

**COMMISSION MEETING
THURSDAY, MAY 13, 2004
DRAFT MINUTES**

Vice Chair Parker called the meeting to order at 1:30 p.m., at the Red Lion Hotel located in Spokane. He welcomed the attendees and introduced the members and staff present:

MEMBERS PRESENT: **COMMISSIONER ALAN PARKER, Vice Chair**
COMMISSIONER CURTIS LUDWIG; Kennewick
COMMISSIONER ORR, Spokane
COMMISSIONER JANICE NIEMI, Seattle
SENATOR MARGARITA PRENTICE, Seattle
REPRESENTATIVE ALEX WOOD, Spokane

STAFF PRESENT: **RICK DAY, Director**
NEAL NUNAMAKER, Acting Deputy Director
AMY BLUME, Administrator, Communications/Legal Dept.
DAVE TRUJILLO, Acting Administrator, Licensing Services
CALLY CASS-HEALY, Asst. Director, Field Operations
JERRY ACKERMAN, Assistant Attorney General
SHIRLEY CORBETT, Executive Assistant

Service Recognition:

Director Day and **Vice Chair Parker** presented a 10-year employee service recognition award to Special Agent Jim Dibble.

Staff Accomplishments:

Director Day noted that Cheryl Devers completed the Technician in Training Program, and, Special Agent Richard Schulte and Supervisor Kathy Mills passed the Certified Fraud Exam.

1. **Review of Agenda and Director's Report:** **Director Day** highlighted the inserts that were provided after the agenda packet was distributed and reviewed the meeting agenda.

Vice Chair Parker requested that Item 11, the Petition for Rule Change: DigiDeal Corporation – Electronic Facsimiles of Cards, be moved from Friday to Thursday to accommodate the maximum amount of commissioners to be present and vote.

Representatives from DigiDeal affirmed their presence and availability. **Director Day** noted

that Item 15, Petition for Rule Change: ZDI Gaming, Inc. – Pull-Tab Inventory Controls, has been withdrawn from the agenda by the petitioners.

Budget Discussions:

Director Day reported that since the fund transfer will be effective after July 1, staff intended to present a reduction plan for fiscal year 2005 at the July commission meeting, and then a biennium plan for 2005-07 in August. Director Day recalled previous discussions around what an appropriate target fund balance might be, noting that in the past the Commission has generally tried to operate within a three to six month fund balance range. He affirmed that while that has been the target, it helped with the budgeting process because it provides some idea of how many reductions might be needed and it helps defines the size the fund balance the Commission may like to establish into the future. He clarified that staff is actually recommending a substantially lower fund balance, partially due to the fund transfer, and because the Commission has relied upon the fund balance for future operating costs.

Director Day revisited the 2002 Supplemental Budget and the experience the Commission faced for fiscal year 2003, as a result of the \$2.45 million fund balance transfer to the General Fund. Staff developed a graphic thermometer approach to guide the agency through the level of reductions necessary. At the time staff targeted close to a \$2 million dollar reduction in reaction to the fund balance transfer. Staff identified the reduction cuts needed to achieve the targeted goal. He explained 12 authorized (but vacant) positions planned to be supplied as house-banked card rooms grew were cut, for an approximate \$1 million reduction. At that time, the Problem Gambling Contract was also eliminated, in part, due to a legal issue, and lastly, the agency took significant steps to eliminate/reduce six management positions. Additionally, the agency relied on vacancy savings and once again deferred technology initiatives, which included on-line applications and payments. As a result, there has been some misconception that the Commission's fund balance was not an integral part of operational costs and when the reductions were made, there were no significant impacts to the Commission's operations.

Director Day explained the Commission's fund balance at the end of fiscal 03 was approximately \$6.7 million. The estimated revenue for fiscal 04 is projected at approximately \$13.4 million and planned expenditures are anticipated at \$14 million. He emphasized the Commission had planned on the fund balance to fund operations and carry the agency through the out years with the understanding, that as time wore on, expenses would have to be brought in line. Essentially, the fund balance will drop by \$750,000 - \$800,000 in 2004 because the estimated revenue would be less than the planned expenditures. In 2005, that situation is projected to become even worse, which brings the Commission to the decisions regarding reductions that will need to be made in July. Based on the authorized budget previously approved by the Commission, the estimated revenue will be approximately \$1.7 million less than the planned expenditures. From there, adding the current revenues and subtracting approved expenditures, the fund balance for the end of fiscal year 2004 is projected at \$5.982 million. Director Day explained that fiscal year 2005 is when the agency will start to face the challenge of balancing the budget as a result of the

transfer authorized by the Legislature. He displayed a chart with the anticipated revenue and subtracted expenses as authorized, to demonstrate the projected fund balance. **Director Day** noted that at this point, the projected fund balance (at a level of less than two months) would be just barely over the cash fluctuation necessary. He suggested that \$1.8 million was too low for a fund balance—and not only that, he noted the next year the Commission would actually experience a minus fund balance.

Director Day explained that staff evaluated what the best and most reasonable fund balance target should be, and reviewed the OFM Guidelines, which describes that at a minimum, an agency should have two months expenditures in their fund balance – which in this case should equate to approximately \$2.2 million. Director Day noted that it is also fairly likely that the Legislature may authorize a public employee raise within the next biennium. He noted there has been a lot of discussion about an unfounded liability with PERS 2 and PERS 3 at approximately \$375,000, in addition to the implementation of the new Public Service Employees' Retirement System estimated at approximately \$140,000 which has not been planned for in the fund balance. Worker's compensation expenses have increased an additional \$30,000. Director Day emphasized that the Commission in its current status, even if it imposed a fee increase, would be one year behind and unable to cover the costs—and at this point, nothing has been incorporated into the budget relative to capital improvements (replacement and/or upgrades of the licensing system) in the fund balance. He affirmed that traditionally the fund balance has been the mechanism to accomplish automation and/or capital improvements to the agency's systems.

Director Day indicated that \$2.7 million (a little over two months' expenditures) seemed to be a very conservative and somewhat risky fund balance because of the aforementioned additional expenditures that will be required, which aren't covered within the \$2.7 million fund balance. He noted that in the past, the Commission has tried to maintain a higher fund balance with at least three months operating cash, and affirmed a monthly cash fluctuation up to about \$1.5 million. Director Day cautioned that if for some reason the revenue dropped dramatically while costs stayed at the approved level, it would be theoretically possible to have a minus budget situation for a couple of months. However, while the fund balance is a minimal fund balance, it is not in immediate jeopardy of causing the Commission financial problems. He explained that in 2004, the Commission could rely on the fund balance to help with operating costs (estimated at \$800,000), and in 2005, the Commission may rely on the fund balance one more time for a certain amount; however, the projected revenue in 2005 will be approximately \$1.7 million below the anticipated expenses. He explained that essentially, the fund balance would help reduce the amount of cuts the agency would have to make in 2005. The expenditure plan which will be further discussed in July commences with the previously authorized figure at close to \$15 million for fiscal year 2005. Staff proposes that in order to balance the budget and maintain a reasonable fund balance, a reduction of approximately \$877,000 from that authorization is needed, bringing the revised expenditure plan at just over \$14 million. Director Day emphasized that figure reflects almost a six percent reduction from the original approved budget.

Staff anticipates taking the \$877,000 and using the same approach as in the past in identifying reductions to achieve the financial goal and having revenue options so the Commission may either chose to go forward with the reductions, or bring in additional revenues, and/or some combination of both alternatives as the Commission moves through the final cuts. **Director Day** emphasized that the \$2.7 million fund balance is substantially lower than what the Commission has relied on in the past, even at the bottom level targeted at three months.

Vice Chair Parker acknowledged the director's first thoughts at how to make some adjustments given the reduction that was imposed in the supplemental budget, and verified that staff between now and the July meeting, would provide a more detailed analysis and proposals on both expenditure reductions and the revenue projections. **Director Day** affirmed and noted the Commission would be unable to get to the reduction level necessary without FTE cuts. He felt confident (at this point) that by relying on the existing fund balance and using vacant positions, the Commission would be able to move through 2005 without cutting existing employees. Vice Chair Parker noted the commissioners would be interested in knowing the full impact of the reduced expenditures, which translated into reduced capabilities. He noted that if the Commission forgoes plans for capital expenditures, the Commission would simultaneously be foregoing plans for increasing capabilities for electronic surveillance, and other programs that would have a clear impact on the agency's ability to do the job at hand.

Director Day affirmed that at the July meeting, staff will be dealing primarily with fiscal year 2005 reductions, and intends to provide a list of impacts, even to the point of rules that may be proposed for repealing. He affirmed the Commission will need to act on the reduction decisions in July because that budget forms the foundation for the 2006-07 budget, which will be presented in August.

Problem Gambling Update:

Director Day reported that at the conclusion of the last meeting, staff was tasked to collect more detailed information from various other parties that might be involved in potential funding for problem gambling. In that process, staff talked to representatives of the Washington Cities and Counties, the Lottery, Horse Racing, Alcohol Drug Division, the Department of Health and Human Services, and the Secretary of the Department of Social and Health Services. Essentially, staff gathered information relevant to how the Commission might proceed and possible topics that could be included in a Request for Proposals (RFP) for services relative to problem gambling that the Commission funded in the past, and could be included in the future. The Commission has been advised that the Department of Social and Health Services currently contracts, and does have a hot-line for drug and alcohol purposes. It is a 24-hour, seven day a week staffed service with limited crisis counseling available. They also have an information distribution system of some services through this same structure. Director Day noted the Commission had a lot of discussion regarding a prevalent survey conducted in 1999, and reported that it appears the Alcohol Drug Division has on an annual basis, or at least a biannual basis, collected information regarding the prevalence of problem gambling in this state. The Commission may be in a position where

that information is already available. Staff proposes looking to see if it is complete enough to guide decisions in the future. **Director Day** noted that it also appears from these contacts, that there is not a significant amount of interest in a direct RFP process from the Commission to the local authorities or to the cities and counties. Additionally, in staff's review of the law with the Assistant Attorney General, it appears the Commission has never been responsible for funding problem gambling treatment services. The RCW primarily directed funds for a 1-800 line, training, education, and similar services. While the section refers to other services, generally other services are as described in that section of the code. Director Day felt it would be a reasonable statement that if the Legislature had intended the Commission to fund treatment services, it would have added the word treatment in that particular paragraph.

Director Day reported that staff recommends that the Commission focus on funding hotline and educational training services as supported by the Revised Code of Washington, and not treatment services. Staff also recommends that the Commission explore further the concept of an interagency agreement with the Department of Public Health and Human Services, which would provide for expanded services, with an alternate for an RFP for services, if the interagency agreement is not available. Director Day believed that staff would develop and begin the discussion on a rule that could impose a separate fee for the permanent source of funding for problem gambling training and education. He suggested a target figure in the area of \$150,000 to \$200,000 in fiscal year 2005 and 2006. This recommendation would allow for an expanded and more permanent funding framework for hot-line, education, and training systems for problem gambling. It would also provide a clear opportunity for a change to 9.46 if the Legislature decided that the Commission should fund treatment services. The framework would also allow for tribal funding if that became available through DSHS. Director Day reiterated staff's recommendation that the Commission reaffirm its legal advice and the Commission's present authority to fund training awareness and 1-800 services, not treatment, and to explore in more detail the concept of an interagency agreement, and move forward with public discussions regarding a rule to impose a license fee for problem gambling in order to establish a permanent funding source targeted at approximately \$150,000 to \$200,000 a year.

Assistant Attorney General Ackerman affirmed this was a question of a basic statutory interpretation. The general rule is that the statute recites a number of items in a list and includes that list with a general catch-all provision. RCW 9.46.071 deals with items such as public awareness training, it addresses other services, and it also includes the hot-line. Mr. Ackerman suggested that one has to look at that provision and interpret it with thought to the preceding legislative history, when approximately two years ago, the Legislature chose to specifically fund a treatment program. **Vice Chair Parker** noted that was out of appropriated funds apart from anything to do with the Commission's budget. Mr. Ackerman concurred, noting it was a treatment program within the Department of Social and Health Services. The Legislature then made the decision not to fund the program any further. He noted that in the last legislative session, a bill was introduced which would have specifically funded a treatment program. The Legislature again decided not to pass that bill. Again, there is a history of deciding not to fund treatment. Mr. Ackerman suggested that the normal rules of statutory construction would indicate that it was the Legislature's intent that the

Commission expend funds for the items indicated; public awareness, training, outreach, surveys, the hot-line, and items of that nature.

Vice Chair Parker advised that he was comfortable with that interpretation. **Commissioner Niemi** responded that she was also comfortable not only with that interpretation, but with the suggestion that the Commission begin some discussions to try and work out an interagency agreement, and in light of the Commission's fiscal problems, that we look at introducing a fee because the Commission clearly does not have funds at this time to be able to do that. **Commissioner Ludwig** affirmed that he understood the problems, the importance of what was being suggested or recommended, and was fully aware of the Governor's veto message on the \$500,000 and, he supported exploring things such as the interagency agreement with DSHS.

Representative Wood also addressed the Governor's veto message and the \$500,000, noting that he thought it left things open as to who was supposed to deal with the \$500,000 and setting up a treatment program. He agreed it should be done through the Legislature, and noted they tried and thought they had it, until the last week of the session when things didn't work out. **Senator Prentice** stated that while it's true that the Legislature can make that decision, she recalled that the \$500,000 was targeted the year Mega Millions was implemented—it seemed obvious that if the state was going to promote its lottery more aggressively, then the state obviously had that obligation. She affirmed that over the years, everyone has struggled with what the proper thing to do would be—and the intent all along was to do something that included treatment. Senator Prentice believed the Problem Gambling Group had come up with a program that is very specific and organized, and points in a direction that is a little different than in the past. She believed there was a state obligation to pool funds. Senator Prentice affirmed this was a horrible year and she wished the Legislature would not have stripped the money out of any agency, but it happened, and she believed there was an obligation to continue to find some method of treatment.

Representative Woods emphasized the one thing that the Commission could help with next year was a better explanation of what a revolving fund is, how it works, and whether the Tribes put money in the bank separately from everybody else, or whether it was one pool. He reported that people were calling the revolving fund a surplus fund, which became an explosion point at the end of session.

Senator Prentice advised that it was shocking to see how many agencies the Legislature raided. She cautioned that she would like to say that it's not going to happen again; but, even more frustrating, is that with a billion dollar shortfall for next year, (which may even be more) she couldn't see the possibility of it not happening again. Senator Prentice emphasized that she disagreed with the premise because she believed it's dishonest and it's double taxation, and all of the things that every body in this room believes about it—and agencies funded by fees and licenses shouldn't be raided because that is quite a disservice—which she promised would be part of future legislative discussions.

Vice Chair Parker referred back to the budget, noting that at the last Commission meeting a discussion was facilitated in reference to the Director preparing a letter to the Attorney General questioning the legality not only of the use of funds collected from licensees under a statutory scheme that makes it clear that these aren't intended to be a public revenue funds, but also the question of an arrangement whereby the Director of OFM appears to have the final say over taking those funds or not taking those funds. The Commission's question is whether there is a conflict over a statutory scheme that is supposed to rest accountability in a Commission, set up independently of the executive agencies, and then at the same time putting that kind of discretionary decision within the director of OFM.

Coming back to the problem gambling issue and the funding aspect, **Vice Chair Parker** believed it would be appropriate to entertain a motion in response to staff's recommendation that the Commission explore an interagency agreement arrangement whereby the Commission could work with the appropriate agency to support those aspects of problem gambling; the hot-line service, perhaps some training in the administration of the hot-line, but stopping short of holding the Commission out to actually support a treatment program, and to bring back to the Commission a rule proposal that would authorize the collection of a fee independently, that would be then set aside for supporting that program in the future.

Commissioner Niemi made a motion seconded by **Commissioner Orr** to explore an interagency agreement and for Commission staff to work with the appropriate agency to work on a hot-line service, training and administration, to stop short of supporting a treatment program; and to bring forth a rule proposal authorizing the Commission to collect a fee independently set aside for that specifically. *Vote taken; the motion passed unanimously.*

Commissioner Orr commented that one of his frustrations is that because the Commission is not generally funded, "we aren't at the table" and he requested that when it appears the Commission is coming close to the chopping block, that we should get invited to the negotiating table. He emphasized his belief that the Commission was not invited on purpose, which was very frustrating. **Vice Chair Parker** affirmed there was also an issue of public education around that because most members of the Legislature were not aware of the material the Commission had submitted to OFM—the analysis showing these were not excess funds. He noted if the public isn't already educated around those issues, the agency could be vulnerable. Commissioner Parker believed the request for the Attorney General's opinion will provide an opportunity for public education around that issue.

Vice Chair Parker questioned if there are there other ways in which the Commission could present the budget so that there isn't a budget line called a discretionary fund balance. He affirmed the idea of receiving and setting aside funds for a capital reserve was good management; however, the reality of politics is that it looks like they are excess funds. **Director Day** affirmed, and noted the opportunity for public discussion and creating a greater understanding of the Commission's budget will be raised as we proceed with the discussion of funding problem gambling and the rule around raising funds for that purpose, and budget impacts and results.

Vice Chair Parker clarified his interpretation of the motion just adopted meant that the Commission was also holding off on any type of funding arrangement for the Council of Problem Gambling—that it is on hold while the Commission examines the idea of an interagency agreement and whether that is the Commission’s best route. **Director Day** affirmed his understanding that there is a targeted proposed amount, and the Commission will further explore that and whether an interagency agreement would in our opinion be effective. A final decision is slated for the July meeting.

Correspondence:

Director Day addressed letters the Commission issued in response to correspondence from various legislative representatives, the Council on Problem Gambling, and from Tribes relative to problem gambling. He noted that part of the theme the Commission has been trying to get across is that we recognize and have long supported problem gambling; but, the Commission is also in the position that it has to make determinations on where to reduce ongoing services as well as determine whether or not problem gambling should be funded, and to what level through the Commission. **Director Day** emphasized he has tried to make sure there was a general understanding that this is not a one-way street and this money was already budgeted funds.

Director Day reported that the agenda packet included an update on Initiative 892, in an effort to keep everyone aware that this item was moving forward for signatures. **Vice Chair Parker** called for public comments, and there were none.

2. House-Banked Card Room Reviews:

Castle Casino, Everett:

Dave Trujillo, Acting Administrator-Licensing Services, reported that Castle Casino Incorporated is doing business as Castle Casino and they are seeking approval to be licensed to conduct house-banked card games. Castle Casino is located in Everett. Castle Casino Incorporated was formed on September 5, 2003. President and Secretary, Hans Stock of Stanwood owns 100 percent of the issued stock. Neither Castle Casino Incorporated nor Mr. Stock own any business in which they have previously held a substantial interest or applied for or held a Washington State Gambling Commission License. Special Agents conducted criminal and personal history background checks on all substantial business holders. The Financial Investigations Unit initiated and completed a financial investigation on both the corporation and stockholder finances to determine possible hidden ownership, unreported substantial interest holders, undisclosed ownership involved in other activities and businesses, and the sources of all funding to start up the business and purchase/lease the equipment and/or building. No information was found that would preclude any substantial interest holder or the corporation from involvement in the operation of a house-banked card room.

On April 19, 2004, Special Agents completed an onsite preoperational review and evaluation. This examination consisted of evaluating the applicant’s internal controls including accounting, administration, the cashier’s cage, a soft count, security surveillance, gaming,

and records, and they were all determined to be adequate and in compliance with administrative rules.

The applicant proposes to operate, the following card games: Spanish 21, Fortune Pai Gow, Lucky Ladies Black Jack, Four Card Poker, Three Card Poker, and three Poker tables. Presently the applicant has requested and is pending approval for operating hours to be from 10 a.m. to 6:00 a.m. Based on the results of the licensing investigation and the pre-operational review evaluation, staff recommends Castle Casino Incorporated, doing business as Castle Casino, be licensed as a house-banked card room authorized to operate up to ten tables with a maximum betting limit of \$100. General Manager, Gary Lancer and Operations Manager, Carol Goss were present, introduced themselves, and responded to some operational questions.

Commissioner Orr made a motion seconded by Commissioner Ludwig to license Castle Casino, Inc., d/b/a/ Castle Casino as a house-banked card room authorized to operate up to ten tables with a maximum bet limit of \$100. Vote taken; the motion passed with four aye votes.

House-Banked Card Room Status Report:

Mr. Trujillo reported that with the approvals just provided, there are a total of 83 licensed house-banked card rooms in our state, four are licensed but not operating, and a total of nine house-banked applications are pending investigation or are undergoing various levels of investigation. **Vice Chair Parker** called for a recess at 2:35 p.m., and recalled the meeting at 2:50 p.m.

3. New Licenses, Changes, and Tribal Certifications:

Commissioner Ludwig made a motion seconded by Commissioner Niemi to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 27 on the approval list. Vote taken; the motion passed with four aye votes.

4. Defaults:

Stacey Segerman, Card Room Employee Revocation – 11th Frame, Bremerton:

Amy Blume, Administrator-Communications and Legal Division, reported that staff is requesting a default order be entered revoking Stacey Segerman's card room employee license, based on Ms. Segerman taking \$100 in cash from her employer when she was working at the 11th Frame Restaurant and Lounge in Bremerton. She admitted to this activity, and it was also captured on surveillance tapes. By failing to respond to the charges Ms. Segerman has waived her right to a hearing.

Commissioner Niemi made a motion seconded by Commissioner Ludwig that based on the authority of RCW Ms. Segerman's license to conduct gambling be revoked. Vote taken; the motion passed with four aye votes.

Exchange Club of Tacoma, Negative Cash Flow Summary Suspension:

Amy Blume, Administrator-Communications and Legal Division, advised that staff was requesting a default order be entered to revoke the Bingo license of the Exchange Club in Tacoma. This is based on the licensee having a negative cash flow for the third and fourth quarters in amounts that totaled approximately \$8,000. Charges were brought against the organization, they were personally served, and the licensee advised the Commission that they had planned to close at the end of the month. They did not request a hearing and waived their rights to a hearing. Staff is requesting that the Bingo license be revoked.

Commissioner Niemi made a motion seconded by Commissioner Orr that based on the violations, the Exchange Club's license to conduct gambling activities be revoked. Vote taken; the motion passed with four aye votes.

5. Petitions for Review:

Benjamin Medina, Card Room Employee Revocation – Chips Casino:

Commissioner Niemi acting as Hearing Officer advised this was a petition for review of the Administrative Law Judge's decision in the matter of Benjamin Medina. **Sara Olson**, Assistant Attorney General reported that she did not see Mr. Medina and was not aware if he had a representative appearing for him. Commissioner Niemi verified that he had notice and Ms. Olson affirmed. Seeing as Mr. Medina had not appeared, Ms. Olson recommended the Commission uphold the initial order made by the Administrative Law Judge for revocation of Mr. Medina's gambling license.

Commissioner Parker made a motion seconded by Commissioner Orr to adopt Ms. Olson's recommendation.

Director Day noted for the record that the Medina review was scheduled for 3:00 p.m., and the card room employee revocation at 3:30 p.m., and that it was possible that the petitioners may not appear before the designated times. **Commissioner Niemi** recommended voting on the motion with the understanding that if Mr. Medina appeared prior to 3:30 p.m., the Commission would vacate the default order, if indeed it passed, and allow the petitioner to say something, and the Commission could make another decision if necessary. Vote taken; the motion passed with four aye votes.

At 3:00 p.m. **Mr. Medina** appeared before the Commission and **Commissioner Niemi** stated that in effect, by listening to Mr. Medina, the Commission revoked their first affirmation in this matter. **Mr. Medina** and **Assistant Attorney General Sara Olson** presented their testimony. A transcript of the hearing is on file. The Commission deferred action until the conclusion of the Quintos review.

Leo Quintos, Card Room Employee Revocation – New Grove Casino:

Assistant Attorney General Olson advised that she was contacted this morning by an attorney representing Mr. Quintos, and since neither the petitioner nor his attorney were present, she suggested they may also be relying on the published 3:30 time line.

At 3:30 p.m., **Scott Staab**, Attorney for the petitioner and Assistant Attorney General **Sara Olson** presented their testimony. A transcript of the hearing is on file. At 3:50 p.m., Commissioner Niemi called for an executive session to deliberate the Medina and Quintos matters. The Commission reconvened at 3:55 p.m.

Commissioner Ludwig made a motion seconded by Commissioner Orr to affirm the initial order by the Administrative Law Judge regarding the Quintos matter. Vote taken, the motion passed unanimously.

Commissioner Orr advised Mr. Quintos that the Commission was not trying to be malicious, and while he understood Mr. Quintos' predicament, he also explained that the Commission had an obligation to make sure that the industry is run in an appropriate manner. He noted there were a significant amount of things that happened, and that the petitioner was notified adequately, and yet did not tidy up his record, which was why the Commission was making this judgment.

Commissioner Niemi called for a motion regarding the Medina petition. Commissioner Parker made a motion seconded by Commissioner Orr to affirm the initial order by the Administrative Law Judge regarding the Medina matter. Commissioner Parker explained there was no basis to overturn the Administrative Law Judge. Commissioner Orr affirmed that there was too much of a record, and that the petitioner needed to pay attention to the rules. Vote taken; the motion passed unanimously.

Mr. Ackerman, Assistant Attorney General, announced for the benefit of council that he would prepare the necessary orders, to be effective immediately, and forward them to both parties.

Chair Parker proceeded to (Friday's) agenda item number 11 due to his inability to attend Friday's meeting, and the Commission's desire to have the maximum amount of commissioners present for the decision making process.

11. Petition for Rule Change: DigiDeal Corporation-Electronic Facsimiles of Cards:

WAC 230-40-070:

Ms. Blume reported this is the fourth time the petition has appeared on the agenda, and it is slated for final action. She noted that at the last meeting there were some questions about paying for the regulation of this activity and whether additional staff would be needed. Ms. Blume advised that additional staff was not anticipated. She noted that each DigiDeal system would be required to have an identification stamp, at \$360 each, which is the mechanism to pay for associated regulation. Ms. Blume explained the organization originally requested this rule a few years ago.

In the current petition, the petitioner is requesting that electronic card facsimiles be allowed for all authorized card games. This would include a game like poker which is not a house-

banked game. This petition simply deletes the word house-banked. After the last meeting, the staff felt there were regulatory concerns and believed the activity should be limited to house-banked card rooms. Staff met with the petitioner and developed agreeable language.

Ms. Blume also noted that DigiDeal has worked on a game called Trips 2 and Trips 3; however, Special Agent Keith Wittmers has advised DigiDeal that the Commission could not approve either of these games. One reason is because the rule before the Commission today must be changed first. Secondly, the game as envisioned would actually allow greater than the maximum wagering limits currently allowed. She also explained if this rule was passed, there isn't a game that would be ready for play in the state. Another argument is that this might be considered by some to be an expansion of gambling. She noted if the Commissioners were inclined to pass the rule, staff would recommend passing the version on tan paper, which has been agreed to by the petitioner.

Bob Tull, Attorney for DigiDeal, explained the market for player banked games of traditional Poker has expanded so much in the past year or so that DigiDeal would like to be able to offer a variety of facsimile type of games in this state and throughout the country. The electronics simply replicate cards. The game requires a dealer, someone has to operate it, and it provides great security in some jurisdictions, which is the attraction of this game. He noted that at the last meeting the questions focused on how the technology works. Another thing discussed, with DigiDeal's concurrence with staff, was the recommendation that these machines/devices, and these facsimiles be used in a house-banked card room setting so staff would not have to worry that there was some new issue being injected. He believed staff was comfortable with their operation in the house-banked facility, noting they have been operating successfully both in card rooms and in tribal facilities throughout the state. DigiDeal would now like to be allowed to play player-banked games, such as Poker. He acknowledged staff's concern regarding the structure of the proposed games, and noted the licensee would always have to go through a game approval process. In this case, the Commission identified some issues that DigiDeal is just about ready to respond to formally. DigiDeal has redesigned the games so they will fit within staff requirements, and DigiDeal will make a submission for review. Mr. Tull emphasized the key point is that the technology itself is not at issue and the setting is not at issue. The game, whether it's Poker in the form of Trips or whether it's Texas Hold-Em, will have to be conducted in a house-banked card room in this state, with all the surveillance that would normally take place, to provide an exceptionally secure regulatory environment—one the licensee hopes will also be of interest to tribal and non tribal operators. Mr. Tull emphasized DigiDeal would like to employ this technology in order to produce profits for the entities and he advised Larry Martin was present and prepared to answer any technical questions.

Vice Chair Parker called for questions or public comments, there were none.

Commissioner Orr made a motion seconded by Commissioner Niemi to adopt the rule as amended by staff. *Vote taken; the motion passed unanimously.*

6. Motion to Vacate Default Order:

Fraternal Order of Eagles #00565, Tenino

Sara Olson, Assistant Attorney General, representing the state explained this was a motion to vacate the default order for the Fraternal Order of the Eagles #00564. **Jerry Ackerman**, Assistant Attorney General clarified that the issue before the Commission is whether or not to vacate the default order the Commission previously entered. If so, then the matter would go to an Administrative Law Judge to begin the process, which has never commenced up until now. Mr. Ackerman explained that as he understood the issue, the Eagles had a punch-board/pull-tab license. If the Commission decided not to vacate the default, the previously entered order would stand, and the petitioner would have the option to apply for a new license, which the Commission would then weigh based on the merits at that point. **Alan Davis**, President for the organization appeared on behalf of the Eagles. A transcript of the hearing is available.

Commissioner Orr made a motion seconded by Commissioner Parker to vacate the default order. Commissioner Orr commented this organization had an obligation to make sure their financial reporting was processed on time. Commissioner Parker concurred and noted he supported the motion because he didn't think the petitioner was deprived of any substantial right because the organization has the option of asking to reinstate their license. *Vote taken; the motion passed unanimously.*

7. Other Business/General Discussion/Comments from the Public:

Election of 2004-2005 Commission Chair and Vice Chair:

Vice Chair Parker opened the floor for nominations to select officers among the Commissioners for the coming year. **Commissioner Orr** nominated Commissioner Parker for the position as Vice Chair. Commissioner Orr believed Commissioner Parker could serve as Vice Chair handily. Commissioner Ludwig seconded the nomination, and moved the nominations for the Vice Chair position be closed, which was seconded by Commissioner Orr. *Vote taken; the motion passed unanimously.* (Commissioner Parker abstained)

Commissioner Parker thanked his fellow commissioners for their nominations, passed the gavel to Commissioner Orr, and made a motion to nominate Commissioner Niemi to serve as Chair for the 2004-2005 term. Commissioner Ludwig seconded the nomination and moved that nominations for the position of Chair be closed, which was seconded by Commissioner Parker. *Vote taken; the motion passed unanimously.* (Commissioner Niemi abstained)
Director Day extended the staff's congratulations to Vice Chair Parker and Chair Niemi.

Vice Chair Parker called for comments and there were none. He then announced the Commission would conduct an Executive Session for the purpose of discussing potential litigation, and recessed the meeting at 4:00 p.m. He announced no public action would be taken. At 4:48 p.m. Chair Parker recalled the public meeting and announced that Friday's meeting would commence at 9:30 a.m.; with no further business Vice Chair Parker adjourned the meeting at 4:50 p.m.

**COMMISSION MEETING
FRIDAY, MAY 14, 2004
DRAFT MINUTES**

Chair Niemi called the meeting to order at 9:30 a.m., at the Red Lion Hotel located in Spokane. The following members and staff were present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Seattle**
 CURTIS LUDWIG, Kennewick
 COMMISSIONER ORR, Spokane
 SENATOR MARGARITA PRENTICE, Seattle
 REPRESENTATIVE ALEX WOOD, Spokane

STAFF PRESENT: **RICK DAY, Director**
 NEAL NUNAMAKER, Deputy Director
 AMY BLUME, Administrator, Communications/Legal Dept.
 DAVE TRUJILLO, Acting Administrator, Licensing Services
 CALLY CASS-HEALY, Assistant Director, Field Operations
 JERRY ACKERMAN, Assistant Attorney General
 SHIRLEY CORBETT, Executive Assistant

Special Agent Commissioning

Director Day and **Chair Niemi** performed the oath of office/commissioning for Special Agent Bryce Mack, assigned to the Eastern Region in Spokane. The appropriate affidavit was signed.

9. **Approval of Minutes:** Regular Meeting of April 8-9, 2004, Olympia meeting.

Commissioner Orr made a motion seconded by Commissioner Ludwig to approve the meeting minutes of the regular meeting of February 8 and 9, 2004, as presented. Vote taken; the motion passed with three four votes.

10. Staff Presentations:

Multiple House-Banked Card Room Ownership Report:

Director Day noted the Commission had asked staff to keep the Commission updated to see if there were any dramatic changes in the trends surrounding house-banked card room ownership—and whether the Commission would need to consider or make policy recommendations if that situation warranted such consideration. **Dave Trujillo**, Acting Administrator for Licensing Services Division provided an updated overview of the concentration of ownership of house-banked public card rooms in the state of Washington. He noted that in years past, this report was called the multiple ownership of house-banked public card rooms; however, multiple ownership implied two or more, when the Commission's interest in the past has been directed at the concentration of three or more ownerships.

Mr. Trujillo reported that in February of 2002, there were four instances of multiple ownership involving three or more house-banked public card rooms. In February of 2003, there were four. As of May of 2004, there were five. Some of the players are different, and some of the business structures are different, but, the overall change is one. The Commission's historical position has been not to limit ownership. The foundation for this position is based on RCW 9.46 which states that the Commission shall not deny a license to an otherwise qualified applicant in order to limit the number of licenses issued.

Mr. Trujillo explained that RCW 9.46 and WAC 230-02-140 defines an applicant as being an individual, a partnership, a corporation or other association, natural or legal, which includes limited liability companies and other legal entities. Ownership can range from 100 percent, defined as full ownership, and partial ownership as anything from 1 to 99 percent.

Five schematics were displayed generally representing the existing structures for: Washington Gaming Inc., Michel's Development, Great American Gaming Corporation/Great Canadian Gaming Corporation, Crazy Moose Casino, and Royal Casino, Inc. **Mr. Trujillo** affirmed the structures that are being submitted today are much more complex than they were in years past, and, unfortunately every new business and/or applicant is structured somewhat differently than in the past. He concluded his presentation by noting that as long as an applicant is found suitable under RCW 9.46 and WAC 230-02-104, staff would continue to recommend no change to the existing rules or laws to limit the number of house-banked public card rooms owned by an individual or entity.

Chair Niemi verified the Commission cannot limit house-banked card rooms, and if there needed to be a limit in relation to multiple ownerships, that would have to come from the Legislature. **Mr. Trujillo** affirmed.

11. Petition for Rule Change: DigiDeal Corporation – Electronic Facsimiles of Cards:

WAC 230-40-070: Petition heard on Thursday, May 13, 2004.

12. Promotions:

WAC 230-12-045:

Ms. Blume reported this rule deals with promotions that licensees offer in conjunction with gambling activities. They are separate from promotional contests of chance, which are open for any business, commonly found in grocery stores and in other types of businesses. She noted this particular rule had been difficult for staff and licensees to interpret. Originally, it was part of the promotions package passed in October 2003. The changes are intended to make the rule clearer, but they are not meant to change what is allowed and they are not substantive changes. Staff recommended final action. **Chair Niemi** called for questions/comments and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to adopt the amendment as presented by staff. *Vote taken; the motion passed with three votes.*

13. Petition for Rule Change: Bonanza Press-Carry Over Jackpot for Event Pull-Tabs:

WAC 230-30-033:

Ms. Blume explained this is a petition for rule change allowing for carryover jackpots with the event pull-tabs. The petitioner, Roger Winland, is a sales representative for Bonanza Press, a manufacturer. This rule would only affect the charitable licensees and allows them to have carryover jackpots with event pull tabs. Event pull tabs were first allowed in March of 2001. They were part of the package the Commissioners considered when dealing with the cash flow rules, and when looking at other opportunities for charitable and non-profit licensees. Staff believes the reason these two concepts weren't allowed back in 2001, was simply that event pull-tabs were new at that time. They are small games played in conjunction with Bingo games. It is played like a regular pull-tab game, except that some of the tickets would have Bingo numbers on them, allowing for a way for a player to win an additional prize. **Ms. Blume** advised that staff didn't have any regulatory concerns about allowing this activity and noted the rule was up for discussion and final action next month. **Chair Niemi** called for public comments.

Cindy Arnold, Executive Director of Silver Buckle Youth Equestrian Center in Vancouver, commented that because there would not be a Commission Meeting in June, the organization would ask that the rule become effective 31 days after filing if passed, so that it could be available July 1, 2004, instead of January 1, 2005.

Representative Wood clarified these would be pull-tabs that now have Bingo numbers on them, and he asked if this would break down a barrier between the two games. He noted there were pull-tab people and there were bingo people, and now the two activities seemed to be combining. He wondered if the bingo parlors might have some problems with this as a point of discussion. **Ms. Blume** responded that this game has actually been allowed for a couple of years. The only difference is adding a carry-over. She affirmed that staff wouldn't have concerns with this rule becoming effective 31 days after filing, if it was passed at the next meeting.

14. Logo Cards:

WAC 230-40-070:

Ms. Blume reported this rule deals with Logo Cards, and is being proposed at the request of the licensees. Logo cards are unique to the particular card room and they provide a security feature so that other cards can't be introduced from outside the facility. The number of manufacturers in the state who make the logo cards has decreased, making it harder for the cards to be purchased. Subsequently, several Class E licensees and a few Class F licensees requested the ability to use cards without logos. The rule has been reworded; it will continue to require that house-banked card rooms use the logo cards. The new language stipulates that all games that require player supported jackpots must use logo cards. Because PSJ's can end up having pots that have significant amounts of money in them (up to \$100,000), staff thought it was important to retain the security feature of the logo cards. This rule change would assist approximately six licensees. Staff recommended further discussion.

Chair Niemi called for public comments.

George Teeney, from The New Phoenix and The Last Frontier in LaCenter, explained there was no problem getting logo cards for house-banked games—they can usually be purchased at a majority of licensed distributors in the state. However, the plastic logo cards used in Poker are a downsized deck and the key manufacturer/distributor, a company called KEM, no longer makes them, and it's almost impossible to get logo Poker cards from licensed vendors in the state. Suggestions have been made to circumvent the logo requirement for these PSJ or Poker games by creating some other rule that would provide the same type of game protection. He emphasized that he didn't object to the existing rule, as long as the logo cards were available in the state. Mr. Teeney reiterated there were no licensed distributors in the state that offered logo Poker cards (only Black Jack was available), and he hoped to generate discussion about other ways to create the safety features that logo cards actually offer to the game. **Director Day** clarified that Mr. Teeney supported logo cards for Poker games that have a progressive jackpot for player sported jackpots, but, would like continued discussion on whether or not that requirement should be somehow otherwise addressed or should be deleted from this rule proposal, and to identify whether staff felt that protection should be in the rule for the jackpots. Mr. Teeney affirmed. Director Day advised that staff will continue to work with the licensees and be prepared to discuss the rule further next month.

15. Petition for Rule Change: ZDI Gaming, Inc. – Pull-Tab Inventory Controls:

WAC 230-40-072: The ZDI petition was withdrawn by the petitioner.

16. Digital Surveillance in Card Rooms:

WAC 230-40-625 and WAC 230-40-825:

Cally Cass-Healy reported WAC 230-40-625 and WAC 230-40-825 deal with surveillance in card rooms; both rules have identical changes, and are up for discussion and possible filing. Staff has been working with digital surveillance for about two years, and the changes are based on some of the things staff has learned since. Subsection 3(b)2 continues to require

the recording system to be locked, but not necessarily by the manufacturer, so that only authorized persons have access to the system when they need that at the operating level. Subsection 3(b) 3 allows for the use of motion activated recordings—this is a technology issue that staff feels is acceptable and doesn't create regulatory problems. Subsection 3(b)6 allows for different resolution requirements for recording images as long as the playback requirements are met. Subsection 3(b)8 is housekeeping in nature, and Subsection 4 allows for quad devices, but no longer allows for multiplexing devices on the drop box trail. Staff recommends WAC 230-40-625 and WAC 230-40-825 be filed for further discussion.

Chair Niemi called for questions and/or comments, there were none.

Commissioner Ludwig made a motion seconded by **Commissioner Orr** to file WAC 230-40-625 and WAC 230-40-825 as recommended by staff. *Vote taken; the motion passed with three aye votes.*

17. Merchandise Prizes for Pull-Tab Games – Removing Pricing and Credit Restrictions: WAC 230-12-330, and WAC 230-12-340

Ms. Cass-Healy advised that WAC 230-12-330 relates to pricing restrictions on merchandise prizes for pull-tabs only. The proposed change removes punch-board pull-tab merchandise prizes from the pricing restrictions (only for the merchandise prizes not for the pull-tab games). This was introduced initially as a petition. Some distributors felt they were at an unfair advantage and wanted the Commission to license other people who sold merchandised games. Staff questioned whether there was authority to do that, looked at the issue from a regulatory perspective, and came back with the current rule. **Ms. Cass-Healy** affirmed there was some opposition to the proposal, mainly from some of the distributors in the industry. Staff recommends filing the rule for further discussion. **Chair Niemi** called for questions or comments from the public and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to file WAC 230-12-330 as recommended by staff. *Vote taken; the motion passed unanimously.*

Ms. Cass-Healy explained that WAC 230-12-340 removes the credit restrictions from merchandise prizes only, credit would still apply to the pull-tab games themselves. Statements against this rule are listed under the proposed statements against the proposed rule change. Staff recommends filing the rule for further discussion. **Chair Niemi** called for questions or comments from the public, and there were none.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** WAC 230-12-340 as recommended by staff. *Vote taken; the motion passed with three aye votes.*

18. Other Business/General Discussion/Comments from the Public:

Chair Niemi reintroduced the topic of draft correspondence to the Attorney General requesting an opinion regarding fund transfers as discussed on Thursday. She affirmed that

changes had been incorporated by staff as directed, and a revised draft submitted for Commission consideration.

Commissioner Orr made a motion seconded by **Commissioner Ludwig** to forward the communications requesting an Attorney General's opinion on the Commission's current budget situation as submitted. *Vote taken; the motion passed unanimously.*

Chair Niemi called for any other public comments.

Steve Michels, owner of Michel's Development, and Second Vice President of the RGA, congratulated Commissioner Niemi and Commissioner Parker on their election to the Chair and Vice Chair positions. He affirmed the RGA looked forward to their leadership.

Commissioner Ludwig commented that based on the last two days and the minimum number of comments from the public, it suggests that the Commission continues to be unique among state agencies as far as rule making was concerned. The fact that the Commission doesn't have too many complaints or questions about the rules adopted and filed suggested to Commissioner Ludwig that the Commission is apparently doing a satisfactory job so far as the industry was concerned.

With no further business, **Chair Niemi** adjourned the meeting at 10:15 a.m. She advised the next meeting was scheduled for July 8-9, 2004, at Maple Hall located in LaConner.

Minutes submitted by:

Shirley Corbett
Executive Assistant