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STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSIONGAMBLING COMMISSION
COMM & LEGAL DEPT

In the Matter of the Suspension or
Revocation of the License to Conduct
Gambling Activities of:

WHITE HORSE BAR AND GRILL
Tukwila, Washington

Licensee.

OAH Docket No. 2011-GMB-0017

WSGC No. CR 2011-00009

INITIAL ORDER

1. HEARING:

- 1.1 This case came before Administrative Law Judge Douglas H. Haake for an administrative hearing on May 18, 2011, at the Washington State Gambling Commission Hearing Room in Lacey, Washington, after due and proper notice to all parties. The hearing was digitally recorded.
- 1.2 Tim Bowles, appeared and represented the licensee.
- 1.3 Eric Bowles appeared and testified on behalf of the licensee. Mike Carlin appeared for the licensee but did not testify.
- 1.4 The Washington State Gambling Commission (Commission) appeared through its legal counsel, H. Bruce Marvin, Assistant Attorney General.
- 1.5 Special Agent Jay Summers, investigator for the Commission, appeared and testified on behalf of the Commission.
- 1.6 Peggy McCarthy, City of Tukwila, Finance Deputy Director, appeared and testified on behalf of the city. Shawn Hunstock, City of Tukwila, Finance Director appeared but did not participate in the hearing.
- 1.7 The Commission presented 4 exhibits, all of which were admitted.
- 1.8 The licensee did not present any exhibits.

2. STATEMENT OF THE ISSUES:

- 2.1 Whether there are grounds to revoke licensee's license or permit under RCW 9.46.075(1) and WAC 230-03-085(1) which provide that the Commission may revoke a license if the holder has violated, failed, or refused to comply with

the provisions, requirements, conditions, limitations, or duties imposed by Chapter 9.46 RCW or any Commission rules.

- 2.2 Whether the Commission has grounds to suspend or revoke the Licensee's gambling licenses under WAC 230-03-085(3) which provides that the Commission may revoke a gambling license when the licensee has demonstrated willful disregard for complying with the ordinances, statutes, administrative rules, or court orders whether local, state, or federal.
- 2.3 Whether the Commission has grounds to revoke Licensee's gambling license under WAC 230-03-085(4), which authorizes the Commission to revoke a gambling license if the holder has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned the Commission to take action.
- 2.4 Whether the licensee can affirmatively establish by clear and convincing evidence that she is qualified to hold a gambling license in accordance with the laws and regulations governing gambling in the State of Washington as set out in RCW 9.46.075(8) and RCW 9.46.153(1).

3. FINDINGS OF FACT:

- 3.1 Peggy McCarthy (McCarthy) has been the Deputy Finance Director for the City of Tukwila (city), for two and one-half years. As part of her duties, she supervises accounting operations, including the monitoring and collection of gambling taxes.
- 3.2 Chapter 3.08 of Tukwila's city code provides for a gambling activities tax and provides for enforcement. Exhibit 2, pages 9-14.
- 3.3 Licensee is licensed by the Commission for pull tabs and commercial amusement games, license numbers 05-09408 and 53-20709. Exhibit 1.
- 3.3 On April 4, 2010, a financial specialist charged with monitoring gambling tax receipts brought the licensee's delinquency to the attention of McCarthy. The city conducted an investigation of licensee's gambling tax liability and penalties. A spread sheet was prepared showing a tax and penalty balance owing of \$203,718.35. Exhibit 2, pages 6 and 7. The unpaid taxes and penalties were for the years 2005 to 2010.
- 3.4 On September 29, 2010, a letter was sent to the licensee on behalf of the city setting out the amount owed and requesting payment. Exhibit 2, page 5. A copy of the spreadsheet was enclosed.
- 3.5 In July 2010, McCarthy met with Tim and Eric Bowles to discuss the tax delinquency. The city offered a payment agreement that was rejected by the

Bowles' because they were not financially able to meet the proposed terms. The city filed a lien for delinquent taxes, interest and penalties, in the amount of \$158,195.88. Exhibit 2, pages 13 and 14. The lien remains in effect and has been updated to reflect increased unpaid tax balances and penalties.

- 3.6 The taxes accrue annually and are based on gambling revenue. Licensee's liability has been at least \$40,000.00 per year. Exhibit 2, pages 6 and 7.
 - 3.7 In August 2010 licensee made a \$1,000.00 payment. In September 2010, the licensee made a \$2,000.00 payment. Payments in these amounts are insufficient to pay the current taxes or to retire the delinquent tax balance.
 - 3.8 On September 29, 2010, the city sent a letter to the licensee headed "Notice of Delinquent Gambling Taxes ***License Revocation Action May Be Taken***" Exhibit 2, page 5. Again, the outstanding obligation was detailed. An October 31, 2010, deadline of was given for payment. No satisfactory response was received.
 - 3.9 On October 29, 2010, Eric Bowles executed a letter to the city acknowledging the debt and promising to pay \$2,500.00 per month toward the balance owing. Exhibit 2 page 8. A check for \$7,500.00 accompanied the letter. The check was returned by licensee's bank indicating licensee had insufficient funds to cover the check.
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- 3.10 On December 21, 2010, the city petitioned the Commission for disciplinary action based on licensee's delinquent taxes. Exhibit 2, page 1. An affidavit executed by McCarthy in support of the request was enclosed.
 - 3.11 Licensee's have made three payments since January 2011, totaling \$19,000.00. These payments do not meet the licensee's current obligations or retire its delinquent tax balance. A \$10,000.00 payment in January was intended to make up for the \$7,500.00 NSF check and as a \$2,500.00 payment towards its January taxes.
 - 3.12 Despite the payments, the city wants to pursue licensee discipline.
 - 3.13 Special Agent Jay Summers (Summers) has been with the Commission for 5 years as a financial investigator. He has in excess of 300 hours of specialized training and is certified as a fraud examiner.
 - 3.14 Summers was assigned licensee's file for investigation. He conducted and investigation and prepared a case report. Exhibit 1. Based on his investigation, he found that the licensee owed over \$200,000.00 in gambling taxes to the city. Further, the city had unsuccessfully attempted to resolve the delinquency by entering into a payment plan with the licensee.

- 3.15 He also review the licensee's violation history, finding one verbal warning and one notice of infraction. Exhibit 3.
- 3.16 Based on his investigation, Summers is of the opinion that the licensee is not qualified to hold a gambling license.
- 3.17 The licensee operates 36 tanks of pull tab games. Licensee receives less than 15 percent of its income from pull tabs. The licensee attributes its tax difficulties to a downturn in the economy and enactment of .08 as the legal limit for blood alcohol content when driving. The owners are trying to sell the business. They anticipate paying the outstanding taxes upon sale.
- 3.18 The city licenses other business that offer pull tabs, amusement games, and social card games. The other licensed businesses are not delinquent on their gambling taxes.

4. CONCLUSIONS OF LAW:

Jurisdiction

- 4.1 Office of Administrative Hearings has jurisdiction over the person and subject matter herein pursuant to RCW 9.46.140, Chapter 34.05 RCW, and Title 230.

Burden Of Proof

- 4.2 Licensees bear the burden of establishing their qualifications by clear and convincing evidence. RCW 9.46.153(1). Each applicant and holder of a license issued pursuant to Chapter 9.46 RCW is subject to continuous scrutiny regarding his/her general character, integrity, and ability to engage in or participate in, or associate with, gambling or related activities impacting this state. RCW 9.46.153.

Legislative Intent

- 4.3 The legislative intent expressed in RCW 9.46.010 justifies the high burden on licensees to demonstrate their qualifications, which provides in relevant part: "The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities by strict regulation and control." The statute further provides: "All factors incident to the activities authorized in this chapter shall be closely controlled, and the provisions of this chapter shall be liberally construed to achieve such end." In short, those persons who wish to work in this highly regulated industry are held to the very highest character and integrity standards.

License Suspension And Revocation

- 4.4 RCW 9.46.075(1) and (8) and WAC 230-03-085(1) provide that the Commission may revoke a license if the holder has violated failed, or refused to comply with the provisions, requirements, conditions, or duties imposed by Chapter 9.46 RCW or any Commission rules.
- 4.5 WAC 230-03-085(3), provides that the Commission may suspend a gambling license when the license holder has demonstrated willful disregard of federal, state or local laws, administrative rules, and the lawful orders of administrative bodies and courts with jurisdiction to enforce such laws and rules.
- 4.6 WAC 230-03-085(4), provides that the Commission may suspend or revoke a gambling license when the license holder has failed to pay gambling taxes to local taxing authorities and the local taxing authority has petitioned the Commission to take action.
- 4.7 RCW 9.46.075(8) and RCW 9.46.153(1) place the burden on the licensee to affirmatively establish by clear and convincing evidence that he is qualified to hold a gambling license in accordance with the laws and regulations governing gambling in the State of Washington.

Analysis

- 4.8 Here, the licensee has failed to pay gambling taxes to the local taxing authority. The licensee's failure exhibits a willful disregard for local laws.
- 4.9 That authority has petitioned the Commission for revocation of the licensee's licenses.
- 4.10 The licensee has not affirmatively established by clear and convincing evidence that he is qualified to hold a gambling certification in accordance with the laws and regulations governing gambling in the State of Washington. RCW 9.46.075.
- 4.11 Accordingly, pursuant to the foregoing Findings of Fact and Conclusions of Law, the gambling licenses of the White Horse Bar and Grill shall be revoked.

III

III

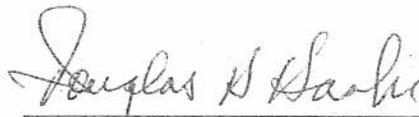
III

5. INITIAL ORDER:

IT IS HEREBY ORDERED,

Pursuant to law and public interest, the pull tab and amusement games licenses, license numbers 05-09408 and 53-20709, issued to the White Horse Bar and Grill by the Washington State Gambling Commission are hereby revoked.

Signed: May 31, 2011 at Olympia, Washington.



Douglas H. Haake
Administrative Law Judge
Office of Administrative Hearings
PO Box 9046
Olympia, WA 98507-9046

NOTICE TO THE PARTIES OF APPEAL RIGHTS

You may file an appeal of this order within twenty three days from the day OAH mails this initial order to you. WAC 230-17-090(2); *see also* WAC 230 -17 -030(2), WAC 230 -17 -035(2) [Service by first class mail is complete three days after mailing.]. An appeal from an initial order is known as a "petition for review". Your petition for review should (a) identify the parts of the initial order you disagree with and (b) refer to the evidence in the record that supports your position. If you decide to petition for review, you must serve copies of your petition on all parties or their representatives at the same time you file it with the Gambling Commission. If the Commission does not receive a petition for review within 23 days, the Commission will automatically make this order its final order.

Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must serve copies of the reply on all parties or their representatives at the same time you file your reply.

Any party may file a cross appeal. Cross appeals must be filed with the commission within ten days of the date when the petition for review is filed with the Commission. WAC 230 -17 -090(5). If you wish to make a cross appeal, you must serve copies of the cross appeal upon all other parties or their representatives at the same time you file your cross appeal.

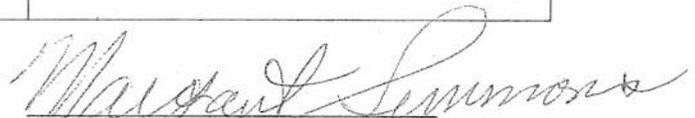
If a party timely files a petition for review, then at least a majority of the Commission members shall review the petition within 120 days and render a final order.

Certificate of Service – OAH Docket No. 2011-GMB-0017

I certify that true copies of this document were served from Olympia, Washington on the following as indicated.

Address: Michael Carlin White Horse Bar & Grill 14935 Interurban Ave S Tukwila, WA 98168	First Class Mail, Postage Prepaid
Address: Washington State Gambling Commission Communications and Legal Department PO Box 42400 Olympia, WA 98504-2400	First Class Mail, Postage Prepaid
Address: H. Bruce Marvin Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	First Class Mail, Postage Prepaid
Address:	
Address:	
Address:	

Date May 31, 2011


Authorized Representative
Office of Administrative Hearings