

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, MAY 13, 2011
APPROVED MINUTES**

Vice-Chair Rojecki called the Gambling Commission meeting to order at 9:35 a.m. at the Comfort Inn & Conference Center in Tumwater and introduced the members present.

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

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

Director Rick Day thanked the Comfort Inn Hotel and Conference Center for providing this room at no cost to the Gambling Commission for their meeting. He noted this was an example of reduction in the cost of government sponsored by the hotel.

Partnership Program: Stephanie Beach, Financial Investigations Unit, and Elaine Radabaugh, Individuals Unit

Director Rick Day briefly explained the agency sponsors a Partnership Program, which is an expanded orientation program for all employees within the agency. It provides the employees the ability to participate in various functions of the agency so they get the full picture of the responsibilities of this Commission. He introduced two participants in the Partnership Program who both work in our Licensing Operations Division. Stephanie Beach is an agent in the Financial Investigations Unit and Elaine Radabaugh works in the Individuals Unit. Director Day welcomed both participants to the meeting and said he appreciated their interest in observing the operations of the Commission.

Staff Accomplishment: Kathy Hutchinson, 15 years of State service

Director Day indicated that Kathy Hutchinson, who was scheduled to receive her service recognition certificate at this meeting, was not present.

1. Agenda Review

Director Day briefly reviewed the handouts provided to the Commissioners and the public. He reviewed the agenda, pointing out the study session had been held on Thursday in the Gambling Commission office in Lacey. He noted there were no staff requested changes to the agenda. Director Day congratulated Commissioner Ellis for his reelection last month to the position of Commission Chair and Commissioner Amos who was elected to the position

of Vice-Chair. He stated the next Commission meeting would be on Thursday, July 14, at 1:30 p.m. at the Washington Convention Center in Seattle, noting it would probably be a one-day meeting.

2. **Petition for Review** – Mark D. Bishop, Class III Employee, Revocation

Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Mark D. Bishop** representing himself.

AAG Marvin and **Mr. Bishop** provided their arguments in the Petition for Review. A recording and transcript of the hearing is available upon request.

At the conclusion of the arguments, **Vice-Chair Rojecki** asked if there were any questions and called for an executive session at 10:00 a.m. to deliberate the matter; he recalled the public meeting at 10:30 a.m.

Commissioner Amos made a motion seconded by **Commissioner Reichert** to uphold the initial Order revoking Mark David Bishop's Class III Employee Certification based on the record and that it was a crime of violence that caused injury. The motion is not predicated on Mr. Bishop's failure to report the violation on his renewal application. Vote taken; the motion passed with three aye votes.

Commissioner Reichert asked Assistant Attorney General (AAG) Ackerman what options might be available to Mr. Bishop if he ever wanted to work in the gaming industry again. **AAG Ackerman** responded that Mr. Bishop would essentially be starting over. His certification would be revoked, at this point, as far as the Commission was concerned. Mr. Bishop would have to start the process over again and get the TGA to recommend him as a suitable person to be licensed in the industry. He would have to go back to the Tribal Gaming Authority (TGA) or other tribal authority and seek to obtain a class III certification through the Tribe and then through the State.

Mr. Bishop asked if there was a time frame that he would have to wait before he could go through the process again. **AAG Ackerman** replied there was not a statutory time frame but, obviously, the TGA and, ultimately, the Commission would look at how much time had passed in determining whether or not it was appropriate to recommend Mr. Bishop for licensing.

Commissioner Reichert indicated one area of Commission concern was the communication between the Commission and Tribal gaming authorities on matters like this. Commissioner Reichert encouraged the Commission to find a way to explore what they might know about what the Tribal gaming authority is thinking on these matters, in these cases, before they come to the Commission. **AAG Ackerman** said he understood the concern. The Commission would have additional conversations as well. **Commissioner Reichert** pointed out we are, after all, co-regulators. He thought this seemed a bit one-sided in a sense; knowing the Commission was doing the right thing on this case. **AAG Ackerman** agreed.

Director Day said he was also aware of that. He pointed out that Mr. Sam Wetzler, the Puyallup TGA Director, was in the audience.

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

3. **Director's Report**

Director Day drew attention to some documents located behind the Director's Report tab:

- > *Director's E-Link* – An internal document titled “Government-to-Government” that summarizes staff's government-to-government work to date.
- > *WAC 230-17-137 Guidelines for Imposing Penalties in Disciplinary Actions* – Lead Staff Attorney Melinda Froud reported in her memorandum that in February 2009, the Commission adopted a rule allowing presiding officers, the Commissioners or an Adjudicative Law Judge (ALJ), to consider mitigating and aggravating circumstances when determining a penalty. The process of adopting the rule went on for a couple years and was quite heatedly debated. Director Day recalled that Mr. Malone, who is in the audience, participated in a great deal of that debate, along with several attorneys. The rule established the list and then required staff to report back on impacts regarding the rule because there were some concerns about time. Ms. Froud indicated in her summary that staff's experience has been that the ALJs do not rely on the rule in their initial orders and no other attorneys have cited it at this point. Out of 38 hearings, there were only 2 clients that were represented by attorneys, which is pretty low, because the hearings were, for the most part, individuals instead of businesses. Ms. Froud concluded that she found the rule had not created any significant impacts, but did have a benefit, in her estimation and which Director Day agreed with, as a resource for staff, licensees, applicants, and attorneys. The list of mitigating factors established by the Commission seems to be helpful for everybody participating in the process. Staff would propose no change be made to the rule, and believes the rule is beneficial as it is. There are some other interesting statistics in the memorandum that Director Day encouraged the Commissioners to look at.
- > *Customer Service Survey Results* – Ms. Jessica Quiles, one of the licensing supervisors, reported in her memorandum that the surveys were provided to customers who walk into our office. They can fill out the surveys while they are in the office or can mail them back. Staff also developed an online survey to supplement that one. The hard copy survey was implemented in 2005 and the online survey was implemented in July 2010. There were only about 40 responses received, which are summarized on the back of the memorandum. Staff found that about 90 percent of these responses were positive, and that the hard copy surveys seem to be more positive than the online surveys. Director Day suspected that was because people were working together and getting to know each other. Some of the online responses covered some of the more controversial areas like internet gambling. Staff will continue to review the surveys as they are received and will keep track of the differences between online and hard copy surveys. Once staff receives enough data to comment on, Director Day will bring it back before the Commission. Regardless of whether the comments are good or bad,

staff appreciates the responses and acts on each survey when possible. If a name was included, staff re-contacts them. Supervisors provide recognition to any staff person who receives a positive comment.

Legislative Update

Ms. Hunter noted that the Legislature went into a special session on April 26 focusing on the budget and bills necessary to implement the budget. She reviewed the bills that were still alive:

- > SSB 5232, authorizing prize-linked savings deposits, is the bill that allows credit unions to have a drawing for people who have made a deposit. Typically, that would be when they open up a CD. They would have to leave that money on deposit for 12 months. The Governor has signed the bill, which will become effective on July 22.
- > SHB 1402, social card games, will help a business in Kent that got caught in an annexation a couple of years ago. That bill has also been signed by the Governor and will become effective on July 22.
- > SB 5921, limiting the use of public assistance electronic benefit cards, has had many changes since it was originally SB 5327. This bill would impact all of our licensees. When it was SB 5327, the bill was more limited and just dealt with the use of public assistance electronic benefit cards. A few months ago, the press reported about the cards being used at casinos. That concept got rolled up into a much bigger bill dealing with social service programs overall. The bill now deals with temporary assistance to needy families and has many different policy considerations, as well as the use of the electronic benefit cards. This bill was acted on during the special session; passing the Senate 44-0. It is out of the House committee and in rules. Because the House committee made changes to the bill, it will have to go back to the Senate. The bill that came out of the House committee a couple days ago with the amendments expands the limits on things that the benefit cards cannot be used for. Recipients are already prohibited from using the cards for gambling, but several other areas were added. Businesses will have to make sure their ATM machines have been disabled from accepting the electronic benefit cards by January 1, 2012. The bill requires the Department of Social and Health Services (DSHS) to notify the licensing authority if they find electronic benefit cards still being accepted at ATMs. The Commission would have to immediately suspend any licenses that accept the electronic benefit cards, and then reinstate those licenses once the ATM had been disabled from accepting the cards. Current law requires licensees to notify DSHS of any known violations of the cards. There have been a lot of amendments to the bill, and staff will continue to watch the bill as it goes through the process.

Budget and Compensation Bills:

Ms. Hunter reported there was nothing new to report on the budget bills and the consolidation bills. Senate Bill 5931 merges the different consolidation bills. The bill had a hearing on April 14, but has not had any action during the special session.

Director Day indicated there was quite a bit of discussion at the study session yesterday regarding the electronic benefit cards. Several of the nonprofit representatives present were concerned about a situation where they would verify with their ATM provider that the machine had been disabled, they would be told it was disabled, but then someone uses it. The law says their licenses have to be summarily suspended, so they were very concerned about that part of the bill. Staff said they would look at it. The language in that area has changed and now requires DSHS to notify the Gambling Commission, as the licensing agent, that the licensee has failed to comply. That may help with the pressure a little bit, but Director Day would still notify legislative staff of the concerns raised because it could be problematic.

Vice Chair Rojecki asked for clarification on how it works. DSHS is supposed to certify the ATMs in the banned facilities, whether used for gambling or something else, but then the facility would actually get penalized, even though it was DSHS's responsibility. **Director Day** agreed it was a bit complex and a little problematic, which is what is causing some of the concern. He thought that was also what has delayed the bill. He recalled the press kept ballooning the problem as the investigative reporters found that it was not just happening in casino A, but was also in pull-tab bar B, or even striptease joints. So the reporters kept expanding their investigation. A group of legislators got frustrated and expanded the list of prohibited uses and also put in a more proactive part about being the responsibility of the business. Currently, the law says that businesses cannot allow the benefit cards to be used for gambling, but those businesses would have to have direct knowledge that somebody is coming in and using the card for gambling. In this case, the language was switched so the business has the responsibility to get that function disabled. The electronic benefit cards look almost like any debit card. The responsibility under this bill is for the licensee/business owner to have that function disabled so that the ATM will not accept that card, but it raises additional problems as it lists grocery stores and those kinds of things. It is not as simple as that; according to the licensees, there are about five different codes that they understand have to be disabled.

Vice Chair Rojecki asked if they were going to shut the grocery store access down because they have lottery ticket sales. **Director Day** replied it was his understanding that was not the case, but it is the complexity involved in this kind of thing when there is a broad prohibition. Regardless of how it comes out, staff should be able to at least apply some discretion as they move forward with any action. **Vice Chair Rojecki** did not think it made sense to ban certain things, but still allow cash to be taken out on those cards. The people would just not do it at the facility where they want to buy cigarettes. He asked if there were any other questions; there were none.

Correspondence

Director Day explained the letter dated April 19 from Ms. Hunter to Senator Steve Conway with attachments were included to provide information about the regulatory program for nonprofit licensees. Director Day recommended the Commissioners take the time to read the information included with the letter, because it should be helpful for July's Commission meeting. The attachments contain reports from Assistant Directors Mark Harris and Tina

Griffin that describe the various regulatory programs and the cost attributed to those programs. A group of charitable/nonprofit representatives met with the Senator and with Commissioner Rojecki to express their concerns with licensing fees. This group has filed a petition for rule change that should be before the Commission at the July Commission meeting, depending on how things go with the development of the petition. The group agreed to hold the petition over until July because it will require some fairly significant changes and it will take some work to identify the rules that need to be amended. Staff thought this information would be helpful to the Commissioners during the ongoing discussions regarding fees and regulation of charitable/nonprofits. The RCW recognizes that raising funds for promotion of a bona fide charitable/nonprofit organization is in the public interest. At the same time, it requires the Commission to set fees in an amount to cover costs of licensing enforcement. These two issues could end up in conflict when a charitable/nonprofit licensee in the larger operations grossing \$4 million is paying \$16,000 to \$19,000 in license fees as opposed to donating that money to their charitable works. That is part of the foundation of the problem and is just made worse by the long-term decline in licensees, revenues, and the play of bingo. These types of gambling activities are not nearly as popular as they were years ago. So over the years, the arguments have ensued in the Commission over cash flow and how to ensure the money goes to the charitable licensees without being too burdensome during the process. Over the years, the Commission has discussed many issues of license fees and taken a number of actions that have been intended to assist the charitable/nonprofits. A report prepared by Sally Perkins on a study the Commission requested to examine the history of charitable/nonprofits is located on our website. Director Day recommended the Commissioners take the time to look at her report because it goes through some of the problems there have been for the Commission to administer over the years. The Commission has approved only three fee increases for charitable/nonprofit licensees in ten years and there are none scheduled until after the 2014 biennium. In addition, staff has streamlined a number of regulatory programs as well, trying to reduce complexity and time with financial statements and program reviews. Interesting statistical information was also included and Director Day was confident the detail of this information would be seen in various forms and interpretations as the petition moves forward.

Director Day pointed out a letter from the Criminal Justice Training Commission regarding Special Agent Supervisor Danny Lisa who has provided training at the Criminal Justice Training Academy for a number of years. Special Agent Supervisor Lisa provides training for the basic academy and also for the trainers. Director Day introduced Special Agent Supervisor Lisa, who was providing security for this meeting, and thanked him for the great work he has done with the Commission.

Monthly Update Reports

Director Day pointed out the letter dated April 27 to Governor Gregoire from Chair Ellis regarding federal internet gambling bills. The Commission authorized sending a letter regarding staff concerns about the newly introduced federal House effort to authorize internet gambling. This letter describes several concerns the Commission has with that bill.

News Articles

Director Day pointed out there were a number of news articles; some are local interests.

Vice Chair Rojecki thought this was where the Commission would normally have public discussion on the Director's Report. **Director Day** explained that had previously been the process, but it was eliminated at Chairman Ellis' discretion. Instead, he decided to ask for public discussion each time there was an action on legislation instead of at the end of the Director's Report. There is another public discussion period at the end of the day where the audience can comment on anything they want.

4. Approval of Minutes – Regular Meeting – April 14, 2011

Commissioner Reichert made a motion seconded by **Commissioner Amos** to approve the minutes from the April 14, 2011, regular Commission meeting as submitted. *Vote taken; the motion passed with three aye votes.*

5. New Licenses and Class III Certifications

Deputy Director Trujillo reported there were no pre-licensing reports for house-banked card rooms or manufacturers, or any other unusual items of note.

Commissioner Amos made a motion seconded by **Commissioner Reichert** to approve all New Licenses and Class III Certifications listed on pages 1 through 18. *Vote taken; the motion passed with three aye votes.*

6. Defaults:

Ms. Hunter reported staff was requesting the licenses or certification be revoked for all five default orders. The first default is for a commercial pull-tab business and the other four are for individuals. Spitfire Pub & Eatery has closed and none of the individuals are currently working. The licensees or certified employees were properly served and none of the charges that were sent by regular mail were returned. The legal secretary tried to contact all the licensees to remind them of the deadline to request a hearing. In all cases, the licensee or certified employee waived their right to a hearing by not responding. Under the Administrative Procedure Act (APA), the Commission may enter the orders in default.

a) Spitfire Pub & Eatery, Organization, Revocation

Ms. Hunter reported the Spitfire Pub & Eatery failed to pay an exceeding license class fee, they failed to submit documents that staff requested, and they also failed to submit their activity reports. Their license expired on March 31 but the Commission had jurisdiction over the case when the charges were issued on March 4. One of the owners told staff they were no longer interested in selling pull-tabs, and he thought that by not renewing, it would basically resolve the case. That is not how it actually works. Once charges have been issued, they need to be resolved. Staff is recommending the Commission revoke the Spitfire Pub & Eatery's license.

Vice Chair Rojecki asked if anyone was present representing the Spitfire Pub and Eatery; no one stepped forward. He asked if there were any questions.

Commissioner Amos asked if the Spitfire Pub & Eatery was still open for business. **Vice Chair Rojecki** affirmed. **Ms. Hunter** corrected her statement about them being closed. It appears someone is operating the business. It is probably a new owner without a pull-tab license.

Commissioner Reichert made a motion seconded by **Commissioner Amos** that the Commission revoke Spitfire Pub & Eatery's license to conduct gambling activities. Vote was taken; the motion passed with three aye votes.

b) David Hodgin, Card Room Employee, Revocation

Ms. Hunter reported that David Hodgin, while working as a floor supervisor at the Silver Dollar Casino, used a scheme involving match play coupons to defraud his employer. Match play coupons are sent to players and have their names on them. Mr. Hodgin gave the match play coupons to other employees and said if they would take these when they were playing and they win, he would split the proceeds with them. Staff is recommending the Commission revoke his license.

Vice Chair Rojecki asked if there were any questions; there were none. He asked if David Hodgin was present or a representative; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Reichert** that the Commission revoke David Hodgin's card room employee license. Vote was taken; the motion passed with three aye votes.

c) Long Pham, Card Room Employee, Revocation

Ms. Hunter reported that Long Pham, while playing at the Silver Dollar Casino in Renton, cheated by resetting his cards after the dealer had already revealed his cards. As a result, Mr. Pham won \$200. Staff recommends the Commission revoke Mr. Pham's license.

Vice Chair Rojecki asked if there were any questions; there were none. He asked if Long Pham was present or a representative; no one stepped forward.

Commissioner Reichert made a motion seconded by **Commissioner Amos** that the Commission revoke Long Pham's card room employee license. Vote was taken; the motion passed with three aye votes.

d) Charles E. Hill, Class III Employee, Revocation

Ms. Hunter reported Charles Hill had a 1993 conviction for Third Degree Assault, he misrepresented his criminal history on his application, and he has shown willful disregard for complying with court orders, which is evidenced by his outstanding court

finances and fees of almost \$65,000. The Director brought charges against him. Mr. Hill responded by returning the form and explained that he did not want a hearing and that he understood this may result in a default being entered. Mr. Hill also wrote on the hearing request that he was surrendering his license. Staff recommends his certification be revoked. Ms. Hunter explained that the Default Order included in the agenda packets incorrectly showed a May 2010 date. The Default Order provided to the Commissioners for signature has been corrected to May 2011. Ms. Hunter pointed out the same error was made on Kendrick Felder's Default Order, which has also been corrected.

Vice Chair Rojecki asked if there were any questions; there were none. He asked if Charles E. Hill was present or a representative; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Reichert** that the Commission revoke Charles E. Hill's Class III Employee Certification. *Vote was taken; the motion passed with three aye votes.*

e) Kendrick B. Felder, Class III Employee, Revocation

Ms. Hunter reported Kendrick Felder has a history of domestic violence. He had two in January 2010 and another in August 2010. Mr. Felder also failed to disclose his criminal history on his Class III Certification Renewal Application. The legal secretary talked with Mr. Felder and let him know about the time to request a hearing, but staff has not heard from him. Staff recommends the Commission revoke Mr. Felder's certification.

Vice Chair Rojecki asked if there were any questions; there were none. He asked if Kendrick Felder was present or a representative; no one stepped forward.

Commissioner Amos made a motion seconded by **Commissioner Reichert** that the Commission revoke Kendrick Felder's Class III Employee Certification. *Vote was taken; the motion passed with three aye votes.*

7. **Petition From the Public – Washington Gold Casinos** – Minimum cash on hand requirements for prizes over \$30,000 at house-banked card rooms

Amendatory Section WAC 230-15-050 – Minimum cash on hand requirements

Assistant Director Harris reported the petitioner, Victor Mena, is requesting that house-banked card room licensees offering large jackpot prizes be authorized to keep the funds over \$30,000 in a separate bank account, rather than on the business premises. The petitioner states it is a safety concern because if they offer a prize over \$100,000 they have to keep that money on site, which raises the risk of theft and robbery, plus there is a risk to the players if they win and leave the card room with a cash prize. With this rule change proposal, the licensee would be required to have enough cash on hand to pay the highest single prize available. Staff would need to verify the existence of a separate bank account for the jackpot prize and confirm the balance. Because all the funds would no longer be

required to be kept on the premises, there would be a chance the funds might not be available to pay out the large prize. The petitioner is requesting an effective date of 31 days from filing, which staff agrees may be reasonable based on the petitioner's safety concerns. Staff recommends filing the petition for further discussion.

Vice Chair Rojecki asked if there were any questions; there were none. He asked if the petitioner would like to comment.

Mr. Victor Mena, Chief Operating Officer for Washington Gold Casinos, explained this rule change would afford Washington Gold Casinos to be able to be a bit more secure with its operations, not only for their guests but for themselves as an operating group. Essentially under the current rule, it did not allow them to be able to utilize a separate checking account for a large jackpot prize of this nature, which could be in excess of \$100,000. So the triggering event being a long-term odds-based item, it could mean they could have that money sitting on premises for an extended period of time. And, as everybody knows, people tend to talk about those types of things in terms of cash having to be available to pay that prize. Mr. Mena felt it would be safer to be able to distribute that prize to their guest in the form of a check once it was won, instead of giving them a garbage sack full of about \$200,000. It could be a little bit harrowing for somebody to walk out with that amount of money. This would give casinos that availability, similar to what is already allowed with a progressive prize and PSJ funds.

Vice Chair Rojecki asked how often it happened that they would give them that bag of money. **Mr. Mena** replied that, typically, they have aggregates in the casino that pay up to \$30,000, either for a table share or for an individual's share. So, typically, they see as high as \$30,000 go out; and \$30,000 in hundred dollar bills can be quite a stack. But it does not happen often. The triggering event for this type of jackpot is in the millions, so it would probably take a few months for it to happen. **Vice Chair Rojecki** asked if Mr. Mena was saying it was predictable. **Mr. Mena** affirmed; it is based on odds.

Commissioner Reichert said his question might be more directed to staff in terms of the nature of the type of account being established. He asked if it would just be another checking account in the usual way, or would it be an escrow account? He was trying to get some idea about what protections would be in place on these accounts. **Assistant Director Harris** replied that, based on the request of the petitioner, it would just be a separate bank account; it could be a checking account or a savings account. The rule does not specify. **Commissioner Reichert** asked if AD Harris saw any problems with that. He knew it was just another form of cash in this conversation, but it could be leveraged as an account in someone's name or the business's name for lending purposes or other reasons. **Assistant Director Harris** affirmed, adding that was the concern about staff verifying it. The funds might not be available; or somebody could be short on payroll for the month and see that money sitting there and use it to pay the payroll out of it. Staff does have some concern about having to verify those funds on a periodic basis to make sure they are actually there. **Commissioner Reichert** thought he would go a little deeper than that; that they also not be leveraged in some way through some loan guarantee or using it for other purposes.

Vice Chair Rojecki asked if staff had done a complete and thorough review of this proposal in its entirety to try to address some of the concerns they have. He asked if staff has looked into it deeper or if part of the reason for making the recommendation for the Commission to file the petition was so staff could look into some of those issues in greater depth. **Assistant Director Harris** replied that staff has looked at that, and as Mr. Mena mentioned, they are pretty much identical to what is being done for other jackpot prizes available for card rooms and PSJs, which are the player's money and not the house's money. Those are basically set up as separate bank accounts; they are not in trust or anything like that.

Commissioner Reichert clarified that was what prompted his question; knowing it is an existing model so it functionally probably works okay. But when talking about \$30,000 and maybe millions of dollars, there might be a tendency to want to leverage or use that as security for something else.

Assistant Director Harris indicated another staff concern that has happened in the past was that various taxing agencies would come in (IRS, Department of Revenue) and they would see it as a bank account, sweep it as they sweep all the accounts, and then that money – **Commissioner Reichert** interrupted to add: for prior obligations of some sort. **Mr. Harris** agreed; so then the operator would be responsible for bringing that money back into those accounts before they could continue to operate and offer those prizes. **Commissioner Reichert** stated it seemed the use of cash flow would be in danger in the process. He said he would be interested to hear how staff might address those issues as the Commission goes forward with this proposal. **Mr. Harris** affirmed.

Vice Chair Rojecki called for public discussion; there was none.

Commissioner Amos made a motion seconded by **Commissioner Reichert** to accept for filing and further discussion the proposed amendment to WAC 230-15-050. *Vote taken: the motion passed with three aye votes.*

8. **Petition From the Public – Bonanza Press** – Allowing manufacturers to sell jar tabs to, and/or buy jar tabs, from other manufacturers

Petitioner's Amendment #1 Up for Filing

- a) Amendatory Section WAC 230-16-015 – Punch board and pull-tab sales restrictions
- b) Amendatory Section WAC 230-16-035 – Pull-tab construction
- c) Amendatory Section WAC 230-16-195 – Additional requirements for sales invoices

Assistant Director Harris reported the petitioner, Richard Norris, was requesting the ability to purchase jar tickets from other manufacturers. The petitioner does not have the capability to manufacture jar tickets and wants to have the opportunity to get into that part of the market. Mr. Norris would like to purchase jar tickets from other manufacturers, add the flare, package the tickets as a complete pull-tab series, and then sell them to distributors. He states he can package a game at a much lower cost than to buy a complete jar ticket pull-tab series from another manufacturer. Deputy Director Trujillo passed out some sample jar

tickets to the Commissioners. AD Harris explained jar tickets are small paper folded and banded tabs that come in a single format or bundled in a group and are generally sold out of a plastic fish bowl. Players purchase the pull-tabs, open them up, and match the symbols on the tab to the flare, which determines whether they have a winning or losing ticket. The jar tickets are typically less expensive to manufacture than other types of pull-tabs.

At the request of staff, the petitioner agreed to change his rule proposals, which are listed in the packet as Petitioner's Amendment #1. The current rules authorize manufacturers to sell pull-tabs to distributors, distributor representatives, and pull-tab licensees only. Manufacturers are not authorized to sell pull-tabs to, or purchase pull-tabs from, other manufacturers. The reason they are not specifically authorized to do this is probably a carryover from when the Commission had restrictions on sales, promotions, discounts, and credit pricing. Those rules were repealed in 2005. Currently there are six licensed manufacturers of pull-tabs and 14 licensed distributors of pull-tabs. They were notified of the proposed rule change, and staff has received one letter in support and three letters against the rule change proposal. The petitioner believes the rule change may enable pull-tab manufacturers to increase their sales. When staff perform a manufacturer audit or inspection, they would have to take the additional steps of verifying the purchase of the tickets from one manufacturer, the packaging, and the selling from the primary manufacturer to the secondary manufacturer. The petitioner verbally requested an effective date of 31 days from filing because their high volume sales months are September and October. Staff recommends filing Petitioner's Amendment #1 for further discussion.

Commissioner Reichert noted one of the letters dealing with the tickets mentioned that the effect of the proposed rule does not fall within any of the exceptions to the Executive Order 10-06. He asked AAG Ackerman if he knew what that was about. It is almost like a limitation on the Commission's ability to deal with this. **AAG Ackerman** explained that Executive Order 10-06 was from the Governor asking for a limited rule moratorium. One of the exceptions listed was for petitions from the public that were designed to generate economic activity; in other words, to improve a business climate. **Commissioner Reichert** asked if the assertion would be that it may fall within that opening. **AAG Ackerman** responded he had just gotten the letter Commissioner Reichert referred to and had not yet read it. He said he would take a look at the letter. **Director Day** added that the Governor's moratorium on rule making does not change APA and the requirements for the Commission to consider public petitions. So the Commission can be aware of it, but he was not sure they could make a determination based on it. **Commissioner Reichert** thought it was really not on the merits of this petition; that it was really when the Commission started reading that they were limited. Or should the Commission even be looking at it. **AAG Ackerman** affirmed the Commission could.

Vice Chair Rojecki asked if there were any questions; there were none. He asked if Mr. Norris would like to comment on his rule petition.

Mr. Richard Norris, President and General Manager of Bonanza Press, explained he initially went forward with this proposal, looking at the opportunity to add a product to

Bonanza Press' current mix of business. They do not have the capacity to manufacture jar tickets. A majority of the sales of jar tickets that occur in Washington State are from two manufacturers. There is a third manufacturer that does a little bit of business and a fourth manufacturer that does none. So there is opportunity for them to partner with one of those other manufacturers and actually increase the amount of jars that are available to distributors. While those distributors do have the opportunity to buy from those manufacturers, the quantities and such that are offered, because they are not located within Washington State, are difficult. So Bonanza has the opportunity to partner with them, warehouse it here, finish the manufacturing, and then sell it. Mr. Norris was not proposing manufacturing these tickets out of the country or even from an unlicensed manufacturer. The manufacturers Bonanza Press are looking to partner with are currently licensed. As far as the manufacturing process, the current licensed manufacturer would basically manufacture the ticket, put it into a bag, and Bonanza Press would then import the product into Washington State. Some of those sales would then happen outside of Washington because Bonanza Press may sell to Alaska, Colorado, or wherever jar tickets are sold. But if the product is to be sold in Washington State, Bonanza Press would add the ID stamp, the flare, the packaging, and all of the requirements that are based within Washington. Bonanza Press would be responsible for that product because they buy the ID stamp and are the ones selling the product here in Washington State. So there is no question about who is going to be responsible for the ticket; Mr. Norris is responsible because he sold it here, he added those products here, and he put the stamp on it that made it Washington legal. Mr. Norris explained there is no tracking issue because there is already legal requirements for all of the manufacturers that they be able to identify via the stamp where it was, how it was made, who it was sold to, and all those kinds of things. None of that would change in this environment. If Mr. Norris purchased a partially manufactured ticket from another manufacturer, they would have to record that sale either way because they are also licensed in Washington. Mr. Norris said he would be the person responsible for the product in Washington because he put the ID stamp on it.

Vice Chair Rojecki asked for clarification that the manufacturer that Mr. Norris bought the partial ticket from would still have to be licensed in the state of Washington. **Mr. Norris** affirmed that was their original proposal. In working with staff, the word "licensed" is not in there, but Mr. Norris was amenable to adding that, if that was a requirement. He would actually prefer that because it makes everybody more comfortable. **Vice Chair Rojecki** asked whether it was in the proposal. **Mr. Norris** replied the language was not super clear. **Vice Chair Rojecki** asked if this was a work in progress then. **Assistant Director Harris** replied when a manufacturer is referred to in the WAC rule, it implies that it is a licensed manufacturer. It just does not say "licensed" manufacturer because when referring to manufacturer in the WAC rules, it is implied that it is a licensed manufacturer.

Commissioner Amos asked how many came in the big bag that Mr. Norris mentioned. **Mr. Norris** replied there can be up to 25,000 tickets in a single bag. Jar tickets follow the same rules as a pull-tab, so small quantities up to 25,000.

Vice Chair Rojecki called for public discussion.

Mr. Lane Gormley, Vice President of Operations at Arrow International, thanked the Commission for giving him the opportunity to give their position on this. Arrow International has no problem with another manufacturer manufacturing tickets, and they know of no reason, if Bonanza chooses to make jar tickets, buy the equipment, and make the tickets. Arrow International thinks there are issues of bringing tickets in Washington without the tax ID stamp beforehand. As the rules are listed now, when the manufacturer makes a sale in the state of Washington, they put the ID stamp along with the invoice, when they sell it. Mr. Gormley thought this was blurring the relationship between a manufacturer and a distributor. He was also concerned there could be multiple – two or three – manufacturers that were referred to, come together and sell. It might not just be one manufacturer selling to another manufacturer; there may be two of them. So when this coalition is formed, Arrow International has some concerns about whether the intent is to control pricing, or that that could occur if it should go through. Mr. Gormley was not sure how a manufacturer – and operations is what he does; he has made jar tickets before. He did not know how somebody could feel that they could manufacture something outside the state of Washington, ship it into Washington, add labor to it, and still expect to be competitive to what the original cost was in pricing. Mr. Gormley said it did not make sense to him. Several distributors that use this product use it to sell merchandise. They may want to explain how that works – merchandise tickets where the distributor also currently has a manufacturing license so they can re-flare the product the manufacturer sends them – to address this. The rule, as written, talks about how the manufacturer would put the original manufacturer's name and the secondary manufacturer's name on it; or on the final one. In Mr. Gormley's case, if Arrow International sells to a distributor in the state, who also happens to hold a manufacturer's license, are they now required to put both names on there? Mr. Gormley thought there were a number of concerns to address. And many of the states – in fact, all that he knows of that they are regulated in – this separation between distributor, manufacturer, and operator is there to promote the overall business environment and keep it competitive and healthy. Mr. Gormley thought this was one step towards doing away with that. He was not sure why they would be carving out just one product line. Mr. Gormley was going to say jar tickets should be all right; is something going to change going forward that it is going to be something different? Maybe tickets need to go that way too; as these tickets come into the state. As it is proposed, lots of tickets could be shipped into this state and there would be no way for the Gambling Commission to know how much has gone in here. If it gets out into the field with no ID stamp on it, there is no way to track that back. Mr. Gormley said Arrow International urged the Commission and the staff at the very least to do some more reworking on this proposal. Mr. Gormley talked to the National Association of Ticket Fund Manufacturers, and Mary Magnuson would be willing to help on that and maybe they can come up with something that works for everybody. Mr. Gormley said those were their concerns.

Vice Chair Rojecki asked if Mr. Gormley was a distributor and manufacturer or just a manufacturer. **Mr. Gormley** replied they were just a manufacturer.

Vice Chair Rojecki asked if staff's request was for the Commission to file Amendment #1. **Assistant Director Harris** affirmed

Commissioner Reichert made a motion seconded by **Commissioner Amos** to accept for filing and further discussion the Petitioner's Amendment #1 to WAC 230-16-015, WAC 230-16-035, and WAC 16-195. *Vote taken; the motion passed with three aye votes.*

Vice Chair Rojecki commented that he also had some concerns, including that some are blurring some of the lines. He thought those concerns should be worked on during this process. He thought all the comments that were made were fair. Vice-Chair Rojecki recommended moving forward and working on some of the issues that were addressed.

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

Vice Chair Rojecki called for a break at 11:30 a.m. At 11:45 a.m. he called for an Executive Session 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.

Adjourn

Vice-Chair Rojecki called the meeting back to order at 12:45 p.m. and immediately adjourned.

Minutes prepared by:

Gail Grate
Executive Assistant