

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, FEBRUARY 11, 2010
APPROVED MINUTES**

Chair Keven Rojecki called the meeting to order at 1:35 p.m. at the Great Wolf Lodge in Grand Mound and introduced the members present:

MEMBERS PRESENT: **Commission Chair Keven Rojecki, Tacoma**
 Commission Vice-Chair John Ellis, Seattle
 Commissioner Mike Amos, Selah
 Commissioner Michael Reichert, Maple Valley

STAFF: **Rick Day, Director**
 David Trujillo, Deputy Director
 Mark Harris, Assistant Director – Field Operations
 Amy Hunter, Administrator – Communications & Legal
 Jerry Ackerman, Senior Counsel, Attorney General’s Office
 Gail Grate, Executive Assistant

Staff Accomplishment:

Chair Rojecki and **Director Day** congratulated Debra Vandall for 30 years of state service, all with the Gambling Commission. Ms. Vandall started as a Clerk Typist 2. She set her goal to become a special agent in the agency and steadily worked her way to that position. Ms. Vandall is an excellent employee and an experienced agent. She has worked in tribal gaming, in financial investigations, and now has taken on a new assignment for the agency to expand gambling crimes and educational awareness around the state to the various organizations.

1. Agenda Review / Director’s Report:

Director Day briefly reviewed the agenda noting there were no staff requested changes. He reminded everyone this was a one-day Commission meeting. On Friday a Texas Hold’em Work Group meeting, which is open to the public, is scheduled for 9:30 a.m. in this room.

Legislative Update

Ms. Amy Hunter reported that:

- Commissioner Reichert had his confirmation hearing on Wednesday, which was passed out with a recommendation that he be confirmed. Hopefully, that will get out of rules and be voted on this session.
- Senate Bill 6103 is the bill that is still alive from the definition of gambling bills. The Commission voted in support of all three of the combined bills at the meeting last month. These bills redefine gambling in light of the February 2009 betcha.com case. Staff’s concern with the decision is that it has broader implications than just the case that was before the court. Senate Bill 6103 passed 35 to 13 and was referred to the

House Commerce and Labor Committee and has been scheduled for a hearing on Wednesday, February 17. House Bill 2355 and Senate Bill 6152 are both dead.

- House Bill 2394, which the Commissioners voted in support of, deals with establishing a government-to-government relationship between state government and Indian tribes. The bill is still moving, but has had several amendments since last month. The bill requires agencies to make reasonable efforts to collaborate with Indian tribes when they are developing policies. Most requirements in the bill are already being done by the Commission. The General Government Appropriations Committee made three significant changes and the bill is now in rules. The three changes were:
 - Eliminating the Joint Legislative Committee on State and Tribal Affairs.
 - Changing the training portion to make it clear that the tribal liaison and the executive director are the two people who need to get training in an agency.
 - Eliminating the requirement that each state agency submit an annual report.
- Senate Bill 6268 amends the Administrative Procedures Act (APA). All of the Commission rules fall under the APA as well as the actions taken against applicants and licensees. The bill had a hearing, but did not make it out of committee.
- House Bill 2603 deals with agencies giving small businesses an opportunity to comply with either a state law or an agency rule before imposing any type of a penalty. The bill passed out of Appropriations with a new definition of small business.
- House Bill 2873 dealing with local governments and giving them some authority to limit house-banked social card games in their jurisdiction. The bill had a hearing, but it did not pass out of committee.
- Senate Bill 6503, the furlough or temporary layoff bill, has not yet passed in both sides. Should the bill pass, staff would likely recommend submitting a plan to OFM to try to reduce the impact on existing staff. That plan would look at credit for current vacancy savings and other changes, which are three times greater than the savings that would be achieved by being closed on those 11 dates.
- House Bill 2921, capturing additional savings, is ready for the Governor's signature. This bill reinstates the freezes on exempt and WMS hiring salaries, equipment over \$5,000, and out of state travel. The bill would be implemented 30 days after the effective date of the bill. The Gambling Commission enforcement officers, revenue generating positions, and forfeiture funds are exempt.
- House Bill 2998, suspending certain monetary awards and salary increases, is ready for the Governor's signature. It would suspend all different types of recognition awards that are given to State employees through June 30, 2011.
- Senate Bill 6382, dealing with restricting compensation, is ready for the Governor's signature.
- Senate Bill 6683 is out of Ways and Means and in Rules. This bill deals with renewal licenses.
- House Bill 3134 was introduced very close to cutoff and did not have a hearing. It dealt with sports pool boards, bracket pools, and fantasy sports leagues.

Commissioner Ellis asked, with regard to Senate Bill 6683, if Ms. Hunter knew the extent of which licensees could currently apply for licenses and renewals from the Gambling Commission online. This would, of course, just covers renewal notices. **Ms. Hunter**

deferred to Deputy Director Trujillo. **Deputy Director Trujillo** asked Commissioner Ellis if he would repeat the question. **Commissioner Ellis** said the Senate bill would require agencies to notify licensees when their licenses are up for renewal and he was interested in taking that one step further and finding out generally how many of the Gambling Commission licensees are able to actually submit their renewal paperwork online. **Deputy Director Trujillo** replied that at the present time staff continues to work towards online processes. Our licensee breakdown is approximately 4,000 commercial businesses and nonprofit charitable organizations with approximately another 16,000 individuals. He thought there was an online process, which is not submitting a renewal application but does let staff know when somebody is no longer with an organization.

Correspondence

Director Day drew attention to the State Auditor's Report for the Fiscal Year 2009. It is the eighth consecutive year the State Auditor had no recommendations or findings in their audit work relative to the Gambling Commission. Director Day congratulated Mr. Terry Westhoff, Business Operations Administrator, and his entire fiscal staff for their excellent work in keeping the agency in line financially and according to requirements. Next, he pointed out a letter signed by Chair Rojecki that was mailed to Peggy Ann Bierbaum thanking her for her services as a Commissioner and recognizing the value she contributed to this Commission. The Governor's office is in the process of searching for a replacement for Commissioner Bierbaum. Director Day explained the third item was an update from the Texas Hold'em Discussion Work Group appointed by Chair Rojecki. The group held its first meeting on January 19 and set a schedule for three additional meetings. Director Day asked Vice-Chair Ellis if he would like to share any information about the group's activities.

Commissioner Ellis reported the meeting summary included in the agenda materials gives a good overview of the nature of the discussions at the initial meeting. This was an organizational meeting and was designed to allow the group to focus on what its goals were, the issues that needed to be addressed, and the information that would be useful to address those issues and where to get it, as well as to determine the future meeting dates. Commissioner Ellis thought the group did a good job of accomplishing all of that. One of the most important decisions made was a recognition that the purpose of the group was limited to Texas Hold'em and to look at potential ways to improve that specific poker game without getting into other games. Tomorrow's meeting will be an important one with regard to gathering information. Commissioner Ellis was hopeful that members of the working group would have had an opportunity to actually assemble information that would be useful to the issue, or at least come up with ideas on where information might be available that would allow the group to provide a solid basis for any proposals that may come out of the group. The meeting tomorrow is a public meeting, so anyone who is interested in the work of the group may attend and listen to the group's discussion. Meetings are scheduled for March 12 and April 19, if needed. There was a hope that the group may be able to accomplish its business in three meetings, culminating in the March 12 meeting in Lacey. The meetings are structured to take advantage of the fact that Commission meetings normally run Thursday afternoon and Friday morning, leaving Friday afternoon or the later

morning period open for the meeting of the working group so that travel is minimized for members of the working group. That will be the case for the next two meetings.

Chair Rojecki asked about the process for contacting the members and if staff had contacted Mr. Bailey and Mr. Ruff as far as tomorrow's meeting since they were not at the last meeting. **Assistant Director Mark Harris** replied he was under the impression that Hollee Arrona was trying to get in contact with them. He had heard that she had not received responses back to her e-mails. **Commissioner Ellis** said he knew Ms. Arrona had tried unsuccessfully to contact them before the last meeting. Hopefully she has had more success for the meeting tomorrow.

Director Day thanked Vice-Chair Ellis for being willing to take the time to Chair the working group. **Commissioner Ellis** replied he was glad to do it.

Monthly Update Report and News Articles

Director Day pointed out two bills in the Federal Update: H.R. 3697 and S. 1703, which are intended, as introduced, to address the controversial decision of Carcieri applying to tribal trust land. These two bills in their present state would reaffirm the Secretary of Interior's authority to take land into trust from Indian tribes that were recognized after 1934.

Commissioner Reichert asked in relationship to the audit findings – the one issue he had raised in the past about the discretion the Commission has over seizure and forfeiture funds – is it possible there could be another conversation about that between Director Day and himself, and perhaps even speak with the Auditor's office. Commissioner Reichert was still not quite clear about where the authority is to use forfeiture funds in the Commission's budget process. He understood the issue that the Commission is being responsible for it was settled, but he was not clear as to what leeway the Commission has in its use. **Director Day** agreed they could definitely have a discussion to the detail of Commissioner Reichert's choosing. The Auditor did look at seizure forfeitures and undercover funds, because they are high risk areas. The Auditor wanted to make sure to look into that, and the audit findings specifically indicated there were no findings or recommendations. Director Day said he would be happy to share that information. **Commissioner Reichert** suggested following-up on that afterwards, just to clarify in his own head what the Commission is able to do with it or not. **Director Day** agreed, adding there is a fairly limited list of what the Commission can use those funds for, but there are also a lot of federal exceptions.

Commissioner Reichert indicated he just wanted to make sure that he, as a Commissioner, honors and understands what those limitations are.

Chair Rojecki thanked Director Day and the agency for the audit results and asked him to pass his thanks along to staff. He thought it was a good indication of the management happening at all levels within the Commission as far as no financial errors.

Comments from the Public Regarding Director's Report

Chair Rojecki asked if there were any public comments on the Director's Report; there were none.

2. **Approval of Minutes – January 14 - 15, 2010 Regular Meeting**

Commissioner Ellis made a motion seconded by Commissioner Amos to approve the minutes from the January 14-15, 2009, regular Commission meeting as submitted. Vote taken; the motion passed with four aye votes.

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

Deputy Director Trujillo reported that included with the Commission Approval List of New Licenses and Class III Certification for February 2010 were a House-Banked Public Card Room Report and a Pre-Licensing Report for Wizards. Staff recommends approval of all items listed on pages 1 through 14.

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

Commissioner Ellis made a motion seconded by Commissioner Reichert to approve the list of New Licenses and Class III Certifications as listed on pages 1-14. Vote taken; the motion passed with four aye votes.

4. **Staff Proposed Rule Change – Restore the 120 day deadline for nonprofit licensees to report their annual progress and restore the licensee’s ability to request an extension to request the forms**

a) **Amended Section WAC 230-07-145 – Reporting annual progress**

Deputy Director Trujillo reported this is a staff proposal to restore the 120 day reporting requirement for large charitable and nonprofit licensees that existed in the rules prior to January 1, 2008. During the Rule Simplification Process the rule was rewritten into two smaller, easier to understand rules. This proposal is to restore the reporting requirement and provision for extension so the reporting obligation is clear and easy to understand. There were also some small changes made by the Code Reviser’s office. Staff recommends filing for further discussion.

Chair Rojecki asked if the Code Reviser normally looked at these rules. **Deputy Director Trujillo** explained the Code Reviser has filing requirements and often uses the Office of Typing Service that may also make some changes. **Chair Rojecki** asked if those changes would be for conformity. **Deputy Director Trujillo** affirmed.

Chair Rojecki called for public comment; there was none.

Commissioner Ellis made a motion seconded by Commissioner Amos that the Commission accept for filing and further discussion the proposed amendment to WAC 230-07-145. Vote taken; the motion passed with four aye votes.

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

Chair Rojecki opened the meeting for public comments.

Mr. Victor Mena, Chief Operating Officer for NG Washington, LLC that operates three card room casinos in the state of Washington: Crazy Moose Casino in both Pasco and Mountlake Terrace, and Coyote Bob's Casino in Kennewick. He was also representing the Recreational Gaming Association (RGA) on behalf of an amended version of WAC 230-14-090, a pull-tab rule on controlling prizes. Mr. Mena wanted to get in front of everybody some verbiage that the RGA thought would be appropriate because the pull-tab language about pull-tab exchanges was left out in the simplification process. Essentially, as everybody is aware, it was discussed at the last meeting the typical practice of a pull-tab player as he peels open a winner that has \$1 winner on it, the player can, essentially, exchange that one for another pull-tab to purchase with that winner instead of in lieu of cash. So they wrote an amendment to line item 3 stating a player may accept a cash prize in the form of a pull-tab of equal value, which the RGA felt in the spirit of what has been occurring in the industry would cover the rule for them; to not be in violation possibly with the gaming agent that comes in to audit. The RGA would like to get that in front of the Commission, if they would not mind.

Chair Rojecki asked if Mr. Mena had copies of the proposed rule change. **Mr. Mena** affirmed, adding their initial concern as an industry, obviously, was the lack of language that allowed for a pull-tab exchange in the prior rule. The RGA felt this would take care of that process. It is a one line item to be able to add. **Chair Rojecki** asked how this differed from what was submitted last month.

AAG Ackerman stated he had a procedural issue with this. Notice has not been given that there is going to be further consideration of the rule at this time. He did not think there was anything at all improper about the speaker providing the information to the Commissioners, which Mr. Mena has done, but procedurally under the APA, if the Commission is going to consider this matter further, it needs to be properly noticed and an opportunity given to the public to know that the Commission is going to consider and deliberate on this and ask questions. AAG Ackerman did not think there was anything wrong with the Commission receiving what they have, but technically it should not be considered by the Commission at this point. His understanding is that it will be on the agenda for next month, however, and certainly the Commission would be free to act on it at that point in any manner they chose. **Chair Rojecki** agreed that sounded good. **Director Day** clarified that staff were made aware of this wording, and anticipate they will recommend it be placed on the agenda for discussion purposes instead of final action at the next meeting. **Chair Rojecki** affirmed, and thanked Mr. Mena.

Chair Rojecki asked if there were any more public comments; there were none. He reminded everyone that there was no meeting on Friday.

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

Chair Rojecki called for an Executive Session at 2:20 p.m. to address pending investigations, tribal negotiations, and litigations. **Chair Rojecki** called the meeting back to order at 3:30 p.m. and immediately adjourned.

[All 4 Commissioners were present during Executive Session]