

**COMMISSION MEETING  
THURSDAY, OCTOBER 11, 2007  
MINUTES**

**Chair Janice Niemi** called the meeting to order at 2:25 p.m. at the Spokane Convention Center, explaining the meeting was starting late because the flight Commissioners Bierbaum and Rojecki were scheduled to be on was delayed. She then introduced the following members and staff present.

**MEMBERS PRESENT:**   **COMMISSIONER JANICE NIEMI, Chair**, Seattle  
                                  **COMMISSIONER PEGGY ANN BIERBAUM**, Vice-Chair, Quilcene  
                                  **COMMISSIONER KEVEN ROJECKI**, Tacoma  
                                  **SENATOR MARGARITA PRENTICE**, Seattle  
                                  **SENATOR JEROME DELVIN**, Richland  
                                  **REPRESENTATIVE RICHARD CURTIS**, LaCenter  
                                  **REPRESENTATIVE GEOFF SIMPSON**, Covington

**STAFF PRESENT:**       **RICK DAY**, Director  
                                  **SHARON REESE**, Deputy Director  
                                  **MARK HARRIS**, Assistant Director – Field Operations  
                                  **DAVID TRUJILLO**, Assistant Director – Licensing Operations  
                                  **AMY HUNTER**, Administrator – Communications & Legal  
                                  **JERRY ACKERMAN**, Assistant Attorney General

**Director Day** presented Special Agent Patrick Parmer with a certificate and pin for 25 years of state service with the Gambling Commission.

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

**Director Day** reviewed the agenda for Thursday and Friday and noted there were no staff recommended changes to the agenda.

**Underage Gambling Prevention Training Program (PowerPoint Presentation)**

**Director Day** explained that our Field Operations Division has been conducting licensee compliance inspections related to underage gambling for about three years. Partially in response to a public complaint and subsequent study session discussion where card room representatives suggested training would be helpful in the area of underage gambling, staff moved forward with these inspections and also attempted to develop a training program relative to underage gambling prevention. Most of our compliance inspection programs are conducted jointly with the Liquor Board to tap its expertise. **Director Day** introduced Special Agent Eric Gural, from our Spokane Office, and Special Agent Patrick Matthews, from the Liquor Control Board. **Director Day** pointed out that Agents Gural and Matthews presented a longer program at the study session this morning for the benefit of the licensees.

**Special Agent Eric Gural** explained the presentation would cover gambling issues regarding some of the gambling and liquor rules as they apply to individuals who are under the age of 18. WAC 230-06-010 specifies that individuals under the age of 18 shall not participate in any type of gambling activity. In 2003, in a partnership with the Liquor Control Board, agents started conducting inspections. Minors were sent into casinos to see if they would be allowed to gamble. Agent Gural reported on the percentage of violations found throughout the state, using the PowerPoint presentation. Agent Gural explained that with first time offenses, the dealer is written a \$200 Notice of Violation and Settlement (NOVAS) and the organization is also written a \$300 NOVAS. Within about 12 months, a follow-up inspection is conducted and if someone under the age of 18 is allowed to gamble, the dealer and the organization both receive a Statement of Charges. WAC 230-03-085 covers willful disregard and provides for a suspension or a deferred suspension vacated by a fine. Agent Gural explained that training could be a mitigating factor that could affect the amount of the fine imposed. The Liquor Control Board provides mandatory alcohol server's training, which is called MAST, and includes information on checking identification and posting signs that individuals that look youthful in appearance will be checked.

**Representative Richard Curtis** noted the statistics were very high in certain areas and wondered if it was because of the race, total disregard, or more undercover visits. Representative Curtis asked if agents found anything that was a catalyst to the problem; was it identified that it was training or something in those particular areas that caused people to allow more of this – or was it just blatant disregard of the law? **Special Agent Gural** replied there were a lot of factors that came into play. One was that after agents went to the first licensee, that licensee contacted the next licensee, etc. causing a decrease to be seen because the description of the minors was given when the licensee called ahead. **Representative Curtis** asked whether Agent Gural thought the increase in technology and the ability to be able to make false identification cards had increased the numbers. **Agent Gural** agreed that could be a contributing factor, adding that the Liquor Control Board would go over some of the different types of IDs and how to recognize them. **Assistant Director Harris** noted these numbers reflect our agent inspections where undercover operatives are sent in using their own personal, legitimate IDs or say they don't have their ID. Fake IDs do not come into play for these percentages – the licensees either check the IDs or they don't.

**Officer Patrick Matthews**, State Liquor Board reported that their Spokane office covers nine counties, and five officers cover approximately 270 licensed establishments each. Officer Matthews said he covers Spokane, Asotin, Garfield, and Whitman Counties, and that WSU in Pullman takes up a lot of his time because of the over-service and drinking there. The Liquor Board provides free classes at its Spokane office twice a month on how to avoid getting into trouble through ID and over-service. When requested, training is also presented at the licensee's location for their employees and managers so everybody understands the laws pertaining to selling liquor to minors, over-service, and conduct and criminal activity on that licensed establishment. When our officers make contact with the licensees, they ask about the policies the licensees have in place, about their internal controls, and whether they check IDs. Officer Matthews reviewed some of

the recommended steps to take when checking IDs and showed some examples of ID cards. Four things required to be on an ID are the date of birth, expiration date, picture, and signature. Vertical IDs identify the person as a minor and horizontal ID cards identify the person as being over 21. The vertical ID cards are the ones used for compliance checks done by the Gambling Commission and the Liquor Board.

**Representative Simpson** asked whether a person was automatically mailed a horizontal ID when they turned 21, or was it possible to have a vertical one issued and still be carrying it after the person turns 21. **Officer Matthews** replied there is a time limit on replacing the vertical ID card with a horizontal ID. Licensees are taught to assume anyone with a vertical ID is a minor, and require the person prove they are not a minor. Officer Matthews sees a lot of underage people in Pullman using other people's ID cards; family members using other family member's IDs. Officers suggest the licensees have a policy in place and internal controls because some people look older than they appear and it is important that everybody understands how to check IDs and what to look for. It is also important for our agencies to continue to do compliance checks to make sure licensees are in compliance. Bartenders who are caught selling to a minor could be charged with a gross misdemeanor. The licensee gets an Administrative Violation Notice and is re-inspected within 30 days. Statewide, liquor agents are doing a lot more compliance checks and undercover inspections for over-service, and are pushing to actually cite the patron because it is a civil infraction to be intoxicated on a premises. That way we get the bartender, the licensed establishment, and the patron. We are looking at an educational program throughout the state, and we suggest the licensees use it as a tool when cutting somebody off. **Representative Simpson** asked how it was determined whether a person was intoxicated. **Officer Matthews** replied the licensees were taught to look for two to three good signs of intoxication: somebody who is stumbling, has slurred speech, is fumbling their money, or is falling off their stool. If the Liquor Board gets a complaint of over-service, an investigation is conducted – a couple of officers are sent to blend in and to sit in the licensed establishment, to look around and find the most intoxicated person, and to see if the staff are being vigilant and walking around looking for people who are intoxicated. If they are not, then we go forth with an over-service case. Officer Matthews thought it was very important to enforce the liquor laws with the gambling laws together, because public safety violations are the number one thing. And the top five that we deal with are: sell to minors, minors frequenting, over-service, disorderly conduct, and criminal conduct on a licensed establishment.

**Senator Jerome Delvin** asked if the liquor officer would cite the minor when found in an establishment. **Officer Matthews** affirmed that when a minor is found in an establishment, both the minor and the licensed establishment are served an infraction.

**Representative Curtis** asked if the training given to licensees includes military IDs, because they can also be somewhat difficult to judge. And would that be the same type of infraction since it is a federal ID. **Officer Matthews** replied that using anybody's ID, regardless if it is an approved ID, is still an infraction. **Representative Curtis** asked if the military IDs were more difficult to judge if they were fake. **Officer Matthews**

replied that military IDs still had the requirements of a picture, birth date, signature, and expiration date.

**Representative Simpson** asked about how many fake IDs the liquor agents recover each year on average. **Officer Matthews** replied very few from local establishments, other than in Pullman where a lot of family members' ID cards are used. Pullman can't stop the consumption, but they are trying to control it by being more pro-active. What normally happens when a licensee, staff member, or manager think a person has a fake ID is to tell the person they are going to call law enforcement, and usually the underage patron will leave.

**Director Day** thanked Agent Gural, Officer Matthews, and the Liquor Board, noting he thought it has been a very effective process. Director Day added there is a piece of legislation that staff hopes will work its way through the Legislature this year that establishes the penalty side of the gambling infraction for the minor. The presentation will be posted to the agency website next week.

**Rules Simplification Project (RSP) Training Program (PowerPoint Presentation)**

**Director Day** explained that the final large RSP chapter and revisions of the Rule Simplification Project will be heard on Friday. As part of that process, staff has to prepare for the effective date of the Rules Simplification. To reassure the Commission that we are conscious of the need to train both our staff and the industry regarding the new rules and that we are moving forward with training, Agent Josh Stueckle will provide a brief presentation to the Commission. Josh is a Special Agent in our Yakima office and a member of the team that designed the Rule Simplification Training Program.

**Joshua Stueckle**, Special Agent, Yakima Field Office, recognized the team members: Lisa Saila and Paul Nicholes, Special Agents in the Southwest region; Susan Blanchett, Special Agent Supervisor in the Southwest region; Jess Lohse and Danny Lisa, Special Agents in the Northwest region; Roshawna Fudge, Attorney for the Communications and Legal Division; Allen Esparza, Special Agent in the Financial Investigations Unit, and himself. All of our trainers are experienced, certified instructors who have attended and completed the 40-hour Instructor Development Course from the Criminal Justice Training Center in Burien. They have provided training on firearms, defensive tactics, basic law enforcement academy instruction, and new licensee training. The new rules are effective January 1, 2008, so the RSP Training Team was formed to develop, schedule, and conduct training for both the staff and the licensees. There are three goals for this training: introduce the new layout of the Rules Manual, review significant changes to the rules, and gain a working knowledge of the new Rules Manual. Licensee training for the non-house-banked licensees is scheduled for next month and include six locations throughout the state; two each in the east, the northwest, and the southwest. Individualized training will be provided to the house-banked card rooms at their locations starting in November and finishing in December. Training notifications were put in the quarterly newsletter, letters were mailed to licensees informing them of the upcoming training, and fliers have been placed at each commission meeting, in addition to notification by our agents as they visited the different licensees. Agent Stueckle

reviewed how each training class would be conducted, and ended by informing everyone that the presentation would be posted to the agency website next week.

### **Bingo Adjusted Cash Flow Report**

**Director Day** reviewed the Bingo Adjusted Cash Flow Report provided to the Commissioners in their agenda packets, noting that all licensees are projected to meet their requirements, with the exception of the Ruth Dykeman Children's Center which is struggling. Based on amended reports, Ruth Dykeman, may not be able to meet requirements. Director Day pointed out there were no consecutive negative quarters, showing the regulatory compliance and financial side is much more positive than we were looking at last year.

**Chair Niemi** asked if this report included any smoking versus non-smoking; was it all non-smoking? **Director Day** affirmed it was – the smoking ordinance went into effect in November of 2006 and this report covers the first two quarters of 2007. So we're now seeing some recovery.

### **Audited House-Banked Card Room Financial Statement Report**

**Director Day** explained the consolidated report was prepared relative to the house-banked card room financial statements and provides some specific conclusions. We have seen a drop in the total number of licensees since last year and a decline in the positive income. The report shows an increase in reported net losses and an increase in administrative violations connected with our review of the financial statements.

### **Correspondence**

**Director Day** pointed out the State Auditor's Exit Report for their audit of the Gambling Commission for 2007 fiscal year, noting that this is the seventh year in a row that the Commission has had an agency audit with no findings. Director Day thanked the agency's business office and licensing staff for an outstanding job.

### **Monthly Updates/News Articles**

**Director Day** noted there were no new updates or additional information at the federal level regarding legislation.

**Chair Niemi** opened the meeting for public comment.

**Gary Murrey**, representing the Recreational Gaming Association (RGA), testified that earlier today there was a discussion on the PowerPoint presentation on the gambling service to minors that got quite lively between himself and some of the agents about the difference between the Liquor Board standard and the Gambling Commission standards. Mr. Murrey asked about the leeway that the Liquor Board has for mitigating circumstances but the Gambling Commission agents don't have. For instance, if the licensee does everything possible with training and ID scans, and if the employee circumvents that and allows a minor to drink, the employee is cited, but the licensee may be given a warning that it needs to pay more attention. The licensee did everything it

could; however it should have possibly known this employee was circumventing that. The Gambling Commission agents do not have the ability to say that the licensee did everything possible, so the licensee gets a notice the first time and a Statement of Charges the second time – no matter how hard the licensee tries. Mr. Murrey had an employee go through the Liquor Board training one day and the next day served a minor chips to gamble with. There is a list of probably 30 things being done to help train and mitigate those violations. There is nothing more that can be given to the employees than the tools, the training, posted signs, and having the employees sign a document that they understand the rules. Mr. Murrey said that he is still held liable for the actions of his 600 employees and asked what else he could do. Why can't the agents from the Gambling Commission look at the circumstances and say the licensee did all it could do and give a warning. That is not allowed under the Gambling Commission circumstances, but is allowed by the Liquor Board. What is the difference in the importance between a minor drinking versus a minor gambling – is it more of a detriment to society over the gambling than the drinking? Mr. Murrey said he wants to protect the public, but there is a liability with his side that needs to be protected also. Even when the licensee does everything it can, there is more risk of the loss of a gambling license than the liquor license.

**Chair Niemi** said that was a good question; that it almost seems worse to have a minor drinking than gambling, and asked if staff could answer the question. **Director Day**: responded that even though the licensee remains responsible regardless of the circumstances, it is done consistently across the State. We do use different processes in the beginning than the Liquor Board, but we have tried to remain consistent. At what point and who would make the decision on regarding what is the best efforts. At this point staff generally has allowed the decision to be made by our legal department or by the ALJ. Director Day understood the Liquor Board may choose to do the process because all enforcement agents have a lot of discretion, but we have often heard about consistency from one end of the State to the other. Director Day commented that we do not use a criminal ticket, which the Liquor Board does. When the Liquor Board cites, they cite criminally; our agents provide a civil ticket, so the processes really aren't comparable. If there is no other violation within a year, the licensee would actually get another civil ticket, not a Statement of Charges. A licensee has to have two infractions within a year period to receive a Statement of Charges. That is the part that is not discretionary on the part of the agents, because it has to come to our legal department for a Statement of Charges.

**Chair Niemi** said it was her understanding that the State Patrol can give a warning ticket if a person is speeding, as can the police, and it sounds like the Liquor Board can give a warning ticket. Those are all criminal violations, but our agency does not have a warning ticket for underage gambling. **Mr. Murrey** replied that he believed there should be a warning ticket if the licensee and the agents all felt the licensee did the best it could to train the employees to do it right. **Chair Niemi** asked whether these organizations have somebody at the door to not allow someone in if they are underage. **Mr. Murrey** agreed, but noted there had been instances when an underage person got past the door security, but was stopped at the table. It is just human error – we do what we can.

**Senator Prentice** commented that she was at this morning session also, and heard it said several times during the presentation that having a license is a serious responsibility and a serious liability. Senator Prentice did not know that she could compare that to getting stopped for going a few miles over the speed limit – she did not see that as comparable. Senator Prentice felt that being in management meant you were responsible for your employees. As the Director of Nurses, Senator Prentice used to get frustrated when something happened in the middle of the night that she thought the nurses knew better and she knew they were trained better, but you just had to take the consequences. Senator Prentice said she knew these are reviewed because of conversations she has had with Rick. But she could not imagine that it could be said the licensee would always get a warning the first time – no one can make that kind of commitment.

**Mr. Murrey** clarified he was not asking for there to always be that other layer of warning; just the ability for the agents when they know that the licensee did everything it could, that a warning may be justifiable. The Gambling Commission right now has no such policy in place.

**Max Faulkner**, President of the Recreational Gaming Association (RGA), wanted to let the Commissioners know of an error in the minutes before approving them on Friday. Mr. Faulkner explained that last month in Yakima he gave the RGA stance on the rule eliminating one of the pull-tab machines and said that small clubs were lucky to make \$500 to \$1,000 a month more. It went in the minutes as \$500,000, but the small clubs don't expect to make that from pull-tabs. Mr. Faulkner said he had also talked with Gail about the error. **Chair Niemi** said the mistake would be brought up tomorrow and corrected at that time.

2. **Qualification/Program Review**  
**Spokane Youth Sports Association**

**Director Day** reminded the Commissioners that the Qualification/Program Review is taken from two angles: Financial Investigations' staff reviews the records and reports, and our field agents perform an onsite program review to make sure the services are being provided. Director Day introduced Michael Schneider, Special Agent out of our Spokane office.

**Special Agent Michael Schneider** reported that, along with Special Agent Tyson Wilson, a program review was performed on Spokane Youth Sports Association (SYSA) for their operating year of 2006. Agent Schneider reported that the mission of SYSA is to provide sports to kids where everyone participates, and its focus is more on sportsmanship and being a team player rather than winning. Spokane Youth Sports is the largest provider of youth sports in their area. As part of the review an analysis was done on the financial statements and an onsite review, a narrative, and a review of supplemental information was performed. Staff determined that the SYSA made significant progress in 2006 and recommend the Spokane Youth Sports Association continue to be certified to conduct gambling activities in this State. Agent Schneider noted that SYSA Gambling Manager Jeff Barlow, Assistant Manager Peggy Larson, and Executive Director Phil Helean are present to answer any questions.

**Jeff Barlow**, primary gambling manager for Spokane Youth Sports introduced Executive Director Phil Helean and one of his assistant managers, Peggy Larson.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** that Spokane Youth Sports Association continue to be certified to conduct gambling activities in the state of Washington as a nonprofit organization. *Vote taken; the motion passed unanimously.*

**3. New Licenses and Tribal Certifications**

**Assistant Director Trujillo** explained that at the end of the approval list is a house-banked card room report that was approved at last month's Commission meeting. The report was not included in your packet last month, so it was included this month just for informational purposes.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-20. *Vote taken; the motion passed unanimously.*

**Chair Niemi** called for a recess at 3:30 p.m. and reconvened the meeting at 3:45 p.m. Chair Niemi stated that the Petition for Reconsideration would be taken out of order and heard next because of the late start of today's meeting and because the Petitioner and Assistant Attorney General are present.

*(Agenda Items #4 and #5 were taken out of order)*

**5. Petition for Reconsideration**

**Assistant Attorney General H. Bruce Marvin** was present for the State, as well as **Petitioner Kevin C. Herbst**. Mr. Herbst and Mr. Marvin provided their testimony in the matter for reconsideration. A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony (4:00 p.m.), **Chair Niemi** asked if there were any questions and called for an executive session to deliberate the matter; she recalled the public meeting at 4:20 p.m.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to reverse the Commission's earlier decision and grant Mr. Herbst's Petition for Reconsideration, that his suspension continue until November 19, 2007, and that Mr. Herbst is eligible to reapply for his license on November 19, 2007. The Commission directs staff not to consider this earlier incident in issuance or non-issuance of a new license. *Vote taken; the motion passed unanimously.*

**4. Defaults**

***Porterhouse Restaurant, Moses Lake, Revocation***

**Ms. Hunter** explained this order is a bit unusual and is actually a proposed stipulated order. When staff presents a default, it is done because staff mailed the statement of charges and the licensee did not respond. In this case, the charges were mailed, the licensee did not respond by the deadline, but the licensee is now requesting a hearing. The request was received almost two months late, but the licensee has retained an attorney and would like to have a hearing. Staff is not opposed to the licensee having a hearing or to handling the case like other cases where a licensee does request a hearing on time. But it was felt that there was not a mechanism for staff to just allow this when the hearing has been requested late. In the agenda packet on colored paper is a proposed stipulated order for the Commission's consideration. The procedural history for the case is laid out in a two-page memo from staff attorney Arlene Dennistoun, and explains that this circumstance does not happen very often; although it did happen with the same licensee two years ago. In that case, the Commission issued an order granting the licensee's motion to vacate the default and remand for further proceedings. The result in that prior case two years ago is the same result that staff is recommending today. The memo explains several options for handling the case. If the Commission decides to enter a default order, Ms. Hunter said she would let the attorney, Joan Mell, know, and Ms. Hunter would ask the Commission to hold it over to Friday morning to allow time for more argument about it. Ms. Mell had not anticipated she would be able to attend today, but she is present. Staff recommends that the Commission enter the stipulated order; staff would not present a default order; and the case would go to an administrative law judge for further proceedings, which could include settlement negotiations.

**Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to enter a Stipulated Order remanding Porterhouse Restaurant to an administrative law judge for further proceedings. Vote taken the motion passed unanimously.**

***Brian R. Eng, Card Room Employee, Summary Suspension***

**Ms. Hunter** reported that Brian Eng is not currently working in gambling and staff requests his license be revoked. Mr. Eng has a license as a card room employee, although he was actually employed as a floor and shift manager at the Silver Dollar Casino in Tacoma at the time of this incident. Mr. Eng allegedly conspired with others to cheat his employer by removing and replacing decks of cards. Mr. Eng admitted he removed decks of cards from the Silver Dollar Casino, and that he had gotten them from another individual and returned them later. Mr. Eng admitted he had been paid at least \$1,800 for doing this. The Director issued an Order of Summary Suspension to Mr. Eng, which were sent by both certified and regular mail. By failing to respond, Mr. Eng has waived his right to a hearing and staff is requesting a default order be entered revoking his license.

**Chair Niemi:** asked if Mr. Eng or a representative were present. No one stepped forward.

**Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to enter a Default Order revoking Brian Eng's license to conduct gambling activities. Vote taken the motion passed unanimously.**

***Thompson J. Dillon, Class III Employee, Revocation***

**Ms. Hunter** reported that Thompson Dillon is not currently working. Staff is requesting that Mr. Dillon's Class III certification be revoked. Mr. Dillon has an outstanding warrant, he failed to fully disclose material facts related to his criminal history, and demonstrated willful disregard of court orders by failing to appear and pay fines and fees. The Director issued charges to revoke Mr. Dillon's certification, which were sent by both certified and regular mail. The legal secretary made a courtesy call and spoke with Mr. Dillon to remind him of the date to request a hearing. By failing to respond, Mr. Dillon has waived his right to a hearing and staff is requesting a default order be entered revoking Mr. Dillon's class III certification.

**Commissioner Bierbaum** asked if Mr. Dillon was not working at Emerald Queen Casino any more. **Ms. Hunter** replied that was correct. Mr. Dillon was suspended on June 6 and the tribe did not request a conditional certification, which is something they can do for tribal members. The tribe is waiting for a final decision from the Commission before taking action against Mr. Dillon's license. Ms. Hunter reminded the Commission that for employees who work at tribal casinos, the tribe does the licensing and the state does the certification.

**Chair Niemi** asked if Mr. Dillon or a representative was present. No one stepped forward.

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** to enter a Default Order revoking Thompson Dillon's Class III certification to conduct gambling activities. *Vote taken the motion passed unanimously.*

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

**Chair Niemi** called for other public comment. There was none.

**Executive Session to Discuss Pending Investigations, Tribal Negotiations & Litigation; and Adjournment**

At 4:30 p.m. **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigations. She called the public meeting back to order at 5:15 p.m. and immediately adjourned.

**COMMISSION MEETING  
FRIDAY, OCTOBER 12, 2007  
MINUTES**

**Chair Niemi** called the meeting to order at 9:30 a.m. at the Spokane Convention Center. The following members and staff were present.

**MEMBERS PRESENT:** **COMMISSIONER JANICE NIEMI, Chair**, Seattle  
**COMMISSIONER PEGGY ANN BIERBAUM**, Vice-Chair, Quilcene  
**COMMISSIONER KEVEN ROJECKI**, Tacoma  
**SENATOR MARGARITA PRENTICE**, Seattle  
**SENATOR JEROME DELVIN**, Richland  
**REPRESENTATIVE RICHARD CURTIS**, LaCenter  
**REPRESENTATIVE GEOFF SIMPSON**, Covington

**STAFF PRESENT:** **RICK DAY**, Director  
**SHARON REESE**, Deputy Director  
**MARK HARRIS**, Assistant Director – Field Operations  
**DAVID TRUJILLO**, Assistant Director – Licensing Operations  
**AMY HUNTER**, Administrator – Communications & Legal  
**JERRY ACKERMAN**, Assistant Attorney General

**7. Approval of Minutes – Regular Meeting, September 13-14-2007**

**Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** to approve the minutes of the September 13-14, 2007, regular commission meeting with the change to page 24 as presented. *Vote taken; the motion passed unanimously.*

**8. Rules Simplification Project – Chapter 230-17 – Hearings Rules**

**Ms. Hunter** reported that the Hearings rules have been on the agenda for three months and are up for final action today. Staff received no additional comments. Ms. Hunter pointed out three rules that are the rules where agreement was not reached with the small group. Page 63 deals with official notice, page 75 deals with protective orders,; and page 129 deals with disqualification of a Commissioner who was the presiding officer for a stay hearing and is now hearing the case on appeal. Ms. Hunter explained that staff feel that all of the changes have been made that should be made as far as the Rules Simplification packet goes. Staff is recommending final action with an effective date of January 1, 2008.

**Gabe Galanda**, a lawyer with Williams Kastner in downtown Seattle, on behalf of Valley Technologies, introduced Debora Juarez, a senior colleague with the firm and a former King County Superior Court Judge. Mr. Galanda said he would not repeat the remarks made last week, but would briefly talk about the policy implications of both rules. **Chair Niemi** suggested Mr. Galanda inform the Commissioners of the page numbers he planned to discuss. **Mr. Galanda** replied he would be discussing the

protective order rule on page 63 and the official notice rule on page 75, noting he would not be addressing the rule regarding the recusal of commissioners. Mr. Galanda brought up Commissioner Bierbaum's concern last month about simplifying the lay language and adding additional language. Mr. Galanda stated that Commissioner Bierbaum's point, as reflected in the minutes, was making substantive changes, whether it was addition or subtraction, under the guise of simplification. As Mr. Galanda reflected on the point about adding substantive language, he went back through the rule packet and realized that we and the staff agreed and recommended to the Commissioners 11 of the 41 rules that are actually adding or enhancing these rules; adding things like short-and-plain statement requirements to provide better notice in the charging document, adding service mechanisms by email and fax to bring the agency to 2007 in terms of the way administrative law is being practiced in this day-and-age, and adding a definition of a continuance to give the lay person a better sense of what that concept means. They are very helpful additions and enhancements to the process. Mr. Galanda respectfully suggested to the Commission that they not look at it in terms of addition and subtraction, but look at it through a lens of due process; are we enhancing due process for the sake of licensees and the agency itself, or are we eroding due process by subtracting or simplifying language. The erosion of language or the deletion of substantive rule language raises some significant constitutional issues. The protective order rule almost goes without saying that Washington gaming is a cutting-edge industry that involves all kinds of business secrets, processes, developments, or research as contemplated by the prior version of the rule. There is highly sensitive intellectual property information in terms of game devices, secret net win information, and very important audit and financial statements. All of those kinds of things are in the possession, in some respects, of the agency and ultimately could come to bear in an administrative proceeding. Business secrets, including sacred information like financial or property information, must be protected. So the rule language that was promulgated in 1973 cannot be simplified away. Mr. Galanda believed there are some significant due process issues in attempting to delete that language from the rule – deleting criteria that could guide a presiding officer or ALJ in imposing a protective order that would make that information confidential, would protect it from public disclosure, or otherwise would make it suitably protected.

Mr. Galanda stated that the rule of official notice is really a policy question. The current rule and the proposed rule include the ability for an ALJ to take official notice of federal law and state law, and within state law, agency law, statute regulation, and other such state laws. Mr. Galanda believed there should be parity with tribal law; parity that is recognized in the Indian Gaming Regulatory Act, parity that is recognized and compelled by Washington State Tribal Compacts and amendments. We are pleased to say that the staff has recommended those compacts be added as something that could be officially noticed. Mr. Galanda urged the Commission, as a matter of policy, to extend respect to the co-regulatory relationship between tribal governments and the state of Washington, to honor the primary regulatory role of tribes, and the compact mandate that they have tribal gaming laws, and ultimately to recognize tribal self-government and co-management of the burgeoning industry in Washington. As we cited in our letter, the Governor has done that in the Centennial Accord. The Washington State Supreme Court has done that through Rule 82.5 of our civil rules which compels superior courts to provide full faith

and credit to tribal court rulings. Agencies from Licensing to Revenue to DSHS have done that in their own unique ways, again recognizing the viability and to some extent the primacy of tribal law. In this instance, we commend to you tribal gaming laws as compelled by the compact and tribal licensing contents which parallel with the state license content language that the staff is advocating as something that should be officially noticed.

**Commissioner Bierbaum** asked if the Commission does not change a rule but looked at it and decided it does not need any change, will that hold anything up in terms of completing this Rules Simplification Process. **Assistant Attorney General Ackerman** responded that the answer is no, it would not hold anything up. The Commission would simply need to identify the rule that you did not wish to have changed and that rule would remain in its current form when or if the package is approved by the Commission.

**Commissioner Bierbaum** asked the Chair for permission to take the protective orders out of the Rule Simplification package and deal with them separately. **Chair Niemi** said the rule was WAC 230-17-075 of the new rule package and asked if WAC 230-50-350 would be left in.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to adopt Rules Simplification Project Chapter 17, as presented by staff, with the exception of WAC 230-17-075, with an effective date of January 1, 2008. **Assistant Attorney General Ackerman** inquired if it would be consistent with Commissioner Bierbaum's motion to allow the section that you have excepted out to be renumbered to be consistent with the overall package? **Commissioner Bierbaum** agreed, as did Commissioner Rojecki. *Vote taken; the motion passed unanimously.*

## 9. **Rules Simplification Project – Housekeeping/Cleanup Package**

**Chapter 01** – About the Commission

**Chapter 03** – Licensing

**Chapter 05** – Fees

**Chapter 06** – Rules for All Licensees

**Chapter 07** – Charitable and Nonprofit Organizations

**Chapter 09** – Fund-Raising Events

**Chapter 10** – Bingo

**Chapter 11** – Raffles

**Current Chapter 12** – Rules of General Applicability

**Chapter 13** – Amusement Games

**Chapter 14** – Pull-Tabs

**Chapter 15** – Card Rooms

**Ms. Hunter** reported that this has been on the agenda three times and is up for final action today. No additional comments have been received on these rules since they were filed at the August meeting. Ms. Hunter explained the few changes that staff made to the package since the September meeting; some title changes for consistency with other chapters, and a couple of removals from the package. Staff is asking to remove the rule on page 101 from the cleanup package. This rule was put in because of the petition that was passed by the Commission that Mr. Ronnie Strong had submitted about not having to

record address information for bingo winners when the winnings are under \$20. When staff went back and looked at the RSP version, it was felt that a few more changes needed to be made to the rule. Staff is also recommending that WAC 230-10-446, on page 113, be removed. Staff found that the language in this rule is actually duplicated in WAC 230-10-455, which the Commission has already passed, so this rule is not needed. Staff added an additional sentence in the rule on page 169, subsection 6, to incorporate a rule interpretation. Staff recommends adoption with the changes noted, with an effective date of January 1, 2008.

Ms. Hunter thanked the Commissioners for their time and patience, noting 654 rules have been gone over in the past couple of years. Ms. Hunter explained that staff is in the process of doing a concordance review, which involves double-checking that the rules in the current rules manual have been transferred over to the new RSP manual. In the process, about nine rules were found that need to be added back in, which will be presented at the November meeting. Ms. Hunter reported that this concludes the majority of the Rules Simplification Project, other than those few straggler rules.

**Chair** Niemi asked if there were any questions or public comment. There was none.

Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to adopt the rules in the Housekeeping/Cleanup Package, as presented by staff, with the exception of WAC 230-10-350 and WAC 230-10-446 which will be removed from the cleanup package, with an effective date of January 1, 2008. Vote taken; the motion passed unanimously.

**10. Electronic Pull-Tab Dispensing Devices**

**Rules Simplification Project Rules:**

**Amendatory Section WAC 230-14-045** – Authorized pull-tab dispensers.

**Amendatory Section WAC 230-05-030** – Fees for other businesses.

**Assistant Director Trujillo** reported these rules were presented at the September Commission meeting but held over to this Commission meeting, and includes only a few changes. The proposed amendments will add limiting language to the Authorized Pull-Tab Dispenser Rule and will prohibit video displays and remove the function of a dispenser from opening a pull-tab and reading encoded data. The proposal will also remove language authorizing the agency to individually charge \$106 annually for ID stamps. The proposed amendments will prohibit the use of electronic video pull-tab type dispensers currently being operated in the State, which include the Gold Crown dispensing device manufactured by Trade Products and also the VIP dispensing device manufactured by ZDI. At the September Commission meeting, Jay Gerow, on behalf of ZDI, demonstrated the ZDI VIP dispensing device. Statements opposing the proposed rule change have increased from last month to 26 written statements, which are included in the agenda packet on yellow paper. There were eight people who testified against the rule proposal at the last meeting. Four additional statements have been received against the proposed rule changes, including ones from Senator Mark Schoesler of the Ninth Legislative District, Joe and Linda Driscoll of Arlington, Ralph Larson of Olympia, James Bailey of Tacoma. A request was received from Congresswoman Cathy McMorris

Rodgers for a copy of the rule proposal. The Commission will want to take into account policy considerations that include whether the Commission rules concerning electronic video pull-tab dispensing devices are consistent with the definition of pull-tabs and are consistent with the Legislative intent as described in the Gambling Act, and whether the electronic video pull-tab dispensing devices are current with existing Commission rules. The rule summary was changed from having an effective date of January 1, 2008, to having a date that would be determined by the Commission in the future. At this point staff recommends filing for further discussion.

**Chair Niemi** asked whether Mr. Trujillo anticipated much discussion regarding the second rule, WAC 230-05-030, and in what order the discussion should be taken on the two rules. **Assistant Director Trujillo** suggested taking discussion on WAC 230-14-045 first.

**Chair Niemi** asked if there were any questions from the Commissioners.

**Representative Curtis** asked for clarification on whether staff intends to develop rules for the video displays; there currently are rules for electronic pull-tab devices, but not for the video displays. **Assistant Director Trujillo** affirmed that currently there are rules for pull-tab dispensers and for stamps for electronic pull-tab dispensers. This proposal would remove WAC 230-05-030 and add limiting language to the dispenser rule prohibiting video displays. **Representative Curtis** asked if there was a committee to go over these rule changes. **Assistant Director Trujillo** replied that the rule changes being discussed have already been made and are in the agenda packet. Any subsequent discussion would still have to be set in motion.

**Chair Niemi** called for public comment.

**Dan McCoy**, McCoy's Distributing, provided the Commissioners with a brochure and sample ticket on the Gold Crown video dispensing device. Last month, a demonstration was given on the VIP machine. The typical ticket is in essence a five window ticket, the same size and dimensions that are dispensed out of a mechanical machine. The tickets are opened the same way; the only difference is that the Gold Crown tickets have one window with a bar code that is opened on the way out of the machine. The information on the bar code is then sent to the computer, which shows an exact replica of the ticket on the video screen. The entire pull-tab game is put in the machine. Players would insert their money into the machine and hit the button; the machine would then dispense the ticket, open the window, show the exact replica on the video screen, and then if the ticket was a winner, it would be taken to the cashier. There are times when the bar code window does not open, and at that point the video screen would instruct the player to open ticket by hand.

**Chair Niemi** interrupted Mr. McCoy to explain this discussion was on whether to file an amendment or a new WAC and asked Mr. McCoy to direct his comments to the proposed amendment or to an amendment he would prefer to be filed. **Mr. McCoy** said his only reason for being there was to make sure it was clear what the machine was and to express

his interest that the proposal not be filed. These machines offer a revenue stream for his company and various places where his company has placed the machines, including taverns, casinos, bingo halls, bowling alleys, and fraternal organizations. **Chair Niemi** explained there are some ambiguities in the current WACs, and asked if it would be objectionable to Mr. McCoy to file something that would clear up some of the ambiguities, rather than simply requesting the Commission to not file the proposal. **Mr. McCoy** responded he was not clear on the ambiguities, that his issue was whether the Commission was going to take something away that has been in the marketplace for ten years. **Chair Niemi** said she understood. **Senator Prentice**: asked if Mr. McCoy was trying to show the similarities with the ZDI machines and asked if there were differences. **Mr. McCoy** responded that both machines read the ticket and show the player what is on the ticket. That is the only discernable difference between the VIP, the Gold Crown machine, and any mechanical machine. **Senator Prentice** noted she had visited one in her district and wondered if there were any substantial differences. **Mr. McCoy** said no. **Director Day** clarified that one of the major things being discussed is the Gold Crown does not have, and has not proposed, any of the gift card technology. **Senator Prentice**: asked if Director Day was saying to leave things the way they are. **Director Day** pointed out that Senator Prentice had asked if there were any major differences. At this point, that has not been an issue with Gold Crown. **Mr. McCoy** said that was a good point, adding he was not very familiar with the cash card technologies, which was an oversight on his part, and noted that was a difference between the two machines.

**Bob Materne**, Swinging Doors, testified the only reason he came to the meeting today was to tell Senator Prentice that he has the Swinging Doors, because years ago Senator Prentice told Mr. Materne that she liked the name of his place. Mr. Materne said he was an old-timer; that he and his wife have had the Swinging Doors for almost 27 years. They started May 11, 1981, with about eight employees, and after five years they were ready to file bankruptcy. A fellow by the name of Mike Swanson from Mr. Ed's suggested he put in pull-tabs, and since then the business has grown. About four years ago, Swinging Doors was number four in the State in pull-tabs, doing about \$3.2 million a year. This year the business will do about \$1.5 million, and has gone from eight employees to 54 employees. Mr. Materne said they have tried to change the way they do their operation with food and beverage, but when half of your revenue is taken out of one item out of your place, it is very difficult. Mr. Materne guessed he represented the Spokane contingent, adding there are a lot of owners present today. Mr. Materne urged the Commission not to change or take anything away from them, and suggested looking at the gift card presentation by Jay and Bill Tackett.

**Senator Prentice** noted the Commission was provided with a list of establishments that have the machines and asked if Mr. Materne had them. **Mr. Materne** replied he had previously had both type machines, but did not currently have any.

**Monty Harmon**, Harmon Consulting in Olympia, a licensed service supplier and a licensed CPA, asked the Commission not to file the petition. Mr. Harmon said he believed in filing petitions and thought discussion was a good thing. But looking at the history for this issue, Mr. Harmon stated he was looking at a situation where the

Commission decided to defer to the courts to rule on this machine. That ruling has been accomplished and the licensee prevailed, after expending resources. Mr. Harmon was looking more at the efficient use of Commission resources. As a license fee payer, he is seeing a great deal of resources going into a situation that Mr. Harmon thought had been resolved after being referred to the courts and that the discussion was done. When he looked at this particular issue and the tickets, back in the days with pull-tabs when they were manufactured, there was not a secondary win code – and that became a requirement for the Commission. The bar code that is on these tickets is a third manner of verifying a winning ticket and not really a problem. Basically, Mr. Harmon encouraged the Commission to consider the amount of resources that have been expended by the licensee in trying to follow the rules and the amount of Commission resources that are being utilized on this issue, which Mr. Harmon did not see as a threat to the effective regulation of gambling. Mr. Harmon asked the Commission to not file this petition.

**Chair Niemi** agreed, as far as the amount of resources that are being used by this, noting that she personally thought that filing and doing something, whether this or something else, should be done so this does not keep floating out in the air forever. Chair Niemi commented she was tired of it also and would like to have the petition filed and taken care of. Chair Niemi noted she was not saying that she was in favor of this amendment or any other amendment that might be proposed.

**Representative Curtis** wondered if the discomfort level was not necessarily about the rules – there are going to be rules for everything that has to be done and looking at the rules and trying to evaluate whether they are current or not is probably not a bad idea. The discomfort level seems to be that some people feel this may result in getting rid of the video pull-tab machines. Is that correct?

**Mr. Harmon** agreed the concern of some licensees is that there is something that has been in place for ten years that a lot of money has been spent on – ZDI in particular has expended resources under the current rules to approve a new machine, which does not change pull-tabs, which is the regulated activity.

**Jay Gerow**, ZDI Gaming, asked that the Commission not file this rule. It has drug on for a very long time. Mr. Gerow did not feel the rules are ambiguous; that everything is there that needs to be there. However, if the Commission chooses to file the rule, Mr. Gerow asked that some amendments be made to the rule, which have been shared with staff, that would allow some clarity and perhaps make staff feel better on, ZDI's intentions. It is not going to be this explosion of gambling, it is going to be a very limited scope. One of those would be that a paper pull-tab has to be part of the mix so that it stays within the rules. The other would be that there could not be any winners over \$20 allowed to go to the cash card as a prize, which then follows the rules that are already in place with flare regulations. Also that it was necessary to insert the winning ticket back into the pull-tab machine to collect that prize so that winning ticket was kept with the machine for accountability. Staff has ZDI's proposed rule change, and if the Commission does need to do this, Mr. Gerow said he would like to see it go that way; however, Mr. Gerow would prefer not to have it filed.

**Angela Bakunowicz**, with Cadillac, and Cleo's, and Classic Island Casinos, testified her concern with having this proposed rule filed is really a money factor. By taking the machines out her casinos are going to lose revenue. Eight of the machines are currently at Cadillac Island Casino and six at Classic Island Casino. Plans are to be opening up Cleo's shortly and some machines are planned for there also. The machines bring in a lot of revenue for our casinos. On the other side, the minimum wage is going up to over \$8 an hour as of the first of the year, plus processing costs with licensing with the Washington State Gambling Commission is going up also. How are we going to overcome losing revenue, but have all these gains coming towards us too? That is Ms. Bakunowicz's biggest concern with having this rule being filed.

**Representative Curtis** thought everybody realized that ultimately taking out the machines may be part of it, but thought the intent was to resolve rules and move forward to develop rules for the machines that are currently authorized, not necessarily take out the current machines that we have. It could be a result, I guess. But that was not the initial intent of the discussion, was it – to take out all the video machines? **Chair Niemi** thought it actually was. **Representative Curtis** wondered why then are we discussing rules for something we are not going to have. **Chair Niemi** said she understood about not taking this out and she absolutely agreed. Mainly because of the testimony last month from the Yakima City Councilwoman about the amount of money that Yakima gets from the taxes on these machines, Chair Niemi said she would have a very hard time voting for this new rule. Chair Niemi thought it was appropriate that the licensees are able to keep those machines.

**Angela Bakunowicz** commented on the possibility of the ZDI machines going a step forward with the cash cards, noting our culture is going towards technology. Everything that we do is moving forward towards technology – that is the new age. Not to keep moving forward is a hold back. Ms. Bakunowicz described it like in class where students went from handwriting everything down to typing everything on computers – it just shows how our technology is moving forward. **Chair Niemi** agreed and said it was a good comment.

**Teresa Bakunowicz**, also with Island Casinos (Cadillac Island, Classic Island, and Cleo's Island Casino), corrected the location of the machines, noting that the eight video machines are at Classic Island Casino and the six machines at Cadillac Island Casino, along with about 60 pull-tab bowls. Ms. Bakunowicz asked why the Commission is proposing to eliminate the video screens when there is not currently any malfunctions with the screen and the machine itself is more reliable than the fishbowls. The machines virtually eliminate theft because only the security guards have access to the machines and are the only ones who empty the money out of the machines at the end of the day.

**Chair Niemi** interrupted to ask whether Ms. Bakunowicz was proposing that the Commission not file, or that the Commission file a different amended rule. **Ms. Bakunowicz** replied she was proposing that that the Commission does not file, and asked if she could continue. **Chair Niemi** affirmed. **Ms. Bakunowicz** asked the Commission

why they would eliminate something that currently has nothing wrong with it. It did not seem just in her mind.

**Senator Prentice** responded that was the danger when someone over-reaches; they end up lucky to escape with their hides. That is the reality of it. Appropriately this whole issue should be handled by the Legislature. That's where it really needs to go and each of the ex-officio members has been watching this closely.

**Commissioner Rojecki** commented that he too did not support taking away the machines that are in existence today, but after hearing the discussion and to further this issue for future resolve, **Commissioner Rojecki** made a motion seconded by **Commissioner Bierbaum** to accept for filing and further discussion Amendatory Section WAC 230-14-045, and directed staff to work with the industry stakeholders and file an alternative that takes into account the discussions heard today. **Chair Niemi** added that her comments during the discussion give a good idea of what direction we wish the Commission to go. Chair Niemi appreciated what staff has done in filing this amended petition for pull-tab dispensers. What we are asking staff to do is listen to the people and file another amended petition for the Commissioners to consider. The reason being that, as one of the last people said, everything has changed so much since 1972 that may be time to take advantage of these electronic machines. It is also time to deal with the idea of cash, or non-cash, or paper. Chair Niemi felt strongly that we are trying to figure out "how many angels can dance on the head of a pin" when we talk about what is cash, or non-cash, or paper, or not paper. It would be really nice to make that clear to everybody. Chair Niemi agreed this petition should be filed for discussion so that the WACs and rules are clearer. Chair Niemi clarified that, as Commissioner Rojecki said, the Commissioners would like to have something new to look at in November. *Vote taken; the motion passed unanimously.*

**Mr. Gerow**, ZDI Gaming, asked for clarification – will the stakeholders be involved in that discussion? **Commissioner Bierbaum** answered it was part of the motion Commissioner Rojecki made – that the industry be included. If you have specific recommendations about the form in which that input should be provided, it would be helpful to the Commission. If there needs to be some kind of formal mechanism for people to have their views heard, we will certainly listen to that next month.

**Assistant Director Trujillo** reported the second rule is wrapped into that same package and has to do with repealing the stamp fee rule that would be associated with the first rule. Assistant Director Trujillo felt the discussion has wrapped both of those together, but if the Commissioners have any specific questions concerning that particular rule or would like to have public comment addressing that portion of the rule, we can bring people forward. **Chair Niemi** thought that, although the two rules are together, there is a lot of difference between fees and not filing something. **Commissioner Bierbaum** asked why the two different rules were together. **Assistant Director Trujillo** explained they were together because if the Commissioners chose to amend the language not allowing video monitors or the ability to read encoded data, then there would not be a need for the fee on the electronic video pull-tab dispensers. **Chair Niemi** asked if the motion covered

both of the rules to be filed. **Assistant Director Trujillo** affirmed. **Chair Niemi** asked if that had already been done, that we just need comment on the fees section. **Commissioner Rojecki** said no. **Assistant Director Trujillo** agreed, apologizing for not clarifying that sooner. **Mr. Ackerman** thought the motion just went to the first rule. **Commissioner Rojecki** confirmed his motion only went to the first issue, and asked if this had been discussed at study sessions. **Assistant Director Trujillo** responded it was discussed at the July, August, and September study sessions. **Director Day** clarified it was really just an administrative clean-up if the first proposal went forward. If the first rule were to be enacted, there would be no such thing as a video pull-tab machine and, therefore, no need to have a stamp for it. All the discussion has been about the first rule. **Commissioner Rojecki** asked if it meant that if we have an alternative, then this may not even be needed. **Director Day** affirmed. If there is an alternative eventually adopted by the Commission, instead of the one that was filed, this fee would probably remain.

**Commissioner Bierbaum** made a motion seconded by **Commissioner Rojecki** to accept for filing and further discussion Amendatory Section WAC 230-05-030, as presented by staff, with an effective date to be determined. *Vote taken; the motion passed unanimously.*

#### **11. Other Business/General Discussion/Comments From the Public/Adjournment**

**Chair Niemi** called for public comment.

**Director Day** thanked the Commissioners, our staff, the public, and everyone in the industry that have helped with the RSP process, and participated in everything from raffles through card rooms. The Commissioners have seen the weight of the material, but the effort in going over every detail of those rules has been outstanding. It is important for everyone to realize that we appreciate all the effort and participation put into this process, and it is a much better product because of that effort. **Director Day** noted that he had been advised that the G2E conference, which is attended by a lot of industry members, takes place in Las Vegas around the same time as the next Commission meeting. Staff has had some discussion about possibly holding the study session on Friday instead of on Thursday of the Commission meeting. **Director Day** asked those who attend the study session to check the Commission meeting agenda for the dates and times of the study sessions.

**Senator Prentice** commented that it was always important to look back and see why this Commission exists. We are regulatory and law enforcement, and although all of us are concerned about the production of jobs and people losing jobs, that cannot be the deciding factor – we have to obey the law. **Senator Prentice** thought it was also important to review why the Ex-Officio members are part of the Commission, which is the result of the Indian Gaming Regulatory Act and the way our state handled it. **Senator Prentice** thought it was because the Gambling Commission was already in place that the decision was made by the Legislature to include four Legislators as ex-officio members for the purpose of voting on tribal compacts and amendments, but also to pay attention to issues such as we have been having and act as the liaison to the Legislature. **Senator Prentice** was surprised to see that, at some point in mediation, the attorney suggested that the Ex-

Officio members attend although they have no role or say in that process; although, the members would have a say in the Legislature. It is important to redefine the ex-officio member's role because often, because we all like each other, we think that we are in each other's business, and we are not.

**Commissioner Bierbaum** comment that she agreed with both Chair Niemi and Commissioner Rojecki that they were not interested in taking away or having the existing machines removed. But she disagreed with comments made by Mr. Harmon that the current rules are okay and clearly define what is and is not permitted. If that were true, the Commission would not be embroiled in this expensive litigation; litigation suggests there is ambiguity and uncertainty. All the Commission wants to do is bring these rules up to the 21<sup>st</sup> century so we are not arguing over the definition of cash cards and what is cash, and so that the Commission knows what technology is or is not permitted. We understand that the rule that was proposed is draconian, but it was draconian because it was designed to get those involved in this process to recognize the need that if the Commission cannot get rules that are clear then we are just not going to have these machines at all. But we will have the machines, because the Commission knows that people will be able to get together and make a set of rules that are clear and understandable so the Commission will not be litigating for the rest of our lives.

**Chair Niemi** called for a brief Executive Session at 10:30 a.m. to discuss a personnel matter, noting that the meeting would be adjourned immediately after the Executive Session. **Chair Niemi** reconvened and adjourned the meeting at 11:00 a.m.

Minutes prepared by:

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