

RECEIVED

MAY 18 2010

GAMBLING COMMISSION  
COMM & LEGAL DEPT

STATE OF WASHINGTON  
GAMBLING COMMISSION

RECEIVED

APR 30 2010

GAMBLING COMMISSION  
COMM & LEGAL DIVISION

In the Matter of the Suspension or Revocation of )  
the Licenses to Conduct Gambling Activities of: )  
)  
American Legion #00176 )  
Vancouver, Washington, )  
)  
Licensee. )  
\_\_\_\_\_ )

NO. CR 2009-00749

SETTLEMENT ORDER

RECEIVED

MAY 06 2010

HEADQUARTERS OFFICE OF  
ADMINISTRATIVE HEARINGS

This Settlement Order is entered into between the Washington State Gambling Commission and American Legion #00176. H. Bruce Marvin, Assistant Attorney General, and Brenda Bono, Staff Attorney, represent the Commission. Wayne Sharp, Commander represents the licensee.

I.

The Washington State Gambling Commission issued American Legion Number #00176 (Salmon Creek), organization number 00-06290, the following licenses:

- Number 01-01965, Authorizing Class "F" Bingo Activity;
- Number 02-02841, Authorizing Class "A" Bingo Activity;
- Number 05-02847, Authorizing Class "G" Bingo Activity;
- Number 60-00334, Authorizing Class "D" Bingo Activity.

The licenses expire on June 30, 2010, and were issued subject to the licensee's compliance with state gambling laws and regulations.

II.

In the above-entitled case, the Gambling Commission issued a Notice of Administrative Charges and Opportunity for an Adjudicative Hearing on February 5, 2010, seeking the suspension or revocation of American Legion #00176's licenses to conduct gambling activities. On February 25, 2010, Commission staff received the licensee's request for a hearing.

III.

The following facts and violations were alleged in the Notice of Administrative Charges:

The licensee has failed to provide Commission staff with required Annual Statements and financial statements for 2006 and 2007 in a timely manner. The licensee has also failed to provide the 2008 annual report as requested, in violation of RCW 9.46.075(1) and (5), WAC 230-030-85(7), WAC 230-07-145, WAC 230-07-150 and RCW 9.46.153(1). As a result, there are grounds to suspend or revoke the license(s) under RCW 9.46.075, and WAC 230-03-085.

## **VIOLATIONS:**

### **RCW 9.46.075(1) and (5) Denying, suspending, or revoking an application, license**

The Commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(The following subsections apply)

(1) 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 pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any Commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control.

(5) Fails to produce any book, record, document or item required by law or Commission rule.

### **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.

### **WAC 230-03-085 Denying, suspending, or revoking an application, license**

We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(The following subsections apply)

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

(3) Has demonstrated willful disregard for complying with ordinances, statutes, administrative rules, or court orders, whether at the local, state, or federal level.

(7) Fails to provide us with any information required under Commission rules within the time required, or, if the rule establishes no time limit, within thirty days after receiving a written request from us.

(8) Fails to prove, by clear and convincing evidence, that it is qualified in accordance with the provisions of this chapter. RCW 9.46.153(1) provides that it shall be the affirmative responsibility of each 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.

Salmon Creek failed to timely provide financial statements and reports, despite extensions and repeated requests by Commission staff. By not providing the annual report and financial statements as requested, Salmon Creek has failed to provide the materials to prove they continue to qualify for a gambling license, and grounds exist to suspend or revoke its licenses under RCW 9.46.075 (1) and (5), and WAC 230-03-085 (1), (3), (7) and (8).

**WAC 230-07-145 Reporting annual progress.**

Charitable or nonprofit licensees must report annually their progress toward meeting their stated purpose in the format we prescribe. This report must explain the type and scope of activities which licensees conducted during their last annual fiscal accounting period. In addition, the report must include, at least:

- (1) A brief history of the licensed organization, including its stated charitable or nonprofit purpose(s);
- (2) A written statement setting out their goals for meeting their stated charitable or nonprofit purpose(s) in the future;
- (3) The number of full and regular members;
- (4) A list of contributions, scholarships, grants, or sponsorships made during the period. This list must include:
  - (a) The name of each organization or individual receiving a contribution from the licensee. The licensee may use the phrase "individual contribution" in place of the recipient. If the recipient is not named in the report, the licensee must maintain records to verify and identify the recipient of each individual contribution; and
  - (b) Whether funds awarded were from gambling income or other funds; and
- (5) Gross income from all nongambling activities and the source of the income;
- (6) The revenue and expenses for any nongambling sales activities, presented separately, when conducted primarily in conjunction with gambling activities;
- (7) Total expenses for both charitable or nonprofit services;
- (8) The percentage or extent to which the licensee used net gambling income for charitable as distinguished from nonprofit purposes; an
- (9) The details of any loans, contracts, or other business transactions with related parties that accumulatively exceed one thousand dollars during the period. "Related parties" means officers, board members, key employees, or members of the licensed organization, including direct relatives of each.

Salmon Creek has failed to provide the required reports, in violation of WAC 230-07-145. As a result, Commission staff cannot perform the necessary qualification review to determine whether or not the organization continued to qualify as a bona fide non-profit authorized to conduct gambling activities, and grounds exist to suspend or revoke its licenses under RCW 9.46.075 (1) and (5), and WAC 230-03-085 (1), (3), (7) and (8).

**WAC 230-07-150 Financial Statements required for groups III, IV, and V.**

1) In addition to information required in WAC 230-07-145, charitable or nonprofit licensees in Groups III, IV, and V must also submit complete financial statements prepared in accordance with generally accepted accounting principles (GAAP).

2) Licensees in Groups IV and V must have the financial statements prepared by an independent certified public accountant.

3) The statements and all required disclosures or footnotes no later than one hundred twenty days following the end of the licensee's fiscal year.

4) The financial statements must include:

(a) A statement of financial position:

(b) A statement of activities. This statement may be presented in a consolidated form if licensees provide the details of each component as supplemental information. Licensees must present revenue and expenses for each activity separately as follows:

(i) Each gambling activity; and

(ii) Retail sales conducted in conjunction with gambling activities;

(c) A statement of cash flows;

(d) A statement of functional expenses;

(e) In addition to all disclosures required by GAAP, the financial statements must disclose the following:

(i) Loans to or from officers, board members, and employees: We will not consider employee salary advances of five hundred dollars or less as loans. Details of all terms, including interest rates and payment schedules, must be disclosed.

Salmon Creek is a Group III non-profit, and has not provided the required financial statements under this rule for 2008, and was late in their filing of the required financial reports for fiscal years 2006 and 2007. Grounds exist to suspend or revoke its licenses under RCW 9.46.075 (1) and (5), and WAC 230-03-085 (1), (3), (7) and (8).

\\

\\

\\

\\

IV.

American Legion #00176 has waived its right to a hearing, based on the terms and conditions of this Settlement Order. In December 2009, the licensee submitted some of the financial materials requested. Additional materials were received in March 2010. The licensee is now in compliance with its financial records and agrees to the following terms and sanctions:

1) American Legion #00176' gambling license is hereby suspended for a period of **ten (10) days**, provided that:

- a) **Three (3) days** of the suspension shall not be currently served, but shall be deferred for a period of one year from the date of entry of this Settlement Order, subject to the following: The licensee agrees not to violate the terms of this Settlement Order, or any of Washington's gambling statutes or regulations during the one (1) year term. If the licensee violates this Settlement Order or gambling statutes or regulations, and if the violation is the type that warrants the filing of administrative or criminal charges, then the Director may impose the three-day deferred suspension of the current gambling licenses and any subsequently acquired gambling licenses.
- b) The parties agree that the Director of the Washington State Gambling Commission, pursuant to this agreement, has discretion to determine whether the licensee has violated any term of this agreement. In the event the Director determines that a violation of this agreement has occurred, he may suspend the license(s) issued to the licensee for up to three days, by mailing or delivering a Notice of Order of Administrative Charges to the licensee. This suspension shall be in addition to any consequences of the new violation. The licensee shall be afforded the opportunity to have an Adjudicative Proceeding, which includes a hearing on the alleged violations.
- c) Pursuant to RCW 9.46.077, the licensee has chosen to vacate the remaining **seven (7) days** of this suspension by paying a fine of **one thousand dollars (\$1,000)**, and by paying **one thousand dollars (\$1,000)** of investigative costs, for a total of **two thousand dollars (\$2,000)**.
- d) **The fine shall be paid in two installments over a two month period.**
  - i. The first installment of \$1,000 shall be due by May 1, 2010.
  - ii. The second installment of \$1,000 shall be due by June 1, 2010.
- e) **The signed order must be received by Commission staff on or before April 30, 2010.** Payments must be **mailed** to Commission Headquarters at the following address:

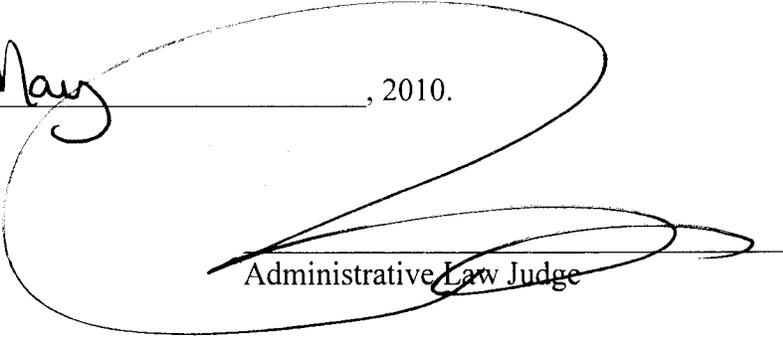
Washington State Gambling Commission  
Attention: Communications and Legal Division – Fines  
P.O. Box 42400  
Olympia, WA 98504-2400

or **delivered** (in person or via private courier) to the following address:

Washington State Gambling Commission  
4565 7<sup>th</sup> Avenue SE; Fourth Floor  
Attention: Communications and Legal Division – Fines  
Lacey, WA 98503

- f) If the licensee makes its payments as provided in this settlement, this case will be closed. However, if the licensee fails to timely make any of the payments as provided in this settlement, the Director may impose an additional two (2) day suspension for each late payment. Serving the suspension would not, however, relieve the licensee of its obligation to pay its fine.

DATED this 14<sup>th</sup> day of May, 2010.

  
Administrative Law Judge

APPROVED FOR ENTRY:

APPROVED AS TO FORM:

By the signature below, the licensee acknowledges reading the Settlement Order, and understands the terms and conditions contained in it.

Wayne Sharp 28 APR 10  
Wayne Sharp, Commander (Date)  
American Legion #00176

H. Bruce Marvin  
H. Bruce Marvin, WSBA #25152 (Date)  
Assistant Attorney General,  
Representing the Washington  
State Gambling Commission

Brenda Bono # 26792 for  
Brenda Bono, WSBA #299956 (Date)  
Staff Attorney  
Washington State Gambling Commission