

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Suspension of)
the License to Conduct Gambling Activities of:)
Bernie's Place)
1601 Bay Avenue)
Ocean Park, Washington,)
Licensee.)
_____)

NO. CR 2009-00246

**NOTICE OF ADMINISTRATIVE
CHARGES AND OPPORTUNITY
FOR AN ADJUDICATIVE
PROCEEDING**

I.

The Washington State Gambling Commission issued Bernie's Place (Bernie's), organization number 00-20156, the following license:

Number 05-20009, Authorizing Class "A" Punchboard/Pull-Tab Activity.

The license expires on September 30, 2009, and was issued subject to the licensee's compliance with state gambling laws and regulations.

II.

Rick Day, Director of the Washington State Gambling Commission, charges the licensee with the following violations of the Washington State Gambling Act, 9.46 RCW, and WAC Title 230:

SUMMARY

Bernie's violated numerous requirements relative to their pull-tab¹ business, for willful disregard of Commission rules and regulations. In addition, Bernie's offered alcohol as a gaming prize, and used dice for reasons other than authorized limited wagering.

¹ Pull tabs are games of chance where a player pays the advertised price posted on a game information sheet (flare) and receives a ticket (tab) which offers a chance to win cash or merchandise. The price of the tabs ranges from twenty-five cents per ticket to one dollar per ticket. The flare lists the name of the game plus additional game information and is attached to a clear storage container (bowl or tank). The bowl is where all the individual pull-tabs from a game are stored (in public view) while on sale. The flare lists the cost to the player to purchase a tab, winning symbols (drawings or symbols that appear on each tab), dollar amounts that can be won, and the number of winners in each value category. The flare also lists the commission's identifying number (stamp number) for each game, the date the game was put in play, the number of tabs in the game, and the manufacturer's unique serial number for the game (primary game protection). Each winner that is greater than \$20.00 is assigned its own unique identifying number (secondary game protection). There is a requirement that all winners from a game greater than \$20.00 be marked off the flare (deleted), so players know by looking at the flare the amounts of money that are left which can be won. Players can also estimate their chances of winning the prize by viewing the number of tabs left in the bowl which must be clearly visible to the public each game.

- 1) On February 7, 2009, a Special Agent (agent) received an anonymous complaint regarding the licensee. The complainant reported that Bernie's was combining multiple pull-tab games in one dispenser and not paying out prizes as advertised. They also said that \$25 pull-tab prizes were being paid with \$12 and a "free drink," and that the owner, Bernie Blum, was putting pull-tab money in his pocket, and not keeping track of sales.
- 2) On February 12, 2009, an agent contacted Mr. Blum at Bernie's. He asked Mr. Blum about the complaint, and asked if Mr. Blum was combining pull-tabs in the same container. Mr. Blum said yes. The agent reviewed the pull-tabs in play and noted the pull-tab games Boogie Down and Piglets were combined in one fishbowl.² The games Coldfront and Duckshot were also combined in one fishbowl. The only flares posted were Piglets and Coldfront. Flares for Boogie Down and Duckshot were not posted.
- 3) The agent asked Mr. Blum how he was recording gross receipts and prizes paid for the games that were combined; Mr. Blum said that he just counted the money that was in the drawer. The agent informed Mr. Blum that there was no way to reconcile the games, because he did not know the starting count of the games he combined. Mr. Blum said he had been given permission to operate this way by Gambling Commission staff. When pressed, Mr. Blum referenced a Liquor Control Officer for his information. The agent contacted the Liquor Control Board, which denied giving gambling advice to Mr. Blum.
- 4) Mr. Blum admitted that he was not paying full cash prizes, and that he was awarding alcoholic beverages in lieu of prizes, despite advertising pull-tabs paid in cash. He was informed by the agent that the rules prohibit alcohol prize awards, and that if full prizes were not awarded as advertised, it constituted an act of fraud.
- 5) During the agent's contact with Mr. Blum, he noticed a jar on the counter with cash in it. Taped to the jar was a sign which read "5 of a kind=money in jar, 4 of a kind = well drink or 4 more rolls." It also said "\$1.00 per roll." Located next to the jar was a dice cup with five dice in it. The agent explained to Mr. Blum that dice were only allowed for customers to determine who paid for music or food/beverage.
- 6) Also on February 12, 2009, the agent noticed the reader board on Bernie's sign advertised a poker game. The board read, "Tex Holdum 10 players MON & SAT \$20.00 entry cash game to follow." Below that, it read, "WED cash game \$2, 3, 4.50-100 blind bet." The agent asked if Mr. Blum was allowing poker. Mr. Blum said the sign had been up since last November, but that the person who was posting and organizing the game had died, and no games took place. The agent explained the licensing requirements for social card games. Mr. Blum said he was not going to allow poker.
- 7) The agent informed Mr. Blum that he would return to reconcile the Bernie's pull-tab inventory, and made an appointment to return February 20, 2009.

² A fishbowl is a clear plastic container, which holds pull-tabs for sale. Each pull-tab container must be in plain view and must hold only one game so that players can determine the prizes available and the beginning pull tab count.

- 8) Two agents returned to Bernie's on February 20, 2009. The agents performed detailed testing³ on five games removed during the fourth quarter of 2008. All of the games had material discrepancies. Six months of pull-tab games removed from play were combined on one monthly summary. The prescribed format required each month and pull-tab to be recorded on a separate monthly income summary. The licensee failed to accurately and completely record games removed from play. The licensee did not complete actual cash or cash over/short for any pull-tab game removed from play, which impacted net receipts.
- 9) The agents' review also revealed that complete winners' information was not recorded on winning pull-tabs over \$20. None of the winners over \$20 had the date the prize was awarded or the initials of the employee awarding the prize. In addition, the licensee started deleting prizes under \$20 for the game Breakin' the Bank and did not continue. In addition, two \$15 prizes were won, but only one \$15 prize was deleted from the flare.
- 10) The agent's review revealed that the gross receipt amount on the 2008 fourth quarter activity report (QAR) was materially inconsistent with the licensee's pull-tab monthly income summary for the same period.
- 11) A bar code pull-tab comparison⁴ detailed multiple exceptions. One game was played, but not recorded on a monthly income summary, and another was recorded twice on the same summary. Two games were removed from play on the summary, but were improperly put back in play on February 12, 2009, when the agent reviewed the games in play.
- 12) A Records review showed that for at least the time period of July 1, 2008, through December 31, 2008, the licensee failed to record cash over/short on the monthly summary.
- 13) The licensee has the following administrative history:
 - a) The licensee commenced gambling operations in January 2008.
 - b) In April 2008, a Notice of Infraction (NOI)⁵ was issued to the licensee for failing to delete five winning pull-tabs over \$20 from the corresponding game flare.
 - c) In June 2008, a warning letter was issued to the licensee for failure to delete a pull-tab prize over \$25 from the corresponding flare.

3 Detailed Testing includes counting all of the unsold pull-tabs for each game, counting all of the winning pull-tabs for each game and reconciling gross receipts and prizes paid to the amounts recorded on the pull-tab Monthly Income Summary (MIS) required to be maintained by the Commission. The MIS details how many pull-tabs were sold for each game placed into play, the amount of prizes paid for all of the winning pull-tabs, the amount of actual cash the licensee received from patrons for each game, and whether or not there were any cash shortages or overages.

4 A bar code comparison uses a bar code scanner to enter WSGC stamp numbers into a computer program. The bar codes entered are from purchase invoices, games removed from play, and games in inventory. The computer program then compares all the information and details any exceptions.

5 A Notice of Infraction is a written notice, which advises the licensee of a violation of an administrative rule or law. It is often given after the licensee has been given the opportunity for compliance. There is no fine involved.

Therefore, under RCW 9.46.075(1), RCW 9.46.190, RCW 9.46.0305, and WAC 230-03-085(1) and (3), WAC 230-14-090, WAC 230-14-070, WAS 230-14-055, WAC 230-12-090, WAC 230-06-020, WAC 230-14-285, WAC 230-14-050, WAC 230-14-290, WAC 230-14-284, WAC 230-14-110, WAC 230-14-100, WAC 230-14-085, grounds exist to suspend Bernie's Place's license.

RCW 9.46.075(1) provides that 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. These reasons shall include, but not be limited to, cases wherein the licensee, or any person with any interest therein: (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.

WAC 230-03-085 (1) (3) provides that the Commission may deny, suspend, or revoke and application, license or permit, when the applicant, licensee or anyone holding a substantial interest in the applicant's or licensee's business or organization (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.

WAC 230-03-085(1) provides that the Commission may deny, suspend, or revoke any application, license or permit, when the licensee, or anyone holding a substantial interest in the licensee's business or organization.

RCW 9.46.190 provides that any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation: (1) Employ any device, scheme, or artifice to defraud; or (2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or (3) 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.

WAC 230-14-090 (1) provides that pull-tab operators must protect players from fraud and game manipulation. (2) provides that pull-tab operators must award all prizes won.

WAC 23-14-070 (1) provides that pull-tab operators must place flares in plain view and in the vicinity of the pull-tab container or dispenser.

WAC 230-06-020 provides that licensees must not offer or award beverages that contain alcohol as a prize or in place of a prize for any gambling activity.

WAC 230-14-285 (1) provides that pull-tab licensees must prepare a detailed monthly income summary for pull-tab series in the format required.

WAC 230-14-050 (2) (d) provides that licensees must not place out for further play any pull-tab series that they have permanently removed from play.

WAC 230-14-290 (1) provides that when preparing their monthly income summary, operators must determine cash over short.

WAC 230-14-284 provides that pull-tab licensees must submit an activity report to the commission. Licensees must complete the report in the format required.

WAC 230-14-110 (1) provides that when pull-tab players win more than \$20 or merchandise prizes with a retail value over \$20, operators must make a record by having winners print their name and date of birth, in ink, on the side of the winning tab opposite the winning symbol and verifying the winner's identity and recording the current date and initialing the winning tab.

WAC 230-14-100 (4) provides that if operators elect to delete prizes of less than \$20 from flares, they must continue to do so until they remove the games from play.

RCW 9.46.0305 provides that the legislature authorizes the wagering on the outcome of the roll of dice on the premises of an establishment engaged in the business of selling food and beverage for consumption on the premises to determine which of the participants will pay for coin operated music on the premises or certain items of food or beverages served by such establishment and therein consumed. Such establishments are authorized to possess dice and dice cups on their premises, but only for use in such limited wagering.

III.

Jurisdiction of this proceeding is based on 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and WAC Title 230.

The licensee will have the opportunity to have a hearing on the alleged violations.

In order to have a hearing or discuss settlement options, the enclosed REQUEST FOR HEARING must be COMPLETED AND RETURNED to the Gambling Commission *within 23 days* from the date of the mailing of this notice.

Based on RCW 34.05.440, failure to return this document will result in the entry of a default order SUSPENDING your licenses for 30 days.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

Rick Day, being duly sworn on oath, says: That he has read this Notice of Administrative Charges and Opportunity for An Adjudicative Proceeding, knows the contents of it, believes it to be true, that he is the Director of the Washington State Gambling Commission, and in that capacity has executed said Notice.

[Signature of Rick Day]

RICK DAY, DIRECTOR

SUBSCRIBED AND SWORN TO before me
this 21st day of May, 2009.

Michelle M. Pardon

NOTARY PUBLIC in and for the State of

Washington residing at Lacey

My Commission expires on June 16, 2013

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of the document upon all parties of record in the proceeding by mailing a copy thereof, properly addressed with postage prepaid, by regular and certified mail to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington this 22nd day of May, 2009

Communications and Legal Department
Washington State Gambling Commission

[Signature of Mawzen Pretell]

