

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, APRIL 14, 2011
APPROVED MINUTES**

Chair Ellis called the Gambling Commission meeting to order at 1:10 p.m. at the Washington State Attorney General's Office conference room in Tumwater and introduced the members present.

MEMBERS PRESENT: **Commission Chair John Ellis**, Seattle
 Commissioner Michael Reichert, Maple Valley
 Commissioner Rebecca Roe, Seattle

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

1. Agenda Review

Director Rick Day briefly reviewed the agenda, handouts, and material provided to the Commissioners, noting there were no staff requested changes to the agenda. He pointed out that the next Commission meeting would be on Friday, May 13, starting at 9:30 a.m. at the Comfort Inn in Tumwater, but the study group session will be on Thursday, May 12, starting at 1:30 p.m. at the Gambling Commission office in Lacey.

Chair Ellis added that the Friends of American Lake had provided some additional material, including a DVD, in connection with the petition they have submitted.

2. Motion to Vacate Default Order – Esther M. Cardenas-Estrella, Class III Employee Revocation

Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Esther M. Cardenas-Estrella** representing herself.

AAG Marvin and **Ms. Cardenas-Estrella** provided their statements in the Motion to Vacate the Default Order. A recording and transcript of the hearing is available upon request.

At the conclusion of the arguments, **Chair Ellis** asked if there were any questions and called for an executive session at 1:45 p.m. to deliberate the matter; he recalled the public meeting at 2:05 p.m.

Commissioner Roe made a motion seconded by Commissioner Reichert to deny the Motion to Vacate the Default Order because there was no legal basis for Ms. Cardenas-Estrella not responding to the notice. The Commissioners were not making a finding on the merits. Vote taken; the motion passed with three aye votes.

Chair Ellis explained to Ms. Cardenas-Estrella's that the Commission was denying her motion to vacate and leaving on the record the default order. The Commission was not ruling on the basis of the disqualifying factors that were referred to or on the basis of her conduct. **Commissioner Roe** added for the record that she did not believe Ms. Cardenas-Estrella intentionally did not disclose, but that if she had disclosed at the time she applied, she would not have gotten the license.

Ms. Cardenas-Estrella said she understood and thanked the Commissioners.

3. Director's Report

a) Legislative Update

Ms. Amy Hunter reported the Legislative cutoff for bills to get out of the opposite house was yesterday, with the exception of bills necessary to implement the budget. There are still a lot of hearings going on and much discussion because a lot of bills are necessary to implement the budget. Ms. Hunter briefly reviewed the following bills:

- Senate Bill 5232 would authorize the prize linked savings deposits. The bill passed the Senate and the House. The bill went out of the House committee with an amendment to require the money be kept on deposit for at least 12 months, so the bill will have to go back to the Senate for concurrence.
- House Bill 1402 would allow a Class D card room in Kent to continue to operate. The bill has passed the House and Senate and is on its way to the Governor's office.
- House Bill 1150 extends the time when a small business can correct a violation. The bill passed the House and Senate unanimously and the Governor signed the bill on Monday. It will become effective 90 days from adjournment.
- Senate Bill 5860 deals with a 3 percent reduction to state employee compensation for the period July 1, 2011, through June 29, 2013. Full-time employees would receive a temporary salary reduction (TSR) leave of 5.2 hours. Employees whose gross pay is less than \$2,500 a month are exempt from this bill. The bill also continues the salary freeze for WMS and exempt employees, which includes all of our agents. Performance-based awards and incentives would not be allowed, so the agency's performance management confirmation would be temporarily on hold as well. The House passed the bill 53 to 43. The Senate is proposing additional furlough or "temporary layoff" days based on salary. Under \$50,000 gross a year would not have any furlough days.
- House Bill 2044 would authorize a total of 7,875 machines in the state, with up to 200 machines per house-banked card room. The card room would have to be licensed by August 1 in order to have the machines, or if licensed after August 1 would have to show it had been operating card tables for five years. The Lottery Commission would license the card rooms for the machines and have some other responsibilities. The

Gambling Commission would have the primary responsibility with regard to enforcement. The bill has not been scheduled for a hearing at this point.

- House Bill 2046 deals with legislative involvement with compacts and compact amendments. It significantly revises the RCW governing the approval process for the gambling compacts. The bill also gives the Legislature a bigger role with the cigarette and tribal/state compacts and timber harvest excise tax agreements. The bill has not yet been scheduled for a hearing.
- House Bill 1841 and a companion consolidate state information technology. The bill would create the Office of the Chief Information Officer (CIO), which would change some of the approval processes for major IT projects. The bill would require that state agencies locate all of their existing and new servers in the State Data Center unless the Office of the CIO grants a waiver.
- There is also a bill to create the Department of Enterprise Services, which would consolidate five agencies: Office of Financial Management, Department of Printing, Department of General Administration, Department of Information Services, and Department of Personnel.
- A number of bills are dead, but because this was year one of the two-year legislative cycle, they will be alive again in the 2012 session without having to be reintroduced:
 - The moratorium on rule making
 - The bill that increases the threshold on unlicensed members-only raffles.
 - House Bill 1287 to establish a government-to-government relationship with state government and Indian tribes.
 - Senate Bill 5327 limiting the use of public assistance electronic benefit cards. The concept was incorporated into Senate Bill 5921, Revising Social Service Programs, which is still alive. The bill expands the limitations on purchases that are made with an electronic benefits card.

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

b) Correspondence

Director Day pointed out two letters relative to federal internet gambling legislation. Although none of the bills in the 111th Congress went anywhere, there was enough movement that staff thought it would be worthwhile to put together an alert letter to let Governor Gregoire and delegates know there were concerns about those bills. Representative Campbell of California has introduced a new bill, H.R. 1174. Once staff saw the specific bill, the plan was to take a look at it and propose a letter discussing any concerns and ask for the Commission's endorsement to send another letter to Governor Gregoire and the Legislature. The draft letter regarding internet gambling lists some of the specific concerns with this piece of legislation. The states and tribes have experience and have historically regulated gambling, but in this case it would be regulated by the Department of Treasury and the Secretary of the Treasury. Although states and tribes would have a role in the decision making, the authority to make decisions under the bill rests with the Secretary. In this bill, the states and tribes would have to actually opt-out or be automatically included

as a legal jurisdiction for internet gambling. Having everybody either opt-out or not opt-out could result in a lot of confusion relative to regulation. This could also alter long-standing tribal/state relationships that are defined relative to Class III gambling in the states. There are no testing provisions and no authority responsibility for the Secretary to ensure fair and honest operation of the computer systems and software. One administrative problem is that, although the states have some ability to gain funds through the licensing process, they have no ability to gain funds to cover costs of regulatory enforcement. If approved by the Secretary, they could take on that responsibility. Staff included a summary in the last paragraph of the letter. At this point, staff has not heard that the bill is scheduled to move forward any time soon, but after the last experience where bills began moving very quickly, they thought it would be best to get staff concerns on record. Director Day asked if the Commission had any changes to the draft letter and if they would approve sending the letter under the Chairman's signature.

Chair Ellis asked if, given the fact the Commissioners have not had an opportunity to carefully review the letter, Director Day would like to set up a procedure and deadline for the Commissioners to respond with any concerns or suggested changes to the letter.

Director Day agreed, noting the bill was quite lengthy and asked what response time Chair Ellis suggested. **Chair Ellis** suggested a response time of end of day on Tuesday, April 19.

Commissioner Roe agreed. **Director Day** said he looked forward to receiving any suggestions, or criticisms the Commissioners might have and any changes they may want made to the letter. If there seems to be quite a few changes or if the changes are substantive, he will bring the draft letter back to the next Commission meeting. **Chair Ellis** did not think there would be many, given the fact there were not a lot of substantive changes to the first letter that was sent.

Commissioner Reichert asked if Director Day had any indication from the tribes, WIGA, or some other organization, about similar concerns with this legislation. **Director Day** replied he did not, but he had received a couple questions and knew the tribes were looking at it. He did know there were a number of splits with tribes over federal regulation and internet gambling in particular, but not necessarily in Washington State. Some of the larger tribes actually favor it and others do not.

Director Day pointed out a memo from Lisa Benavidez, Human Resources & Training Administrator, regarding performance management confirmation, which is an accountability evaluation program combined with recognition for performance. In November 2009, the Commission reviewed the program and asked staff to return in a few months with a status report. The agency has, at this point, completed the requirements of developing a policy; providing training, evaluations, and expectations; and is ready for final approval. The process is in place, but will be on hold because Senate Bill 5860 is likely to prohibit any kind of performance-based awards or incentives in the next biennium. In addition, staff's understanding is that if this is prohibited in this biennium, it may very well come back in a completely different format. Hopefully, staff will get a chance to try out the program since there has been a lot of work put into it. Regardless of what happens on the incentive side, staff will continue to do the informal recognition and programs already in place that do not

violate anything the Legislature might be looking at. On the accountability side, the process has required staff to become much more current with the evaluation process, which will continue to be kept up. Further news will come after the Legislature adjourns.

Chair Ellis felt that staying on top of the evaluation process was a worthwhile thing in its own right. **Director Day** agreed it has been very beneficial. The process also requires an interim review, which helps make sure there is connection with employees during the process.

Director Day indicated the Commissioners should have received the lengthy H.R. 1174 bill, in addition to the summary provided under the federal update. Information will be included each month until there is action taken on the bill.

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

4. **Request to Exceed Raffle Prize Limit – Friends of American Lake Veterans Golf Course, Lakewood**

Deputy Director Trujillo reported the Friends of American Lake Veterans Golf Course were requesting permission to conduct a large raffle where the prize may exceed \$40,000. WAC 230-11-065 limits the value of a single prize to \$40,000 unless a licensee can show good cause and receive Commission approval to exceed that amount. In this case, Friends of American Lake Veterans Golf Course will be offering a completely restored 1956 Chevrolet as a prize. The vehicle was purchased for \$41,000, and the group is estimating the fair market value to be at least \$56,000. Raffle tickets will cost \$10 each and will be sold throughout the state as the group transports the restored vehicle to car shows, fairs, golf tournaments, and other events throughout this year and into next year. The date of the drawing is anticipated to be Patriot's Day, April 16, 2012. The winner of the raffle will be able to choose either the car or \$25,000 in cash. The use of the proceeds will be used to enhance the existing golf course. The Friends of American Lake Veterans Golf Course have asked to show a short video presentation. Deputy Director Trujillo introduced Major General (Retired) Ed Trobaugh who will provide the narrative for the video.

Mr. Ed Trobaugh, retired Major General, U.S. Army, and a member of the Board of Directors for the Friends of the American Lake Veterans Golf Course, which is a 501(c)(3) organization, reported their golf course is located at the VA Medical Center in Lakewood, Washington. Mr. Trobaugh explained they were requesting the Commission's authority to exceed the raffle prize limit. The purpose of that raffle is to help fund the construction of their golf course. The video to be shown was five minutes, but Mr. Trobaugh provided the Commission with a smaller video to take home that is 15 minutes long. He thought the Commission would find the smaller video to be very interesting; it is much more detailed, with much more background, and is much more exciting. Mr. Trobaugh pointed out that there were three veterans in this five minute video, but it really does not explain all of their background. One is Jim Martinson, a retired Sergeant in the Army, who is in the audience in the wheelchair. Jim's motto is if you can't stand up; stand out. He does stand out. He has participated in two Boston wheelchair marathons in which he won on one occasion. He

has been in three New York City marathons, which he hasn't won yet, but he did not have any doubt that he would. Jim won a gold medal at an international ski tournament in France. He finally figured out that he could ski in the winter, but there is no snow in the summer around here, so two years ago, he came out to the golf course and they have since taught him how to play golf, which will be shown in the video. There will also be a lad in there, Danny Dudek, a Lieutenant Colonel in the Army, who has for the last two years been the Commander of the Wounded Warrior Battalion at Fort Lewis, Washington. Dan is paralyzed from the knees down, and he also plays out of a special golf cart. The Army has seen fit to keep him on active duty, and he already has a set of orders to turn over his command this month. Mr. Trobaugh was sure Dan would go on and do bigger and better things. Finally, there are a couple of shots of Captain Tim Bomke, who was a cavalryman in Iraq who lost his right leg below the knee. He graduated from Montana State before he went in the Army and has recently completed his Master's degree in Education at St. Francis University in Lacey. Mr. Trobaugh's point was that these are veterans that have come to their facility and learned that they can do more than most people ever thought they could do. Mr. Trobaugh showed a video *[not recorded]*. After the video, **Mr. Trobaugh** said he would be glad to try to answer any questions the Commission may ask. He joked that if he did not answer it, he had his gun bearers behind him.

Commissioner Reichert asked what the timelines were they had in terms of the development. **Mr. Trobaugh** replied that, in terms of development, the time line is limited only by the ability to raise \$3.5 million. If they had \$1.5 million right now, they would be moving dirt. He joked that they wouldn't be digging fox holes; they would be moving big dirt.

Chair Ellis asked if there were any other questions of General Trobaugh; there were none. He thanked General Trobaugh for his presentation, noting it was truly inspirational. Chair Ellis said he talked to one of General Trobaugh's colleagues before the meeting began. He indicated that, for some years, he had worked on the Boeing Classic Champions Tour event that is held at Snoqualmie Ridge every August. One of the highlights of that event, which occurs off of the TPC course at Snoqualmie Ridge, is a session that a number of the champions of the Champions Tour of Pros, including Jim Thorpe and Ed Dougherty, go down to American Lake and put on a clinic for the golfers at American Lake. That is a real highlight of the event, and Chair Ellis knew that particularly the veterans and all of the Champions Tour players – they are not all able to go down and participate, but they certainly enjoy the fact that others do and that the program at American Lake is going on. It is obviously a program that has national attention. Chair Ellis asked if there were any similar programs at other golf courses in the country. **Mr. Trobaugh** replied he wouldn't say yes, positively, but there are similar programs that are in various stages of development. If you look on Google, it will talk about adaptive golf. Mr. Trobaugh thought they were way beyond adaptive golf with what they were doing because of the way the course was originally designed and what has been done to it to make it accessible all over the course. **Chair Ellis** said it was a beautiful facility now, and it would be a lot more so with those additional nine holes. **Mr. Trobaugh** replied he was sure it would be. **Chair Ellis** wished

the Friends of American Lake Veterans Golf Course good luck. **Mr. Trobaugh** thanked Chair Ellis.

Deputy Director Trujillo stated that, at this point, staff does believe the applicant has demonstrated good cause to exceed the \$40,000 single prize limit limitation and recommends approval.

Chair Ellis asked if the specific proposal the Commission was being asked to approve was a limit of \$56,000 or if there was a specific amount. **Deputy Director Trujillo** replied he would not classify it as a limit of \$56,000 because fair market value could increase between now and then. If it needed to be categorized, he would suggest it be categorized as at least \$56,000, or in excess of the \$41,000 that they paid. **Chair Ellis** thought the specifics were really the restored Chevrolet for whatever amount it may be worth at the time of the raffle. **Deputy Director Trujillo** affirmed.

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

Commissioner Roe made a motion seconded by **Commissioner Reichert** to approve the Friends of American Lake Veterans Golf Course to exceed the prize limits for this specific raffle. *Vote taken; the motion passed with three aye votes.*

Commissioner Roe thanked Mr. Trobaugh for what they are doing.

Chair Ellis called for a recess at 2:50 p.m. and reconvened the meeting at 3:05 p.m.

5. Approval of Minutes – Regular Meeting – February 10, 2011

Chair Ellis asked if there were any comments or changes requested on the minutes by members of the Commission; there were none.

Commissioner Reichert made a motion seconded by **Commissioner Roe** to approve the minutes from the February 10, 2011, regular Commission meeting as submitted. *Vote taken; the motion passed with three aye votes.*

6. New Licenses and Class III Certifications

Deputy Director Trujillo reported a pre-licensing report for Ringo's Little Vegas Casino was included in the agenda packet. He pointed out four errors in the new licenses and class III certifications report that happened during migration of licensing data from one system to another:

- Le Roi Gaming initially applied as a service supplier, but has since been correctly licensed as a distributor. They will be on the list in May as a distributor.
- O'Henry's Clubhouse and Grill's application has been withdrawn.
- Darcey Flores initially applied as a service supplier representative and has since been correctly licensed as a public card room employee. She will appear on the list in May.

- Keisha Roland initially applied as a service supplier representative and has since been correctly licensed as a public card room employee. She will appear on the list in May.

Staff recommends approval of the new licenses and Class III certifications listed on pages 1 through 35, except for Le Roi Gaming, O'Henry's Clubhouse and Grill, Darcey Flores, and Keisha Roland.

Commissioner Roe made a motion seconded by **Commissioner Reichert** to approve all new licenses and Class III certifications listed on pages 1 through 35 except Le Roi Gaming, O'Henry's Clubhouse and Grill, Darcey Flores, and Keisha Roland. *Vote taken; the motion passed with three aye votes.*

7. **Defaults**

Ms. Hunter reported the two commercial pull-tab businesses are owned by the same people and staff is asking that their licenses be suspended for 30 days. The other four defaults are for individuals and staff is asking that their licenses or certifications be revoked. In the interest of not repeating the same thing with each case, Ms. Hunter made a few general statements:

- None of the individuals are currently working
- In all cases, the licensees were properly served.
- None of the letters that were sent by regular mail were returned.
- With the commercial pull-tab businesses, an agent went out to the businesses to make sure they received the paperwork and they knew that staff was going to request a default.
- In all cases, the legal secretary attempted to contact the individuals to let them know about the default proceeding.
- They did not request a hearing.
- They waived their right to a hearing by not responding.
- Under the Administrative Procedure Act (APA), the Commission may enter an order in default.

a) **Mt. Index Café, Organization, Suspension**

Ms. Hunter reported the licensee did not submit its activity report on time. It was due on July 30 and not received until August 23. The licensee had received a warning letter in August 2009 for not submitting its reports on time and were told in that letter that if they failed to submit future reports on time, it may lead to suspension or revocation of their license. A Commission Special Agent issued a Notice of Violation and Settlement (NOVAS) for a \$300 fine, which the licensee failed to pay. Mt. Index Café's licenses expired on March 31 and they did not renew them. In conversations with the licensee, it sounded like they did not intend to renew them. The Commission did have jurisdiction when the charges were issued because the licenses were valid at that time. Staff is

recommending a 30-day suspension of the licenses, which will basically allow staff to close out the case.

Chair Ellis asked if there were any questions. **Commissioner Roe** commented that considering she was an occasional patron of the Mt. Index Café, she would rather Commissioner Reichert make the motion.

Chair Ellis asked if there was anyone present representing the Mt. Index Café; no one stepped forward.

Commissioner Reichert made a motion seconded by **Commissioner Roe** to suspend the licenses for the Mt. Index Café for 30 days. *Vote taken; the motion passed with three aye votes.*

b) Prospector's Steak & Ale, Organization, Suspension

Ms. Hunter reported the Prospector's Steak & Ale is owned by the same owners as the Mt. Index Café and the same facts lead up to this case. Staff is recommending a 30-day suspension of their licenses.

Chair Ellis asked if there was anyone present representing the Prospector's Steak & Ale; no one stepped forward.

Commissioner Reichert made a motion seconded by **Commissioner Roe** to suspend the licenses for the Prospector's Steak & Ale for 30 days. *Vote taken; the motion passed with three aye votes.*

c) Ben Zeng, Card Room Employee, Revocation

Ms. Hunter reported Ben Zeng wrote five checks totaling \$7,000 that he knew he did not have money in his account for, and then he closed the account. Mr. Zeng signed the certified mail card. Staff is requesting his card room employee license be revoked.

Chair Ellis asked if Ben Zeng or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Reichert** to revoke Ben Zeng's card room employee license. *Vote taken; the motion passed with three aye votes.*

d) Srey Sau, Card Room Employee, Revocation

Ms. Hunter reported Srey Sau was allegedly cheating while playing mini-baccarat at Great American Casino. Before the dealer collected the losing bets, she took back her losing \$75 player wager. In this case, the dealer noticed it immediately and took back the wager. Srey Sau is no longer working as a card room employee and staff recommends revocation of her card room employee license.

Chair Ellis asked if Srey Sau or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Reichert** to revoke Srey Sau's card room employee license. *Vote taken; the motion passed with three aye votes.*

e) Robert K. Brown, Card Room Employee, Revocation

Ms. Hunter reported Robert Brown admitted taking \$1,355 in cash from a co-worker's purse while working as a cage cashier at Great American Casino. Staff recommends his card room employee license be revoked.

Chair Ellis asked if Robert K. Brown or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Reichert** to revoke the card room employee license of Robert K. Brown. *Vote taken; the motion passed with three aye votes.*

f) Karl Fleming, Class III Employee, Revocation

Ms. Hunter reported Karl Fleming admitted he took \$100 from a patron's wallet that had been turned into the lost and found. The Muckleshoot Tribal Gaming Commission has revoked his tribal gaming license. Mr. Fleming is no longer employed as a class III employee. When the legal secretary contacted him, Mr. Fleming said he did not want his certification any more. Staff recommends revocation of his class III employee certification.

Chair Ellis asked if Karl Fleming or a representative was present; no one stepped forward.

Commissioner Roe made a motion seconded by **Commissioner Reichert** to revoke the class III certification of Karl Fleming. *Vote taken; the motion passed with three aye votes.*

8. Election of Officers – Effective July 1, 2011 to June 30, 2012

Commissioner Roe made a motion seconded by **Commissioner Reichert** to elect John Ellis as Chair and Mike Amos as Vice Chair of the Commission from July 1, 2011, to June 30, 2012.

Chair Ellis asked AAG Ackerman if it was okay to proceed with a slate nomination, as opposed to individual candidates. **AAG Ackerman** replied he believed the Commission could do it that way, unless there was an objection by one of the Commissioners. **Chair Ellis** said he just wanted to make sure it was not unconstitutional log rolling. **AAG Ackerman** responded that as long as there was no objection, it should be fine. **Chair Ellis** asked if there was any discussion of the motion. **Commissioner Roe** asked if Chair Ellis

could vote for himself. **Chair Ellis** replied that since he could not very well vote against himself and still vote for Commissioner Amos, he would just have to vote in favor of the motion. *The vote was taken and the motion was adopted with three aye votes.*

9. Other Business / General Discussion / Comments from the Public

Chair Ellis opened the meeting to other business, general discussion, and comments from the public; no one stepped forward.

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

Chair Ellis called for an Executive Session at 3:25 p.m. to discuss pending investigations, tribal negotiations, and litigation. He announced that at the end of the executive session, the public meeting would be resumed solely for the purposes of adjourning until the May 13 meeting at the Tumwater Comfort Inn. He reminded the audience that the study group session would be held on Thursday, the day before the Commission meeting, at Lacey headquarters office.

Adjourn

Chair Ellis called the meeting back to order at 4:00 p.m. and immediately adjourned.

Minutes prepared by:

Gail Grate, Executive Assistant