

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the)
License to Operate Gambling Activities of:) NO. CR 2012-01652
)
OIC¹ Of Washington) **FINDINGS OF FACT,**
Yakima, Washington,) **CONCLUSIONS OF LAW,**
) **AND ORDER OF SUMMARY**
) **SUSPENSION OF LICENSE**
Licensee.)

RCW 9.46.070(17) authorizes the Washington State Gambling Commission (Commission) to summarily suspend² a license, subject to final action by the Commission. The Director has reviewed this Order of Summary Suspension and has issued it for service.

This order takes effect when served on OIC of Washington, its representative, or agent. A Commission Special Agent shall seize OIC of Washington's bingo license and the licensee must stop conducting bingo activities.

FINDINGS OF FACT

I.

Rick Day is Director of the Washington State Gambling Commission and issues this order. Jurisdiction of this proceeding is based on chapter 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and Title 230 WAC.

II.

The Washington State Gambling Commission issued OIC Washington the following licenses:

- Number 03-00868, Authorizing Class "A" Amusement Game activity;
- Number 01-02270, Authorizing Class "H" Bingo activity; and
- Number 05-04765, Authorizing Class "F" Nonprofit Punchboard/Pull-tab activity.

¹ Opportunities Industrialization Center (OIC) of Washington is a non-profit organization providing community services through federal, state and local agencies.

² WAC 230-17-165 defines summary suspension as immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

The Commission issued the licenses, which expire on June 30, 2013, subject to the licensee's compliance with state gambling laws and Commission rules.

III.

After a thorough review of the report by a Commission Special Agent about the facts in this matter, the Director accepts the report as true and has determined that the summary suspension is necessary.

IV.

SUMMARY:

OIC of Washington had a negative adjusted cash flow for the two consecutive quarters ending in June 30, 2012, and September 30, 2012.

FACTS:

- 1) On July 19, 2012, OIC of Washington submitted their Nonprofit Combined Quarterly Activity Report for the period of April 1, 2012, through June 30, 2012. OIC had an adjusted cash flow of -\$3,096.
- 2) On August 6, 2012, OIC of Washington amended their Nonprofit Combined Quarterly Activity Report for the second quarter of 2012. In the amended report, \$928 was reallocated to "Cost of Games" from "Other Expenses." The amended figures did not affect the adjusted cash flow of -\$3,096.
- 3) On October 30, 2012, OIC of Washington submitted their Nonprofit Combined Quarterly Activity Report for the period of July 1, 2012, through September 30, 2012. OIC of Washington had an adjusted cash flow of -\$4,023.
- 4) On November 1, 2012, staff called the Special Agent (agent) assigned to OIC of Washington to inform him that the licensee had a negative cash flow for the last two consecutive quarters. The agent said he would go speak to the bingo manager to verify numbers.
- 5) On November 5, 2012, the agent met with Mulugeta Beyene, OIC of Washington's CFO, and Steve Mitchell, CEO, to explain the summary suspension process.
- 6) On November 8, 2012, the agent advised Commission staff that according to Mr. Beyene, the licensee would be amending their report as they forgot to include taxes.
- 7) On November 19 and 20, the agent met with Mr. Beyene to go over the amended report, which did not include complete gambling taxes in the bingo expense. Mr. Beyene subsequently completed another form. On November 21, 2012, a Commission agent picked up the licensee's second amended report.

- 8) On November 9, 2012, the agent submitted an unofficial amended Nonprofit Combined Quarterly Activity Report for the third quarter of 2012. OIC of Washington had an adjusted cash flow of -\$6,393. The agent confirmed the numbers later that week and staff received an official report submitted from OIC of Washington on November 21, 2012.
- 9) On November 27, 2012, the agent reviewed the second amended report with Mr. Beyene and verified the expenses listed.

CONCLUSIONS OF LAW

I.

- 1) **RCW 9.46.070** provides that the Commission shall have the following powers and duties: The Commission may authorize the Director to temporarily suspend licenses subject to final action by the Commission.
- 2) **WAC 230-17-165(2)** provides that the Commission delegates its authority to the Director to summarily suspend any license if the Director determines that a licensee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.
- 3) **WAC 230-17-165(3)** The Commission deems the following actions of a licensee constitute an immediate danger to the public safety and welfare:
(The following subsections apply.)
 - (a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the Commission;
 - (k) If a charitable or nonprofit organization, being deemed to be operating bingo primarily for gambling purposes and continuing to use program funds to subsidize the operation of gambling activities.

The licensee has failed to maintain a positive cash flow for the last two consecutive quarters and is continuing to use program funds to subsidize its gambling activities. As a result, the licensee is deemed to be operating bingo primarily for gambling purposes. This action constitutes an immediate danger to public safety and welfare based on WAC 230-17-165 (3)(a) and (k) and is basis for OIC of Washington to immediately stop conducting bingo activities.

- 4) **WAC 230-10-375 Failing to maintain a positive cash flow**
(The following subsections apply.)

(1) Bingo licensees must measure adjusted cash flow quarterly to ensure that they maintain a positive cash flow and are not operating primarily for gambling purposes.

(2) If a licensee does not maintain a positive cash flow from the bingo operation during any two consecutive license year quarters, measured independently, the director summarily suspends the organization's bingo license.

5) RCW 9.46.075 Denial, suspension, or revocation of license, application, 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 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.

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

6) 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, certified employee, or anyone holding a substantial interest in the applicant's or certified employee's business or organization commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

The licensee's failure to maintain a positive cash flow for two consecutive quarters demonstrates that it is using program funds to subsidize the bingo activities and operating primarily for gambling purposes, in violation of WAC 230-10-375. As a result, there are grounds to revoke OIC of Washington's bingo license based on RCW 9.46.075(1) and (8), WAC 230-03-085(1), and WAC 230-10-375 (2).

II.

The immediate suspension of OIC of Washington's bingo activity is required due to the licensee's failure to maintain a positive cash flow from its bingo operation for two consecutive quarters.

ORDER

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW and the Director's authority under RCW 34.05.422, RCW 9.46.070(17), and WAC 230-17-165, the Director orders that OIC of Washington's license to operate bingo is summarily suspended, pending a formal hearing by an Administrative Law Judge.

STATEMENT OF RIGHTS

(1) You may ask for a stay of this Order. To do so, you must complete and return to the Commission the enclosed Application for Stay Hearing form within fifteen (15) days from the date you receive this Order. If the Commission receives a timely request, we will hold a hearing within seven (7) days as required by WAC 230-17-170(3). The stay hearing will determine if your suspension should continue, or whether the suspension may be modified.

At the stay hearing, you will have to prove by clear and convincing evidence that:

- (a) You will likely win at hearing; and
(b) If your suspension continues, you will suffer serious injury. Under this section, loss of income from licensed activities is not considered serious injury; and
(c) Removing the immediate suspension will not hurt others in this case; and
(d) The threat to the public safety or welfare does not justify continuing the suspension, or that modifying the suspension will adequately protect the public.

(2) You also have a right to a hearing on the revocation of your license. To do so, you must complete and return to the Commission the enclosed Application for Hearing form within twenty (20) days from the date you receive this order. If you do NOT request a hearing, we will enter an Order of Default revoking your license under RCW 34.05.440.

If you have any questions regarding the rights stated above, please contact Paralegal Jennifer Stretch, at (360) 486-3465 or 1-800-345-2529, extension 3465.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

Rick Day, under oath, declares that he has read this Order of Summary Suspension of License, knows its contents, and believes it to be true, and affirms that he is the Director of the Washington State Gambling Commission and in that capacity has executed this Order of Summary Suspension of the License.

[Handwritten signature of Rick Day]

Rick Day, Director



SUBSCRIBED AND SWORN TO before me this 11 day of December, 2012.

[Handwritten signature of Maureen Pretell]
NOTARY PUBLIC in and for the State of Washington, residing at: Thurston County
My Commission expires on December 2, 2015