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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 the Revocation of the
License to Operate Gambling Activities of:

OAH Docket No. 2013-GMB-0058
WSGC No. CR 2013-00770

KENNY B. GIPSON
Seattle, Washington,
License No. 68-31571

**INITIAL ORDER
REVOKING GAMBLING LICENSE**

Licensee.

I. ISSUES PRESENTED

1.1 Whether the Licensee's conduct constitutes a legal basis for the Washington State Gambling Commission to revoke his Public Card Room Employee License, License No. 68-31571.

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

II. ORDER SUMMARY

2.1 The Licensee's conduct, as set forth below, constitutes a legal basis for the Washington State Gambling Commission to revoke his license.

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

2.3 Therefore, Licensee's Public Card Room Employee License No. 68-31571 is REVOKED.

III. HEARING

3.1 **Hearing Date:** November 4, 2013

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

3.3 **Licensee:** Kenny B. Gipson failed to appear for the hearing.

3.4 **Agency:** Washington State Gambling Commission

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

3.4.2 **Witness:** Special Agent Kevin Maxwell, Washington State Gambling Commission

3.5 **Exhibits:** Exhibits 1 through 14 were admitted into the record.

3.6 **Procedure at Hearing:** The Licensee failed to appear for the hearing and did not contact the Commission or the Office of Administrative Hearings to request a continuance. No other person appeared on the Licensee's behalf. The undersigned administrative law judge waited to begin the hearing until more than 30 minutes after the hearing start time, during which time the Agency made at least one attempt to contact the Licensee at his last known telephone number. All attempts to reach the Licensee were unsuccessful. The Licensee was provided due notice of the hearing and the issues to be considered, but elected not to appear, either personally or through an authorized representative. Consequently, the findings in this case are based primarily upon evidence presented by or on behalf of the Washington State Gambling Commission.

Despite Licensee's failure to appear for the hearing, the Commission chose not to move for an order of default, electing instead to proceed with the evidentiary hearing and present its case in chief.

IV. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1 On May 29, 2013, the Washington State Gambling Commission (Commission) issued a Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding (Notice of Charges) seeking to revoke Kenny B. Gipson's Public Card Room Employee gambling license.

4.2 The Notice of Charges was served on Mr. Gipson by mailing by both regular and certified mail on May 30, 2013.

4.3 On June 19, 2013, the Commission received Mr. Gipson's request for hearing signed on June 13, 2013.

4.4 On August 12, 2013, the Commission served the Notice of Hearing on Mr. Gipson by mailing it to his last known address, which was the address that appeared on his request for hearing.

Incorporated Findings of Fact

4.5 The findings of fact set forth in the Notice of Charges were unchallenged by Mr. Gipson. Mr. Gipson did not appear at the hearing and did not present any documentary or testimonial evidence to rebut those findings of fact. Therefore, because the findings of fact in the Notice of Charges were uncontroverted by Mr. Gipson and because the Commission established an evidentiary foundation to support the findings, the undersigned hereby incorporates into this order the findings of fact designated as numbers 1 through 14 in the Notice of Charges.

Additional Finding of Fact

4.6 The Federal District Court for the Western District of Washington entered an Amended Judgment in a Criminal Case in Mr. Gipson's case in July 1996, imposing a total term of 135 months confinement. Exhibit 14, p. 2.

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 The Commission may revoke a gambling license if the license "has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level." WAC 230-03-085(3).

5.4 The Commission may revoke a gambling license if the licensee "has been convicted of . . . a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude." RCW 9.46.075(4). Washington's courts have held that delivery of a controlled substance is a crime which necessarily involves moral turpitude. *State v. Tuss*, 21 Wn. App. 80, 82,

584 P.2d 421 (1978); *see also State v. Sims*, 119 Wn.2d 138, 142, 829 P.2d 1075 (1992), in which the court held that "It is impossible for a person to intend to manufacture or deliver a controlled substance without knowing what he or she is doing. By intending to manufacture or deliver a controlled substance, one necessarily knows what controlled substance one possesses as one who acts intentionally acts knowingly."

5.5 The Commission may revoke a gambling license if the licensee has "obtained a license or permit by fraud, misrepresentation, concealment, or through inadvertence or mistake." RCW 9.46.075(3). Similarly, the Commission may revoke a license if the licensee makes a misrepresentation of a material fact to the Commission or fails to disclose a material fact to the Commission. RCW 9.46.075(7).

5.6 The Commission may revoke a gambling license if the licensee fails to provide the Commission with any information required by rule within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from the Commission. WAC 230-03-085(7).

5.7 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).

5.8 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).

5.9 In this case, the evidence establishes that Mr. Gipson 1) committed a crime involving moral turpitude; 2) in so doing, demonstrated a willful disregard of federal law; 3) obtained his license through misrepresentation of or failure to disclose a material fact; and 4) failed to provide the Commission with required information within 30 days after receiving a written request from the Commission. Mr. Gipson's conduct violated the public interest and posed a threat to the effective regulation of gambling in the state of Washington. Furthermore, he has failed to prove by clear and convincing evidence that he is qualified to hold his Public Card Room Employee license. Therefore, the Commission has met its burden of establishing one or more bases sufficient to support revocation of Mr. Gipson's gambling license. Mr. Gipson's gambling license should be revoked.

INITIAL ORDER

IT IS HEREBY ORDERED THAT:

Kenny B. Gipson's Public Card Room Employee License No. 68-31571 is **REVOKED**.

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



Joshua D. Sundt
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

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).

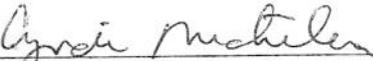
CERTIFICATION OF MAILING IS ATTACHED

Certificate of Service – OAH Docket No. 2013-GMB-0058

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

Kenny B. Gipson 25002 – 62 nd Place South, Apt PP101 Kent, WA 98032	<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: November 7, 2013



Cyrdi Michelena
Office of Administrative Hearings