

**COMMISSION MEETING  
THURSDAY, MARCH 10, 2005  
MINUTES**

**Chair Niemi** called the meeting to order at 1:30 p.m. at the DoubleTree Guest Suites in Seattle, and introduced the members and staff present.

**MEMBERS PRESENT:**                   **COMMISSIONER JANICE NIEMI, Chair;**  
   **COMMISSIONER ALAN PARKER, Vice Chair;**  
   **COMMISSIONER CURTIS LUDWIG, Kennewick;**  
   **COMMISSIONER GEORGE ORR, Spokane;**  
   **COMMISSIONER JOHN ELLIS, Seattle;**

**STAFF PRESENT:**                   **RICK DAY, Director;**  
   **NEAL NUNAMAHER, Deputy Director;**  
   **CALLY CASS, Assistant Director-Field Operations;**  
   **AMY HUNTER, Administrator-Legal Division;**  
   **DAVE TRUJILLO, Acting Administrator-Licensing;**  
   **JERRY ACKERMAN, Assistant Attorney General;**  
   **SHIRLEY CORBETT, Executive Assistant**

**Staff Accomplishments:**

**Director Day** and **Chair Niemi** presented state and agency service awards to the following agency staff: Dallas Burnett (Gambling Lab) and Darleen McColley (Forms & Records Unit/Public Disclosure) – 15 years of service, Cameron Baker (Research Analyst II) – 20 years of service, and Leonard Junk (Law Enforcement Training) – 35 years of service.

**1. Review of Agenda and Director’s Report:**

**Director Day** identified several legislative inserts that were added to the agenda packet after printing. He reviewed the agenda for Thursday and Friday; and he recommended adding a House-Banked Card Room Review for Marilyn’s on Monroe at Spokane and a House-Banked Card Room status report on Thursday. Regarding Friday’s agenda, Director Day

noted that staff received correspondence regarding the Petition for Review advising that the Petitioner would not be present.

Legislative Issues:

Substitute Bill SB 5730 — Small Business Regulation:

**Director Day** reported this bill related to small business impacts and required additional reporting. The Commission submitted a fiscal note attaching a half FTE position. Director Day advised that staff would not recommend a formal position; however staff would attend the hearing, and if necessary explain the financial or fiscal impact. **Chair Niemi** concurred.

SB 6057 – Social Card Room Report:

**Director Day** explained Substitute Senate Bill 6057 was introduced to require that card rooms with gross receipts file quarterly reports, similar to the reports the Commission required before reducing the requirements due to staff cut-backs. The legislation was initiated at the request of Peter Callaghan, a reporter with the Tacoma News Tribune. Director Day believed that part of the issue behind this bill was a misconception that the Commission was requiring less information. He clarified the Commission had passed a rule that increased the financial reporting of house-banked card rooms—requiring all card rooms to supply financial statements prepared by outside CPA’s. Smaller operations were required to submit compiled statements; and medium sized operations were required to have reviewed statements. Operations with \$3 million and above were required to submit audited statements to ensure accurate reporting. Director Day explained the quarterly reports reflect an estimate of expenses that were allocated against the gambling expenses, which didn’t provide an accurate report for regulatory reasons and meanwhile required a lot of paperwork on behalf of the licensees and the Commission. In the budget reduction process, staff determined the number of “lines” that were required could be reduced, and, by adding the financial reports the Commission could come away with information that was much more valuable to the Commission’s regulatory purpose, and enhance the Commission’s ability to supply the Legislature with accurate information.

**Director Day** advised that staff recommended the Commission remain neutral on the bill; and testify with concerns relating to identifying the fiscal impact. He emphasized the Commission reduced the staff available for this purpose, and there would be a fiscal impact if the bill passes. He suggested staff clarify the information gathered to help the Legislature understand that the agency does obtain significant financial information regarding card rooms. He noted that if the Legislature deems this to be a priority, it would amount to restoring part of a system that staff is familiar with operating. He affirmed the fiscal note identifies half an FTE would be needed to accommodate the statute to provide for the social card room quarterly reports.

**Chair Niemi** addressed the audience and affirmed that the Commission would remain neutral on the specified bills, and she clarified that staff testifying would explain how the bills affect the Commission. However, if in fact some bills pass, she noted it may eventually mean an increase in fees to sustain the activities mandated. **Commissioner Orr** emphasized that some of the agency reductions were a direct result of the budget transfers, and that Legislators needed to be cognizant of such impacts as they mandate new pieces of

legislation. **Director Day** affirmed that in his testimony to the Senate, he described it as putting the Commission “between a rock and a hard place”—on one hand working capital is transferred out, and on the other hand additional work is required. He believed the discussion garnered some support within the Committee and some recognition that they needed to take a more serious look at what is being transferred from the Commission’s working capital balance.

SB 5994 – Freezing the Number of House-Banked Card Rooms:

**Director Day** reported that Substitute Senate Bill 5994 would freeze house-banked licenses at the current level—those that are in business, the inactive licenses, and pending applications—estimated at approximately 105 licenses. Director Day commented that it would settle the zoning issue. Director Day recommended that the Commission remain neutral on this bill and make the Legislature aware that as a result of this legislation (capping the licenses) the properties may gain dramatically in value. He believed that as the Commission takes enforcement actions or actions to revoke a license, that may result in the Commission seeing additional cases because they are likely to be pursued through the various levels of appeal.

SB 5878 – Banning Gambling on the Internet:

**Director Day** explained that Substitute Senate Bill 5878 bans Internet gambling, and the bill is still alive in Rules Committee. There are two significant elements to the bill—it clarifies that soliciting Internet gambling is a prohibited activity. The Commission has enforced the law in that matter and has conducted over 12 investigations—ranging from on-line casino issues to newspapers and radios that advertise “you-bet” web sites. This change reinforces and strengthens the existing law. Secondly, the bill was designed to provide clarification for the Lottery regarding which activities they may or may not undertake relative to Internet style gaming and electronic gambling over the electronic medium. Director Day believed that a striking amendment has been developed to clear up any technical issues. Director Day recommended that the Commission allow staff to testify in support of the legislation. He noted that although the Lottery related issues were not the Commission’s direct jurisdiction, the bill would help provide clarification in relation to negotiating tribal compacts. The bill would help speak to the Legislature about the limits of that type of development.

**Commissioner Parker** made a motion seconded by **Commissioner Orr** that the Gambling Commission be authorized to testify in support of the bill as recommended. *Vote taken; the motion passed with five aye votes.*

SB 5879 – Restricting Contributions for Gambling Initiatives:

**Director Day** reported that Senate Bill 5879 missed the transmittal deadline and therefore was no longer alive.

HB 2175 – Preventing Charities from Operating Commercial Gambling Activities:

**Director Day** commented that House Bill 2175 was a result of the notice that the Commission sent to the Legislature on February 17, notifying the Legislature about the issue of separation between commercial and non-profit or charitable non-profit and commercial

establishments. The bill restricts charitable non-profits from management and ownership in a commercial operation (specifically a house-banked card room). Staff recommended the Commission support this bill because it provided clarification concerning the separation between charitable non-profit and commercial activities, and answers the question that the Commission's original rule proposed, and helps the decision making/licensing process.

**Commission Parker** made a motion seconded by **Commissioner Orr** to support **House Bill 2175**. **Jerry Ackerman**, Assistant Attorney General, commented that these are essentially policy choices and he affirmed the policy choices the Legislature has made can certainly be justified. *Vote taken; the motion passed with five aye votes.*

**HB 1944 – Allowing State Agencies to Conduct Raffles:**

**Director Day** explained that House Bill 1944 would allow state agencies to conduct a members' only type of raffle. This issue was introduced because a state agency wanted to support a combined fund type of activity. At this point, the Commission doesn't anticipate this particular authorization would create a regulatory issue and staff therefore recommended the Commission remain neutral on the bill. **Chair Niemi** affirmed.

**HB 1648 – Executive Session:**

**Director Day** advised that House Bill 1648 was provided for information and **Chair Niemi** affirmed the Commission would not take a position on the bill.

**HB 1445 – Small Businesses Economic Impact Statements:**

**Director Day** explained that House Bill 1445 was very similar to Senate Bill 5730, relating to rule impacts to small businesses. The bill did not make the transmittal deadline.

**HB 1031 / SB 5037 - Problem Gambling:**

**Director Day** noted that House Bill 1031 and Substitute Senate Bill 5037 and their associated fiscal notes were inserted in the agenda packet. He explained the fiscal impact of the original bill would have been to void the Commission's problem gambling fee. However, the bill intended to impose a B & O tax that would raise money to pay for problem gambling. He recalled the Commission's concern about the possibility of an unfunded liability (Section 9) because the bill had placed treatment as a Commission responsibility, but restricted the Commission from raising fees to cover the additional cost. An amendment was brought forth to address the Commission's concerns. Director Day referred to page 7 of the Substitute Senate Bill, Section 9, paragraph 2 noting the word "treatment" was taken out. He affirmed that as long as this tax is in place, the Commission would be barred from imposing a fee, and the current fee for that purpose would essentially be repealed. Additional language would be included in the last sentence to assist in providing for treatment of problem gambling, and it also allows the Commission to impose fees if the Commission chooses to weigh in with more money. Essentially, as long as the Commission doesn't have the ability to raise money, there isn't an expanded responsibility. When the Legislature expands the responsibility, it is optional in the first place, and secondly, the Commission would have the ability to raise fees to pay for the services. Staff recommends that the Commission continue to support the bills, particularly the amendment, and recognize and acknowledge the Legislature's action to address the Commission's concern. He explained the bill sets up the program in DSHS, with

DSHS as the responsible party for administering the program. **Chair Niemi** affirmed that House Bill 1031 and Senate Bill 5037 have been amended and the Commission would support the amended versions of both bills.

**Commissioner Parker** made a motion seconded by **Commissioner Orr** that the Commission authorize Director Day to support the legislation as recommended. *Vote taken; the motion passed with five votes.*

Lastly, **Director Day** reported that the non-appropriation bill (House Bill 1045) has had no further action. Neither of the budget bills have had any action and the Governor's budget recommendations are expected to be released on March 22. Senate Bill 5591 on zoning did not meet transmittal deadlines and therefore should not move forward this session.

Correspondence:

**Director Day** explained the Commission received a letter from Representative Curtis requesting that the Commission facilitate an analysis on the impacts of a smoking ban. After Representative Curtis sent the letter, House Bill 2038 was introduced and the Commission subsequently received a request for a fiscal note on the bill.

**Director Day** reported the limited statistics the Commission had on smoking ban issues resulted from a three month period of the Pierce County smoking ban in 2004. The results were inconsistent—there was a drop in revenue; however, there were licensees in the same area that increased in revenue. A review of the information available nationally is on both sides of the issue. Director Day emphasized the limited statistical information garnered in less than a three month period was not sufficient to make a factual statement on the overall impact. The fiscal note concludes that absent major available information, it is difficult to draw a reasonable conclusion concerning a statewide ban. Accordingly, the impact of a smoking ban on agency revenues can't be determined. Therefore, staff determined that the fiscal impact on the agency could not be determined based on the small limited information available. Staff proposed that the Commission remain neutral on the smoking bill and use the content of the fiscal note as the foundation for the Commission's response to Representative Curtis. The commissioners concurred.

**Director Day** affirmed the correspondence the Commission previously requested be sent to Legislators opposing the transfers from the Gambling Commission's working capital balance, and the attempt to change the Commission's account to an appropriated account along with information describing the overall growth of gambling activity in the state of Washington were sent. Correspondence was forwarded to Legislators regarding a recent court case, and letters in response to the current version of the zoning bill were also sent as requested.

**Director Day** addressed a letter from the Recreational Gaming Association (RGA) listing four issues. First, in relation to Senate Bill 5287 - the bill for the imposition of a 10 percent tax, Director Day reiterated the Commission at the February meeting decided to remain neutral on the tax bill and recommended that be the recorded answer to the RGA. He affirmed the Commission asked staff to appear at the committee hearings and to be available

to answer questions based on factual information, and to explain the potential impacts of the tax on businesses and Commission funding. The bill has not moved from the Senate.

He noted the item number relating to the smoking ban was just discussed and the Commission established they would remain neutral on the smoking ban legislation, and determined that it really was not possible to do an analysis based on the agency's limited information and because the information was inconsistent.

Item three addressed Problem Gambling Treatment and Awareness and questioned whether the Commission should put the issue of problem gambling on the negotiations table for Tribal Compacts. The RGA testified publicly on this matter. Senator Honeyford requested that the Commission do that, and since that time, staff has put the question of problem gambling treatment funding on the table.

The last item addressed the Legislature and future raids on the Commission's Revolving Account. Director Day responded that the Commission was hopeful that the RGA and other licensed entities that pay fees would also make it clear to the Legislature that these funds are paid for a specific purpose and should be used solely for that purpose. **Director Day** noted the Working Capital Balance was something the Commission has relied on to fund its operations—and each time there has been a withdrawal of funds, there has been a subsequent reduction in the Commission's allotted budget and FTE level. He emphasized that the concept that the funds were "excess" is not accurate, and, hopefully that message could be communicated to the Legislature. He proposed that staff would provide a written response to the RGA under the Chair's signature. **Chair Niemi** concurred.

Charitable Nonprofit Study Follow-up – Industry Standards:

**Director Day** recalled that the Commission is in the process of reviewing and considering each of the nine recommendations prioritized by the Commission. The current topic is a review of the recommendation from the consultant regarding the application of nationwide charitable nonprofit industry standards.

**Director Day** introduced Agent-In-Charge **Terry Westhoff**, who provided a PowerPoint presentation. Mr. Westhoff reported that Consultant Sally Perkins suggested the Commission use recognized charitable nonprofit standards as benchmarks for the Commission's administrative requirements. He noted that when talking about charitable nonprofit standards, two prominent charitable watchdog groups exist: the Better Business Bureau Wise Giving Alliance (BBB), whose standards Ms. Perkins referred to in her study, and the American Institute of Philanthropy (AIP). Mr. Westhoff emphasized that in both cases the standards are strictly voluntary, and that organizations voluntarily submit their information to the watchdog groups for evaluation against their standards. The Better Business Bureau specifically states the purpose of their standards is to encourage fair and honest solicitation practices, ethical conduct for charitable organizations and also to advance the support of the organization's causes. The standards mainly apply to charitable organizations. The Better Business Bureau standards apply only to charities, where the AIP stated that theirs are more inclusive and adds most 501 C-3 organizations, which would include charitable, athletic, education, and C-4's, which are social welfare organizations. The watchdog group

representatives emphasize that these standards do not determine if the organization is a bona fide legitimate nonprofit organization. Mr. Westhoff noted that although the standards do apply to local or international charitable organizations, the organizations that submit are national or international in scope. These organizations primarily solicit or are solicited by large donors.

**Mr. Westhoff** facilitated a comparison of the AIP and BBB standards against the Gambling Commission's rule requirements in the following categories: Board of Director Standards, Program Expense Standards, Fundraising Standards, Excessive Reserves, Financial Statement Standards, Annual Report Standards, and Public Disclosure Standards. Mr. Westhoff then reviewed Commission requirements not covered by the watchdog groups. He also reiterated that while the watchdog group standards don't determine if an organization is a bona fide charitable or nonprofit organization, the standards were put in place to ensure that the organization was operating at a level of efficiency and a standard of ethical conduct. He affirmed the standards aren't applied to most nonprofits, and in fact, a lot of the nonprofit licensees are fraternal organizations (as well as a lot of other organizations) and would not be covered by these standards. In conclusion, Mr. Westhoff stated that Commission rules addressed most of the standards and provides some additional requirements. In some cases the Commission may be stricter, and in some cases a little less strict than the standards; however, the Commission's regulatory program ensures licensee compliance.

**Commissioner Ludwig** asked whether the charitable nonprofit licensees appreciated the areas where the Commission was stricter, especially because it helped them show their members, the public, and the Commission that they are meeting their purpose. **Mr. Westhoff** affirmed.

**Chair Niemi** called upon the charitable nonprofit group for follow-up public comments to the charitable nonprofit presentation from last month. There were no comments. **Director Day** noted for the record a letter received from Don Kaufman, and advised that staff would prepare a response.

**Mr. Westhoff** advised the next staff report would compare Commission standards to the five states that Consultant Sally Perkins indicated were very similar in their regulatory purpose. **Director Day** affirmed the intent to look at the additional standards to ensure people are not operating for purposes other than gambling. He indicated this may be from other states—it may be things like limiting salaries or expenses, or to address the 10 percent requirements, and/or other suggestions to demonstrate how different things may impact the Commission.

Quarterly Adjusted Cash Flow Report:

**Director Day** recalled that the Commission switched to an annual system of quarterly reports on adjusted cash flow. He noted the current report reflected the top 28 licensees—all were in compliance with the adjusted cash flow requirements. He also pointed out that five organizations have had one negative quarter, and affirmed the intent to keep the Commission aware that if a licensee has a second negative quarter, they would be facing a summary suspension.

### Monthly Updates:

**Director Day** drew the Commission's attention to an article from the Business Week regarding the WTO, which gives a broader picture about the activities going on behind the various trade agreements. He also addressed two articles regarding the Lottery and their activities that relate to the ban on Internet gambling.

**Commissioner Parker** inquired about the lawsuit that has been pending pursuant to the WTO. **Assistant Attorney General Ackerman** responded that the article provided a general summary on the WTO lawsuit. Initially, a three judge panel of the WTO concluded that various federal laws and the laws of eight states violated the General Agreement on Trade and Services (GATS) Treaty. They characterized Internet gambling as a recreational service that the United States Government had permitted to trade freely in the GATS Treaty and that the federal laws and state laws restricting Internet gambling were in violation of the United States under that treaty. In essence, the panel determined that the country of Antigua or Barbuda did not properly support its claim that the State of Washington and 40 other state laws violated the treaty. It was a procedural decision that they didn't meet their burden of proof because they didn't properly prove the case. Mr. Ackerman pointed out that the three judge panel that initially heard this was comprised of diplomats, not lawyers, and the U.S. State Department seemed to think that played some role in the conclusion they reached. The matter has been briefed and has been set for argument before an appellate panel, which will review the findings and conclusions of the initial three judge panel. **Mr. Ackerman** reported the State Department keeps describing the decision as deeply flawed and they seemed to be confident that they will succeed in getting the case overturned on appeal. Mr. Ackerman suggested that if the matter is decided upon the merits, they certainly raise good arguments as to why the initial decision was erroneous. If the initial decision is upheld, questions remain on the range of possibilities for a remedy. Most involve trade sanctions—the danger is that Washington doesn't have a huge trade relationship with the country of Antigua and Barbuda, and the trade sanctions could involve other countries that are members of the WTO, which is virtually all of our other trading partners. Another possibility would be for the United States to seek to amend its schedule of commitments to the treaty and not agree to the portion of the treaty that restricts, or said we had to allow unrestricted trade and recreational services. Mr. Ackerman acknowledged this would involve a lot of steps, including congressional ratification; therefore, things were very much up in the air. The State Department seemed confident that they will get this reversed; however, they are awaiting oral argument.

**Commissioner Parker** noted there was a question about the enforceability of a state law on Internet gambling restrictions or limitations—and questioned how one enforced the laws outside of the boundaries of their state. By definition, most of the Internet gambling was taking place across state lines, the operators are in jurisdictions like Nevada, which don't have strict restrictions. **Mr. Ackerman** concurred that most of the problems with Internet gambling are practical problems. He contended that Washington's criminal and civil laws limiting gambling or prohibiting gambling of certain types apply to anyone, no matter where in the world they are, as long as some portion of that activity takes place in the state of Washington. Mr. Ackerman stated there are all of the practical problems of how to obtain jurisdiction over the person, how to get them extradited, and how to overcome the

evidentiary hurdles that are presented by the nature of Internet gambling. He reported the state of New York has successfully prosecuted at least one individual, who was operating Internet gambling in the Caribbean, and he noted the United States Justice Department has become more active and more helpful as this problem or perceived problem has grown.

Meanwhile, **Commissioner Parker** responded, Internet gambling has increased 40 to 50 percent a year with reported transactions of approximately \$40 billion annually. **Mr. Ackerman** affirmed that it was absolutely a mushrooming industry, and the trend in some portions of the world has been to license or regulate the activity in an effort to obtain revenue. That is where some of the European countries such as Australia, and some of the Southeast Asian countries are headed, and he affirmed it would undoubtedly require an international response. Mr. Ackerman believed the United States will at some point have to clearly articulate and act upon a policy decision.

**Director Day** emphasized that the Commission continues to investigate Internet gambling and he expressed a concern that there was no way to verify the honesty, fairness, and the game itself. Players do not know who is benefiting from the funds or who is involved in the funds, and in most cases Internet gambling illegally competes with people who are in business and pay regulatory fees.

With no further comments, **Chair Niemi** called for a recess at 2:55 p.m. and recalled the meeting at 3:15 p.m.

## 2. **Manufacturer Review:**

### **Power Bingo King, Council Bluffs, IA:**

**Dave Trujillo** explained that Power Bingo King is owned by VKGS as a Limited Liability Company. Power Bingo King is housed in Council Bluff, Iowa. He briefly addressed the ownership and organizational charts contained in the report. Mr. Trujillo reported the investigation conducted by the Commission was extensive, noting there were three financial investigations as a part of this investigation. Agents conducted an on-site investigation at the headquarters in Council Bluff, as well as looking at the manufacturing facility in Littleton, Colorado. Mr. Trujillo introduced Randy Kearns who was present representing Power Bingo King. Staff recommended licensing Power Bingo King as a Manufacturer Class C.

**Commissioner Ludwig** made a motion seconded by **Commissioner Orr** to approve a Manufacturer Class C license for VKGS, LLC, doing business as Power Bingo. *Vote taken; the motion passed with five aye votes.*

## 3. **House-Banked Card Room Review:**

### **Marilyn's on Monroe, Spokane:**

**Mr. Trujillo** reported the applicant is Celebrity Casino, a Limited Liability Corporation, doing business as Marilyn's on Monroe located in Spokane. The initial application was submitted in July 2004. He noted the organizational/ownership charts depicted in the report reflected the current ownership. Based upon the pre-licensing investigation and a pre-licensing review and evaluation, staff recommended that Marilyn's on Monroe be licensed as

a house-banked card room with 15 tables. Mr. Trujillo called upon Bob Tull to introduce the members present. **Mr. Tull** introduced Haig Kelegian and Larry Martin.

**Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to license Marilyn's on Monroe as a house-banked card room authorized to operate 15 tables with wagering limits in accordance with WAC 230-40-120 as recommended by the staff. *Vote taken; the motion passed with five aye votes.*

**Mr. Kelegian** thanked the following Commission staff: Paralegal Michelle Pardee, Agent-in-Charge Terry Westhoff, and Dave Trujillo. **Mr. Tull** then introduced Dominique Zervas-Foley, a new member of the Langabeer, Tull Law Firm.

**Mr. Trujillo** reported that with this approval, there were 92 house-banked card rooms currently operating in the state, and nine applications pending. The number of individual card room employee licenses associated with these facilities is 8,531.

#### **4. New Licenses, Changes, and Tribal Certifications:**

**Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to approve the new licenses, changes, and Class III tribal certifications as listed on pages one through 18 on the approval list. *Vote taken; the motion passed with five aye votes.*

#### **5. Defaults:**

##### **Palemia Laupati, Card Room Employee:**

**Amy Hunter**, Administrator, Communications & Legal Division, reported that staff is requesting that Palemia Laupati's license be revoked based on his involvement in a conspiracy to commit robbery. Mr. Laupati plead to robbery in the First Degree and a violation in the Uniform Fire Arms Act, and was sentenced to 36 months of confinement. He failed to notify staff of the arrest as required. Charges were brought against Mr. Laupati, they were sent by regular mail and were not returned. Staff tried to contact him but received no answer. By failing to respond, Mr. Laupati has waived his right to a hearing and staff is requesting a default order be entered revoking Mr. Laupati's card room employee license.

**Commissioner Orr** made a motion seconded by **Commissioner Ellis** to revoke Palemia Laupati's license to conduct gambling activities. *Vote taken; the motion passed with five aye votes.*

##### **Robin Tufono, Card Room Employee:**

**Ms. Hunter** reported Robin Tufono was involved in the Laupati conspiracy to commit robbery. He worked as a security guard at the Cascade Lanes. Mr. Tufono pled guilty to Robbery in the Second Degree and was sentenced to seven months confinement. He also failed to notify the Commission of the arrest. Charges were personally served to him when he was being detained at the Kent regional justice detention facility. By failing to respond to the charges, Mr. Tufono has waived his right to a hearing and staff requests that Mr. Tufono's card room employee license be revoked.

Commissioner Orr made a motion seconded by Commissioner Ellis to revoke Robin Tufono's license to conduct gambling activities. *Vote taken; the motion passed with five aye votes.*

**Robert Peters, Card Room Employee:**

**Ms. Hunter** advised that staff was requesting that Mr. Peters' card room employee license be revoked based on Mr. Peters taking \$50 from his employer's poker tray and then using the money to play poker. At the time, Mr. Peters worked at Players and Spectators in Spokane. He was subsequently terminated; however, he did repay the money taken. The Director brought charges against Mr. Peters, which were sent by regular mail. They were not returned, and staff left him a voice mail reminding him of the date to request a hearing. By failing to respond Mr. Peters has waived his right to a hearing and staff requests that an order be entered revoking his card room employee license.

Commissioner Orr made a motion seconded by Commissioner Ludwig to revoke Robert Peters' license to conduct gambling activities. *Vote taken; the motion passed with five aye votes.*

**6. Other Business/General Discussion/Comments from the Public:**

**Chair Niemi** called for public comments.

**Joseph Patteson**, Shift Manager with the Silver Dollar addressed the smoking ban and the impacts to employees and the business. He noted his facility went from being the number one mini casino, to not being in the top 10 organizations as a result of the ban (he affirmed the business is currently in the number eight position). Mr. Patteson advised that he had a lot of staff who had to pick up second jobs, or they left Pierce County in order to maintain their living. He asked the Commission to consider the potential impacts of the current legislation.

**Chris Kealy** addressed correspondence he submitted to Commissioner Ludwig and was distributed to all the commissioners. He further commented that Mr. Callaghan (TNT Reporter) did not believe the Commission was monitoring the licensee's financial activities; and he disagreed. Mr. Kealy stated the audits are in place to do that, and the summary of those audits would provide the information and tell the truth about the health of the card rooms. He believed the fiscal note the agency submitted relating to taxing social card rooms was inaccurate, partly because the source of the misinformation was the faulty reporting mechanism of old. He requested a copy of the Commission's summary relating to audits.

**Director Day** explained the Commission's new regulation essentially would enhance the information required in the way of financial statements. However, those reports aren't due until April of 2005. He explained that once the Commission receives the complete set of information, staff would then intend to compile and publish the report—it would be a new starting point with the new rule. He emphasized the previous information was obtained from the audited statements that were submitted from the licensees (not all licensees) as required. Director Day affirmed the Commission remained neutral on the bill that was prepared by the Legislature, and that staff provided the tax bill reporting fiscal note based on the information available at the time utilizing financial statements filed with the Commission. **Deputy Director Nunamaker** verified the fiscal note was prepared by using financial statements and trial balances. Director Day cautioned that until the Commission's recent enhancement of the

rule goes into effect, there wouldn't be financial statements available for the entire slate of card rooms. That information will be available beginning in April. He noted staff would use the updated data to provide updated compilations. There were no further comments.

#### **7. Law Enforcement Training Presentation:**

**Leonard Junk**, Special Agent-Supervisor, provided an overview of the agency's Law Enforcement Training Program. He noted that while the agency is not mandated to send special agents to the Basic Law Enforcement Academy, the Commission decided the best way to get the agents trained was to send them to the academy. He reported that agents attend approximately 30 hours of mandatory training each year. The training curriculum changes from year to year based upon identified needs. Mr. Junk highlighted the training provided in 2004 relating to first aid and various mock scenario training sessions, which gives each agent the ability to demonstrate their skills in handling some kind of violation related to RCW 9.46. Each agent receives training in legal issues while attending the Basic Law Enforcement Academy, and in 2004, the agency engaged the services of an instructor from the Criminal Justice Training Commission who provided legal training/updates in each of the agency's regional offices.

**Mr. Junk** noted that approximately ten years ago, the agency decided to purchase the weapons that are issued to the agents, and assumed responsibility for the associated training to make sure agents have all the basic firearms handling skills. Twice a year, agents participate in a firearms qualification where they demonstrate their skills in marksmanship and in handling the weapon. Classes are directed towards safety and tactical issues, which covers verbal commands and challenges, the proper use of cover/concealment, and identifying the proper target and accurately using the firearm. Because agents have the authority to make arrests, the agency conducts two defensive tactics classes a year. One defensive tactics class involves control tactics—take downs, handcuffing, frisking and searching people. The second phase of the defensive tactics training involves teaching people to be able to make strikes, blocks, and kicks. To aid in the training, the agency invested in a new piece of equipment—Laser Shot, which is a video scenario and laser shot technology. It allows agents to test and practice in a sterile and controlled environment and allows the instructors to build a program applicable for the agency and make it better every year. Mr. Junk invited the commissioners to view the equipment as demonstrated by agent instructors.

**Commissioner Orr** believed there were a significant amount of law enforcement people who would enjoy working for the Commission due to the nature of the detective work involved. Commissioner Orr suggested the Commission consider including some level of taser training because he believed it was a significant and useful tool. **Mr. Junk** affirmed he continues to review less than lethal technology, and he noted agents are encouraged to work with the local law enforcement agencies so they are aware of what is available. **Director Day** pointed out that another benefit of the laser technology was that it allows on-site training because it is portable equipment which can be moved throughout the agency's regional offices rather than having agents travel out of their assigned areas for training.

**Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/  
Adjournment:**

At 4:05 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation. At 5:25 p.m., Chair Niemi recalled the public meeting and announced that Friday's meeting would commence at 9:30 a.m., and she adjourned the meeting.

Minutes submitted by,

Shirley Corbett  
Executive Assistant

**COMMISSION MEETING  
FRIDAY, MARCH 11, 2005  
MINUTES**

**Commissioner Ludwig** called the meeting to order at 9:40 a.m., at the DoubleTree Guest Suites located in Seattle. Chair Niemi arrived shortly after the meeting commenced. The following members and staff were present:

**MEMBERS PRESENT:**                   **COMMISSIONER JANICE NIEMI, Chair;**  
   **COMMISSIONER CURTIS LUDWIG, Kennewick;**  
   **COMMISSIONER GEORGE ORR, Spokane;**  
   **COMMISSIONER JOHN ELLIS, Seattle;**

**STAFF PRESENT:**                   **RICK DAY, Director;**  
   **NEAL NUNAMAKER, Deputy Director;**  
   **CALLY CASS-HEALY, Assistant Director-Field Operations;**  
   **AMY HUNTER, Administrator-Legal Division;**  
   **DAVE TRUJILLO, Acting Administrator-Licensing;**  
   **JERRY ACKERMAN, Assistant Attorney General;**  
   **SHIRLEY CORBETT, Executive Assistant**

**10. Approval of Minutes – February 10-11, 2005:**

**Chair Niemi** reported a correction had been submitted—on page 7, the third paragraph, where Ms. Chiechi was speaking—she read the corrected language, “Ms. Chiechi reported that their board voted to oppose Senate Bill 5591 primarily because of the grandfather provision, which should not be included in any zoning language; and noted the deletion of the word not.

**Commissioner Orr** made a motion seconded by **Commissioner Ellis** to approve the minutes of the February 10-11, 2005, regular meeting as corrected. *Vote taken; the motion passed with four aye votes.*

**8. Petition for Review:**

**Kongmanichanh Bounlouane – Card Room Employee:**

**Chair Niemi** called upon Assistant Attorney General Sara Olson. It was determined the Petitioner was not present. **Ms. Olson** reported that on January 7, 2005, an Initial Order was

issued by the Administrative Law Judge. On January 14<sup>th</sup> 2005, Mr. Kongmanichanh timely petitioned for review. Subsequently, Mr. Kongmanichanh sent a letter to the Commission indicating that he would not be in attendance and that whatever final order was issued by the Commission would be acceptable to him. **Ms. Olson** respectfully requested that the Initial Order submitted by the Administrative Law Judge (ALJ) revoking Mr. Kongmanichanh's gambling license be affirmed.

**Chair Niemi** read Mr. Kongmanichanh's letter into the record. **Commissioner Ludwig** verified that staff would respond to the letter concerning the two questions he asked regarding future licensure.

**Commissioner Ludwig** made a motion seconded by **Commissioner Ellis** to adopt the Findings and Conclusions and the Initial Order of the Administrative Law Judge and enter a Final Order revoking Mr. Kongmanichanh's card room employee license. Vote taken; the motion passed with four aye votes.

**9. Motion to Vacate Order:**

**Mike's Place Tavern, Renton:**

Assistant Attorney General Sara Olson and Petitioner Nancy Taylor were present and presented their cases. A transcript of the hearing is available upon request.

At 10:00 a.m., the commissioners convened an executive session to deliberate the case. At 10:10 a.m., **Chair Niemi** recalled the public meeting.

**Commissioner Ludwig** made a motion seconded by **Commissioner Orr** to grant a motion to vacate the Order of Default regarding Mike's Place Tavern. Vote taken; the motion passed with four aye votes.

**Commissioner Orr** explained to Ms. Taylor that she would now have to go through a negotiation process with the ALJ, and that she may still lose her license if the ALJ makes that determination. He encouraged Ms. Taylor to talk to staff in an effort to achieve a settlement prior to appearing before the ALJ. **Commissioner Ludwig** cautioned Ms. Taylor that if she didn't resolve her problems and didn't submit the reports on time and pay the taxes when they were due, he wouldn't be sympathetic again.

**11. Expiration Dates on Bingo Gift Cards:**

**WAC 230-20-115:**

**Assistant Director Cass** explained that Item 11(a) is a proposed change to WAC 230-20-115 regarding gift certificates. The rule currently requires licensees to imprint expiration dates on any gift certificates they may award or sell. The proposed rule change eliminates the requirement of the expiration date on gift certificates as a result of a change to RCW 19.240 during the 2004 Legislative Session. The rule is up for final action and would be effective July 1, 2005. Staff recommends adoption. There were no public comments.

**Commissioner Orr** made a motion seconded by **Commissioner Ludwig** to adopt the amendments to WAC 230-20-115. Vote taken; the motion passed with four aye votes.

**12. Raffle Tickets:**

**WAC 230-20-335:**

**Ms. Cass** explained that Item 12(a) is a proposed amendment to WAC 230-20-335 regarding membership raffles. Operating requirements for members only raffles are outlined in the rule. This proposed amendment would increase the price of a single member, member only raffle ticket from \$2 to \$10 when tickets are sold at a discount. It does not increase the \$25 maximum that is set by law. The rule is up for final action and staff recommends approval. The Commission received correspondence from the original petitioner in support of the change.

**Chair Niemi** called for public comments and there were none.

**Commissioner Orr** made a motion seconded by **Commissioner Ellis** to adopt WAC 230-20-335 as amended. *Vote taken; the motion passed with four aye votes.*

**13. Temporary Licenses:**

**WAC 230-04-255:**

**Deputy Director Nunamaker** reported that Item 13 is an amendment to WAC 230-04-255 which provides the Director authority to issue temporary licenses. The rule has been in effect since 1974 and includes two exceptions; for manufacturers, and for house-banked card rooms. Staff is asking that the restrictions be removed. He explained that a significant amount of pressure is applied to meet agency deadlines, which causes staff and licensees and/or applicants a number of difficulties. In June/July and December, when there isn't a Commission Meeting scheduled, there can be gaps as much as 60 days, when a licensee may be ready; however, the license can't be issued. Staff would continue to present the same reports and information currently received (a separate report on house-banked card rooms and a separate report on manufacturers) for the Commission to rule on the "final" approval.

**Chair Niemi** called for public comments and there were none.

**Commissioner Ludwig** made a motion seconded by **Commissioner Orr** to file the proposed rule to amend WAC 230-04-255 for further discussion. *Vote taken; the motion passed with four aye votes.*

**14. Non-Sufficient Funds (NSF) Check Processing Charge:**

**WAC 230-04-270:**

**Administrator Trujillo** reported that Item 14 was a proposed amendment to WAC 230-04-270 relating to bad checks being submitted as payment of fees. He noted that in 1990, the Commission adopted a \$15 processing fee for NSF checks, and the fee has never changed. Staff is proposing the fee be amended from \$15 to \$30.

**Commissioner Orr** suggested adding a cost of living increase stipulation so the fee would be automatically adjusted and so that staff wouldn't be required to revisit this issue. **Mr. Trujillo** affirmed it was a reasonable concept to ponder.

Commissioner Orr made a motion seconded by Commissioner Ludwig to file the amendment to WAC 230-04-270 for further discussion. *Vote taken; the motion passed with four aye votes.*

**15. Card Room Employees – Change in Employment:**

**WAC 230-04-142:**

**Mr. Trujillo** stated that Item 15 is an amendment to WAC 230-04-142, which is the notification process by card room employees when they begin, change, or terminate their employment. In 1979, the Commission adopted a rule requiring public card room employees to notify the Commission of employee transfers, and Commission staff subsequently treated that as a transfer or addition to an application. In 2000, with the increase in house-banked card rooms and the mobility of card room employees to move from one establishment to another, the Commission began to look at better ways to handle those types of change charges. In an effort to help the card room employees and possibly the businesses, the Commission chose not to handle the fee at the time of transfer/addition to another employer; rather, to assess the fee at the end of the year with the renewal billing. That caused a large bill for some employees and at times they were unable to pay the bill, which caused them to scramble at the last minute. **Mr. Trujillo** noted it also consumed tremendous Commission staff time to monitor the billing process. The amendment allows the Commission to collect the fee at the time of transfer. Staff recommends filing the rule for further discussion. **Chair Niemi** called for public comments.

**Max Faulkner**, Gold Strike Casino/Bill's Casino supported the amendment. He suggested the concept of an electronic transfer of funds so it wouldn't delay an employee's start or change status. He affirmed there were a number of employees who work at two or more places, and at times, employers have paid the \$57 fee. He noted the employer may choose to have the employee reimburse the fee or not. **Director Day** noted the Commission was in the process of developing an online application for the notice/transfer process, and that staff would be making a determination on whether online payments would be cost effective.

**Mr. Ackerman** addressed the second sentence of the amended language—specifically the attempt to say the amount of the fee is specified or contained in the WAC—and suggested the language needed wordsmithing. **Commissioner Ludwig** noted a conflict in the timing of when payments were required. **Mr. Trujillo** concurred on both points and affirmed staff would present a revised edition for consideration at the April meeting.

Commissioner Orr made a motion seconded by Commissioner Ludwig to file WAC 230-04-142 for further discussion. *Vote taken; the motion passed unanimously.*

**16. Quarterly Activity Reporting:**

**WAC 230-08-130, WAC 230-08-140, WAC 230-08-150, WAC 230-08-160, WAC 230-08-165, WAC 230-12-305, WAC 230-12-310:**

**Ms. Hunter** reported the seven rules related to quarterly activity reports. The first five rules deal with the quarterly reports collected, and the last two deals with the documents that are required to be submitted with the activity reports. The rules are up for discussion and possible filing. Ms. Hunter noted the recent \$2.5 million transfer from the Gambling

Commission Revolving Account precipitated staff reductions (from four positions down to two) in the Financial Reporting Unit. This is the unit responsible for collecting the reports, which is the reason for the rule package proposals. **Commissioner Ludwig** inquired if the Commission was premature in proposing a change while the Legislature was still considering statutory changes. **Ms. Hunter** responded the Legislature was looking at a change to the card room report; however, the other rules would be appropriate. She noted the legislative session would be over before the rule would be up for final action.

**Ms. Hunter** explained that reports are currently required to be submitted four times a year. The amendment requires the reports twice a year, which would also decrease the statistical booklets currently produced five times a year to only be produced three times a year. This will require less time for staff to receive and mail the reports as well as the follow-up process on late reports. Item 16(a) deals with commercial pull-tab operators and most of the charitable nonprofit operators, reducing the reporting requirement from four times a year to two times a year. A charitable nonprofit operator Class D (or above) Bingo licensee would still submit quarterly reports so that staff may continue to conduct the cash flow calculation. Item 16(b) applies to distributors, Item 16(c) applies to manufacturers, Item 16(d) applies to card rooms, and Item 16(e) applies to linked Bingo prize providers.

**Ms. Hunter** clarified that Items 16(f) and (g) don't have anything to do with quarterly activity reports; however, the rules require that any updated information be submitted to the Commission with the quarterly activity reports. Currently, if there has been an organizational change, the licensee could note the change on their quarterly activity report—under the new proposal, the licensee will need to report that activity within 60 days of making the change. In addition, licensees are required to notify the Commission regarding any final dispositions of a criminal case, a civil case, or an administrative case that has been filed against the licensee. Such notifications will now be due to the Commission within 30 days instead of being reported on the next quarterly activity report. Staff recommended filing the rules for further discussion.

**Commissioner Ludwig** made a motion seconded by **Commissioner Orr** to file Items 16(a)-(g) for further discussion. **Commissioner Niemi** called for public comments.

**Monty Harmon**, Harmon Consulting, advised that he understood the difficulties the Commission has with budget and staffing, and he wasn't sure if there was an alternative method to approach the problem. He felt the Commission would not be able to respond proactively to problems when dealing with older more historical information. He encouraged retaining the quarterly activity report process.

With no further comments Chair Niemi called for the vote. *Vote taken; the motion passed unanimously.*

#### **17. Other Business/General Discussion/Comments from the Public:**

**Chair Niemi** called for comments from the public.

**Dave Wilkinson**, Skyway Park Bowl in King County, advised that he strongly believed the position taken by the Director and the Commission in notifying OFM that there is no fiscal impact to the Commission by House Bill 2038 or Initiative 901 (smoking ban) was incorrect. He suggested that while many casinos won't close as quickly under a smoking ban as they would if Senate Bill 5287 passes (taxes on social card games), businesses would close and employees would lose their jobs, which would impact the Commission. Mr. Wilkinson challenged the Commissioners to look at the consequences of SB 5287 and SB 2038. He believed the Commissioners may be the only people able to save some of the businesses and their employees. Mr. Wilkinson urged the Commissioners to share information with the Legislature clearly indicating there would have to be an impact in response to a smoking ban.

**Mr. Wilkinson** then referenced Senate Bill 5287 and a reporter's interview with Senator Prentice regarding the proposed tax rate on social card rooms. Mr. Wilkinson then provided packets containing a map showing the tribal casino locations and tribal reservation land, as well as a map showing how many mini casinos and tribal casinos exist in each county. He suggested that with Oregon, Idaho, and Canada surrounding the state, there would be ramifications to a smoking ban—that people along the boarder, or those closely located by a tribal casino would commute to facilities that allow the amenities that people desire. He suggested that the Commission's statistics show a 12 percent decline in revenue in Pierce County during the smoking ban. **Mr. Wilkinson** pointed out that if 20 casinos were to go out of business because of the tax bill or the smoking ban bill, the Commission would be penalized—noting that each casino pays approximately \$20,000 a year in license fees in addition to the card room employee license fees totaling approximately \$7,500 a year. He stressed the importance of Commission staff making some determinations on probable fiscal consequences and he encouraged changing the fiscal note language the agency was providing to the Legislators.

**Melissa Klinkess**, Gaming Consultants Inc., the management company for the Silver Dollar and Golden Nugget Casino, confirmed that the Silver Dollar Casino in Pierce County reduced staff by 50 percent and affirmed the smoking ban had a significant impact on their business.

**Dolores Chiechi**, Executive Director, Recreational Gaming Association, reported that the RGA membership voted to oppose Senate Bill 6057 as written—the requirement for keeping a quarterly report by statute.

**Director Day** commented on the reporting information available and posted on the agency's website regarding local card rooms, and the Commission's plan as a result of the agency's rule change that increased the financial reporting requirements. The Commission will post the information in a clear format when it is completed—most of the information will be drawn from the licensees that had audited financial statements in 2003. Director Day felt it would provide a clear picture of the current status and will assist in posting data into the future. Currently 16 licensees are reflected, and under the new Commission rule, over 100 businesses would be posted. He affirmed that the public and the Legislature would be able to see and access more accurate and more complete reports.

**Director Day** clarified that the Commission filed a fiscal note on Senate Bill 5287 (10 percent tax bill) based on the financial information staff had available. The fiscal note documents that the Commission anticipated a \$1.5 million decrease in agency revenue. The Commission expressed their desire to remain neutral on the bill; however, staff was asked to provide the factual information to the Legislature at hearings. He reiterated the smoking ban was a challenge—because staff only had about three months of experience with the quarterly report information filed in Pierce County. Staff filed a fiscal note and documented that there was an impact—there was a decline in revenue in Pierce County. There were also a number of licensees that reflected increases. Director Day stressed that it was impossible for the agency to take a three-month period of time and apply the statistics to a statewide ban in an effort to determine statewide licensee and revenue impacts. He affirmed there would probably be impacts; however, it was virtually impossible to calculate and know exactly the long term results. He affirmed the fiscal note clearly reflected the Commission’s position.

With no further business, **Chair Niemi** adjourned the meeting at 10:55 a.m., noting the April meeting would be held in Vancouver.

Minutes submitted by:

Shirley Corbett  
Executive Assistant