

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the)
Class III Certification to Conduct Gambling)
Activities of:)
)
Carl D. Flores)
Everson, Washington,)
)
Class III Employee.)

NO. CR 2010-00397

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER OF SUMMARY
SUSPENSION OF LICENSE**

Pursuant to RCW 34.05.422(4), and Section V.(m) of the Nooksack Tribal-State Compact, the Washington State Gambling Commission (Commission) may summarily suspend a license or permit pending proceedings for revocation or other action. The Commission has authorized the Director to summarily suspend a license or permit under RCW 9.46.070(17) and WAC 230-17-165.

This matter has been brought before the Director for a summary suspension of Carl D. Flores' Class III Certification;¹ the Director has issued this order and caused it to be served upon the Class III employee. This order shall be effective immediately upon its service to the Class III employee, authorized representative or agent thereof, unless otherwise specified herein. By this authority, an authorized agent of the Commission shall seize Carl D. Flores' current certification authorizing gambling activity and his gambling activities shall cease as ordered.

FINDINGS OF FACT

I.

Rick Day is the Director of the Washington State Gambling Commission and issues this order in that capacity.

II.

Jurisdiction of this proceeding is based on Chapter 9.46 RCW, Gambling, Chapter 34.05 RCW, the Administrative Procedure Act, WAC Title 230, and the Nooksack Tribal-State Compact.

¹ Class III Certification is issued to employees working at Tribal casinos. The certification authorizes similar activities as the Card Room Employee (CRE) license issued to individuals working at commercial house-banked card rooms. Holders of a Class III Certification may apply to have the certification transferred to a CRE license.

III.

The Washington State Gambling Commission issued Carl D. Flores, of Everson, the following Class III Certification: Number 69-12192, Authorizing Class III Employee Activity, formerly at the Nooksack River Casino. The certification, which expires on May 6, 2010, was issued subject to the Class III employee's compliance with the Nooksack Tribal-State Compact, state gambling laws and Commission rules.

IV.

After a thorough review of the Commission Special Agent's investigative report concerning the facts in this matter, the Director accepts the report as a verity and makes the determination that the action as ordered is warranted.

V.

SUMMARY:

A Class III employee, Carl Flores, admitted taking casino chips, trading the chips for Oxycontin, and smoking Oxycontin in the employee restroom during breaks. He was recorded on surveillance video taking the chips and making his admissions.

FACTS:

1. On March 30, 2010, Marc Epps, Manager of the Nooksack Tribal Gaming Commission provided a Commission Special Agent (agent) with a Tribal Gaming Agency (TGA) incident report regarding a dealer who had stolen casino chips.
2. According to the report, on March 4, 2010, TGA staff was contacted by Nooksack River Casino (NRC) Security Officer Tess Jonasson, who informed TGA that she observed suspicious behavior by Mr. Flores when, on his break, he went over to the Market Centre across the parking lot and entered the restroom for approximately one minute, then reentered the NRC and entered the restroom in the casino. TGA staff agreed that this was unusual, and directed surveillance staff to observe Mr. Flores while he was dealing.
3. NRC surveillance video reflects the following:
 - March 5, 2010, at 15:14 hrs, Mr. Flores takes four green \$25 chips totaling \$100, and puts them in his pants pocket. He does this by hiding the chips in the palm of his hand, adjusting the waistband of his pants, and quickly putting the chips in his front pants pocket.

- On March 6, 2010, at 15:42 hrs, Mr. Flores takes four green \$25 chips totaling \$100, and puts them in his pants pocket. He does this by using the same process observed on March 5th. At 22:06 hrs, he takes four more green \$25 chips totaling \$100 and puts them in his pants pocket.
 - On March 7, 2010, at 15:43 hrs, Mr. Flores takes five green \$25 chips totaling \$125, and puts them in his pants pocket, again using the same process.
4. In three days, Mr. Flores took an estimated \$425 in chips from NRC. A Commission agent and Gaming Director, Todd Finco, reviewed the surveillance. Both determined the amount of chips taken by Mr. Flores reflected in the video at \$425 in value.
 5. On March 12, 2010, Mr. Epp interviewed Mr. Flores regarding the theft of gaming chips. The interview was audio and video recorded. During the interview, Mr. Flores admitted to taking approximately \$4,000 from NRC over a four or five month period. Mr. Flores explained that he was trading the chips for Oxycontin pills and smoking Oxycontin in the employee restroom during breaks. Mr. Flores admitted that he would drop off the chips and pick up the Oxycontin in the restroom at Market Centre.
 6. At the interview, Mr. Flores was issued Nooksack Gaming Commission license revocation paperwork, and barring paperwork. Nooksack tribal police then took Mr. Flores into custody.

CONCLUSIONS OF LAW

I.

- 1) RCW 9.46.070(17) provides that the Commission shall have the following powers and duties: The Commission may authorize the Director to temporarily suspend licenses subject to final action by the Commission.
- 2) WAC 230-17-165(2) provides that the Director may issue an order to summarily suspend any license or permit if the Director determines that a licensee or permittee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.²

² In this matter, violations could include RCW 9.46.196, which enumerates that "Cheating," as used in this chapter, means to:

- (1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator;
- (2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator;
- (3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or
- (4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section. Another possible violation is RCW 9.46.1961, which defines cheating in the first degree as (1) A person is guilty of

3) WAC 230-17-165(3)(a) and (i) provide that the Commission deems the following actions of a licensee or permittee constitute an immediate danger to the public safety and welfare:

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the Commission.

(i) Having pursued or pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management, or execution of an activity for financial gain.

On March 5, 6 and 7 of 2010, Class III employee Carl Flores took casino chips. The certified employee admitted to taking the chips, and was recorded on surveillance video doing so. The certified employee admitted to taking approximately \$4,000 from NRC over a four or five month period. Mr. Flores explained that he was trading the chips for Oxycontin pills and smoking Oxycontin in the employee restroom during breaks. The certified employee's actions constitute an immediate danger to public safety and welfare based on WAC 230-17-165(3)(a) and (i) and are a basis for immediate cessation of Mr. Flores' certified activities.

4) RCW 9.46.075(1) provides the Commission may revoke any license or permit for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein any person with any interest therein: Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the Commission.

5) WAC 230-03-085(1) and (8) provide that the Commission may revoke a license or permit when the licensee or permittee poses a threat to the effective regulation of gaming or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gaming activities as demonstrated by prior activities.

6) RCW 9.46.075(8) provides the Commission may revoke any license or permit when a licensee or permittee fails to prove, by clear and convincing evidence, that he is qualified in

cheating in the first degree if he or she engages in cheating and:

(a) Knowingly causes, aids, abets, or conspires with another to engage in cheating; or

(b) Holds a license or similar permit issued by the state of Washington to conduct, manage, or act as an employee in an authorized gambling activity.

(2) Cheating in the first degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. In addition to any other penalties imposed by law for a conviction of a violation of this section, the court may impose an additional penalty of up to twenty thousand dollars.

Another criminal violation implicated by these facts is Theft in the Third degree, defined at RCW 9A.56.050 as follows: (1) A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed seven hundred fifty dollars in value, or (b) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

(2) Theft in the third degree is a gross misdemeanor.

accordance with the provisions of this chapter. RCW 9.46.153(1) provides that it shall be the affirmative responsibility of each licensee and permittee to establish by clear and convincing evidence the necessary qualifications to hold a license or permit.

7) RCW 9.46.190(3) provides any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation: Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

8) RCW 9.46.153(1) Applicants and licensees-Responsibilities and duties

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted.

On March 5, 6 and 7 of 2010, Class III employee Carl Flores took casino chips and was recorded on surveillance video doing so. Mr. Flores took approximately \$4,000 from NRC over a four or five month period. Mr. Flores traded the chips for Oxycontin pills and smoked Oxycontin in the employee restroom during breaks. Mr. Flores' conduct violated RCW 9.46.190(3). Mr. Flores poses a threat to the effective regulation of gaming as demonstrated by his conduct, and he has failed to prove that he is qualified to hold a license or permit, in violation of RCW 9.46.153(1). Grounds, therefore exist to revoke Carl Flores' certification based on WAC 230-03-085(1), and (8), and RCW 9.46.075(1) and (8).

II.

Immediate cessation of Carl Flores' gambling activity is required for the protection and preservation of the safety and welfare of the public, based on Mr. Flores' failure to comply with the provisions imposed by chapter 9.46 RCW or any rules adopted by the Commission pursuant to WAC 230-17-165(3)(a) and (i).

ORDER

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW, it is the ORDER of the undersigned Director, based on the authority granted to him by RCW 9.46.070(17), the Nooksack Tribal-State Compact, RCW 34.05.422, and WAC 230-17-165, that Carl Flores' Class III Certification within the State of Washington is hereby summarily suspended pending a formal hearing by an Administrative Law Judge.

This summary suspension will be effective immediately upon the service of this Order to the Class III Employee or an authorized representative or agent.

STATEMENT OF RIGHTS

1) **You have a right to petition for a stay of this Order.** You may request a stay by filing a written request with the Commission. **Any request for a stay must be received by the Commission within fifteen (15) days** of service of this Order upon you. If the Commission receives a timely request for a stay, **a hearing regarding a request for stay will be conducted within seven (7) days** in accordance with WAC 230-17-170.

The stay hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified. **Furthermore, at the hearing, the licensee shall have the burden of demonstrating by clear and convincing evidence that:**

- (a) The licensee is likely to prevail upon the merits at hearing;
- (b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities shall not be deemed irreparable injury;
- (c) The grant of relief will not substantially harm other parties to the proceedings; and
- (d) The threat to the public safety or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

A request for a stay does not constitute a request for a hearing as provided in paragraph (2) of this Statement of Rights.

(2) **You also have a right to a full hearing on the merits in this matter.** You may request a hearing by completing and returning to the Commission the enclosed Application for Adjudicative Proceeding and Request for Hearing. Failure to submit the Application for Adjudicative Proceeding and Request for Hearing form within twenty (20) days of service of this order upon you shall result in a waiver of your right to an adjudicative proceeding and entry of an order in default under RCW 34.05.440.

If a timely application for a hearing is received, a hearing shall be conducted no sooner than seven (7) days nor later than 90 days from the date of service of this Order unless otherwise agreed to by the parties: Provided, That you may waive the seven (7) day notice rule of RCW 34.05.434 and request a hearing at an earlier date.

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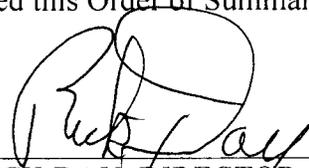
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If you have, any questions regarding the rights stated above, please contact Staff Attorney Brenda Bono at (800) 345-2529 ext. 3470.

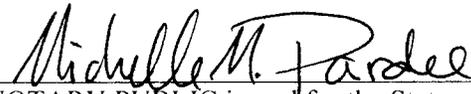
STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

Rick Day, being first duly sworn on oath, deposes and says: He has read this Order of Summary Suspension of Carl Flores' Class III Certification, knows the contents, and believes the same to be true, and that he is the duly appointed and qualified Director of the Washington State Gambling Commission and in that capacity has executed this Order of Summary Suspension of the Class III Certification.



RICK DAY, DIRECTOR

SUBSCRIBED AND SWORN TO before me
this 29 day of April, 2010.



NOTARY PUBLIC in and for the State of
Washington residing at: Lacey.
My commission expires June 16, 2013



