

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Denial of the Application)
For a License to Conduct Gambling Activities of:)
Vesck Incorporated d/b/a)
Jack's Pub & Grill)
Renton, Washington,)
Applicant.)

NO. CR 2011-01272

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

I.

The Washington State Gambling Commission has received an application for a gaming license from Vesck Incorporated doing business as Jack's Pub & Grill, organization number 00-22513, for the following license: Number 05-21052, authorizing Class "C" Punchboard/Pull-Tab activity.

The application was made subject to the applicant's compliance with state gambling laws and Commission rules.

II.

Rick Day, Director of the Washington State Gambling Commission, charges the applicant, Vesck Incorporated doing business as Jack's Pub & Grill, with the following violations of the Washington State Gambling Act, 9.46 RCW, and WAC Title 230:

III.

SUMMARY:

Kevin J. Austin is the Vice President and 33% owner of Vesck Incorporated, doing business as Jack's Pub & Grill (Jack's). Jack's has applied for a Punch Board/Pull-tab¹ license to operate a gambling activity at their establishment. Mr. Austin's criminal history includes 1997 convictions for 1st degree burglary, 1st degree robbery, and attempted 1st degree robbery. In two of these cases, weapons were used to threaten physical harm to individuals. Although Mr. Austin was a juvenile at the time the crimes took place, he was convicted as an adult. Based on Mr. Austin's criminal history, he does not prove through clear and convincing evidence that he qualifies to hold a gambling license. As the Vice President and 33% owner of the applicant business, Mr. Austin's failure to qualify results in a failure to qualify for the applicant organization.

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.

FACTS:

- 1) In August 2011, a Commission Special Agent (agent) was assigned to investigate the qualifications for licensure of the substantial interest holders² of Jack's.
- 2) As part of her investigation, the agent reviewed the licensing file for Jack's. The licensing file included the following information:
 - Commission staff received Jack's' application for a Punch Board/Pull-tab license on July 22, 2011. As part of their application, a complete Disclosure of Corporate Officers/stockholders was included as is required. The applicant listed the corporate officers or stockholders of owner Vesck Incorporated, as Sylvia Sullivan at 33%, Kevin Austin at 33%, and Balmore Escobar at 33%.
 - The agent reviewed Mr. Austin's personal/Criminal History Statement included in the application packet. On the form, Mr. Austin was asked to disclose his criminal history. Mr. Austin disclosed that in 1997 he was convicted of "Robbery 1st, Attempted Robbery 1st, and Burglary 1st."
- 3) Based on Mr. Austin's disclosure, the agent requested applicable court documents pertaining to Mr. Austin's cases from Pierce County Superior Court.
- 4) Review of certified court records reflect the following facts:
 - On June 11, 1997, Information was filed for case number 97-1-02409-1 in Pierce County Superior Court charging Mr. Austin with three counts; Burglary in the first degree, a class A felony, and Robbery³ in the first degree, a class A felony, and Attempted Robbery in the first degree, a class B felony.
 - The Information on the burglary alleged that on December 4, 1996, Mr. Austin unlawfully entered and remained unlawfully in a building with the intent to commit a crime, with another criminal participant(s), and that Mr. Austin and/or the other participant(s) were armed with six rifles.
 - The Information on the robbery alleged that on December 18, 1996, Mr. Austin unlawfully and feloniously took personal property with the intent to steal from the victim and other employees of Burger King by use or threatened use of immediate force, violence or fear of injury, and that the defendant and or an accomplice were armed with a firearm.

² A substantial interest holder is defined at WAC 230-03-045 as a person who has actual or potential influence over the management or operation of any organization, association or other business entity. Each substantial interest holder of a business applicant for licensure must meet the qualifications to be licensed in accordance with WAC 230-03-050 (f).

³ Robbery is defined in RCW 9A.56.190 as unlawfully taking personal property from another against their will by the use, or threatened use of immediate force, violence, or fear of injury to that person or property.

- The Information on the attempted robbery alleged that on April 4, 1997, Mr. Austin unlawfully and feloniously attempted to take personal property with the intent to steal from the victim and other employees and customers of Washington Mutual Bank by use or threatened use of immediate force, violence or fear of injury. Mr. Austin and or an accomplice were armed with a sawed off shotgun and a .380 or 9mm handgun.
- A Declaration of Probable Cause was filed along with the Information.
- The probable cause statement provides that on December 4, 1996, the "Wilson" home was burglarized. Entry into the home was gained by kicking in the side door. The home was 'ransacked' and the items that were stolen included six rifles, cash and jewelry. Mr. Austin told friends that he participated in the burglary.
- The probable cause statement provides further that on December 18, 1996 at approximately 12:40 a.m., a Burger King was robbed by four people. One of the robbers held a six inch long knife to the manager's neck during the robbery. The manager was forced to crawl on the wet floor while the robber kicked her to make her move faster. That robber stated 'I love this shit.' A different robber pointed a handgun at another employee and told him to lie down, while a third robber pointed a silver handgun in an employee's face and forced her to open the safe. Approximately \$3,000 in cash was taken in the robbery. Mr. Austin admitted to the investigating detective that he participated in the robbery, that he knew there were firearms involved in the robbery, and that he was armed with a knife and it was his job to "keep the employees on the ground."
- The probable cause statement provides further that on April 4, 1997, Mr. Austin and some friends attempted to rob the Washington Mutual Bank in Puyallup, and that one of the participants was armed with a firearm. A suspect wearing a ski mask and carrying a sawed off shotgun entered the bank and told everyone not to move. A second suspect, after observing a witness call the police, opened the front door of the bank and told the first suspect they had to leave. They left without taking any money. Mr. Austin was inside the bank, sitting in a chair facing the door at the time of the robbery. Mr. Austin later admitted to taking part in planning the robbery and that while he was sitting in the bank during the robbery, he was armed with a .380 caliber handgun. Later, a .380 handgun was recovered from Mr. Austin's dresser drawer. The probable cause statement included the following quote, "Police have also located several witnesses who told them that the four codefendants admitted doing the robbery and were planning to do another one because they didn't get any money."
- The probable cause statement concludes by stating that Mr. Austin was under the age of 18 at the time of all three incidents.
- On June 20, 1997, a Statement of Defendant on Plea of Guilty was filed on behalf of Mr. Austin. Mr. Austin provided a statement of what he did to make him guilty of the crimes at issue. "On December 4, 1996, in Pierce County, I did enter a home with my

co-defendants and took a deadly weapon with intent to take and keep it. On December 18, 1996, in Pierce County, I did take money with intent to steal from ...Burger King...by use of force and in the commission thereof my co-defendants and I were armed with deadly weapons. On April 4, 1997, in Pierce County, I did attempt to take money with intent to steal from employees of the Washington Mutual bank by threatened use of force and in the commission there of my co-defendants and I were armed with deadly weapons.”

- On September 16, 1997, a Judgment and Sentence in Mr. Austin’s name was filed in Pierce County superior Court, where in it was stated ”the defendant entered into a plea agreement to testify against his co-defendants and in exchange the state agreed to recommend the low end of the sentencing ranges.” Mr. Austin was sentenced to 36 months for count I, 51 months for count II, and 38.5 months for count III. The confinement ran concurrent for all counts.
 - A Certificate and Order of Discharge was filed in Pierce County Superior Court on January 29, 2010, and stated that Mr. Austin had completed his sentence and his court ordered money obligations had been met to the satisfaction of the Court.
- 5) On September 12, 2011, the agent spoke to Sylvia Sullivan, President of Vesck Incorporated, and explained to her that since Mr. Austin does not qualify for licensure, in order for Jack’s to qualify for licensure, Jack’s could either:
- Restructure their ownership and financing so that Mr. Austin was not longer involved, or
 - Withdraw their application for licensure, or
 - Await Commission staff recommending denial of their application.
- 6) Later on September 12, 2011, Mr. Austin visited Commission headquarters and spoke with the agent. The agent explained to Mr. Austin why he does not qualify for licensure. Mr. Austin informed the agent that he had spoken to Commission staff earlier in the application process, and that he was told that his criminal history would not be an issue. The agent informed Mr. Austin that on the surface, a felony over 10 years old would not necessarily be disqualifying, but that in this instance, Mr. Austin committed three separate felonies on three separate occasions where he threatened physical harm to individuals, which specifically meets the definition of disqualifying crimes under WAC 230-03-085.
- 7) On September 21, 2011, an agent received an e-mail from Ms. Sullivan requesting to withdraw Jack’s’ application.
- 8) On October 4, 2011, an agent received an e-mail from Ms. Sullivan requesting to appeal the decision of denial to Jack’s based upon Mr. Austin’s criminal history due to Mr. Austin’s honesty about his past, and the fact that it has been 13 years since Mr. Austin’s convictions.

9) Due to Mr. Austin, a substantial interest holder's convictions for crimes of physical harm, Jack's Pub & Grill poses a threat to the effective regulation of gaming or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities. Therefore, Jack's Pub & Grill has failed to establish by clear and convincing evidence the necessary qualifications for licensure under RCW 9.46.153(1).

10) Therefore, under RCW 9.46.075 (1), (2), (4), (8), and (10), RCW 9.46.153 and WAC 230-03-085(1), (3), and (8), grounds exist to deny Vesck Incorporated doing business as Jack's Pub & Grill, application for a gaming license.

VIOLATIONS:

RCW 9.46.075 Denying, suspending, or revoking an application, license or permit

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 the 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.

(2) Knowingly causes, aids, abets, or conspires with another to cause, any person to violate any of the laws of this state or the rules of the commission;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude.

(8) Fails to prove, by clear and convincing evidence, that he is qualified in accordance with the provisions of this chapter.

(10) Has pursued or is 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.

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

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.

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person; or

(8) 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: (a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or (e) Associations.

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.

IV.

The charges specified in Paragraph III above constitute grounds for the denial of Jack's Pub and Grill's application to conduct gambling activities pursuant to 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and WAC Title 230.

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V.

Jack's Pub & Grill 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 a request for hearing will result in the entry of a default order DENYING your application for a license.

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.



RICK DAY, DIRECTOR



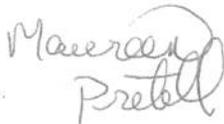
SUBSCRIBED AND SWORN TO before me
this 7th day of NOVEMBER, 2011.

NOTARY PUBLIC in and for the State of
Washington residing at PUYALLUP, WA.
My commission expires on 7/16/2013.

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 7 day of NOVEMBER, 2011



Communications and Legal Department
Washington State Gambling Commission