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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

Gambling Commission
Comm. & Legal Division

In the Matter of:

THOMAS J. FINNERTY,

Licensee.

OAH Docket No. 2013-GMB-0060

Agency No. CR 2013-00661

**INITIAL ORDER
REVOKING GAMBLING LICENSE**

I. ISSUES PRESENTED

1.1 Whether the conduct of Licensee Thomas J. Finnerty constituted a basis for the Washington State Gambling Commission to revoke his public card room employee license.

1.2 If so, whether the Licensee nevertheless has proven by clear and convincing evidence that he is qualified to hold his license.

II. ORDER SUMMARY

2.1 Mr. Finnerty's conduct did constitute a basis for the Washington State Gambling Commission to revoke his public card room employee license.

2.2 Mr. Finnerty failed to prove by clear and convincing evidence that he is qualified to hold his license.

2.3 Mr. Finnerty's public card room employee license, No. 68-23375 is REVOKED.

III. HEARING

3.1 **Hearing Date:** December 18, 2013

3.2 **Administrative Law Judge:** Joshua D. Sundt

3.3 **Licensee:** Thomas J. Finnerty (appearing *pro se*)

3.4 **Agency:** Washington State Gambling Commission

3.4.1 **Representative:** Gregory J. Rosen, Assistant Attorney General

3.4.2 **Witnesses:** Special Agent Bill Kesel, Washington State Gambling Commission; Jamie R. Sands, former account manager for the Palace Casino; and Dean Cameron, former surveillance observer for the Palace Casino

3.5 **Exhibits:** Exhibits 1 through 7 were admitted into the record.

IV. FINDINGS OF FACT

Jurisdiction

4.1 On May 24, 2013, the Washington State Gambling Commission (Commission) issued a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("the Notice of Charges") seeking to revoke Thomas J. Finnerty's Card Room Employee gambling license.

4.2 The Notice of Charges was served on Mr. Finnerty by mailing it on May 28, 2013, by both regular and certified mail.

4.3 On June 24, 2013, the Commission received Mr. Finnerty's request for hearing signed on June 19, 2013.

Mr. Finnerty's Public Card Room Employee gambling license

4.4 Mr. Finnerty holds a Class B Public Card Room Employee gambling license, number 68-23375, issued by the Commission. His license expires on March 9, 2014. Ex. 1, p. 1. The license authorizes Mr. Finnerty to work at the Riverside Casino in Tukwila and formerly at the Palace Casino in Mountlake Terrace. The underlying incidents relevant to this case took place while Mr. Finnerty was working at the Palace Casino¹.

Theft of Casino Property

4.5 At the Palace Casino, during a shift change, both the incoming cashier and the outgoing cashier count all cash and chips in the cashier cage and record the count on a Cashier Window Count Sheet. Once both cashiers agree as to the amount reflected on the Cashier Window Count Sheet, they both sign it. On March 29, 2013, Mr. Finnerty began his shift at approximately 1:00 p.m. The Cashier Window Count Sheet which he completed at the beginning of his shift indicated that the total value of cash and chips in the cage at that time matched the total value of cash and chips in the cage at the beginning of the previous cashier's shift. Because the count balanced, no overage or shortage was indicated on the form. Exhibit 4, page 1.

¹ The Palace Casino ceased operations around the end of October 2013.

4.6 At the end of his shift, at approximately 9:00 p.m., Mr. Finnerty and the cashier coming on duty for the night shift, Bob Jones, began counting the cash and chips in the cashier cage. At approximately 9:10 p.m., Mr. Finnerty said to Mr. Jones, "Now we're \$12.00 over." Exhibit 7, camera #33. This overage was due to the value of \$12.00 in mutilated chips that had been in the cashier cage for at least several days. Just seconds after noting that there was a \$12.00 overage, Mr. Finnerty took a \$10.00 and two \$1.00 bills from the cash drawer and placed them between his clear plastic tip bag and the Whiz machine that the casino used to count and record betting chips. A few seconds later, Mr. Finnerty returned to his tip bag and placed the \$12.00 in the tip bag.

4.7 Mr. Finnerty was aware that, because there was an overage, he was required to note it on the Cashier Window Count Sheet he and Mr. Jones completed at the end of Mr. Finnerty's shift. Despite this knowledge, Mr. Finnerty did not record the overage on the Count Sheet. Instead, he signed a Cashier Window Count Sheet which represented there was \$0.00 in overage/shortage. Exhibit 4, page 2.

4.8 When he finished the shift-change count, Mr. Finnerty took his tip bag with the \$12.00 and left the cashier cage. While still at the casino, he then used the \$12.00 to purchase a meal of chicken strips and fries for himself. After eating, Mr. Finnerty left the casino at about 9:45 p.m. and went home.

4.9 Mr. Finnerty took the \$12.00 because he was hungry and did not have any other money with which to buy food. He intended to take \$12.00 and purchase food for himself; it was not an accident or an oversight.

4.10 At the time he took the \$12.00, Mr. Finnerty was very tired and was in some degree of discomfort from a chronic medical condition that had been bothering him. He was also on over-the-counter medication for the condition. Although his fatigue and discomfort undoubtedly factored into his decision to take the \$12.00, Mr. Finnerty was nonetheless fully aware that these funds were his employer's property and that he was not authorized to take them for his personal use.

4.11 Mr. Finnerty returned to the casino the following day and, after a discussion with account manager Jamie Sands, returned \$12.00 to the Palace Casino.

V. CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I make the following Conclusions of Law:

Jurisdiction

5.1 I have jurisdiction over the persons and subject matter herein pursuant to RCW 9.46.140, RCW 34.05.413, RCW 34.12.030(1), and WAC 230-17-025.

Revocation

5.2 The Commission may suspend or revoke any license or permit issued by it for any reason or reasons it deems to be in the public interest, including failure to comply with Washington state gambling laws. RCW 9.46.075(1); WAC 230-03-085(1).

5.3 More specifically, the regulation provides that the Commission may revoke a gambling license where the licensee has "demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level." WAC 230-17-085(3).

5.4 The Commission may revoke a gambling license if the licensee "poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by prior activities or criminal record." WAC 230-03-085(8)(a) and (b).

5.5 The Commission may revoke a gambling license if the licensee "fails to prove, by clear and convincing evidence, that he . . . is qualified in accordance with the provisions of this chapter." RCW 9.46.075(8); *see also* RCW 9.46.153(1).

5.6 Under RCW 9A.56.020(1), "Theft" means:

(a) To wrongfully obtain or exert unauthorized control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(b) By color or aid of deception to obtain control over the property or services of another or the value thereof, with intent to deprive him or her of such property or services; or

(c) To appropriate lost or misdelivered property or services of another, or the value thereof, with intent to deprive him or her of such property or services.

5.7 RCW 9A.56.050 specifies that a person is guilty of theft in the third degree, a gross misdemeanor, if he or she commits theft of property or services which does not exceed seven hundred fifty dollars in value.

5.8 Here, Mr. Finnerty's admitted theft of \$12.00 demonstrates a willingness to engage in deceptive and criminal behavior. Furthermore, by his theft he has demonstrated willful disregard for complying with state statutes, which is a basis for revocation under WAC 230-03-085(3). I conclude that continued licensure of Mr. Finnerty would violate the public interest and pose a threat to the effective regulation of gambling in the state of Washington. Therefore, the Commission has established a sufficient basis for revocation of Mr. Finnerty's gambling license. Moreover, Mr. Finnerty has failed to prove by clear and convincing evidence that he is qualified to be licensed. Thus, Mr. Finnerty's gambling license should be revoked.

VI. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

Thomas J. Finnerty's Public Card Room Employee Gambling License No. 68-23375 is **REVOKED**.

Signed and Issued at Tacoma, Washington, on the date of mailing.



Joshua D. Sundt
Administrative Law Judge
Office of Administrative Hearings

NOTICE OF APPEAL RIGHTS

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1).

An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2).

RCW 34.05.464 governs the review of initial orders. WAC 230-17-090(1).

Any party to an adjudicative proceeding may file a petition for review of an initial order. Parties must file the petition for review with the Washington State Gambling Commission within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed. WAC 230-17-090(2).

Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition. WAC 230-17-090(3).

Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with the Washington State Gambling Commission within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed. WAC 230-17-090(4).

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. WAC 230-17-090(5).

Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed. WAC 230-17-090(6).

After the Washington State Gambling Commission receives the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order. WAC 230-17-090(7).

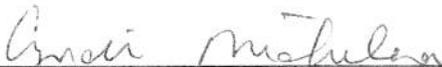
CERTIFICATE OF MAILING IS ATTACHED

Certificate of Service – OAH Docket No. 2013-GMB-0060

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

Thomas J. Finnerty 7301 NE 175th St #209 Kenmore, WA 98028	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
Gregory J. Rosen Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt
Maureen Pretell Attn: Legal Department Washington State Gambling Commission PO Box 42400 Lacey, WA 98504	<input checked="" type="checkbox"/> First Class US mail, postage prepaid <input type="checkbox"/> Certified mail, return receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> 1st Class, postage prepaid, Certified mail, return receipt

Date: January 3, 2014



Cyndi Michelena
Office of Administrative Hearings