

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, MARCH 12, 2009
MINUTES**

Chair Peggy Ann Bierbaum called the meeting to order at 1:45 p.m. at the Olympia Red Lion Hotel and introduced the members present:

MEMBERS PRESENT: **Commission Chair Peggy Ann Bierbaum**, Quilcene
 Commissioner Alan Parker, Olympia
 Commissioner Keven Rojecki, Tacoma
 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
 Gail Grate, Executive Assistant

1. Agenda Review/Director’s Report

Director Rick Day reviewed the agenda and recommended changes. Aaron Allen has requested a continuance for his Petition for Review and AAG Marvin has provided a proposed order for the Commissioners. Staff has no objection to the continuance and suggests setting it aside until the April meeting. **Chair Bierbaum** agreed. **Director Day** suggested the Commission take action today on items 9, 10, 11, and 12 that are on the agenda for filing for discussion because there will not be a quorum on Friday. If they are all filed, it should not affect the petitioners one way or the other, and those items could be opened up for discussion tomorrow to anyone who attends the meeting, and the information would be gathered for final decision in May. **Chair Bierbaum** agreed.

Vision Statement and Goals

Director Day reviewed changes made to the vision statement after the January Work Session. Staff incorporated most of the Commissioners suggested changes. Staff eliminated three goals that were incorporated in the vision statement and added a new goal “to provide accurate and timely information to the Legislature, public, and our stakeholders” that reflects a significant point that Representative Gary Alexander made when the vision statement was discussed. Director Day requested the Commission approve the Mission, Vision, Values, and Goals as reflected in the revised document dated February 19, 2009.

Commissioner Parker arrived at 1:55 p.m.

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

Commissioner Amos made a motion seconded by **Commissioner Rojecki** to approve the Mission, Vision, Values, and Goals as presented by staff. *Vote taken; the motion passed unanimously.*

Updated Numbers for Player Terminal Allocations

Director Day explained the graph was just for the Commissioners information. Previous graphs had the estimated numbers through December; this graph shows actual counts confirmed by our agents as of the end of January. Player terminals fluctuate all the time, but the graph should be reasonably accurate. The end of January total was about 21,850 tribal lottery terminals in play. The X-2 numbers show 12,517, which shows significant progress towards conversion from the old terminals to the new.

Recognition of Commissioner Parker

Director Day and Chair Bierbaum recognized Commissioner Parker who has served the Commission very faithfully for nine years; appointed to the Commission in May 2000 and reappointed in June 2003. Commissioner Parker graduated from the St. Thomas Seminary in 1964 with a BA in philosophy. He served with the United States Army, graduated from the Officer's Candidate School, was commissioned lieutenant in the Signal Corps, and served in Vietnam. Commissioner Parker graduated from the UCLA School of Law in 1972 and is a member of the Washington D.C. Bar Association. He is currently on the faculty of the Evergreen State College where he serves as Director of the Northwest Indian Applied Research Institute. Commissioner Parker is also an enrolled member of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation in Montana. He is married to Sharon and is the father of three children. Director Day read a letter from Washington State Governor Christine Gregoire, which included a handwritten note on the side that said "Thanks for your commitment and fine job." **Chair Bierbaum** presented Commissioner Parker with his retired badge mounted on a plaque of Washington State. **Director Day** thanked Commissioner Parker for his time on the Commission, noting he has been the longest serving vice-chair of the Commission. **Chair Bierbaum** added it has been an honor to serve with him. **Commissioner Parker** thanked everyone.

Proposal to Change Commission Meeting Locations to Olympia

Director Day reported this suggestion was in response to the Governor's request for agency directors to submit potential money saving proposals, and recommends holding the majority of Commission meetings in Olympia. After checking with Chair Bierbaum, staff decided to include this as one proposal that may apply to the Commission. The Commission had previously narrowed travel locations by staying close to the I-5 / I-90 corridors; however, even after these decisions, staff has continued to receive questions and discussions about the cost or benefit of the Commission traveling around the state. The Commission holds ten meetings every year at different hotels around the state, with three of those meetings held in or near Olympia when the Legislature is in session. The meetings in other parts of the state were intended to provide an opportunity for licensees,

the public, and government officials across the state to attend; however, most of those attending the meetings do so regardless of the location and the attendees are usually not from the community where the meeting is held. Holding the majority of meetings in Olympia does reduce the opportunity for attendance by some of our stakeholders who are located in other areas of the state. Staff has estimated that by using free facilities the agency could save an average of \$22,000 in fiscal years 2010 -2011, plus save about \$16,000 for travel. Increasing the number of meetings held in Olympia would reduce staff travel expenses and increase staff productivity by reducing travel time needed to attend meetings. This cost savings is a projection and is pretty much an average. It would be offset to some degree by lodging and travel expenses incurred by the Commissioners because there would still be travel and overnight expenses for Commissioners. There would also be some meeting room and catering charges, whether for cleaning expense, coffee expense, or those types of things that would take place regardless of location. For the 2009-2011 biennium, which begins in July, staff recommends meeting in Olympia and using free or reduced cost facilities where possible and reasonable, except for two meetings a year that will be held on the eastern side of the state. Prior to the end of the biennium, staff will provide the Commission a report describing the actual cost savings, benefits, and concerns to assist the Commission in evaluating the success of this schedule. Information was included showing a few possible free or reduced-cost locations in the Olympia area, which will not always be available. Because staff has contracted with various hotels for 2009 and are committed by contracts, we would not be able to start this until the October Commission meeting. Staff will be at the meetings no matter where they are located, so it is completely up to the Commissioners on what works best for them.

Commissioner Parker felt obligated to warn the Commission about the food service at the Evergreen State College, which was awful. He suggested there were probably better options, despite the fact that it would be an honor to have the Gambling Commission meet at the College. **Director Day** added that parking at the Evergreen State College was somewhat distant as well. **Commissioner Parker** agreed.

Commissioner Rojecki asked about only being able to make reservations up to four weeks, six months, or three months and if that would create a problem for notification to the public for some of the meetings, which might not be on the same cycle they currently are on if staff gets into a bind. **Director Day** agreed it could cause a problem, which was why the savings was going to be reduced by where staff could actually get the meeting locations. If longer range commitments could not be made, then it would not be feasible to use them because the locations are published twice a year in advance. Staff thought about the possibility of scheduling out the free facilities to the limit and backfilling with the others. **Director Day** did not want to give the impression the Commission would be able to use free facilities for all the meetings. That is probably not going to be the case and in some cases would probably not be the best idea. But staff would plan to use them where possible. The list is not an exhaustive list either; there may be other locations that are more convenient and less costly. Staff intends to explore everything that is available in this immediate area and bring those back to the Commission for determination for next year's meeting schedule. The Commission is committed to Olympia next month, Pasco in May, and Vancouver in July.

Chair Bierbaum asked if there were any other questions from any of the Commissioners; there were none.

Assistant Attorney General Jerry Ackerman suggested that, given the Commission is changing a long-standing practice and the audience comes from all over the state, it might be a good idea to get the public's view and whether they are feeling their access would be diminished by this proposal.

Chair Bierbaum called for public comment about the recommendation for the Commission to hold all but two of its meetings in Olympia; there was none.

Commissioner Parker noted the public seemed to be pretty neutral on the topic.

Commissioner Amos made a motion seconded by **Commissioner Rojecki** to hold all but two of its scheduled meetings in Olympia. *Vote taken; the motion passed unanimously.*

Director's E-Link

Director Day explained the "Director's E-Link" documented some accomplishments made by staff over the preceding year. Part of the reason this is done is to collectively say thank you to the staff for their achievements and also to provide the opportunity for the Commissioners to see a list of some of the major accomplishments. Director Day pointed out a few of the accomplishments:

- Issued approximately 5,500 new licenses, certifications, permits, and letters of eligibility.
- Renewed 16,800 licenses, certifications, permits, and letters of eligibility.
- Initiated approximately 380 license withdrawals, administrative closures and denials and revocations; 30 of which were denied for criminal history.
- Processed over 400 requests for public records, including one that resulted in the release of 10,700 documents.
- Staff worked with other jurisdictions during a licensing investigation process, including assisting an out of state police department to locate and extradite a suspect that was later found guilty of Child Rape.
- Completed an investigation on a roulette cheating scheme involving approximately \$13,000. This was in cooperation with the Tribes, the FBI, King County Sheriff's Department, and the United State's Attorney General's office. Recognition for those involved in this cooperative investigation is scheduled for the April Commission meeting.
- Received and approved 375 submissions from 22 tribes, including changes to internal controls, game rules, and similar submissions.
- Completed the pre-operational inspection in cooperation with the Snoqualmie Tribe of the new 17,000 square foot Snoqualmie Casino, including 50,000 square feet of gaming floor, 50 gaming tables, 10 poker tables, 1,600 TLS machines, and 100 Class II machines.
- Responded to 78 complaints and 245 inquiries from the public regarding tribal gaming.
- Processed 50 rule changes, including 24 petitions from the public.

- Responded to 150 media calls, 500 website inquiries, and about 800 general calls for public assistance.
- Completed over 113 underage compliance inspections, and improved the success rate for house-banked card rooms not allowing underage persons to gamble to 75 percent.
- Completed 5,945 inspections of licensed organizations to ensure gambling is operated in accordance with laws and rules.
- Completed 945 investigations based on complaints or agency initiated.
- Identified 149 criminal violations and 796 civil violations.

Legislative Update

Ms. Amy Hunter provided an update on the Legislature, pointing out the cutoff for bills to make it out of the house of origin is at 5:00 p.m. today. Exceptions can always be made to the cutoff date, mainly for bills that would be necessary to implement the budget, so there may be some things that appear to be dead but may actually come back.

- SHB 1040/SSB 5040 dealing with the penalties for underage gamblers is doing well. The Senate version passed 46-0 early on and the House Commerce and Labor Committee has a hearing on the bill tomorrow at 8:00 a.m. An amendment is expected dealing with which courts will have jurisdiction over these cases; the Superior Court Judge's Association felt it would be a better fit to have the juvenile court divisions within the superior courts have jurisdiction rather than municipal and district courts. Staff expects about 20 cases a year, so it is not going to be a big impact on the courts either way. Assuming that the bill passes the House, the bill would then be returned to the Senate for concurrence of the amendment. The House version of the bill is currently in rules will presumably die there.
- HB 1217 / SB 5324 allows the Commission to set the amusement game locations in addition to those locations set by the Legislature. The House version passed 96-1 and the bill has a hearing in the Senate Committee on Monday. Ms. Hunter expects the Senate version of the bill will die.
- Senate Bill 6103 modifies the definition of gambling and will redefine gambling in light of a recent court decision. The concern is that the decision itself has broader implications than just the case that was before the court. Staff's concern was that if the definition were left unchanged, the case would create openings for bookmaking and professional gambling and other illegal activities. The Senate Bill passed earlier this week 38-10 and the bill has been referred to the House Committee. Staff would recommend the Commission support the bill.

Chair Bierbaum asked if there were any questions and called for public comment.

Mr. Jay Gerow, ZDI Gaming, asked what public process did the Commission used to introduce this bill. **AAG Ackerman** replied this was not the Commission's bill. **Chair Bierbaum** agreed, adding it was introduced by Senator Prentice. **Mr. Gerow** asked if this was the first time it was being endorsed by the Commission. **Chair Bierbaum** replied the first time she had seen the bill was in the agenda materials sent to her. **Mr. Gerow** asked how it was ushered through by Senator Prentice; somebody had to request it. **AAG Ackerman** suggested Mr. Gerow talk to Senator Prentice. **Mr. Gerow** asked if this was

going to become a common practice any time this agency loses a court case. **AAG Ackerman** replied his answer was the same; Mr. Gerow needed to talk to Senator Prentice. **Mr. Gerow** agreed and thanked the Commission.

Director Day asked Mr. Gerow if he was present when the Commission changed the schedule of agenda items and if he knew that his petition would be heard this afternoon because there will not be a quorum on Friday. **Mr. Gerow** replied he had not been present at that time, but he was fine with the decision.

Chair Bierbaum commented in response to Mr. Gerow's questions that it was not a matter of losing a court case that would make the Commission support or not support this legislation. The court case certainly identified for the Commission some clear ambiguities in the Statute because the Gambling Commission certainly believes that gambling includes stakes that are conditional or unconditional. To the extent there was ambiguity in the Statute, Chair Bierbaum thought this legislation was designed to clear that up, not because the Commission lost a case.

Ms. Joan Mell thought it would be wise for the Commission to be aware that Senator Prentice testified, when the bill was presented before the Ways and Means Committee that she chairs, that this was a request bill of the agency and that AAG Ackerman and Director Day had come to her and requested this proposal be adopted immediately, that it was of an emergent nature. There was no fiscal note that had been prepared, but the cutoff had already passed for hearing the legislation at the time it was presented before Ways and Means. So it was being presented as something that was causing a fiscal impact, but was pretty much adopted without any evidence that there was any fiscal impact. Ms. Mell had provided some recommended language changes to the bill itself to the staff people reviewing the bill in the Legislature. Ms. Mell thought it would be wise to recommend against the conditional versus unconditional language. If the issue is addressing the ruling of the court case, a simple change by adding the term "may," which is in the bill proposal, addresses that concern. But the introduction of the terms "conditional" and "unconditional" into the definition of gambling exposes the Gambling Commission to the application of the definition to situations like sweepstakes. Sweepstakes have been exempt from regulation by the Gambling Commission because of a condition whereby if consideration does not have to be given to participate in the sweepstakes, it is not considered gambling. An example that the Gambling Commission never regulated would be a situation that occurred with the recent presidential elections where Obama's campaign was utilizing the internet to solicit support and would promise via the internet that if people would log on and make a donation, they would be entered into a drawing to participate in winning tickets to his inauguration and/or other events. Ms. Mell could not recall what all the other events were, but that was the process. That, in some circumstances, is internet gambling; by the Commission's definitions it is. One of the conditions that is affected by the change using the unconditional versus conditional language is the whole issue of whether a person has to give any consideration to participate. Ms. Mell thought the Commission probably achieves its objectives by not including those two terms; just using the term "may" and not raising some serious questions about the scope of the definition of gambling.

Chair Bierbaum commented that this bill was not the Commission's, but their options included opposing it, supporting it, or staying neutral. She was not sure the Commission was in a position at this point to recommend additional changes. **AAG Ackerman** said the Commission could take a position if it chose to do so and write a letter to the Senator or to other legislators asking for an amendment to the bill, but as Chair Bierbaum pointed out, this is not the Commission's bill; it is not agency request legislation. For the record, AAG Ackerman said he had no idea what Senator Prentice did or did not say during testimony; he was not there and was reluctant to attribute things to Senator Prentice based on the hearsay that has been introduced today. AAG Ackerman did know that some of the facts recited by Ms. Mell are not accurate. He did not know whether Senator Prentice said or implied those things, but this is basically not agency request legislation. It appears to be designed to correct some of the flaws in a Court of Appeals decision that is still under litigation, so the question is whether the Commission wants to support it in the form it is in or suggest changes. If the Commission suggests changes, then the questions become: what changes, what is going to be the process for determining those changes, and whether or not those changes actually achieve the desired result. In other words, do they make the bill better or worse? It would be a somewhat precarious thing to sit here and wing it off the top of everyone's heads, saying it should be changed to this because of testimony from one individual saying that she did not like the bill.

Commissioner Rojecki asked where this bill was; if it was waiting for floor action and stuff. **Ms. Hunter** replied it was passed a couple of days ago and will now go over to the House for a hearing. **Director Day** said that on the practical side he would encourage the Commission to vote in support of the legislation to allow staff to give their opinion to the Legislature. Director Day said he would be happy to take another look at the bill in light of Ms. Mell's concerns to see if there is anything there that may merit proposing an amendment, and then bring it to the Commission's attention. **Chair Bierbaum** replied that Senator Prentice has been involved in the regulation of gambling for a very long time and believed she would carefully draft a bill that specifically addressed whatever issue it was that she wanted. So, while Chair Bierbaum has great respect for Ms. Mell's opinion, in her own view she would more likely defer to Senator Prentice. **Commissioner Rojecki** was not clear on exactly what this bill does and wondered if the Commission had enough information to make a motion.

Director Day thought Commissioner Rojecki recalled the Court of Appeals opinion relative to the Betcha.com case where in that opinion, the court – and using more of a lay description than a legal description – said that because of the Welch provision that allowed the person placing the bets on that website, it meant there was no consideration in effect; hence, the definition that it was not gambling, and why the court ruled to overturn the Superior Court decision. The question at hand, as Ms. Hunter addressed in her comments, has significant impact on gambling as it is here. For instance, in bookmaking itself, there is usually no money put up in advance; it is basically on a promise to pay. Many people obviously have consequences if they chose not to do it, but in effect, they could not pay many bets that they make. That basically provides a circumvention of what is gambling in the state of Washington and is just for recollection purposes. The real controlling factor is

that this really is not about the Betcha.com decision; it is more about how gambling is controlled in this state and what the Legislature believes should be. For clarification, staff informed the Senator of the decision to make sure she was aware of it, and then she made a decision whether or not to sponsor a bill. Senator Prentice felt it was of sufficient importance to do so, and brought the bill forward, which brings us to where we are today. It is because of that potential significant impact; not relative to the Betcha.com decision as much as to the concern about future gambling and how it will be conducted in the state of Washington. Staff is requesting the Commission support the bill.

Ms. Mell said she does not represent Betcha.com; that she was looking at it because it was a gambling bill that was changing the definition of gambling. Ms. Mell pays attention to those issues. She did inquire of Ways and Means staff about the language and where the language came from. And she wanted to at least pass the information she received along to the Commission, which was that the Senator's staff did not write that bill and the conditional versus unconditional language did not come from her staff.

Chair Bierbaum suspected that AAG Ackerman, in his role as the Commission's legal counsel, no doubt notified Senator Prentice about the decision, just as he notified the Commission about the decision and described the ramifications and what the Commission thought were the shortfalls or whatever about the opinion. It is good that AAG Ackerman and Director Day shared those with Senator Prentice because she was not at the meeting when the Commission learned of the decision. That is their job and Chair Bierbaum personally did not see any problem with it and thought it would have been a shortfall if they had not done that. With all due respect to the Court of Appeals, the Commission believes the Court was wrong, which is why counsel has been directed to file a petition for review at the Supreme Court. But even then the Commission was left scratching their heads and wondering if maybe the language was ambiguous and may need changing. The Commission believes that gambling, whether the bet is conditional or unconditional, is subject to regulation. She assured Mr. Gerow that just because the Commission lost a case this was not some nefarious scheme to get around an unfavorable opinion.

Commissioner Amos made a motion seconded by **Commissioner Parker** to support Senate Bill 6103. *Vote taken; the motion passed unanimously.*

Commissioner Parker asked if this decision would be conveyed to the House Committee. **Ms. Hunter** affirmed, explaining that staff would prepare a support letter for Chair Bierbaum's signature and then proceed much the same as was done for House Bill 2162.

Ms. Hunter continued reviewing legislative actions:

- SB 5939 and HB 2049, dealing with Washington Management Services (WMS) and other exempt employees. Washington Management Services was actually created in 1993. The introductory language in the bill says it has grown away from its original concept and possible refinements are needed. The Gambling Commission currently has ten WMS positions. Exempt Management Services (EMS) includes the majority of our agents. Director Day, the three assistant directors, and Gail Grate are in exempt positions. The House bill is still alive, but the Senate Bill is technically dead – it died

in Ways and Means. This may come back at the end of the session as legislators are looking to implement and balance the budget. There was a substitute bill that required agencies to reduce their WMS and exempt staff by 75 percent; although, staff understood that was a drafting error and the reduction was really meant to be a 25 percent. Even a reduction of 25 percent, with all of our agents in the exempt status, would obviously be a very big impact on the Commission. Ms. Hunter did not think they were trying to get at all exempt employees; they are not trying to get at all the special agent positions or all the Department of Printing positions, or OFM positions. Ms. Hunter thought it was meant to get at more of the upper-level positions and if a new bill is introduced, that part of the language would be taken care of. The bill will be closely watched in case something gets changed at the end.

- Substitute Senate Bill 5589 consolidates certain boards and commissions, but does not impact the Gambling Commission. The bill is in Rules.
- House Bill 1497 eliminating boards and commissions seems to be dead. The bill never had a hearing and died in committee. There have been several other bills introduced, including Governor Request legislation about boards and commissions, but House Bill 1497 does not appear to be part of any final budget.
- Senate Bill 5460, the freeze or belt tightening bill was passed by both Houses and signed into law. It had an emergency clause and became effective February 18, which was the day the Governor signed it. Staff was successful in getting an exemption allowing the agency to hire enforcement officer positions. The new law freezes personal service contracts, equipment, and out-of-state travel until June 30, 2009. The Director of OFM can give agencies exemptions for these areas on a case-by-case basis. The law also places a freeze on salary increases for exempt positions for 12 months, until February 2010. The salary freeze does not apply to general services positions. Staff has requested one exemption for out-of-state travel for two agents for training. The trip had already been paid for and could not have been refunded. Absent a critical need, staff does not anticipate making any requests for exemptions, but any requests would be brought to the Commission's attention. Terry Westhoff will be preparing a quarterly freeze report to the Commission, which would include the exemption request information.
- Engrossed Substitute House Bill 1694 was signed into law on February 18. This bill will not have a practical impact on the Commission's budget, at least at this point. It reduced agency appropriations until June 30, and reduced the Gambling Commission fund allotment by \$98,000, but the Commission had already reduced the allotment by \$900,000.
- House Bill 1053 and Senate Bill 5124, increasing the price that raffle tickets can be sold from \$25 to \$100. The House has passed the Bill 93-1, and then there was a floor amendment made by the prime sponsor of the bill removing the authority of the Gambling Commission to raise the maximum price by rule. The bill has a hearing in the Senate on Monday. The Commission decided at the January meeting to be neutral on the bill. Ms. Hunter expects the Senate Bill to die.
- House Bill 1273 deals with local governments being able to do raffles only for community activities or tourism promotion activities. And the bill passed the House

97-0. And it also has a hearing in the Senate Committee on Monday. And the Commission also decided to be neutral on that bill at the February meeting.

- Senate Bill 5645 is not truly House Bill 1273's exact companion but the topic is the same. Ms. Hunter expects the bill will die.
- House Bill 2162 deals with local government's option to limit house-banked card rooms within their jurisdictions, and the bill seems to be dead. The Committee passed a Substitute Bill out with all of the technical changes that the Commission had suggested. The bill got one rules pull, but it needed two rules pulls to make it to the floor. Most of the testimony on the bill at the hearing was favorable. There was at least one city that did not support the bill and Ms. Hunter suspected other cities may not have been for the bill. Because of the support from the Commission, staff testified in support of the bill with the technical considerations. Included in the agenda packet is a letter from Chair Bierbaum supporting the bill. The Chair of the Committee did thank the Commission for taking a position, which reiterated that the legislators really do appreciate hearing from the Commission.
- Substitute House Bill 1552 deals with public access at public meetings. The original bill required agencies to allow formal public testimony before adopting any ordinance, resolution, rule, regulation, order, or directive. The substitute bill, which passed 95-0, only applies to rule making decisions; giving people the opportunity to present comment individually. It requires that comments be done orally in the presence and hearing of all other attendees. This bill has passed.
- House Bill 1676 deals with recording executive sessions.
- Commissioner Amos' confirmation made it out of rules on March 3, and should be ready for a vote by the floor. Normal cutoff dates do not apply to confirmations.
- Commissioner Ellis' confirmation is still waiting for the Committee to take executive action.

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

Correspondence

Director Day drew attention to the document entitled "Electronic Code of Federal Regulations." Staff reviewed the regulations for any specific impacts the changes may have on the compacting process used in the state of Washington. Under section 293 are new federal rules that were adopted by the Department of Interior governing the submission and approval of tribal-state compacts. For the most part, these rules just put the process into rule. The primary change is in section 293.8, paragraph c, which is on page 3 and requires the Governor to certify that she has the authority to sign the Compact. As this authority is specifically described in Washington law, staff plans to just put this certification within the signature space for the Governor, which should address the rule. The other significant section is where the process requires that the Tribes have voted on either amendments or compacts, which is really the same process for both and is the process currently used in the state of Washington.

Commissioner Parker asked if that means the federal government has changed the way they are doing things now and if they are using the electronic method to put these things

into law. In other words, there are regulations for the tribal-state gaming compact process, and rather than deal with hard copies they are now implementing this via electronic means. **Director Day** replied that was not his understanding. He thought this was just an optional way to provide it. It is just like the rest of the electronic world – it is the hard copy or the soft copy approach. **AAG Ackerman** thought Director Day was correct in that the Commission is just looking at an electronic version of the CFRs but the actual compact ratification process is still a hard copy process requiring the transmittal of actual signatures on paper to the Department of Interior.

Monthly Update Reports and News Articles

Director Day pointed out several seizure cases and encouraged the Commissioners to look at them. Staff saw no significant new information at the federal level, although rumors say there is supposed to be an online gambling bill, but staff has not seen it yet.

Director Day briefly reviewed the news articles, pointing out articles about National Problem Gambling Awareness Week. The Commission is aware that youth gambling is becoming more of a concern throughout the country and that teen problem gambling rates are higher than adults. In Washington State, 8.4 percent of youth already have a gambling problem or are at risk of developing one. Director Day thought the normal percentage was usually about 3 to 5 percent. There is an average of 300 bets per second placed illegally on the internet. The minors are usually located in isolated areas, so the most likely to discover the gambling problems are family, friends, and those closest to the gambler. Older adults are often considered at higher risk as well because of the isolated nature and the social aspect. Another article entitled “Bingo Theft Forgery Nets Jail for Former Manager” was about an investigation undertaken by a Gambling Commission special agent in Yakima who discovered during a routine records inspection a \$46,000 theft by a trusted employee of the Sister Rebecca Berghoff Foundation in Yakima. The article entitled “Lease Tightening Around Bodog” was an extensive federal investigation that the Gambling Commission is also participating in. The article on “Supreme Court Ruling Raises Questions About the Cowlitz Casino” is about a significant Supreme Court decision involving trust land and the federal agency’s authority to move land in trust for tribes that were recognized after 1934.

Commissioner Parker noted that the Supreme Court decision that came out on the 24th throws into question the future of the Cowlitz Tribes efforts to establish a casino. Does this decision throw into doubt the Cowlitz Tribes proposal to have their land conveyed into trust by the Secretary of Interior, or held in trust by the Secretary? Would there be any question about whether Washington State would want to comment? Commissioner Parker understood there would be proposals made in Congress to legislate concerning this Supreme Court decision. What was under consideration was striking out the word “now” from the 1934 Indian Reorganization Act, which is the one in question here, because that was what the Court hung its decision on. They said “now” means only as of 1934, so all those tribes that were recognized since then, or whose proposals to the Secretary of Interior to have land put into trust status, all of those that took place after 1934, according to some interpretations of the Court’s decision, is thrown into doubt. Commissioner Parker

recalled a hearing has been scheduled for April 1 and 2 before the Senate Committee on Indian Affairs and the House Natural Resources Committee, which is the committee of jurisdiction over a proposed change to this 1934 law. Commissioner Parker thought the Senate Committee was planning to convene their hearing on the first and the House Committee on the second. Commissioner Parker asked what Director Day thought about the appropriateness of the Commission anticipating that hearing and considering weighing in on it. **Director Day** responded that, at this point, the proponents and opponents are arguing back and forth whether or not it will directly apply to the Cowlitz situation. To what extent it might impact the state of Washington and whether there has been an evaluation on that, Director Day was not aware of anything completed at this point. Director Day offered to check on the interest level and whether the Governor's office anticipates taking a position on this particular issue. **AAG Ackerman** indicated he had not heard of any sentiments either way and, in fact, was not aware that a bill was about to be introduced. Since he had not seen the text of the bill, it made it very difficult to comment on. He did know that some thought was obviously being given to the issue and his understanding was that there was also a recent Department of Interior solicitor letter dealing with restricted fee lands as something to be handled in a manner different from trust lands. At this point, there are a number of people trying to get their arms around the opinion and what it means, as well as what the recent Department of Interior letter means, and to see what effect, if any, it has on the state of Washington and on the one tribe that is most directly concerned at this point – the Cowlitz Tribe. But the effort, at this point, is just to understand the current state of the law, not to try to apply it to the Cowlitz or any other particular tribe. AAG Ackerman was not aware of the Legislature, the Governor's office, or anyone else in a policy position that has proposed anything or taken any kind of stand with regard to this recent decision. **Commissioner Parker** thought there was a reference in the article to the Snoqualmie tribe. **Director Day** replied he did not believe so. **Commissioner Parker** wondered if there was anybody at this meeting that had a view on that question.

Mr. George Teeny, owner of a couple of clubs in LaCenter, Washington, that are in direct conflict with the Cowlitz Tribe, said that from his point of view, and his attorney's in D.C., the 1934 case is probably not going to be resolved within the next year because their reasoning is that this is very controversial: there are 500,000 people in this country that would want the tribal reservations to have casinos or land; and there are another 300 million people that have a concern about whether they have the right to do it in the sense of forsaking the rights of the other 300 million to make their 500,000 people right. Cities and counties, as well as states throughout this country, have had a problem with casinos branching up almost anywhere inside their jurisdictions. Two states, Connecticut and Rhode Island, have formally made comments to the DOI and the BIA that they are no longer going to allow any trust land to be given to any more tribes inside their jurisdictions. They feel as though they do not have control over the land within their own borders, and other local jurisdictions are feeling the same thing. Mr. Teeny explained that LaCenter is the area where the Cowlitz Tribe wants to open up its reservation. There is not a single jurisdiction within Clark County and southwest Cowlitz County that want the tribe to form a casino on those properties; there is not a single Chamber of Commerce in those areas that want it; the only people that are in favor of it, besides the Tribe, are the unions so

they can get jobs. Mr. Teeny believed in the 1934 Act that the Supreme Court talked of. His attorneys back East believe this is not something that is going to be coming to a head in the not too distant future. The Interior Department has not even selected their Assistant Secretary yet, and there is a whole bunch of technical stuff that has to be dealt with first. The legislators and congress people are starting to hear from their constituents throughout the country that they want to have a seat at the table to be able to express their points of view when it comes to reservation land, either in trust or reservation, and what should be put on it, so there is getting to be a ground swell. At the last count there have been four organizations that Mr. Teeny was aware of with close to 800,000 people that are saying they do not want them to open up the 1934 Act unless they also have a seat at the table to voice their opinion. It is not just government to government in the sense of the tribal to the U.S. government, but also to the citizens of the country. How far that goes, Mr. Teeny did not know, but that is the position. There is another problem with the Cowlitz besides the 1934 Act. Mr. Teeny said they have been very diligently working on this subject since 2001. Their EIS is probably the most effective EIS that has been seen by people that are in the know. This includes people that work for the Cowlitz as well as that work for Mr. Teeny. There are problems with what they have shared; they are flip-flopping and it is very problematic. So the 1934 Act, although it may eliminate a hurdle for the Cowlitz if it gets resolved, Mr. Teeny thought there were many more of them to come.

Commissioner Parker asked if Mr. Teeny's attorneys would be following what happens if there is a hearing in Washington, D.C. on April 1 and 2. **Mr. Teeny** affirmed.

Commissioner Amos asked if there were twenty-nine recognized tribes in this state. **Director Day** affirmed. **Commissioner Amos** asked if they were all recognized on the Act of 1934. **Director Day** was unsure, but offered to check and let him know later. **Commissioner Amos** said he was just curious because the article only talks about the Cowlitz Tribe and he wondered if all the rest of the tribes had been recognized by 1934. **Director Day** thought the majority of the tribes had been recognized. He was not sure about the rest, but thought that at least one other tribe was not recognized. **Chair Bierbaum** agreed that would be a good thing to find out. **Director Day** said staff would find out and let the Commissioners know. **Commissioner Parker** thought the number was 26 Washington Tribes recognized before 1934.

Comments from the Public Regarding the Director's Report

Chair Bierbaum called for public comment on the Director's Report.

Ms. Joan Mell made a pitch for public disclosure after having observed today's activities. One summary provided to the Commission was of recent legislation. It seemed to Ms. Mell that some of the key bills died in the Legislature, but she believed one of those that had to do with open public meetings, the recording of the executive session, actually was recommended by the Attorney General's office, and raises an issue that Ms. Mell did not think was going to go away. How can the public be confident that the Commission, when it is in executive session, or whatever public agency is utilizing the executive session process is not making decisions within that process; that they are using that time to

deliberate and contemplate the issues, get legal advice, and then are making their formal decisions in the open public meeting. Ms. Mell thought it was important to remind the Commissioners that their decision making cannot be done in executive session, and that this issue is not going to go away unless there is some resolution as to how that is being done and there is some trust that it is not being done; that decisions are not being made in executive session. There was a comment made that a decision had been made to appeal the Betcha.com case. In Ms. Mell's opinion, and she was arguing this in other litigation, it is the Commission's obligation to bring that matter to the public agenda and simply adopt that as its position formally on the open public record. Whether or not the Commission needs comment is obviously the subject matter of the other bill that seems to be moving forward through the process that has limited it to just rule making proposals. But that is a pitch Ms. Mell would just make to the Commission to really encourage them not to make decisions in executive session, but to make that information available to everyone in the public on the public record. When the Commission makes decisions formally, include them on the agenda, and then the public will know what the Commission's decision making has been. The second component to that would be the public is really at a disadvantage, sitting in the audience observing the activities in these Commission hearings because they do not have the information that the Commissioners have in their notebooks. It is incredibly frustrating to hear Director Day discuss correspondence that the public has not seen, does not know what he is talking about, and does not understand where they are coming from or what the dialogue concerns. Ms. Mell recommended that those materials that are in the Commissioners notebooks, which are not confidential or subject to an exemption, could be posted, along with the agenda, on the website where the interested public could pull off the website whatever they were interested in and have it available when the Commission is debating or discussing it.

Mr. Max Faulkner, President of the Recreational Gaming Association (RGA), said that Commissioner Parker's tenure as a Commissioner pretty much coincided with the time Mr. Faulkner had been coming to meetings. During that time there has been a number of hard fought, contentious battles and whether Commissioner Parker has agreed with the RGA or not, he has understood that they are business people trying to make their way in a complex marketplace with ever-changing rules. It has been kind of a struggle sometimes, and Mr. Faulkner appreciated Commissioner Parker's understanding. The RGA would like to thank Commissioner Parker for his long service and open-minded deliberations, and wished him well in his future endeavors.

Commissioner Parker said he appreciated Mr. Faulkner's comments because he has tried to be as even-handed as possible. He has enjoyed his service on the Commission and has considered it a privilege to occupy such a position. Commissioner Parker is a member of a federally recognized tribe, albeit from Montana and not from Washington State, and in his professional career he has certainly immersed himself in questions of legal issues dealing with the rights of tribes, which he brought to the table as a Commissioner. Commissioner Parker said he has always appreciated Mr. Faulkner's organization and the representatives of the card room licensees, recognizing that it is a legitimate business they are engaged in and they deserve fair treatment by the Commission. Commissioner Parker has certainly enjoyed trying to play that role.

Mr. Jay Gerow testified he was going to withdraw his petition, item number 9 on the agenda. He said he had not planned on being in attendance on Friday anyway and that he was unable to be here, even though the Commissioners had moved it to today. The reason for withdrawing the petition is he was given staff's proposed amendments last week, after they had already gone into the agenda, without any time to comment on them. Mr. Gerow was not in support of the amendments whatsoever because they do not bring to light what the original purpose of the rule proposal was, which was to put some sort of a time constraint on how long Mr. Gerow's product has to sit in the lab. The submittal now can take as long as staff deems necessary, or whenever they get to it. The Commission has, by Compact, limits for the tribal reviews which have to be out of there; yet non-tribal does not have this benefit. There was no recommendations in either of the proposals – Amendment 1 and 1A – and neither one of those serves the purpose of what was originally intended for the rule, which once again leads to no accountability or responsibility on staff's part to get his product out in a timely manner.

Chair Bierbaum asked why Mr. Gerow was withdrawing his proposal. The Commission has not done anything on the staff alternative and has not denied the original proposal.

Mr. Gerow replied it was because he did not want to go forward with either one of the proposals that are being presented. All they do is create multiple sections with new rules and they are not consistent with what Mr. Gerow was looking for to begin with. They do not seem like they were done in very good faith. **Chair Bierbaum** responded that if Mr. Gerow was going to be here, the Commission would be talking about his petition this afternoon. **Mr. Gerow** said that was fine; he would be present today.

Mr. Martin Durkin, Jr., representing the Muckleshoot Tribe, testified he wanted the record to reflect some earlier comments made in regards to Native American gaming and the lawsuit. Mr. Durkin wanted to add into the record that the Muckleshoot tribe is the second largest employer in South King County and do a tremendous amount of things for the community and the state of Washington. For someone to characterize the only people that support Native American gaming are the Native Americans is very inconsistent and unfair. In the last statewide ballot, on a measure in terms of gaming and where high-stakes gambling should take place, voters in the state of Washington voted over 70 percent that they believed that high-stakes gaming should take place on the reservations. That trend is fairly stable when public opinion research is done out there, and the communities around the reservations and the people throughout the state of Washington support what the tribes are doing. Mr. Durkin took some offense in regards to the earlier comments made.

Chair Bierbaum said it was always good to get both perspectives and thanked Mr. Durkin for his.

Mr. Durkin commented regarding some legislation that was introduced on four-minute Keno that was not discussed today, probably because it is lottery legislation. Four minute Keno, 250 times a day, is much different than a drawing once a week or once a day and goes far beyond what is known as a lottery drawing. Mr. Durkin had some very big concerns about some 20,000 or 25,000 terminals throughout the state of Washington that

will all of a sudden become gambling parlors: at 7-11, Quik Marts, and places of that nature, and the people that will gather there – and heaven forbid the mother that goes in to get her milk and groceries and stumbling around people and walking by people. Mr. Durkin thought the Gambling Commission should take a look at that legislation if for no other reason than the very fact that the Lottery Commission does not have the necessary enforcement activities to oversee something of that magnitude.

Commissioner Parker asked if Mr. Durkin had testified to the Legislature on that proposal. **Mr. Durkin** replied there had not been a hearing yet; it had been referred to the Ways and Means Committee.

2. Petitions for Review

a) *Aaron V. Allen, Card Room Employee, Revocation (Held over to April meeting)*

Assistant Attorney General H. Bruce Marvin explained that Mr. Allen had retained counsel as of last week, so in order to give the attorney an opportunity to familiarize herself with the case and effectively represent her client, staff has agreed to stipulate to a continuance that would set this matter over until the April Commission meeting. Since this is a matter before the Commission, AAG Marvin thought it was appropriate for the Commissioners to sign off on that order and accept the stipulation, if that was how they would like to proceed. From staff's perspective, a continuance would be the appropriate way to go.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** to enter into a stipulation and order continuing the petition for review hearing on Aaron V. Allen to the April Commission meeting. *Vote taken; the motion passed unanimously.*

b) *Robert L. Ramelow, Card Room Employee, Revocation*

Assistant Attorney General Bruce Marvin reported the hearing was set for 2:30 p.m. today in the matter of the petition for review by Robert Ramelow. At 3:20 p.m. AAG Marvin had not seen Mr. Ramelow or had any contact with him with regard to his presence at today's hearing. AAG Marvin explained that since Mr. Ramelow had not arrived, AAG Marvin said he would like to move ahead and present the case on the merits and dispose of this case in that manner.

Chair Bierbaum said she has always wondered about that procedurally. It seems to her that if somebody files a petition, or a motion, or whatever it is, and then does not show up, Chair Bierbaum was not sure the person against whom the motion or petition or whatever can proceed on the merits, or if it was just stricken. **AAG Ackerman** replied that the Commission has done it both ways in the past and thought it was appropriate, if the Commission chooses, to do so since this is an administrative matter and a civil matter and not a criminal case. The Commission certainly can treat the case as submitted on the record. Mr. Ramelow has provided his petition, which presents nothing more than his entire record that the Commission has. So the Commission could, based on that record, make a decision on the merits, which AAG Ackerman thought they had done last month on

some cases. It is also appropriate for the Commission to simply enter a default and dispose of it that way, if they choose. It is really at the Commission's discretion.

Chair Bierbaum asked if the Commissioners had a preference, whether to enter a default order or enter a decision on the merits. **Commissioner Amos** did not have a preference. **AAG Marvin** said staff's preference would be to present it on the merits. **Chair Bierbaum** directed AAG Marvin to proceed on the merits.

Bruce Marvin, Assistant Attorney General, representing the Gambling Commission staff in this matter explained this was a petition for review from an initial order issued by an ALJ revoking the card room employee license of Robert L. Ramelow. Mr. Ramelow was a licensed card room employee working as a dealer at the Lilac Lanes Casino in Spokane. The investigation into this matter commenced after casino management reported to the Commission staff that Mr. Ramelow had been removing chips from the pot of a poker game in a manner consistent with removing a rake; that being the casino's fee, and then transferring the chips into the chip tray in front of him, and then ultimately depositing the chips into his token drop box. So, theoretically, it went from the player's money; the player's pot. When Mr. Ramelow transferred it into the chip tray, technically any chips that enter the chip tray become the property of the casino. He then transferred the chip to his own personal token box, thereby perfecting the theft. His actions were brought to the attention of the casino's management by a patron and subsequently confirmed through review of surveillance videotape. A special agent subsequently interviewed Mr. Ramelow about these activities and during that interview Mr. Ramelow admitted that he had stolen up to \$125 worth of chips in that manner. Mr. Ramelow also supplied the agent with a written confession. Administrative charges were issued on April 2, 2008. The hearing was originally scheduled for July, but it was subsequently continued because criminal charges had been brought against Mr. Ramelow. On October 24, Mr. Ramelow entered a guilty plea to Third Degree Theft and was sentenced to 12 months probation. The administrative hearing was ultimately held on November 19, 2008. On January 7, 2009, the ALJ issued an initial order revoking Mr. Ramelow's CRE license, and this petition has followed.

At this point the Commission staff is asking the Commission to affirm the initial order and issue a final order adopting the initial order in its entirety. The basis for that is that the conviction of Third Degree Theft, while conducting a gambling activity, is a disqualifier that has been specifically identified by the Legislature as a type of conduct that should not be tolerated within state sanctioned gambling activities. Also Mr. Ramelow is currently serving a sentence of probation, which is also a disqualifier under Commission regulations. In his petition for review, Mr. Ramelow acknowledges that he did in fact steal the chips, but he does however argue a number of points with regard to mitigation. One, Mr. Ramelow contends that he was unfairly profiled by the agent during the testimony. During the testimony, the agent testified that Mr. Ramelow had in fact been convicted of Third Degree Theft and opined that that is the type of conduct which is disqualifying under the Gambling Act. Under the circumstances, AAG Marvin did not think he could fault the Special Agent for reaching that conclusion. Mr. Ramelow also raises the issue of hardship to his family. Even in these current economic times, there are other chances to work and be gainfully employed out there. It is unfortunate that Mr. Ramelow chose to engage in

activities that sacrificed his gambling license, but AAG Marvin did not believe the financial hardship that Mr. Ramelow is undergoing is sufficient grounds to reduce the sanction here. Finally, Mr. Ramelow argues that he should be given credit for admitting to his wrongdoing, but the fact is that he was caught on surveillance tape. AAG Marvin did not think Mr. Ramelow's admission added much to the case that the Commission staff presented to the ALJ. Under these circumstances, Mr. Ramelow cannot prove by clear and convincing evidence that he is qualified to hold a gambling license. Accordingly, staff would ask that the Commission enter a final order affirming and adopting the initial order in its entirety.

Chair Bierbaum asked if any of the members of the Commission had any questions of Mr. Marvin. **Commissioner Parker** said the case seemed pretty cut and dry.

Chair Bierbaum asked if Mr. Robert L. Ramelow or anyone here on his behalf was present; nobody responded.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to enter an order affirming the initial order, findings of fact and conclusions of law of the Administrative Law Judge revoking Robert L. Ramelow's card room employee license. *Vote taken; the motion passed unanimously.*

Chair Bierbaum called for a break at 3:30 p.m. and reconvened the meeting at 3:45 p.m.

3. **Default – Sammy Barr, Card Room Employee, Revocation**

Ms. Amy Hunter reported that Sammy Barr was convicted in November of Rape with a Victim Under 13 Years of Age. His sentencing is scheduled for a couple of months from now in the state of Virginia. The Director issued charges by certified and regular mail. The certified mail was signed, but the signature was illegible; the regular mail was not returned. Staff made a courtesy call to Mr. Barr and left a voice mail about the deadline. Mr. Barr did not respond, so he has waived his rights to a hearing. Staff would recommend the Commission revoke Mr. Sammy Barr's card room employee license.

Chair Bierbaum asked if Sammy Barr or anyone on his behalf was present; no one responded.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** to enter a final order in default of the findings, conclusions, and decision revoking Sammy Barr's card room employee license. *Vote taken; the motion passed with three votes; Commissioner Parker was away from the table.*

4. **New Licenses and Class III Certifications**

Commissioner Rojecki made a motion seconded by **Commissioners Amos** to approve the list of new licenses Class III certifications as listed on pages 1-15. *Vote taken; the motion passed unanimously.*

5. **Request to Exceed Raffle Prize Limit – B.P.O.E. #1843 (Lake Sammamish Elks Lodge)**

Assistant Director David Trujillo reported the Lake Sammamish Elks Lodge #1843 is requesting approval for a raffle in excess of \$40,000. The organization is a long-time punchboard/pull-tab and social card game licensee. The Elks Lodge has the opportunity to raffle off a car with a manufacturer's suggested retail value of \$51,485, so this year they applied for and received a raffle license. Commission rules require that a licensee that wishes to conduct a raffle with the value of a single prize greater than \$40 must receive the Commission's approval. Lake Sammamish Elks Lodge provides activities for members, sponsors local youth sports contests and veterans' celebrations, and provides funds for children's medical care, the Elks National Foundation, and the Compassion House. The Compassion House is in Snoqualmie and is a nonprofit organization that provides transitional housing and other aid to people in need. Staff recommends approving Lake Sammamish Elks Lodge #1843 to exceed the raffle prize limit.

Commissioner Rojecki asked how often the Commission approves these types of requests. **AD Trujillo** replied that in the past 12 months, two requests to go over \$40,000 for a single prize have been received. Generally speaking, that is because the maximum amount for a raffle ticket is \$25, so in order for an organization to make more than \$40,000, it requires a great deal of tickets. The number of requests may go up though, if legislation is approved allowing raffle tickets to become \$100. **Chair Bierbaum** thought the Commission had only approved two since she has been on the Commission; and had not denied any. **AD Trujillo** noted this was only the fourth request he has presented since he has been coming to the Commission – about five or six years.

Commissioner Amos made a motion seconded by **Commissioners Rojecki** to approve the request for Lake Sammamish Elks Lodge #01843 to exceed the raffle prize limit for this occasion. *Vote taken; the motion passed unanimously.*

6. **Approval of the Minutes – February 12-13, 2009 Regular Meeting (Moved from Friday's Agenda)**

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to approve the minutes of the February 12 and 13, 2009, regular commission meeting. *Vote taken; the motion passed unanimously.*

Chair Bierbaum noted that Items 7 and 8 were moved to the April Commission meeting, so next up would be Item 9.

9. **Petition for Rule Change** (*Moved from Friday's Agenda*)

ZDI Gaming, Inc. – Testing electronic pull-tab dispensers

Petitioner's Original Version Filed January 2009

- a) Amendatory Section WAC 230-14-047 – Standards for Electronic Pull-tab Dispensers

Staff's Alternative #1 – Up for Filing March 2009

- b) New Section WAC 230-14-048 – Modification for Electronic Video Pull-tab Dispensers

Assistant Director David Trujillo reported this petition was up for discussion. Mr. Gerow was correct in his comment earlier; he did see the first version that was mailed with the Commission meeting agenda materials about the same time the Commissioners did. Subsequent to that version, there was a newer version brought to this meeting because of input received after the agenda packet was mailed. In light of Mr. Gerow's earlier request, AD Trujillo would withdraw staff's alternative at this point in favor of continuing a dialogue with Mr. Gerow.

AAG Ackerman pointed out that, as a point of procedure, he thought Mr. Gerow's earlier comments indicated that he wished to withdraw the petition. AAG Ackerman suggested hearing from Mr. Gerow first, because if he does wish to withdraw the petition there is nothing to propose an alternative to. The first step is to see if Mr. Gerow wants to go forward and have this conversation or if he simply wishes to withdraw the petition and terminate the discussion.

Chair Bierbaum asked if Mr. Gerow would like to address the question.

Mr. Jay Gerow replied his only interest was if there was going to be some sort of a time frame put into the rule; otherwise, he had no interest in it at all. **Chair Bierbaum** explained that just because the Commission accepts this for filing does not necessarily mean that a decision with respect to imposing deadlines on the process has been rejected. **Mr. Gerow** replied he did not see in any of the proposed amendments where there was any type of time frame. **Chair Bierbaum** replied that, just like with wager limits, it is not necessarily the case as the Commission goes through the discussion that they would not approve a deadline. It may not be Mr. Gerow's; it may something else. **Mr. Gerow** understood that. **Chair Bierbaum** was attempting to say that she did not want Mr. Gerow to think that if the Commission accepts the staff alternative for filing that they are rejecting the notion of a deadline, because that is not what is happening. All the Commission is doing is accepting it for filing. **AAG Ackerman** agreed with Chair Bierbaum, and then asked Mr. Gerow if he wanted to go forward with his petition and the two possible alternatives, or would he prefer to withdraw the petition at this point. AAG Ackerman thought he had heard AD Trujillo say that Commission staff was prepared to enter into a dialogue to see if there was a compromise version of a rule that would address the issues, which could be presented at a later date.

Mr. Gerow stated he would prefer to withdraw the petition, and then if staff is willing to work with him, they will do that. Mr. Gerow said he had done this the Commission's way before and it did not work out in his favor.

Chair Bierbaum accepted Mr. Gerow's withdrawal of his petition. **Mr. Gerow** thanked the Commission.

10. Staff Proposed Changes (Moved from Friday's Agenda)

- a) Amendatory Section WAC 230-03-185 – Applying for a Manufacturer License
- b) Amendatory Section WAC 230-09-131 – Poker Tournaments Authorized
- c) Amendatory Section WAC 230-15-115 – Standards for Cards
- d) New Section WAC 230-15-158 – Ensuring Card Room Employees Meet License Requirements

Assistant Director Mark Harris reported these rules were up for filing and explained the proposed changes add items back into the rules that were inadvertently omitted during the Rule Simplification Process. AD Harris briefly reviewed the changes:

WAC 230-03-185 – add back current agency practice: staff may conduct an onsite review of a manufacturer's process; and the manufacturer must comply with quality control restrictions for gambling equipment used in Washington.

WAC 230-09-131 – allow FRE operators that do tournaments to offer cash and merchandise as prizes.

WAC 230-15-115 – add back the exception that says nonhouse-banked card games do not have to use logo cards.

WAC 230-15-158 – new section to add back into a rule that card room operators are responsible for ensuring that employees are properly licensed. In the RSP process, staff felt that RCW 9.46.158 would suffice; however, it has been determined that the rule as it was before was important.

Chair Bierbaum asked if there were any questions or public comment; there were none.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** to accept for filing and further discussion Amendatory Sections WAC 230-03-185, WAC 230-09-131, and WAC 230-15-115, and New Section WAC 230-15-158 as presented by staff. *Vote taken; the motion passed unanimously.*

11. Petition for Rule Change (Moved from Friday's Agenda)

Lance Dodd: Using half dollars and quarters to pay nonhouse-banked card game fees

- a) Amendatory Section WAC 230-15-145 – Surveillance room requirements for house-banked card game licensees

Assistant Director Mark Harris reported this petition was up for filing and reviewed the rules summary. AD Harris explained that licensees using the rake method may collect a fee limited to the maximum of 10 percent of the pot or \$5, whichever is less. The

petitioner states that nonhouse-banked card game licensees could collect additional revenue by being able to use quarters and 50 cent pieces for the fee. Staff anticipates little or no impact to the agency; there have not been any significant issues with coins being used for house-banked games. Staff recommends filing for further discussion.

Chair Bierbaum asked if Mr. Lance Dodd was present; no one stepped forward. Chair Bierbaum called for public comment; there was none.

Commissioner Rojecki made a motion seconded by **Commissioner Amos** to accept for filing and further discussion Amendatory Section WAC 230-15-145, as presented by staff. *Vote taken; the motion passed unanimously.*

12. Petition for Rule Change (Moved from Friday's Agenda)

Recreational Gaming Association: Verifying winning jackpots

- a) Amendatory Section WAC 230-15-320 – Surveillance room requirements for house-banked card game licensees

Assistant Director Mark Harris reported this petition was up for filing and explained that the petitioner is requesting an amendment to increase the winning payout verification limit from \$1,000 to \$3,000 for house-banked card rooms. In January, the wagering limit for house-banked card games increased from \$200 to \$300. The current rule requires surveillance to zoom in with a PTZ camera to verify all winning payouts greater than \$1,000. The petitioner states that because of the betting limit increase, house-banked card games offering the \$300 wager limits may require the surveillance observer to verify more jackpots and take away from their other duties. Agents rarely see wagers at the \$300 limit, and the odds based bonus wagers are usually from \$5 to \$20. Agents verify jackpots over \$1,000 during the compliance checks and very rarely do they come across a payout. Increasing the requirement to \$3,000 would make the rule more consistent with WAC 230-15-319, which applies to jackpot payout recordings being retained for 30 days. Staff would lose the ability to verify the payouts between \$1,000 and \$3,000. If there was a complaint about a jackpot and there was not sufficient detailed video surveillance, staff would side with the player, per WAC 230-15-310. Staff recommends filing for further discussion; however, the petitioner should provide evidence that this occurs frequently enough to offset the loss of detailed information presently used to resolve the disputes.

Chair Bierbaum called for public comment.

Ms. Dolores Chiechi, Recreational Gaming Association (RGA) asked the Commission to file this petition for further discussion. The RGA has polled some of its members and asked them to provide some of the documentation that shows the frequency of those payouts over \$1,000. Ms. Chiechi stated that the slowing down of the game and the players having to sit there while each of those \$1,200 payouts, or \$1,500 payouts, or over \$1,000, really does bog the game down, and brings attention from the pit all to one table. Meanwhile there are still 14 tables operating. Ms. Chiechi hoped the Commission would file it for further discussion so the RGA could bring forward further evidence to that effect.

Commissioner Parker made a motion seconded by Commissioner Rojecki to accept for filing and further discussion Amendatory Section WAC 230-15-320, as presented by staff. Vote taken; the motion passed unanimously.

Other Business/General Discussion/Comments from the Public

Chair Bierbaum called for public comment; there was none.

Director Day explained that Vice-Chair Rojecki and Commissioner Amos would attend the meeting on Friday to ensure the Commission had not missed any public comment that might have been anticipated.

Chair Bierbaum said this was Commissioner Parker's last meeting, and speaking for herself and she was sure the other members of the Commission, it has truly been an honor and a privilege to have met Commissioner Parker and to work with him over these years, and to gain from the knowledge that he has acquired over the many years that he has been involved in both Indian gaming and gambling in the state of Washington. On behalf of the Commission Chair Bierbaum thanked Commissioner Parker very much for his service.

Commissioner Parker replied it had been a pleasure and indicated he might drop in occasionally.

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

At 4:05 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 5:05 p.m. and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, MARCH 13, 2009
MINUTES**

Vice-Chair Keven Rojecki called the meeting to order at 9:05 p.m. at the Olympia Red Lion Hotel and introduced the members present:

MEMBERS PRESENT: **Vice-Chair Keven Rojecki**, Tacoma
 Commissioner Mike Amos, Selah

STAFF: **Rick Day**, Director
 Jerry Ackerman, Senior Counsel, Attorney General's Office
 Gail Grate, Executive Assistant

Vice Chair Keven Rojecki explained the Commission took care of Friday's agenda items on Thursday because there was not going to be a quorum for Friday, so today's meeting would only be for public testimony. Vice-Chair Rojecki reviewed the actions taken on Thursday:

- February Commission meeting minutes were approved.
- Final action on the wager increase for nonhouse-banked card rooms was held over to April.
- Final action on the petition for electronic poker tables was held over to April.
- The petition for testing of pull-tab dispensers was withdrawn by the petitioner.
- Items 10, 11, and 12 were filed for discussion.

Director Day suggested there may be someone present who traveled to the meeting to testify on a certain rule change. If so, they could identify which rule they wanted to comment on and provide their testimony.

Vice Chair Rojecki agreed and asked if there was anyone present who wished to testify on a particular rule change.

11. Petition for Rule Change (Action taken on Thursday)

Lance Dodd: Using half dollars and quarters to pay nonhouse-banked card games fees

- a) Amendatory Section WAC 230-15-145 - Surveillance room requirements for house-banked card game licensees

Mr. Lance Dodd, petitioner, testified he was requesting a change to WAC 230-15-145 to allow half dollars and quarters be used to pay card game fees.

Director Day informed Mr. Dodd that the Commission had agreed on Thursday to file his petition for further discussion, and assumed Mr. Dodd's testimony would be in support of his petition. **Mr. Dodd** affirmed.

Vice Chair Rojecki explained that the Commissioners took care of the rule changes on Thursday because there was not going to be a quorum on Friday, but Mr. Dodd was free to provide his testimony. **Mr. Dodd** responded he had been urged to attend this meeting to field any questions concerning his petition. **Director Day** replied Mr. Dodd was in good shape at this point, explaining that at the April Commission meeting his rule proposal would go to the study session, which is an informal discussion on Thursday at 10:30. Then at the May Commission meeting, the Commissioners would consider final action on whether to adopt or not adopt the rule proposal.

AAG Ackerman pointed out that the May Commission meeting would be in Pasco, and did not know if that was convenient for Mr. Dodd's attendance. If it is not convenient, Mr. Dodd could make a statement explaining why he filed this petition and why he thought it was a good thing to have happen. This meeting is recorded, and the Commissioners who are not present will review the minutes prior to the next two meetings. So if it is not possible for Mr. Dodd to be in Pasco, it would be a good idea for him to testify today on what caused him to file the petition.

Mr. Dodd testified the reason he filed the petition for the inclusion of half dollars and quarters for the purpose of taking fees was just for it to allow the card rooms to take a truer 10 percent. The revenue allowed to take is 10 percent, not to exceed \$3, so the half dollars and quarters would allow the operators to facilitate that closer to a true 10 percent.

Vice Chair Rojecki noted there were no questions on this petition yesterday when the Commission voted to file this petition. **Commissioner Amos** agreed there were no questions. **Vice Chair Rojecki** appreciated Mr. Dodd's time and apologized that the majority of the Commission was not present. This petition was filed and the Commission will consider further action in the future.

Mr. Dodd thanked the two Commissioners who were present.

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

Vice Chair Rojecki called for public comment; there was none. With no further business, **Vice-Chair Rojecki** adjourned the meeting at 9:15 a.m. The next meeting will be held in April at the Olympia Red Lion Hotel.

Minutes prepared by

Gail Grate
Executive Assistant