan filed a similar petition in the same court. Both petitions sought a judgment declaring that the Board does not have independent

authority to renegotiate, approve, or execute a new casino operating contract and that the Board is statutorily obliged to obtain approval of the Louisiana Legislature before entering into a casino operating contract.[6] The two matters were consolidated, and we ordered the district court to render judgment on the merits no later than April 3, 1998.[7]

On April 3, 1998, the trial court rendered judgment in favor of the Board.[8] In her oral reasons for judgment, Judge Clark found that the legislature, in adopting *La. R.S. 27:210(B)*, granted the Board *independent* authority to renegotiate and execute the Amended and Renegotiated Casino Operating Contract. The trial judge reasoned that *La. R.S. 27:31* transferred the power and authority of the LEDGC to the Board, that *La. R.S. 27:245(A)* granted the Board the power and authority to renegotiate the contract of a casino operator that had been placed in bankruptcy, and that *La. R.S. 27:245(A)* had not been repealed by *La. R.S. 27:224(D)*. She also relied on *Devillier v. Department of Public Safety and Corrections*, 634 So. 2d 884 (La. App. 1st Cir. 1993), *writ denied*, 635 So. 2d 401 (La. 1994), in which this court held:

> [S]ome powers and authority may be implied as necessary and appropriate in order to effectuate the express powers granted to, or imposed upon, such board or agency.

The trial court determined that the power and faculty in the Board to modify and amend the casino operating contract is necessary to perform the functions for which it was created.

The trial court also found no conflict between *La. R.S. 27:245(A)* and *La. R.S.*

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[6] Both petitions originally sought injunctive relief, but the plaintiffs withdrew this demand prior to trial.

[7] This action was prompted by the filing of supervisory writs to this court, wherein the applicants sought to bypass the district court and proceed directly to this court. We denied the request on March 27, 1998.

[8] *See* Case No. 448,192, consolidated with No. 448,218.

27:224(D) and *(E)*. The trial judge reasoned that *La. R.S. 27:245(A)* addresses action by the Board *on its own initiative* when a casino operator enters bankruptcy, while *La. R.S. 27:224(D)* addresses action by the Board *by order of the governor or the legislature*. The trial judge also found that there existed no circumstances under which the legislature had the right to approve a casino operating contract prior to its execution and perfection. She found that the execution of casino contracts is an executive function that had been properly delegated to the executive branch through the Board by the legislature. Insofar as *La. R.S. 27:224(D)* and *(E)* subject the acts of the governor or Board to legislative approval or authorize the legislature to take executive action in entering a casino operating contract on its own authority, the trial judge found them to violate the separation of powers doctrine of Louisiana Constitution Article II, section 2. Moreover, the trial court found that the governor has no authority to execute a casino operating contract because the Board had been granted that authority under *La. R.S. 27:210*.

The trial court concluded that the Amended and Renegotiated Casino Operating Contract approved by the Board was a renegotiated--and not a new--contract. The trial court determined that to the extent that JCC is a party to the contract as an assignee, the contract is an accessory contract, essentially of suretyship, because the intent of the parties is that JCC act as surety for the performance of the casino operating contract. Moreover, the trial court held that the Louisiana Legislature has no authority to approve the renegotiated contract prior, or subsequent, to its execution. Following the ruling by the trial court, plaintiffs sought immediate relief from this court. On April 9, 1998, we issued an order denying the request to bypass the court of appeal and ordered the court of appeal to conduct an expedited hearing on the matter.

On April 22, 1998, the court of appeal rendered its decision in which it affirmed

the trial court's judgment in part and reversed it in part.[9] The majority affirmed the trial court's determinations that the Board can renegotiate the casino operating contract without the approval of the legislature or governor and that *La. R.S. 27:245* had not been repealed by *La. R.S. 27:224(D)* or *(E)*. However, the majority reversed the portion of the trial court's judgment that found that the legislature had no authority to approve a renegotiated contract prior, or subsequent, to its execution. In so doing, the majority held that, under *La. R.S. 27:224(D)*, the legislature may *set aside* or *order the Board to renegotiate* the provisions of the casino operating contract of a casino operator in bankruptcy, provided that the legislature acted before the Board executed the renegotiated contract. The court of appeal reserved the issue of the constitutionality of *La. R.S. 27:224(D)* for decision by this court.

Plaintiff, Senator Bean, filed writ application to this court, alleging that the court of appeal erred to the extent that it determined that the Board possesses independent authority to approve and execute a "new" casino operating contract without obtaining the approval of the Louisiana Legislature. (98-C-1122). The Board and Governor Foster also filed a writ application, alleging that the court of appeal erred in reversing that portion of the trial court's judgment that had held that the Louisiana Legislature had no authority to approve the casino operating contract prior to its execution and further alleging that the court of appeal erred in failing to address the trial court's holding that the Board is authorized by law to execute the casino operating contract without legislative approval. (98-C-1134).

HJC and the Official Bondholders Committee intervened and filed a writ application, seeking a declaratory judgment by this court affirming the trial court's judgment to the extent that it declared that the Board has the authority to execute the

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[9] *Slip Opinion, 1998 WL 204587* (La. App. 1 Cir.).

Amended and Renegotiated Casino Operating Contract. (98-C-1133). HJC and the Bondholders also sought to have this court vacate the other rulings by the court of appeal, alleging that the question of the scope of the legislature's powers under *La. R.S. 27:224(D) and (E)* does not present a justiciable controversy. On May 1, 1998, Senator Jordan filed a response to the writ applications, alleging that Act 384 of 1992 and Acts 7 and 58 of the First Extraordinary Session of 1996 reversed the public policy of the State of Louisiana and transferred the promotion, development, and regulation of the casino to a state agency under a new legal scheme, thereby removing certain powers from the Board and returning those powers to the legislature. Further, Senator Jordan alleged that the court of appeal failed to recognize that the end result of a renegotiation of a contract [even in bankruptcy] may, in fact and law, be a "new" contract, which would require legislative approval under *La. R.S. 27:224(E)*.

DISCUSSION

A. Whether *La. R.S. 27:245(A)* has been repealed.

La. R.S. 27:245(A) reads as follows:

> The ***board shall have the right to set aside or renegotiate the provisions of any casino operating contract of a casino operator who is voluntarily or involuntarily placed in bankruptcy***, receivership, conservatorship, or similar status. The corporation may agree in writing to allow the casino operator to be placed in bankruptcy, receivership, conservatorship, or other similar status without setting aside, revoking, or renegotiating the casino operation contract.

(emphasis added). Clearly, under the plain and unambiguous language of the statute, the Board is granted the authority to renegotiate the casino operating contract where, as in the instant case, the casino operator has been voluntarily placed in bankruptcy. Further, there is no statutory requirement--either expressed or implied--in *La. R.S. 27:245(A)* that the Board seek either gubernatorial or legislative approval of the renegotiated contract. Senators Bean and Jordan, however, urge that *La. R.S.*

27:245(A) is no longer in force, arguing that *245(A)* was rather implicitly repealed by the legislature's 1996 amendments to *La. R.S. 27:224*, which added subsections *(D)* and *(E)*.

Louisiana Civil Code article 8 provides in pertinent part:

> Laws are repealed, either entirely or partially, by other laws.
> A repeal may be express or implied. It is express when it is literally declared by a subsequent law. It is implied when the new law contains provisions that are contrary to, or irreconcilable with, those of the former law.

Nonetheless, it is well settled in the jurisprudence that repeals by implication are not favored. *Thomas v. Highlands Ins. Co.*, 617 So. 2d 877, 878 (La. 1993); *State v. Piazza*, 596 So. 2d 817, 819 (La. 1992); *In re Robin Sapia*, 391 So. 2d 469, 473 (La. 1981); *Gulf Oil Corp. v. State Mineral Bd.*, 317 So. 2d 576, 587 (La. 1974); *State v. Standard Oil Co. of Louisiana*, 178 So. 2d 601, 626 (La. 1937). As such, a repeal by implication will be found only where there is an irreconcilable conflict between two statutes and where there exists no possible construction that could give both statutes effect. *In re Robin Sapia*, 391 So. 2d at 473; *Standard Oil*, 178 So. 2d at 626. We find, as did the lower courts, no such irreconcilable conflict between *La. R.S. 27:245(A)* and *La. R.S. 27:224(D)* and *(E)*.

La. R.S. 27:224(D) provides as follows:

> The governor by executive order, subject to legislative approval either by vote or by mail ballot, or the legislature by Act or Resolution may set aside or order that the corporation renegotiate the provisions of the casino operating contract of a casino operator who is voluntarily or involuntarily placed in bankruptcy, receivership, conservatorship, or similar status. Any action so taken shall constitute the revocation or modification of a pure and absolute revocable privilege as provided in R.S. 27:202(C). Neither the State of Louisiana nor any political subdivision thereof shall be liable in damages for such revocation, modification, or order for renegotiation.

Subsection (D), which tracks the language used in 245(A), purports to give the legislature the power to set aside or to *order* the Board to renegotiate the casino

operating contract when, *inter alia*, the casino operator is voluntarily placed into bankruptcy. We see no conflict between *La. R.S. 27:245(A)*, which grants authority to the Board to set aside or renegotiate the casino operating contract on its own initiative when the operator is placed in bankruptcy, and *La. R.S. 27:224(D)*, which grants the governor, subject to legislative approval, or the legislature, acting alone, the authority to set aside the casino operating contract or to order the Board to renegotiate it when the operator is placed in bankruptcy. *La. R.S. 27:245(A)* and *La. R.S. 27:224(D)* simply provide alternate means for the initiation of renegotiations or for the setting aside of the existing operating contract.

This interpretation is supported by the legislative history. Representative Stephen Windhorst, a co-sponsor of House Bill 9, which became Act 58 of 1996 that added subsections *(D)* and *(E)* to *La. R.S. 27:224*, and the Chairman of the House Committee on the Administration of Criminal Justice, a committee that reported on this bill, testified at a Senate Judiciary Committee meeting and his House Committee meeting with respect to the purpose of the amendment that added subsection *(D)*. The purpose of subsection *(D)*, according to Representative Windhorst, was to address the legislature's concern that because LEDGC (the Louisiana Gaming Control Board had not yet been created) was funded by the casino operator that was then in bankruptcy, thereby depriving the LEDGC of funding, there was no entity that was empowered to take any action against the casino operator in response to its bankruptcy. Prior to the passage of this bill, only the LEDGC could set aside the contract or renegotiate it where the casino operator was in bankruptcy. "What this bill does . . . is allow the Governor and/or the legislature to take that action." Transcript of Hearing, Committee on Judiciary B, April 15, 1996, p. 64; *see also* Minutes, Administration of Criminal Justice Meeting, March 28, 1996, p. 2. Thus, there is absolutely no indication that the

amendment of *La. R.S. 27:224* was intended to give the legislature the power to prevent the LEDGC from setting aside or renegotiation the contract of a bankrupt casino operator, nor is there any evidence that it was intended to require final approval by the legislature for any amended, renegotiated contract to become effective. Rather, the legislative history supports only the finding that the legislature intended that some entity would be empowered to act in the event that the casino operator was placed in bankruptcy or similar status.

La. R.S. 27:224(E) reads as follows:

> The governor by executive order or the board overseeing the operation of the casino, subject to legislative approval either by vote or by mail ballot, or the legislature by Act or Resolution may negotiate a new casino operating contract.

Unlike *La. R.S. 27:245(A)* and *27:224(D)*, La. R.S. *27:224(E)*'s application is not limited to circumstances in which the casino operator has been placed in bankruptcy or similar status, but is broader in its reach. *La. R.S. 27:224(E)* grants the governor, subject to legislative approval, or the legislature, acting alone, the right to negotiate a new casino contract. Again, we see no irreconcilable conflict between this provision and *La. R.S. 27:245(A)*. *La. R.S. 27:224(E)* can be construed to apply only to negotiations of a "new" contract for a casino operator and not to the clearly distinguishable "renegotiation" of the existing casino operating contract, pursuant to *La. R.S. 27:245(A)* or even *La. R.S. 27:224(D)*, which applies only in the limited circumstance where the casino operator has been placed in bankruptcy or similar status.

We also note two other items of legislative history that lend support to the proposition that *La. R.S. 27:245(A)* was not implicitly repealed. In the Act that created the Louisiana Gaming Control Board and transferred to it all of the powers, duties, and obligations of the LEDGC, Section 3 provided that all of the statutory provisions found in the Louisiana Riverboat Economic Development and Gaming Control Act, the Video

Draw Poker Devices Control Law, and the Louisiana Economic Development and Gaming Corporation Act were to be redesignated and consolidated with the new Gaming Control Board provisions by the Louisiana State Law Institute. Thus, pursuant thereto, the Institute redesignated former *La. R.S. 4:645* as *La. R.S. 27:245(A)*. Furthermore, we note that Section 2 of Act 58 of 1996, which added subsections *(D)* and *(E)* to *La. R.S. 27:224*, stated that the additions were not intended to make any change in the law, but were only intended to "clarify the intent of the legislature when it enacted" the original casino laws in 1992.

Thus, considering the legislative history described above and the fact that *La. R.S. 27:245(A), 27:224(D),* and *27:224(E)* can all be construed harmoniously, we find, as did the lower courts, that the legislature did not implicitly repeal *La. R.S. 27:245(A)* by amending *La. R.S. 27:224* in 1996 to add subsections *(D)* and *(E)*. We next conclude that the Board has the independent authority to renegotiate the casino operating contract pursuant to that statute, without seeking gubernatorial or legislative approval. Finally, we hold that the Board is authorized to execute the renegotiated contract, pursuant to *La. R.S. 27:15*, which provides, in pertinent part, that the Board shall have "all the power incidental and necessary to such regulatory authority, control, and jurisdiction over all aspects of gaming activities and operations as authorized pursuant to the provisions of the . . . Louisiana Economic and Gaming Corporation Act . . . ."

B. Whether the Casino Operating Contract is a new or renegotiated contract.

Having concluded that the Board has the independent authority to renegotiate the contract under La. R.S. 27:245(A), we must now decide whether the proposed renegotiated casino operating contract constitutes a "new" contract or a modified version of the original operating contract executed in July 1994. By its terms, *La R.S. 27:245(A)* grants the Board the independent authority to *renegotiate* the contract of a

casino operator who has been placed in bankruptcy or similar status. However, if the contract is deemed to be a "new" contract, then the Board cannot rely upon *La. R.S. 27:245(A)*, as "new" contracts are governed by *La. R.S. 27:224(E)*, which reads as follows:

> The governor by executive order or the board overseeing the operation of a casino subject to legislative approval either by vote or by mail ballot, or the legislature by Act or Resolution may negotiate a new casino operating contract.

Thus, pursuant to *La. R.S. 27:224(E)*, only the governor, subject to legislative approval, or the legislature, acting alone, has the authority to negotiate a "new" casino operating contract.

The trial judge found that the proposed renegotiated contract was not a "new" contract, explaining her view, as set forth in her oral reasons, that "[t]he Amended and Renegotiated Casino Operating Contract is not a new contract but a security device--it is an accessory contract essentially of suretyship--securing the obligations of HJC under the initial Casino Operating Contract." Eight of the twelve court of appeal judges also concluded that the renegotiated contract was not a "new" contract. We agree.

Plaintiffs argue that the renegotiated contract is, in actuality, a new contract because it has new terms and signatories. However, by its very nature, a "renegotiation" connotes the potential for variance from the contract that resulted from the original negotiations. Indeed, we find that *La. R.S. 27:245(A)* contemplates the possibility that a renegotiation with a casino operator might lead to an amended, renegotiated contract with the successor to the debtor in possession, as one of the possible--if not probable--outcomes of a casino operator voluntarily placing itself in bankruptcy is that a new and different entity will be named the successor to the bankrupt entity and will be vested all of its rights, title and interest in any and all property. A transfer of all or part of the property of a bankrupt estate to one or more

entities, whether organized before or after the confirmation of the bankruptcy reorganization plan, is allowed under 11 U.S.C. § 1123(a)(5)(B).

That this possibility was known to the LEDGC at the time that the original contract was executed and, more likely, to the legislature when it enacted *La. R.S. 27:224(E)* in 1996, is apparent by the very terms of the original 1994 casino operating contract. In that contract, LEDGC noted that it could be "compelled by the Bankruptcy Court to acquiesce in an assignment duly approved by the Bankruptcy Court," but indicated that it had no "duty to consent . . . to any proposed assumption and assignment" of the contract. This contractual provision, existing at the time of the enactment of *La. R.S. 27:224(E)*, as well as the legal reality that one possible outcome of a bankruptcy is that a different entity may become the successor to the rights and obligations of a debtor in possession, support the inference that when the legislature gave the Board the authority to renegotiate the casino operating contract of an operator in bankruptcy, pursuant to *La. R.S. 27:245(A)*, this necessarily included or contemplated the possibility that a renegotiated contract would contain new and different terms as well as obligate a new and different entity as a casino operator.

Plaintiffs further argue that even if the proposed contract was "renegotiated" pursuant to the Board's authority in *La. R.S. 27:245(A)*, it is nevertheless subject to the requirement of legislative approval found in *La. R.S. 27:224(E*), which applies to all "new" contracts. In other words, plaintiffs argue that any and all "new" contracts, regardless of whether they are newly negotiated or the result of a renegotiation, must get final approval of the legislature. Plaintiffs' argument, however, is not supported by the statutory language of *La. R.S. 27:224(D)* and *(E)* and *La. R.S. 27:245(A)*. Those three provisions all provide that certain entities (the governor, the Board, and the legislature), with or without legislative approval depending on the provision, may

"renegotiate" the contract of a bankrupt operator or may "negotiate" a "new" contract. A comparison of the sentence structure of *245(A)* and *224(D)* with the very similar structure of that in *224(E)* shows that *224(E)* merely provides the method for the initiation of negotiations of a "new" contract, whereas sections *245(A)* and *224(D)* provide the method for the initiation of renegotiations of an existing contract where the operator is in bankruptcy. Had the language in *224(E)* provided that "any contract to be executed is subject to legislative approval," we might give more credence to the argument that *224(E)* was intended to control the execution of all contracts, regardless of the circumstances of their inception. As it stands, however, the only reasonable interpretation to be given *224(E)* is that it applies to purely new contracts, while *224(D)* and *235(A)* apply to renegotiated contracts of a bankrupt casino operator.

In addition, and most importantly, traditional principles of contract interpretation support the conclusion that the inclusion or substitution of a different casino operator as a result of HJC's bankruptcy does not render the contract a "new" one within the meaning of *La. R.S. 27:224(E)*. The original 1994 contract, which is still in effect to this day, provides at Article XXIX, Section 29.12 that the casino operating contract "may be amended or modified only by an agreement in writing signed by both the LEDGC and the Casino Operator." Furthermore, Article XXVII of the 1994 contract provides in Section 27.1 that "[t]he Casino Operator shall not Transfer this Casino Operating Contract, or any interest herein . . . without first obtaining the Approval of the LEDGC." Also, Section 27.4 provides "[t]he Casino Operator shall not Transfer this Casino Operating Contract, or any interest herein . . . without first obtaining the Approval of the LEDGC." Also, Section 27.4 provides "[t]he LEDGC may Approve the sale, transfer, or assignment of the Casino Operating Contract, or any interest therein, or may grant such Approval subject to the conditions imposed by the LEDGC

or by the applicable law." Thus, it is clear that the original contract authorizes, subject to approval by the LEDGC (now the Board), the amendment of terms of the contract by the Board and HJC, as well as its assignment or transfer by HJC to a new entity. In fact, this is what will be done in this case. Article I, Section 1.1 of the proposed casino operating contract provides:

> Pursuant to the Casino Act, the Gaming Board and HJC hereby amend and renegotiate the Initial Casino Operating Contract on the terms set forth in this Amended and Renegotiated Casino Operating Contract . . . .,

Recital No. 6 on page 1 of the proposed contract provides:

> WHEREAS, the gaming Board has agreed to renegotiate this Casino Operating Contract with HJC and has Approved the amendment, renegotiation and assignment of this Casino Operating Contract as amended and renegotiated to JCC as HJC's successor pursuant to the Plan as of the Plan Effective Date . . . .

Finally, Article XXVIII, Section 28.16 stipulates:

> This Amended and Renegotiated Casino Operating Contract is hereby assigned to JCC, as successor to HJC, as set forth in the Plan. Pursuant to R.S. 27:236(B) and LAC 42:IX 2901 *et seq*., the Gaming Board Approves such assignment by HJC to JCC. JCC hereby undertakes the obligations of the Casino Operator under this Amended and Renegotiated Casino Operating Contract.

The foregoing demonstrates that the Board and HJC have indicated their approval of both the amendment of the terms and the assignment and transfer of the contract thereafter by HJC to JCC. That these changes were contemplated and, indeed, authorized by the original contract lend even further support to the proposition that the contract resulting from the recent negotiations is merely an amended version of the original contract that arises from that contact and is not a "new" contract within the meaning of *La. R.S. 27:224(E)*.

In sum, although it may be *different* from the original contract, the resulting contract is not a "new" one. For "renegotiation" to have any meaning, it necessarily must connote change in some way from the original contract. That sections *224(D)* and

245(A) allow for the renegotiation of a contract of an operator in bankruptcy necessarily contemplates the legal reality of this type of bankruptcy proceeding--that is, that a new entity will become vested with all rights, title and interest of the bankrupt entity. Here, although there are different terms in the proposed, amended contract, the contract itself contemplated that it could be amended with the consent of LEDGC and the casino operator, HJC, which has been given in this case. Additionally, the contract itself, entered into by the LEDGC pursuant to the authority given it by the legislature, authorized the assignment or transfer of the contract by HJC to another party with the approval of LEDGC. The Board, which now exercises all of the authority, powers, and duties of the LEDGC, has indicated its approval of this assignment.

In conclusion, we find that the circumstances presented do not in any way fall under the scope of *La. R.S. 27:224(E)*, which broadly deals with "new" contracts, but rather come within the purview of *La. R.S. 27:224(D)* and *27:245(A*). Under the latter, the Board has the unqualified power and authority to renegotiate the casino operating contract of a casino operator who is placed in bankruptcy. Under the former, the legislature is given the power to order the Board to renegotiate the contract, but this grant of power cannot be reasonably read to operate as a limitation on the Board's authority to do so without legislative approval, nor can it be interpreted to require final approval by the legislature of the renegotiated contract.

C. Whether a decision regarding the legislature's authority to set aside the casino operating contract under *La. R.S. 27:224(D)* would result in an advisory opinion.

The final issue we must decide is whether the court of appeal erred in its reversal of the trial court's holding to the extent it denied "the legislature a right to participate in the process." One plaintiff in his petition for declaratory judgment had specifically

asked "[w]hether or not, and under what circumstances the legislature may set aside the provisions of the casino operating contract." The trial court, in oral reasons, stated the legislature could not do so and that such a law would be "constitutionally infirm." The court of appeal reversed this conclusion, finding that the legislature was given the power to set aside the casino operating contract of an operator in bankruptcy and that this power could be exercised prior to the execution of the renegotiated contract. It would have been more proper, however, for the court of appeal to have vacated the trial court judgment to the extent it addressed the powers of the legislature, or the governor, to set aside the existing casino operating contract. Although the plaintiff requested a judgment declaring whether or not the legislature may set aside the provisions of the operating contract, the trial court should have refused to address this issue, instead finding that it did not present a justiciable controversy and, as such, that any opinion rendered thereon would be advisory.

Actions for declaratory judgment, like actions for conventional judgments, must present a justiciable controversy. *American Waste & Pollution Control Co. v. St. Martin Parish Police Jury*, 627 So. 2d 158, 161 (La. 1993). It is well settled that courts will not decide abstract, hypothetical, or moot controversies and will not render advisory opinions with respect to such controversies. *Louisiana Associated General Contractors, Inc. v. State*, 95-2105 p. 9 (La. 3/8/96); 669 So. 2d 1185, 1193. To avoid deciding abstract, hypothetical, or moot questions, courts require cases submitted for adjudication be justiciable, ripe for decision, and not brought prematurely. *St. Charles Parish School Board v. GAF Corporation*, 512 So. 2d 1165 (La. 1987). In *Abbott v. Parker*, 249 So. 2d 908 (1971), this court addressed the "justiciable controversy" issue in the specific terms of a declaratory judgment action:

> A "justiciable controversy" connotes, in the present sense, an existing actual and substantial dispute, as distinguished from one that is merely hypothetical

> or abstract, and a dispute which involves the legal relations of the parties who have real adverse interests, and upon which the judgment of the court may effectively operate through a decree of a conclusive character. Further, the plaintiff should have a legally protectable interest at stake, and the dispute presented should be of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

See also Tugwell v. Members of the Board of Highways, 83 So.2d 893, 899 (La. 1955)(on rehearing)("[A] declaratory judgment action generally cannot be maintained unless it involves some specific adversary question or controversy asserted by interested parties and based on an existing state of facts, and a declaration of rights must be refused if the issue presented to the court is academic, theoretical, or based upon a contingency which may or may not arise.").

In the instant case, there is no indication whatsoever that the legislature has sought to set aside the operating contract or that legislation to do so has been or will be introduced. As such, there is presently no justiciable controversy between the parties as to whether or not the legislature, in fact, is, or is not, empowered to do so under *La. R.S. 27:224(D)*. As such, the trial court's holding in oral reasons that the legislature lacks this power was an impermissible advisory opinion and should have been vacated by the court of appeal.

DECREE

For the foregoing reasons, we affirm the portion of the court of appeal judgment that concludes that the Louisiana Gaming Control Board has the independent authority to renegotiate and execute the casino operating contract without seeking gubernatorial or legislative approval. However, we vacate that portion of the court of appeal's judgment that purports to interpret the legislature's power to set aside the contract under *La. R.S. 27:224(D)*. Finally, we order that any application for rehearing must be filed not later than seventy-two hours after the rendition of this opinion.

AFFIRMED IN PART; REVERSED IN PART.