

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, APRIL 9, 2009
MINUTES**

Chair Peggy Ann Bierbaum called the meeting to order at 1:30 p.m. at the Olympia Red Lion Hotel and introduced the members present:

MEMBERS PRESENT: **Commission Chair Peggy Ann Bierbaum, Quilcene**
 Commissioner John Ellis, Seattle
 Commissioner Mike Amos, Selah

STAFF: **Rick Day, Director**
 Mark Harris, Assistant Director – Field Operations
 David Trujillo, Assistant Director – Licensing Operations
 Amy Hunter, Administrator – Communications & Legal
 Jerry Ackerman, Senior Counsel, Attorney General’s Office
 Hollee Arrona, Secretary Senior

Recognition of Cooperative Efforts by Tribe, Federal and State Agents

Director Rick Day explained that over a three month period, seven tribal gaming agencies, the FBI, King County, and the Washington State Gambling Commission worked together in an investigation that involved the loss of over \$13,000. This resulted in the arrest and indictment of four people on two counts of theft from casinos on Indian land. There was a separate note citing the quality of the work of the investigation and the cooperative effort between the State and the tribal gaming agencies.

Today’s ceremony is to thank each one of those that participated in the investigation. Everyone’s work is very much appreciated. **Director Day** introduced each recipient while **Chair Bierbaum** along with **Assistant Director Julie Lies** presented certificates, plaques and letters of appreciation. All recipients then gathered for pictures to be taken. The recipients were as follows:

- Adam Flores, Nisqually TGA table game supervisor, alerted the floor supervisor at the time of one of these investigations (not in attendance).
- Andrew Chastain, Nisqually Tribal Gaming Agency, reviewed digital recordings during an investigation around October 24 and 25 and concluded the cheating scheme had occurred (not in attendance).
- Bounso Ya, Red Wind Casino floor supervisor, was alerted to the roulette scheme and requested surveillance to review the digital recordings. This identified some of the suspects, their car, and how the scheme was being played out
- Daryl Barnes, Puyallup TGA, worked with Tina Davis with digital recording review, prepared well documented accounts of each incident that occurred (not in attendance).
- Dennis O’Bryan, State Gambling Agency, lead agent who coordinated with other law enforcement agencies, tribal gaming agencies and our operations within the state agency.
- Dick Kellogg, State Gambling Agency supervisor, kept up communications and orchestrated the crew.

- Jason Rogers, Snoqualmie Casino surveillance director, made observations of the roulette scheme that resulted in three suspects being arrested by King County deputies.
- Jeanine Sugimoto, State Gambling Agency, assisted in the collection of evidence.
- Jim Greene, State Gambling Agency, assisted in the general investigation.
- Joel Wong, Muckleshoot TGA director, received information and issued a statewide e-mail alert to warn other TGAs of the scheme. Merle Barr, the Chairman of the Commission accepted on his behalf.
- Julie Kerkof, State Gambling Agency, assisted in the investigation, collected evidence, interviewed witness, and provided knowledge regarding roulette.
- Nouen Danny Chum, Puyallup Casino roulette dealer, brought attention to the operations at the Puyallup Casino of a possible roulette cheating scheme (not in attendance).
- Patrick Gann, special agent with the FBI, assisted the State Gambling Commission in gathering information, filed criminal complaints in federal court, and prepared and filed arrest warrants in federal court regarding the four suspects listed in the criminal complaint (not in attendance). Mark Terra accepted on his behalf.
- Rick Herrington, State Gambling Agency, instrumental in putting out criminal intelligence regarding some of the suspects involved in this case.
- Ron Baldwin, State Gambling Agency, assisted in the collection of evidence and information.
- Scot Patnode, floor supervisor at the Clearwater Casino, detected the scheme and brought the suspect group to the attention of the Suquamish Tribal Gaming agency.
- Tate London, Assistant United States Attorney, provided the Commission and agent Gann the legal guidance regarding the case (not in attendance).
- Tina Davis, Puyallup Casino surveillance supervisor reviewed 50 hours of digital recordings at the casino on I-5 and detected the cheating scheme. She prepared DVDs for the Tribal Gaming Unit of the State.
- Travis Vessey, State Gambling Agency, assisted in the investigation (not in attendance).
- Vander McInnis, Suquamish TGA, detained and identified three of the seven suspects involved in the case.

Staff Accomplishments

Partnership Program: Therese Cramblit

Director Day introduced Therese Cramblit as a participant of the Partnership Program which is a program to provide staff the opportunity to visit different areas of the Commission so they have a better idea of the whole picture and how everything fits together.

1. Approval of Minutes – March 12-13, 2009, Regular Meeting

Chair Bierbaum asked if the members of the Commission had an opportunity to review the minutes from the March 12th and 13th regular meeting. **Commissioner John Ellis** and **Commissioner Mike Amos** confirmed they had. **Chair Bierbaum** asked if there were any changes, revisions, or corrections. **Director Day** pointed out an insert with some small highlighted changes. **Chair Bierbaum** acknowledged the changes and asked for a motion.

Commissioner Amos made a motion seconded by **Commissioner Ellis** to accept the minutes as recorded with corrections. *Vote taken; the motion passed unanimously.*

Commissioner Ellis stated that although he was not present at the meeting, he had read the minutes and they appear to be in order, and are consistent with what he understood occurred at the meeting.

2. Agenda Review/Director's Report

Director Day reviewed the agenda and pointed out that several changes had been made since the agenda was originally posted. **Director Day** requested authorization to remove Cheryl Gunderson from the default list as staff is confident that service was not accomplished.

Chair Bierbaum approved the change.

Director Day introduced Julie Lies, Assistant Director of Tribal Gaming Division, who presented the Tribal Contributions Report.

Tribal Contribution Report (PowerPoint presentation)

Assistant Director Julie Lies addressed the Commission and explained that she was reporting on the tribal contributions that are required in the tribal-state compacts and Appendix X2.

Seventeen (17) of the 22 tribes have committees. The agency's role is to ensure that the compact provisions are followed and the payments are made to qualifying organizations. Staff verifies the accrual and disbursement of the charitable amounts as well as smoking cessation and problem gambling. The ongoing contributions are for fiscal year 2007. The tribes have a year to accrue funds, and another year to disburse. The 2 percent payments are made annually, and some tribes make those quarterly.

Types of services that received funding are fire and emergency services and law enforcement. There was a slight decrease in the 2007 distribution amount. Of almost \$6 million, 56 governments received funding. That is up one from last year. Over the last three years about 58 governments received funding.

0.5 percent of the tribal lottery system net receipts is paid to non-profit or charitable organizations in the state of Washington. The largest distribution given is to social and community services. This year 1,105 organizations received funding.

New contributions are for the fiscal year 2008.

Smoking cessation is 0.13 percent of the tribal lottery system net receipts. These payments would not need to be made if a casino, meaning the entire building, is completely smoke free or does not serve alcohol. 53 percent went to the tribes' own smoking cessation programs. Nine charities received funding. Some of those charities were the American Lung Association, American Cancer Society, and Fred Hutchison Cancer Research. Two state agencies received funding: the Department of Social and Health Services Division of Alcohol and Substance Abuse and also the Department of Health.

Twenty three (23) organizations received funding from the tribes. The amount is slightly larger than 2 percent, due to being based on tribal lottery systems.

Problem gambling contributions are 0.13 percent of Class III net receipts which includes tribal lottery system machines, table games, and keno. This is a new requirement under Appendix X2.

Washington State Gambling Commission

April 9-10, 2009

Minutes

Page 3 of 26

40 percent of the contributions went into tribal programs through the tribes' health centers 3 percent went to Department of Social and Health Services Division of Alcohol and Substance Abuse, and 57 percent went to charitable organizations. The Evergreen Council on Problem Gambling received a major part of that. The other thing to note is the Kalispel Tribe has the Camas Institute which is a non-profit organization. Just over \$1.5 million was distributed to 15 organizations.

Chair Bierbaum asked if there were any questions. There were none.

Legislative Update

Ms. Amy Hunter gave an update on items before the Legislature and explained the cutoff for bills to make it out of the opposite house is Friday, April 17th. This cutoff does not apply to any matters that are deemed necessary to implement the State budgets. The 105 day regular session is scheduled to adjourn on Sunday, April 26th. In the interest of time, if the Commissioners want to have more discussion about a bill or have questions, please ask.

- SSB 5040, penalties for underage gamblers. This would allow agents to issue civil infractions. It imposes a \$125 fine. The bill passed the Senate the third week of session. The Senate version had an amendment about having the Juvenile Court Divisions of Superior Courts having jurisdiction over these cases instead of the municipal and district courts. When the Superior Courts have jurisdictions, the statutory assessments do not apply. Without the statutory assessments, the fine would be \$125. The court would still be able to impose up to four hours of community restitution and any court costs. The bill passed the House by a 94-4 vote, and will go back to the Senate for concurrence with the amendment about jurisdiction.
- HB 1217 allows the Commission to set amusement game locations in addition to those set by the Legislature. The House version passed 96-1. The bill had a hearing in the Senate, passed out of committee, got out of Rules, and then was passed by the Senate by a 44-1 vote. It was delivered to the Governor's office on April 7 and it is expected that she will sign it. The Senate version died after getting out of Rules.
- SB 6146, consolidates the Gambling Commission in to the Department of Licensing as the Office of Gambling Regulation. The bill was introduced last week and there was no hearing on the bill prior to the cutoff.
- SB 6152 modifies the definition of gambling. The bill redefines gambling in light of a recent court decision. The concern with the decision is that it has broader implications than just the case that was before the court. This bill also adds an additional section in section 1 adding language to the legislative declaration. The Commissioners supported 6103, and because it is an almost identical bill, staff will proceed with a support position if asked. The Senate passed that 38-10. The House Commerce and Labor Committee heard the bill but did not bring it up for a vote for executive action. It died in committee.
- HB 2049 deals with Washington Management Services (WMS) and other exempt employees. The bill that is moving is a reporting requirement for agencies and is not worrisome. It requires all State agencies to report a number of things to the Department of Personnel annually, including the number of employees that are in these categories and wage and bonus

Washington State Gambling Commission

April 9-10, 2009

Minutes

Page 4 of 26

information. It passed the House 95-0. It is out of Senate Rules and ready for action on the Senate floor.

- HB 1053 increases the price that a raffle ticket can be sold from \$25 to \$100. The House passed the bill 93-0. The bill has been heard by the Senate committee, passed out of committee, passed out of Rules, and passed the Senate by a 43-3 vote. It is waiting for the Governor to sign. There was a question on the floor about whether this was an expansion of gambling. The Lieutenant Governor ruled that it was not. The Senate bill died in Rules.
- HB 1273, allows local governments to hold raffles, as long as all of the net receipts are used for community activities or promotion of tourism. The bill passed the House 97-0. It has had the Senate committee hearing, got out of committee, got out of Rules, and is ready for a vote on the Senate floor.
- SHB 1552, public access at open public meetings. The bill is less broad than the original bill and only applies to rule making decisions. It amends the Administrative Procedure Act and requires that interested parties be given the opportunity to present comment individually. They have to all stand up as a group. It requires that comments be done orally in the presence and hearing of all other attendees. The original bill was similar to this. This bill is also out of Senate Rules and is also ready for a vote by the Senate.
- Commissioner confirmations. Commissioner Amos was confirmed on March 31 by a unanimous 44-0 vote. And Commissioner Ellis' confirmation got out of Rules on April 7 and is now on the Senate confirmation calendar
- SB 5589 makes the Horseracing Commission functions part of the Gambling Commission. The bill is still alive.
- HB 1497 eliminates about 370 boards and commissions, meaning the structure of having a board and commission. That bill was not even scheduled for a hearing.
- SHB 2162, local governments options to limit house banked card rooms within their jurisdiction. That bill died in House Rules.
- HB 1676 deals with the Open Public Meetings Act. This bill allowed agencies to record their closed executive sessions and then dealt with training about the Open Public Meetings Act. That bill died.

Chair Bierbaum asked if there were any questions of the Commissioners.

Commissioner Ellis asked if the last bill required agencies to record their executive sessions.

Ms. Hunter confirmed that it did in last year's version, but this year's version did not. It includes a number of other requirements.

Ms. Hunter explained the Recreational Gaming Association has helped on the underage gambling bill by putting in requests for a rules pull. At the rules meeting earlier this week the first pull was 50-40 and is finally going to get to the floor.

Correspondence

Washington State Gambling Commission

April 9-10, 2009

Minutes

Page 5 of 26

- No Limit and Pot Limit Nonhouse-banked Poker Games
Director Day explained the letter was concerning a request to the Commissioners to allow no limit or pot limit poker and eliminating the raise limit in favor of limiting the buy in.
Assistant Director Harris responded suggesting the proposal may not be consistent with state law and sent him a note directing him to the rule making process in case he wished to pursue the idea.

Monthly Update Reports

Director Day pointed out that the administrative cases information is in the packet. There is no new seizure information to report. It is expected that at the federal level there is to be a new internet gambling bill

News Articles

Director Day noted one article of interest entitled “Internet Gambling Takes a Hit from Washington Appeals Court”. It just confirms that the court ruled that the state internet gambling law does not violate the United States Constitution or the regulation of interstate commerce.

3. Evergreen Council on Problem Gambling (PowerPoint presentation)

Executive Director Maureen Greeley explained the Council is a non-profit organization and used to be called the Washington State Council on Problem Gambling. We changed our name a year-and-a-half ago to the Evergreen Council on Problem Gambling because people were confusing us as a state agency. Our mission is predominately to provide services for problem gamblers, family members, employers, communities, and all groups who are affected in one way or another by the addiction of gambling.

I want to make it very clear we are not anti-gambling. Many people hear our name and they immediately think we must be anti-gambling. We are not. We understand, just as most addictions, a glass of wine does not make an addiction. Gambling as entertainment and recreation does not make an addiction. But there is a percentage of our population who are affected by gambling in a form that goes way beyond entertainment and recreation. For those people we want to make sure that we have the programs and services in place to help them.

So our key program areas revolve around treatment, training, awareness, research and advocacy. Among those things in the treatment and training area, probably the biggest one that people are familiar with is the helpline service. In Washington State we have a toll free 24 hour a day helpline. Anyone can call that for information about problem gambling, referral to services, whether they are support groups or actual treatment providers. We also provide the workforce development training in the state of Washington for any treatment providers who are seeking certification, or who are looking for continuing education regarding problem gambling as a specialty. These may be counselors, they may be psychologists, they may be family counselors.

We also are invited and we enjoy doing the new agent training for the State Gambling Commission. We are a very small portion of that overall training, but we receive a lot of good comments on having that for your field agents and why it's important for them to at least be aware of the issue and how it exists in our State.

New this year a tribal problem gambling awareness conference was added. You will see in your folders that we have our third annual Western Regional Conference on Problem Gambling in Vancouver, Washington the last day of April and May 1 and 2. We have had Gambling Commission staff and Commissioners attend in the past. The Commissioners are certainly welcome to join us. But we are offering this year on October 1, 2, and 3 a tribal problem gambling awareness conference that will actually help those behavioral health services members in the tribes who are trying to have problem gambling services available onsite in their health and wellness centers.

In addition, the Council is offering a tribal casino responsible gaming certification which is a very expanded version of the new agent training and would allow all employees at casinos to get a basic understanding of problem gambling and how to deal with the issue onsite in the casinos.

In awareness and prevention the Council does many things. We are out in the communities all of the time speaking to groups. But we have some big things launching this year. We're working with the Office of the Superintendent of Public Instruction prevention specialists and educational school districts to develop and launch curricula around addictions and healthy choices, and specifically how problem gambling fits into that. So we're developing that for several grade levels. In conjunction with that a youth website, and we have launched our first YouTube channel to get awareness out to youth because we're finding that they are not really interested in a lot of the other forms of communication that we've tried to reach them with. So we're branching out into other areas.

The Council is also interested in research and advocacy, and has some research going on right now at the University of Washington to look at gambling behaviors with college students. We have a grant funding proposal out to look at how to increase the impact of our helpline. That may mean actually moving away somewhat from the helpline more to chat rooms and using enhanced web capabilities to reach out to other populations. Our advocacy also has included an attempt to work towards therapeutic justice which would be a problem gambling court similar to the drug court systems. Thanks to the help of a lot of people from different agencies, the gaming industry, and the Lieutenant Governor's office, the Council held forums on the capital campus this year. Representative McCoy has agreed to sponsor a bill for a pilot problem gambling court next year. His staff will help draft the bill language over the interim.

Executive Director Greeley thanked the Commission for the support of many staff members.

Chair Bierbaum asked if the Commissioners had questions.

Commissioner Ellis asked if there was any sense of the magnitude of problem gambling within the tribal community as compared to the other areas.

Executive Director Greeley replied that to date there have been no studies specifically looking at Native American populations. The last prevalent studies done in the state of Washington were in 1998 and 1999, so the statistics are very old. They don't seem to vary substantially from state-to-state. It still seems to be holding fairly steady that somewhere between 2 percent and 4 percent of the adult population, regardless of cultural aspect, is going to have a pathological or problem gambling. With teens it is actually much higher, but

as they mature, it seems to drop back. We know that teens are a population that are testing boundaries and experimenting. But it is a concern for us, particularly as the internet becomes more and more. There are not a lot of prevalent studies that have been done since internet gambling has really been a high area. But Ms. Greeley did not have cultural statistics and demographics of that type for Native American.

Assistant Director David Trujillo expressed his thanks to Maria Chiechi who helped get the amusement game legislation through. He also thanked Chiechi and Associates for their help.

4. Allowing Amusement Games at Family Sports Complexes (Taken out of order)

- a) **Amendatory Section WAC 230-13-150** – Amusement game locations
- b) **Amendatory Section WAC 230-13-080** – Operating coin or token activated amusement games
- c) **Amendatory Section WAC 230-13-135** – Maximum wagers and prize limitations at certain amusement game locations

Assistant Director David Trujillo directed the Commission to item number 4 on the agenda and tab number 11 in the agenda packet. The packet has three rules that are up for discussion and were filed in February and discussed at study session in March. They are to amend WAC 230-13-150, amending WAC 230-13-080, and amending WAC 230-13-135. These three rules remove the requirement that family sports complexes offering amusement games be commercially operated. It also removes the requirement that charitable or non-profit organizations offering amusement games also be licensed to conduct or operate pull-tabs and bingo.

The main purpose for bringing this to you today is a housekeeping change. Staff added the two letters “es” to “complex” to make it “complexes”. To date we have received no statements opposing the change. If there are no questions, the item will be up for final action again in May. Staff will be recommending the rule to be effective 31 days from adoption, or June 15, 2009.

Chair Bierbaum commented that there appeared to be attachments missing because the sentence just drops off on the History of the rule. **Assistant Director Trujillo** agreed there should be attachments and assured it would be corrected.

Chair Bierbaum asked for questions.

Commissioner Ellis stated he assumed there are still no issues or controversies concerning any aspect of the proposed rule changes. **Assistant Director Trujillo** verified that to be true and acknowledged there had been no correspondence received on the matter.

Chair Bierbaum asked if any member of the public wanted to comment on these proposed rule changes. It was acknowledged that it was going to be up for final action at the May meeting.

5. Petition for Rule Change (Taken out of order)

Recreational Gaming Association – Funds to pay out prizes

- a) **Amendatory Section WAC 230-15-455** – Keeping funds to pay prizes, progressive jackpot prizes, and odds-based wager prizes

Assistant Director Harris directed the Commission to item 5, a petition for rule change by the RGA, which is up for discussion and possible filing. The petitioner is requesting to eliminate the requirement that individual odd based wager prizes that house-banked card rooms offer over \$25,000 be deposited in a separate bank account. The proposed

change would allow that if they offer more than one prize, the second highest prize greater than \$25,000 would be kept in either a bank account, mutual savings account, credit union account, or have a verifiable line of credit. Currently the minimum cash on hand requirement includes the highest odds based prize offered to be included as part of the minimum cash. Recently the betting limits increased from \$200 to \$300. Under the \$200 limit with the odds based wagers and the aggregate requirement in another rule, most of the house-banked card rooms didn't have any jackpots that exceeded \$25,000. If they are set at \$20,000 none of that amount was ever deposited in a bank account. Now that the betting limits have increased to \$300, a lot of these odds based aggregates will now exceed that and would be around \$30,000. Staff worked with the RGA on their petition and came up with some verbiage that would allow the original prize to be included in the minimum cash on hand and the second highest prize available to be on a deposit, but not in a separate bank account or another line of credit. The thought process behind that was that most likely the chances of two jackpots going are minimal. They already have the original amount in cash in the cage, and then a backup amount on deposit or for a verifiable line of credit. The petitioner did not indicate an effective date. If adopted, staff would recommend an effective date of January 1, 2010. Staff recommends filing for further discussion.

Commissioner Ellis clarified that under the history of the rule it indicates that house-banked card room licensees are required to keep the total of all of the prizes in a separate bank account. It is possible that with the \$300 wagering limit, a card room with several tables with odds based wager prizes could reach \$30,000. It says if a licensee is operating four house-banked tables of that sort that offer the \$30,000 prizes, they be required to keep \$120,000 in a separate bank account. It wasn't clear where that leads under the proposal. Would that mean that the first \$30,000 prize needs to be included in the cash on hand and then the second table's \$30,000 prize is going to be treated as the second highest prize and therefore would be included in the bank account. **Assistant Director Harris** agreed that was correct.

Chair Bierbaum felt the math was mind boggling and asked if Ms. Chiechi was present. **Ms. Dolores Chiechi**, Executive Director of the Recreational Gaming Association (RGA), explained this was their petition. Ms. Chiechi thanked staff for working with the RGA to come up with language that is agreeable to staff as well as workable for the industry. And as we make rule changes, they kind of trickle down to affect other rules that we take a look at and go okay, we didn't think of that as we brought the other one forward. Ms. Chiechi appreciated the Commission considering this petition for filing, but also asked that they consider a 31 day effective date once the rule is approved so the industry does not have to wait until January 2010 to have this go into effect. Thank you for consideration. And I would be happy to answer questions if I possibly could. But like Commissioner Bierbaum, I get a little fuzzy with the math myself.

Chair Bierbaum asked if anyone wanted to talk on behalf of or in opposition to filing this petition. There was no response.

Commissioner Ellis made a motion seconded by **Commissioner Amos** to accept for filing and further discussion the proposed new rule WAC 230-15-455. *Vote taken; the motion passed unanimously.*

6. Petition for Rule Change (Taken out of order)

Galaxy Gaming, Inc. – Increase the Number of Games Played in a Single Hand of Cards

- a) **Amendatory Section WAC 230-15-040** – Requirements for authorized card games
Assistant Director Trujillo directed the Commissioners to tab 13 in the agenda packet, which is up for discussion and possible filing. Petitioner Rob Saucier of Galaxy Gaming is requesting to increase the maximum number of games allowed within a single hand of cards from three to six so he can introduce a new game or modify an existing game. Staff has not seen this game.

As this is considered for filing, regulatory concerns of house-banked card game licensees offer games with more than three wagers within a single hand of cards. There may be an increase in dealer procedural errors and/or cheating or theft. Resource impacts, additional staff time may be needed to review new games submitted for approval. If the games prove to be popular, additional staff training and regulatory time may be needed. The Commission increased the number of games in a single hand from two to three effective January 1, 2008, house-banked card game wager limits from \$200 to \$300 effective January 1, 2009, and the number of players at a house banked card table from seven to nine, that was also effective January 1, 2009. Mr. Rob Saucier was going to attend the meeting on Friday, but will not be able to attend today. He plans to attend the next Commission meeting to talk more about his game concept. Staff recommends filing for further discussion due to the fact this was originally scheduled for Friday's Commission meeting.

Chair Bierbaum asked if the Commissioners had questions.

Commissioner Ellis confirmed it would be discussed next month and expressed his concern about the increase in the potential maximum wager going from \$900 to \$1800 on a single hand. What would staff recommend if the petitioner were present to discuss the potential filing of the rule today?

Assistant Director Trujillo explained that he understands the petitioner is hoping to modify a game that is in play now that can be played up to three hands. The proposed game would increase it to four, not the six.

Assistant Director Harris clarified that the game Mr. Saucier is requesting to modify has already been approved with the three bets. The petitioner is just adding a progressive type bet to an existing game. That game version has already been approved for tribal casinos, so the original game has been approved in theory.

Assistant Attorney General Jerry Ackerman confirmed that the Commission's only obligation under the rules is to take action within 60 days. One option would be to continue the petition to the next meeting and make the decision on whether or not to file at that time. The Commission can continue this discussion to next month if they choose to do so.

Chair Bierbaum preferred to do that.

Commissioner Amos agreed.

AAG Ackerman suggested that the Commission do that by motion so it is on the record.

Commissioner Amos made a motion seconded by **Commissioner Ellis** to continue the petition for rule change on WAC 230-15-040 to the May Commission meeting. *Vote taken; the motion passed unanimously.*

7. Staff Proposed Rule Change (Taken out of order)

Remote Access to Card Room Surveillance

a) **New Section WAC 230-15-276** – Remote access to card room surveillance

Assistant Director Harris addressed item number 7 which is under tab 14. It is a staff proposed rule change up for discussion and possible filing today. Staff has worked with the RGA to come up with some verbiage that will work for both. The rule allows licensed gambling service suppliers to install and maintain closed circuit television surveillance systems to remotely access the system to perform maintenance and repair. It would add requirements that the card room must notify the agent prior to accessing the system; the card room must document in their surveillance log the reason why and when; and the remote access will only be enabled during that duration of time and will be terminated at that point. There are no rules that specifically prohibit or allow it. It has been allowed in the past to facilitate repair and maintenance remotely. The purpose of this rule is to codify what has been allowed. The only concern for staff would be that we would have to do reviews of the logs, which may take a little more time for staff. If adopted, staff recommends an effective date of January 1, 2010. Staff recommends filing it for further discussion.

Chair Bierbaum asked if the Commissioners had any questions.

Commissioner Ellis asked if there is the possibility of somebody remotely shutting down the card room's closed circuit surveillance systems while a cheating operation was in affect?

Assistant Director Harris agreed it was possible but to his knowledge that has never occurred. The connection is only during the period of time that they are doing the repair and maintenance and then the connection would be severed. There is a small window where somebody could do something, but staff, surveillance and the card room would be notified when that was occurring.

Commissioner Ellis felt sure it would be done properly but what of the intruder who is not authorized to enter the system, but somehow is able to do so. Are you familiar with that being a problem with these kinds of systems?

Assistant Director Harris replied the system should only be connected up to the internet or through the phone lines during the period when this is being done. It would only be during that time when somebody outside could possibly remotely access the system.

Commissioner Amos verified this would be a security company who put in cameras and is accessing remotely.

Assistant Director Harris confirmed that to be correct. Currently if they have upgrades or the system goes down, a tech would come out and perform the repair, which could take a day or two. This would allow them to hook up the system so they could get on remotely for that period of time to do that specific activity and then disconnect.

Chair Bierbaum asked for comments from the public. There were none. She asked for a motion.

Commissioner Ellis made a motion seconded by **Commissioner Amos** to accept for filing and further discussion the proposed rule change to WAC 230-15-267. *Vote taken; the motion passed unanimously.*

Chair Bierbaum called for a break at 3:00. **Chair Bierbaum** reconvened the meeting at 3:20.

8. Defaults: (Taken out of order)

- a) Cheryl Gunderson, Card Room Employee, Revocation (postponed)
- b) Shaun L. Claiborne, Card Room Employee, Revocation

Ms. Melinda Froud advised there are two defaults being presented. The first is for Shaun Claiborne. On December 14, 2008 the licensee allowed a minor to gamble. The licensee was issued a notice of violation and settlement for allowing the minor to gamble. That allowed the licensee the option to pay a \$200 fine or to settle the matter. The licensee failed to pay the NOVAS.

On February 18, 2009 administrative charges were issued by certified and regular mail. The certified mail receipt was signed for and returned, and the regular mail was not returned. On March 6, 2009 the Communication and Legal Division's legal secretary made a courtesy call to the licensee but the number listed in Mr. Claiborne's file was disconnected. The licensee did not respond to the charges, and by failing to respond to the charges, Mr. Claiborne waives his right to a hearing and the Commission may enter a final order in default pursuant to RCW 34.05.440. This case is before you for entry of a default order. Commission staff recommends that the Commission suspend Mr. Claiborne's license for 30 days.

Chair Bierbaum asked if Mr. Shaun Claiborne was present or anybody appearing on his behalf? There was no response. She then asked if there is a motion.

Commissioner Ellis asked Ms. Froud what is the thinking behind the request for suspending the license for 30 days? Is that just the standard sanction that's applied in a situation like this where a card room employee allows a minor to gamble?

Ms. Froud replied that it would be a standard penalty for a default type of action.

Commissioner Ellis asked if Mr. Claiborne is out of the industry, at least at present.

Ms. Froud confirmed he is no longer working as a card room employee.

Chair Bierbaum asked for a motion.

Commissioner Ellis made a motion seconded by **Commissioner Amos** to enter a default order suspending for 30 days the license of Shaun Claiborne. *Vote taken; the motion passed unanimously.*

- c) Maureen Pangelinan, Card Room Employee, Revocation

Ms. Froud explained the second default is for Maureen Pangelinan. The licensee admitted to stealing money from the purse of a fellow employee. Casino staff reviewed surveillance video and confirmed the licensee took money from the employee's purse. Ms. Pangelinan is not currently working as a card room employee. On February 19, 2009 administrative charges were issued by both certified and regular mail. The certified mail receipt was signed and returned, and the regular mail was not returned. On March 6, 2009 the Communications and Legal Division's legal secretary made a courtesy call to the licensee, but the phone number on file had been disconnected. The licensee did not respond to charges. By failing to respond, Ms. Pangelinan waives her right to a hearing and the Commission may enter a final order in default. This case is before you for entry of a default order.

Chair Bierbaum asked if Maureen Pangelinan was present, or anyone else on her behalf? There was no reply. The Commission members were asked if they had any questions. There were none. **Chair Bierbaum** asked for a motion.

Commissioner Ellis made a motion seconded by Commissioner Amos to enter a default order revoking the license of Maureen Pagelinan to engage in gambling activities. Vote taken; the motion passed unanimously.

9. New Licenses and Class III Certifications

Assistant Director Trujillo directed the Commissioners to the tab titled New Licenses and Class III Certifications in the agenda packet. This list includes 13 pages. Based upon the licensing investigations, staff recommends approving all new licenses and Class III certifications listed on pages 1 through 13.

Chair Bierbaum asked for a motion.

Commissioner Ellis made a motion seconded by Commissioner Amos to approve the licenses and Class III certifications listed on page 1 through 13 of the materials. Vote taken; the motion passed unanimously.

10. Petition for Review (Taken out of order)

a) Aaron V. Allen, Card Room Employee, Revocation

Mr. Marvin was present for the state.

Mr. Aaron Allen was present along with his attorney **Ms. Dominique Zervas**.

A recording and transcript of the hearing is available upon request.

At the conclusion of the testimony, **Chair Bierbaum** asked if there were any questions and adjourned at 3:50 p.m. for an Executive Session to deliberate on the testimony.

Chair Bierbaum reconvened the meeting at 4:05 p.m.

Commissioner Ellis made a motion seconded by Commissioner Amos to enter an order affirming the findings, conclusions and order of the ALJ revoking the license of Mr. Allen to engage in gambling activities. Vote taken; the motion passed unanimously.

Commissioner Ellis went on to explain that the feeling is there are two basic problems. One is the specific crime of vehicular assault. But a very important part of that felony, and a very important part of his history and his capability, his qualifications to work in a card room is – has been his long standing difficulty of dealing with alcohol, and most importantly, driving when he had consumed alcohol. The driving offenses, of course, are extremely important. And the lack of judgment that is reflected in that history, was equally important, and is something that is specifically of concern to the Commission in determining whether or not a person should be an employee in a card room. So that is my motion.

Other Business/General Discussion/Comments from the Public

Chair Bierbaum asked for comments from the public. There were none. At 4:35 p.m. **Chair Bierbaum** called for an Executive Session to address pending investigations, tribal negotiations, and litigations.

Chair Bierbaum called the meeting back to order at 5:25 p.m. and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, APRIL 10, 2009
MINUTES**

Chair Peggy Ann Bierbaum called the meeting to order at 9:00 a.m. at the Olympia Red Lion Hotel and introduced the members present:

MEMBERS PRESENT: **Commission Chair Peggy Ann Bierbaum, Quilcene**
 Commissioner John Ellis, Seattle
 Commissioner Mike Amos, Selah

STAFF: **Rick Day, Director**
 Mark Harris, Assistant Director – Field Operations
 David Trujillo, Assistant Director – Licensing Operations
 Amy Hunter, Administrator – Communications & Legal
 (arrived at 9:45 a.m.)
 Jerry Ackerman, Senior Counsel, Attorney General’s Office
 Holle Arrona, Secretary Senior

Chair Bierbaum reminded everybody that she would be leaving at 10:00 and suggested that everybody use their time wisely. The first item will be the petition for rule change under tab 8, which is PokerTek submission first. Mr. Miller was present to talk on behalf of this.

11. Petition for Rule Change *(Taken out of order)*

PokerTek – Electronic poker tables

- a) **Amendatory Section WAC 230-15-030** – Authorized nonhouse-banked card games
- b) **New Section WAC 230-16-157** – Electronic poker tables

Assistant Director Trujillo began with item number 8 in the packet, petition for rule change. The petitioner seeks to amend one rule and add a new rule. The petitioner, Dave Malone on behalf of PokerTek is seeking to amend WAC 230-15-030 to authorize electronic poker tables and seeking to propose adding a new rule, WAC 230-16-157 which would set out certain standards for electronic poker tables that these poker tables must follow.

The agenda materials have been in your packet since October of 2008. Consider as you review the petition whether or not this table is an electronic gambling device defined in RCW 9.46.0241. The electronic gambling lab has concluded that the petitioner’s electronic poker system manifests three elements which must be present for a machine or system to be classified as a gambling device. Those three elements include the operation of which creates a right to things of value; second element is consideration; and third element is that there is an element of chance. Also to consider is whether or not automatically crediting poker winnings to a player account in the cage is the same as crediting winnings to a cash card. This is something the Commission denied in January of 2008. Also to consider is whether or not the ability of the player’s access card to access a wagering account makes the player card an instrument of value. You may also wish to consider whether or not it’s acceptable to remove the requirement for a live dealer. Included in your packet is the response to staff concerns by Frank Miller and

Dave Malone, and both are present today. Staff is recommending denial based upon the gambling lab's conclusion.

Chair Bierbaum asked if the Commissioners had any questions. There were none.

Mr. Miller: Thank you, Madam Chair, members of the Commission, my name is Frank Miller from the law firm of Miller, Malone and Tellefson. I'm here on behalf of PokerTek with my partner, Dave Malone as well, who has assisted in this petition with Mr. James Namchek who flew in from North Carolina again for hopefully a final decision today. I want to thank you for taking the time to work with this petition. It's been a two year process, and I'm going to try to be brief today. But there are a few points I really want to stress with you as we go forward.

I've given you a handout today just to kind of follow along in my presentation. It's kind of my version of a PowerPoint. And if you'll just kind of go along and follow some of these points. I'm not going to refer to all of them because of the time constraints, but I am going to hit the ones that I feel are necessary to hopefully help you reach a conclusion in favor of our client.

First of all is the overview. I'm going to give a brief history, just touching upon a few points. Then we'll respond to the lab report and the staff summary. We're then going to talk about the issue of gambling devices and what we believe is your clear authority to approve certain gambling devices, but certain ones are not. And then finally we'll talk about jurisdictional approvals and maybe the regulatory benefits versus the concerns of this product.

This process started in 2006 when basically PokerTek asked the Commission if they could show the PokerPro product at a tribal trade show. And at that time we were told we could not bring it in the State because initially it was a gambling device and you had to be licensed to basically transport it. And so we did not show the product at that time. We asked to show it in some tribal reservations, and once again we received a letter indicating that we had to be licensed to transport that product in the State. The reason I point that out is because that clearly shows that the Commission has the authority, once again, to license manufacturers of certain devices including gambling devices.

And what PokerTek did was go through the process. They applied, spent the money for the background, and was licensed by this Commission in 2007. They've been licensed ever since. In 2008 we submitted the initial petition to amend the rules to allow the PokerPro product for use – and this is very important – for use in poker games only, nonhouse-banked games. It's very, very important and I want to stress that.

We withdrew the petition because of some initial concerns by the staff. And we sat down, Dave, myself, but mostly David, sat down with Assistant Director Harris, Deputy Director Trujillo and worked out the rules that would be necessary to bring this product to play if it were approved by the Commission.

When I then came before you in our initial presentation, there was some concerns whether this would be a gambling device or not. If you recall, I told you we're open for that debate. But even whether or not it is a gambling device, the real issue was we thought it was number one, permitted. But number two, and more importantly, was the Commission ready to do away with the requirement, or at least allow for electronic chips and do away with a live person at the table. That's really what the PokerPro does. That's the difference here. And that's very important because as we'll talk about briefly, in 2004, this Commission approved an electronic poker table by another company for the same exact game. We're not talking about 2001 now, we're talking about in 2004 poker

was approved for the DigiDeal Corporation, but did not have electronic chips, and it still had a live person, okay? So that's the real issue, that's the difference.

So we know as a matter of course that the Commission has allowed electronic facsimile of cards before. They have allowed them both for house-banked, blackjack and similar games. And in 2004 was approved for poker. So the real issue we thought was as a matter of policy, are you prepared to allow electronic chips and are you prepared to do away with a live person pushing a button dealing the cards, if you will.

Well what's happened since then is we received a response. We submitted the product back to the lab in November. And in February received a response from the lab saying well, we've looked at this and we believe it is a system, which is correct. And I compliment parts of the report. Obviously we respectfully disagree with the conclusion, although they go to great lengths to say it's not video poker, which we all know it's not video poker. That's a separate activity that's not authorized in this State. They do conclude that it may allow certain types or forms of video poker. Now I don't know what that means, and that's hard to even respond to that.

But more importantly what the lab concluded was it's a gambling device because it has the three elements in their mind and the definition of what's a gambling device. The report does not say it's prohibitive. It says it's a gambling device.

This went to the staff. And the staff, based on that report, came back and recommended denial because it's a gambling device. And we've beaten this around our office and we're asking ourselves why would the staff recommend denial, given the regulatory advantages we'll talk about. Look at the investigation yesterday with the cheating and the different scams. Those all involved chips. It takes away that problem and a lot of the benefits. Why would the staff recommend denial? Well we assume it's because there was a concern that there may not have been the authority to approve it, so that's what I'm going to talk about; the authority to approve this.

First of all let me just say we don't think it's a gambling device under the Statute. We don't think it fits. We think it's gambling equipment, and that's where it should be properly classified.

The definition of gambling device; any device or mechanism, the operation of which a right to money, credits, deposits or other things of value may be created in return for consideration as a result of an operation of an element of chance, including but not limited to slot machines, video pull tabs, video poker – and this is important – and other electronic games of chance, all one sentence. Very interesting section.

If you read that entirely, number one, we don't believe PokerPro determines the outcome. It's a poker table. Cards are dealt, players determine the outcome. It's how they bet, it's how they wager, it's how they bluff, it's when they fold. Players determine the outcome. PokerPro reads the winning hand, or the difference. The element of chance is not in the table. You're not playing against the machine. The only element of chance here is the shuffling of the card. And you've got to read this as all one element, all one device.

That's what a slot machine is.

In 1994, and this is so important, I asked my staff to go back and find the hearing tape in 1994. It's hard to do that, as you know. You've got to go back, do a little work, and they had to go to archives. And I don't say this in any way, but I was obviously involved in 1994 as somebody you know. But we had a Task Force in 1993 on the whole issue of gambling policy. And we were in very difficult negotiations with quite a few tribes at the time and I was lead negotiator by law. But there was a real question because some tribes

wanted to negotiate video poker and other types of electronic gaming devices. And we had no authority to do so from the State legislature, from the Governor's office or anything, because we believed they were clearly illegal.

Well, there was other issues as well. There was a group out of Canada that wanted to do charitable casinos. And all these issues were coming kind of to a head. So there was a Task Force created in 1993. And we used this, and the staff relies on those findings quite a bit. It's what is the policy of gambling, the policy to keep it clean and free from organized crime and the criminal element. And it's done by limiting the nature and scope of those activities. Well what that means is it's limited by what the legislature allows us to do, or the people to do legally.

Well on February 23, 1994, we had Senate Bill 2228 which amended RCW 9.46, the section in question, because it added the following language, "including but not limited to slot machines, video pull-tabs, video poker, and other electronic games of chance." That was the amendment in 1994. That was prepared and presented by this agency as part of the Task Force to clarify what was negotiable. It was very, very important, and it was a sensitive issue.

My staff typed this up for me yesterday. I asked them to type the comments of that hearing. And this is me, and I'm not saying this other than just to give you a little history here. This was my testimony in 1994 when asked what does the bill mean, what does the amendment mean. "House Bill 2228, it really clarifies and reiterates our public policy that we've been saying is the public policy of our State. It codifies that. That is very important from an overall standpoint." Not very articulate, I apologize. But that was the testimony back in 1994. "It clarifies too the ban on what types of devices are prohibited in the State. It doesn't change the law, and I want to stress that. But it does clarify, and I think it makes it much clearer as to what is prohibited." Once again, slot machines, video pull-tabs, video poker, and other electronic games of chance.

So we have an opening there – there's two openings. One is including but not limited. Obviously that had to be put in. But we know it's not a slot machine, we know it's not video poker. Those are stand alone games. The operation – the element of chance is completely in the game. It's not a video pull-tab. And we know the Attorney General's office already ruled a few years back that video pull-tabs are not permissible in the non-tribal arena. They're prohibited, they're a gambling device.

But could it be another electronic game of chance? The answer is no. Poker is not a game of chance. In our brief we set forth some case law, an AGO opinion in 1953 that said although poker's gambling there's no doubt, no one's saying it's not, it's not a game of chance. There's an element of chance in poker, and that's the cards. But it's not a game of chance like a lottery. And I think that's very important in looking at is the PokerPro table a gambling device.

So in our view, it should not be deemed to be a gambling device, it should be gambling equipment. But given that the staff and the lab has determined that it is a gambling device, I want to talk about your authority to approve it as a gambling device, and to regulate it, and to utilize it, because that's what I think has happened over the last few years. There's become a fear. When we use the term gambling device, it's synonymous with prohibition. And it's not the case, Commissioners. It's not the case.

You have clear authority. And if you follow along with me under your authority to approve gambling devices, let's just start a few pages back. Not all gambling devices are prohibited. RCW 9.46.215 makes it a felony for a person to manufacturer, possess, sell

or lease, or transport a gambling device. We all know that. But there's an exception, section 2. This section does not apply to persons licensed by the Commission respecting certain devices that are to be used solely for which the activity was licensed. And also does not (unintelligible) a person acting in conformance with this chapter and the rules adopted under this chapter, and the devices are the type and kind traditionally and usually employed in connection with the particular activity. There's the exception right there, number one.

Number two, next page. Commission authority to approve and regulate gambling devices. RCW 9.46.070(11) authorizes the Commission to regulate and establish the type and scope of and manner of conducting the gambling activities authorized by this chapter. This is important. What this says is you have the authority to regulate the activities, the scope of and manner of conducting. And what is the activity; social card game. That's very important, social card games.

Let's go on. The Commission has the authority to approve and regulate gambling devices. Once again another argument, RCW 9.46.310, Licenses for the Manufacture, Sale, Distribution or supply of gambling devices. No person shall manufacture, and no person shall sell, distribute, furnish or supply to any other person, any gambling device. Listen to this sentence which I think is so important. Including but not limited to punchboards and pull-tabs, in this state, or for use within this state, without first obtaining a license to do so from the Commission under such provisions of this chapter. Such licenses should not be issued by the Commission except respecting devices which are designed or permitted for use in connection with activities authorized by this chapter. Let me give you an example. Pull-tab dispensers; there's no clearer definition of a gambling device than a pull-tab. It meets the definition clearly. Coin in, pull a slot, get a ticket, open it, gambling device. Matter of fact in the original gambling act there was a tax on gambling. It was called the gambling device tax for pull-tab dispensers; \$300 per machine. It was repealed. Now it will probably be back in legislation tomorrow. That was certainly something that was authorized; they repealed it. It showed that those certain types of gambling devices were permissible.

What we're trying to show you here is that the authority clearly exists, if you choose to authorize this type of equipment as a gambling device.

What's the agency practice been? The agency practice has been to approve certain types of devices, WAC 230-02-200, as gambling equipment. And what we're basically talking about is any device, gambling related software, or any other paraphernalia used as part of gambling or to make gambling possible. The rule example includes devices for dispensing pull tabs, one; electronic devices for conducting, facilitating or accounting the results of gambling activities, two; components of a tribal lottery system; electronic devices for rigging and displaying outcomes of gambling activities – this is from the rule. Accounting systems that are part of or directly connected to a gambling system; devices as applied used to conduct card games, including but not limited to tables manufactured exclusively for gambling purposes. Believe it or not, that could be a blackjack table that's used in an illegal environment. That's a gambling device under the broad definition of the statute, okay?

The whole point here is that the practice has been to classify some of these as equipment and then regulate them and limit them pursuant to your rules.

Without getting into a bunch of case law, we cited some cases in our supplement to you just to show you that there's a difference between a game of chance and poker and how

it's been utilized. We also cited the Friendly Lawsuit which has been obviously a real pillar in the whole development of the tribal lottery system. It's been relied upon in tribal compacts. And it's really important because it also shows when Judge Van Sickle says gambling devices are permitted in Washington. And he goes on, and without getting into too much detail, but he does say they're permitted except for those that are played with the insertion of a coin or other thing of value. That's referring to the Gambling Act. Or those allowing for individual play against a device, getting into maybe his interpretation of the Lottery Statute.

We believe once again it shows that there is clear authority. In the AGO opinion which was given to you in the original staff presentation – the only reason I'm commenting on that is we don't think it's relevant here. It's distinguishable. It had to do with video pull-tabs. They were listed as a specific gambling device, number one. Number two, the Commission's authority with regard to pull-tabs was limited by its 1973 definition. And there's no such limitation of social card games. As a matter of fact, social card games are subject to Commission rule and regulation. There's no requirement for chips. There's no requirement for a live dealer in the Statute. It's simply up to Commission regulation. So in conclusion, we believe you have the authority to approve it as a gambling device, subject to your regulations. And what our petition does is only two things; it authorizes electronic poker tables for poker, non-banked, nonhouse-banked; it sets forth standards for manufacturing of these products. The standards that came from your current rules that authorize facsimile of cards for house-banked games.

Since we started this process, PokerPro has been approved for use in the following jurisdictions. I'm going to say about 25 countries around the world. In the United States alone, you can see the list I've given you. I won't go into every one, but quite a few states. I guess the point I want to stress is it was just approved in Nevada. It was tested extensively, has received full approval. It's interesting, in Nevada under their law, it was a gambling device. This is important. They don't tax it as a slot machine because it's not. They tax it as a table game. They tax it as a table game. And they will only allow it in their unrestricted licenses, which are casinos. Not in their restricted license areas, which are the bars you see in Nevada. If you've ever been there, you can play slot machines. Because it's not a slot machine. And we can't treat it like one.

Finally in conclusion, I'd just like you to consider the regulatory benefits. If you look at this, you do have the authority to approve it. And I'm going to ask you, given no objection on the record – and I'm not aware of any objection – I think there were three letters back in November or October from legislators who called it video poker. The staff has pointed out, and I appreciate this, that there are benefits to this product, regulatory benefits. As a former director and someone who has been involved in this area and knows some of the issues with card rooms, especially historically, to have a product that controls the chips, the cards, the accounting, the ability to go back and view these hands and disputed hands, from a local jurisdiction standpoint, the ability to know how much money came in from a taxing standpoint is a tremendous advantage. And yet the reality of it is, this is an expensive product. Not everybody is going to use it. We're talking about a few locations that may in fact want to try it, hopefully more will.

It is the future. It is the future. If you go to the gaming shows, and I encourage you to do that if your budgets will allow, or if you're still around by them – and I mean that with all due sarcasm to be honest with you because as I told the Director today, that was a horrible situation last week. I don't mind saying that on the record. Let me just say this.

You will see a tremendous amount of technology. We're a new table with electronic cards and electronic chips. You'll see some games with electronic chips and real cards. The industry is moving. It's like e-mail to a letter, you know, and we need to be aware of that. It's like digital photography to film. I mean what has happened here?

This was a product that was designed to do nothing but to change the game but to improve the play, to bring technology to the play of poker. And truly, I looked at that group yesterday and the tremendous investigation involving this Commission and tribal gaming agencies. What it involved, it involved scams of roulette and chips. That wouldn't have happened with this product. That wouldn't have happened in a poker environment.

And finally one of the last issues I want to stress is that this Commission has made, and I think rightfully so, a major effort to crack down on underage gaming. This product, at least as far as poker goes, stops it cold in its tracks because the requirement that you sign up, the requirement when you're done to go back to the cage and to show your identification to then get what's left in your account.

So given all that, I realize it's hard to overcome a staff recommendation of denial. I know Mr. Ackerman's going to comment on it now and I have been around this enough to realize that I'll have a chance to respond. But we would ask for you to consider this and certainly approve PokerPro for use in the State of Washington.

And I want to make one last point. If you deny this based on it's a prohibited gambling device, not only do you keep it away from the card rooms in the State, but you also restrict our client's ability to negotiate this, or bring this to the tribes. Right now this product has been played throughout the country as Class II. Nowhere has it been deemed to be Class III except in Arizona, and that's because there is no poker in the state. It's by compact. It was in the Seminole tribe for over two years exclusively. The Seminole tribe was one of the largest Class II facilities in America under the jurisdiction of the tribe and the NIGC. And never was there a concern raised by the NIGC on this product.

So if you rule that it's a prohibited gambling device, arguably, not only will it be questionable as Class II, it will be difficult for our clients that are trying to reach tribal jurisdictions to negotiate it and stay as Class III. So I point that out as well. I'd be more than happy to take any of your questions. I'm sorry I went over time. I tried to really cut it back as quickly as I could.

Chair Bierbaum asked the Commissioners if there were any questions. There were none.

Commissioner Amos had a comment for Mr. Miller and Mr. Malone. The letter that you sent in on March 31st was quite impressive. It shows that technology has jumped leaps and bounds over the last few years. The presentation and the equipment are impressive.

Mr. Miller: Commissioner, I want to thank you for that. And I will point out that the PokerPro has been approved by all those jurisdictions. It's not been denied in one, once it's been looked at. So thank you. Appreciate that.

Chair Bierbaum asked for public comment.

AAG Ackerman requested that Frank clarify a portion of his testimony. Frank, are you saying that poker does not meet the definition of contest of chance that's set forth in 9.46.0225?

Mr. Miller: I think what I'm trying to say here Jerry is that on the definition of gambling device, electronic games of chance, it does not meet that test. Video poker does, because that's a different activity. But social card poker, no, it does not.

AAG Ackerman asked if poker meets the definition of contest of chance, are you saying game of chance means something different from contest of chance? And if so, what does it mean?

Mr. Miller: It's not a contest of chance, poker.

AAG Ackerman: Poker is not a contest of chance?

Mr. Miller: I don't believe it is. Let me have the Statute in front of me.

AAG Ackerman stated 9.46.0225.

Mr. Miller: I don't have it in front of me, Jerry.

AAG Ackerman offered to read it to Frank. As used in this chapter, contest of chance means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance notwithstanding that skill of the contestants may also be a factor therein.

Mr. Miller: Yeah, I don't understand where you're going with your question. Your lab determined it was a gambling device, we're saying it's not. But we're saying if it is, you have the authority to approve it. So it doesn't really matter whether it is or not. It comes down to if it's a gambling device, the Commission still has the authority to approve it.

AAG Ackerman tried to clarify the statement that was made because game of chance is used in the definition of gambling device. Part of the argument, was that poker is not a game of chance.

Mr. Miller: That's correct. And we base that on if you look, we cited you an Attorney General opinion, and we cited a State Supreme Court decision that distinguished poker -- as a difference between a contest of chance and poker, which is obviously gambling. But I don't think it's a contest of chance. And for purpose of the definition of gambling device, that's what we're looking for here. I'm not saying it's not gambling by any means.

AAG Ackerman expressed his concern is with the definition of contest of chance. The case you're citing is from 1953 --

Mr. Miller: It's prior.

AAG Ackerman: -- which predates the Code.

Mr. Miller: I understand that.

AAG Ackerman continued that the Code then defines contest of chance. It says that it means any contest, game, gaming scheme or gaming device in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor therein. Clarify if you're asserting that a game of chance is somehow different from a contest of chance, and that is why poker doesn't fit.

Mr. Miller: Yes. Contest of chance is not part of the definition of a gambling device. That's my opinion.

AAG Ackerman asked how are those two things different.

Mr. Miller: Contest of chance is certainly a broad term. What we refer to is what is a gambling device. And once again I go back to the clarification that was put in in 1994. And it is different because skill is a major factor in this game. And although certainly chance is an element, given the deal of the card, the skill of the game is what makes poker different than any other type of gambling game. I think you would agree.

AAG Ackerman asked if poker is a contest of chance or not.

Mr. Miller: Poker is a social card game. It's a social card game, Jerry. I mean you guys are -- If you're looking for a way to say no, I understand. But poker is a social card game. That's the activity here. You know, that's the activity. And the bottom line is you set the

rules as to how you play it or not. It's gambling. I acknowledge to you it's gambling. But in our view, I mean we made it very clear. It should not be deemed as a gambling device. But even if it is a gambling device, you have the authority to approve it. What else can I say? I don't know how else I can make it any clearer.

AAG Ackerman asked again if poker is a contest of chance or not.

Mr. Miller: I think I've answered it.

Chair Bierbaum questioned how useful this debate is. He's answered it as best he can.

Chair Bierbaum asked if there any other comments from members of the public.

Mr. Chris Kealy: Chris Kealy, Iron Horse Casino, Auburn, and a poker player at large. Having played that machine in Spokane when we were playing it, and listening to all the testimony, and even listening to that last question, to me the key point is are you playing the machine or are you playing another player. And it's pretty obvious you have to play another player. So the machine, to me, is the same as a shuffle machine for cards. It just combines electronic chips and electronic cards and shuffling. So it is an ingenious device bringing together multiple facets of necessary components to operate a game. But the game itself, it's a facilitator of a game of chance.

So I think my answer to even Mr. Ackerman's question is yes, it's poker. It's a game of chance. But you're not playing the machine.

Chair Bierbaum asked if anyone else who would like to speak either on behalf of or in opposition to this petition.

Director Day reminded the Commissioners know that the term Class II gaming does not include electronic or electronic facsimiles of any game of chance, or slot machines of any kind. That is included in the federal definition, IGRA. There's always differing interpretations.

Mr. Miller: Any other questions? There were none

Chair Bierbaum asked for a motion.

Commissioner Amos made a motion to approve that the proposed amendment to WAC 230-15-030 and proposed new rule WAC 230-16-157. The motion failed for lack of a second.

Chair Bierbaum asked for a second.

Commissioner Ellis began by stating that number one, it is not argument and the Commission certainly has the authority to approve gambling devices. There is reluctance to approve this for a number of reasons.

The AGO opinion that was cited emphasizes the strong policy that we have in this State against mechanical and electronic forms of gambling, whether they're equipment or devices. They are viewed with suspicion and in many instances are prohibited. Mechanical devices with the use of a coin are expressly prohibited; video poker is prohibited.

The gambling device definition requires only an element of chance. In poker there is certainly an element of chance.

Commissioner Ellis questions the concept of a social card game and the machine. But that is not determinative. Considering what Mr. Namchek said at the first hearing on this device concerning speed of play when he indicated that the average poker dealer deals about 24 hands an hour and that this machine would up that rate of play to 54 hands an

hour, based on the experience in Indiana. It is clear that an increase in the instances of poker has been recognized by the Senate rulings to constitute an expansion of poker. **Chair Bierbaum** explained she does not believe it is a gambling device. If it is a gambling device, the Commission still has the authority to approve it. **Chair Bierbaum** believes it is gambling equipment. It still needs to be approved. **Chair Bierbaum** does not believe it constitutes an expansion of gambling simply because more hands can be played within a period of time.

There are incredible regulatory benefits associated with the PokerTek table. The Commission clearly has the authority and the discretion to approve the PokerTek game. The Commission does not have to approve any request for approval for any gambling equipment. The climate in Washington State does not embrace gambling as other jurisdictions do, for whatever reason. Washington has been a state that has accepted gambling reluctantly, not willingly, where other states have more willingly accepted it. The Commission is left with two choices. They can approve it and if the legislature wants to change the law, they can do that. Or we could say no, we're not going to approve it. If the legislature wants to specifically approve PokerTek, lobby your legislators and have them introduce legislation.

If it was thought that approving PokerTek would result in a non-hysterical reaction that didn't lead to draconian measures and resulted in simply legislation designed to give us further direction, PokerTek would be approved. Based on what's happened in the last couple weeks, that's not likely.

Based on that, it is feared that the ramifications of approving PokerTek would go far beyond just provoking targeted legislation designed to give us direction on what we ought to do. The chair is unable to second the motion. It will fail for lack of a second.

Mr. Miller: I appreciate that. On behalf of my client, I want to say I appreciate your candor, all of you, Commissioner Ellis, everybody, and Jerry your discussion. I do, we'll talk about it afterwards.

I guess I just want to say where do we go from here? Is our future with the legislature in this type of arena? Where do we go? And I guess that's the issue that I'm having a real hard time with because with the other games that have been approved, electronic poker without chips, obviously with a dealer. Where do we go? It puts you in a difficult situation. And I understand what you're facing right now. But I'll tell you, what happened last week, I think you know it and I know it. That's unfortunate because that could have a devastating effect. That would destroy the possibility of what happened yesterday. So where do we go? Bring it back in two months? They're not in session. Where do we go?

Chair Bierbaum responded no. That could have been a strategic decision.

Mr. Miller: I appreciate that.

Chair Bierbaum replied that the legislature has the ultimate say on all these matters and that the place to go for more definitive direction for the Commission is the legislature and the Governor. Clearly there's some education needed. It is not the Commission's job to do that; it is the industry's job to do that.

Mr. Miller: And I appreciate that. I do believe you have the clear authority obviously. And it's hard to clarify much more. I would just hope in the future that these processes – this took a long time.

Chair Bierbaum agreed.

Mr. Miller: It took a lot of your time, it took a lot of my client's time and money, it took a lot of our time. It would have been really helpful early on if we'd been told it's illegal in our view.

Chair Bierbaum expressed that none of them think it's illegal.

Mr. Miller: Well I appreciate that. That's somewhat --

Commissioner Ellis confirmed the rationale for his approach is not going to change in two months.

Mr. Miller: I understand.

Commissioner Ellis expressed that neither he nor **Chair Bierbaum** thinks that the machine is illegal. If it is a gambling device, they both recognize that the Commission has the authority to approve it.

Mr. Miller: Thank you. Appreciate it, thank you.

12. Petition for Rule Change – (Taken out of order)

Recreational Gaming Association – Wager increase for nonhouse-banked card games
Staff's Alternative #1

- a) **Amendatory Section WAC 230-15-135** – Wager increase to \$500 for Texas Hold'em "all in" bet only

Petitioner's Alternative #2

- b) **Amendatory Section WAC 230-15-135** – Wager increase to \$300 for all bets in Texas Hold'em only

Assistant Director Harris pointed to item number 11 under tab 7. This petition has been around since May of 2008. There are two alternatives up for final action today.

The first alternative is the one the Commission asked staff to draft which would allow for an all in wager of \$500 for Texas Hold'em while all other bets remained at \$40. This is for nonhouse-banked card games operated at a house-banked card room. Alternative 2 is the RGA's alternative that was proposed that would increase the wager limit to \$300 for Texas Hold'em for house-banked card game operators that operate nonhouse-banked card games. Class F and E licensees would still be at the \$40 limit.

In your packet there are numerous statements supporting and opposing the proposed change. The proposed rule change is a policy decision, and the Commission may wish to consider whether or not the proposal is consistent with the legislative intent of RCW 9.46.010. If approved, the petitioner is requesting an effective date of 31 days from filing. Staff would recommend an effective date of July 1, 2009. Any questions of myself? The petitioner is present. The Commissioners had no questions.

Mr. Kealy addressed the Commission on behalf of the RGA as the Vice President. We have talked about this issue for a long time, most of last year. It's been all over. The petition has missed a filing here and there and here we are.

I do want to clarify; I do not think we need a 31 day after filing. We would be happy with the July 1st implementation of any proposed change. I think that's competent regulation and staffing thought processes. We have been through a few gyrations in that and we would be glad to submit to.

I do want to say that we mostly support the \$300 version of this on Texas no limit Hold'em only in house-banked environments. It matches our current betting limits on other games. It matches the level of activity in the facility. And there may be some more rule changes, or some thought processes given to maximum buy-ins and thought processes in that area that might be found out in the next few months while we're

working towards implementation. Because if you approve this, we actually have to go to our ICEs and put together how we're going to handle it. That may beget a couple housekeeping things that could also be caught up with.

So anyhow, that is our position; we want to work with the staff on whatever needs to be done to regulate the game properly. Any questions?

Chair Bierbaum confirmed there were no questions and asked if any members of the public would like to speak on this. There was no response.

Commissioner Amos moved to approve RGA's Alternative #2, wager increase to \$300 for all bets in Texas Hold'em only, amendatory section WAC 230-15-135.

Commissioner Ellis stated that this is getting to be a pattern. He would decline to second the motion. When this issue first arose, he was open to the concept of a modest increase in the wagering limit, not \$300, but in Texas Hold'em on all in bets, which was one of the reasons that was advanced as a primary reason for the request for the increase. The proposal now goes substantially beyond that. It seems like it has been less than two years since we increased the betting limit in poker games to \$40 from the previous level of \$25. A request to increase the level to \$100 was rejected.

Commissioner Ellis declined to second the motion.

Chair Bierbaum expressed that she would vote to support staff alternative #2.

AAG Ackerman explained his recollection of the rules of order under which the Commission operates would be for the Chair to yield to Commissioner Ellis, if he chose to accept it. Then, Madam Chair could second Commissioner Amos' motion. However Commissioner Ellis is under no obligation to accept the Chair. So absent that move, then the motion will fail for want of a second.

Director Day wished to clarify the alternative the Chair is in favor of.

Chair Bierbaum corrected herself and expressed favoring alternative #1.

Director Day clarified the motion is on \$300.

Chair Bierbaum clarified she was in favor of alternative #1 and was confused due to the order in which they appeared in the packet and due to the confusion asked Commissioner Amos to clarify which alternative he was proposing.

Commissioner Amos clarified that he was in favor of the \$500 all in limit.

Director Day clarified that the motion was for alternative #2, which is the alternative by Recreational Gaming Association for \$300 basically in Texas Hold'em in house-banked.

Commissioner Amos made a motion seconded by **Commissioner Ellis** to approve the petition for rule change proposed by staff to make a \$500 maximum for all in on Texas Hold'em effective July 1, 2009. *Vote taken; the motion passed by 2-1 vote.*

Commissioner Ellis commented for the same reasons, I am opposed to the motion. But at the same time, with the clear indication that Chair Bierbaum is in favor of the motion, I can't get excited about having the motion fail for a procedural hang up of the sort that we have and potentially go through more months with a new petition being filed. I'm not positive what Commissioner Rojecki's view of the motion is. At any rate, I will go ahead and second the motion so it can come to a vote.

Chair Bierbaum clarified that she is going to support it but stressed that this better be the very last request for an increase in wager for a very long time.

13. Staff Proposed Rule Change (Taken out of order)

Washington State Gambling Commission

April 9-10, 2009

Minutes

Page 25 of 26

Allowing Minors to Sell Raffle Tickets

- a) **Amendatory Section WAC 230-03-140** - Full and Regular Membership Requirements
- b) **Amendatory Section WAC 230-11-030** – Restrictions on Ticket Sales

Director Day explained this is a staff proposed rule change on selling raffle tickets that has had zero discussion on this.

Ms. Hunter directed the Commissioners to item number 13 on the agenda, but tab number 9 in your book. It would allow minors to sell raffle tickets under limited circumstances, whether the organization is licensed or unlicensed. Had no public comment when the rule was up for filing in February, no comments at yesterday’s study session, or at March study session. Staff would recommend final action.

Chair Bierbaum asked if the Commissioners had questions. There were none.

Commissioner Ellis made a motion seconded by **Commissioner Amos** to approve the petition for amendments to WAC230-03-140 and 230-11-030 to be effective July 1, 2009 . *Vote taken; the motion passed unanimously.*

Director Day recommended to the Commissioners to hold over the petition allowing poker supervisors to receive tips to next meeting.

Chair Bierbaum agreed.

Other Business/General Discussion/Comments from the Public/Adjournment

Chair Bierbaum asked for public comment. There was none.

Chair Bierbaum adjourned the meeting at 10:00 a.m.

Minutes prepared by

Hollie Arrona
Secretary Senior