COMMISSION MEETING
THURSDAY, JANUARY 11, 2007
DRAFT MINUTES

Chair Ellis called the meeting to order at 1:30 p.m. at the DoubleTree Guest Suites located in Seattle. He introduced the following:

MEMBERS PRESENT:	**COMMISSIONER JOHN ELLIS, Chair,** Seattle **COMMISSIONER JANICE NIEMI, Vice Chair,** Seattle **COMMISIONER ALAN PARKER,** Olympia **COMMISSIONER PEGGY ANN BIERBAUM**, Quilcene **COMMISSIONER KEVEN ROJECKI,** Tacoma
STAFF PRESENT:	**RICK DAY**, Director **SHARON REESE,** Deputy Director **MARK HARRIS,** Assistant Director–Field Operations **DAVE TRUJILLO,** Assistant Director – Licensing Operations **AMY HUNTER**, Administrator – Communications & Legal **JERRY ACKERMAN**, Assistant Attorney General **SHIRLEY CORBETT**, Executive Assistant

Director Day introduced and welcomed Mark Harris as the newly appointed Assistant Director for Field Operations. While new to the position, Director Day advised that Assistant Director Harris has been with the agency 12 years. **Chair Ellis** welcomed Mr. Harris and advised the Commissioners were very pleased to have such a highly qualified person step into this important position.

Chair Ellis also recognized Richard Garry, of the Spokane Tribal Council. He has made himself available to answer any questions the Commission may have regarding the proposed compact between the State and the Spokane Tribe.

1. **Review of Agenda and Director's Report:**
   Director Day reviewed the agenda and highlighted agenda inserts placed in the agenda packet after publication. He drew attention to the November issue of the *Police Chief Magazine* noting that Deputy Director Reese (as a Guest Editor) had a published article on page 28.

Governor's 2007-09 Proposed Budget:
Director Day explained the approved 2007-09 biennium budget for the Commission was forwarded to the Office of Financial Management for inclusion in the Governor's Executive Budget. The report in the agenda packet provided a brief summary document affirming the Governor included the Commission's budget as approved by the Commissioners and included that budget in the Executive Recommendation.

In addition, the Governor included funding for an allotment of about $1 million dollars above the level the Commission approved, primarily to deal with anticipated salary increases and to make the temporary 1.6 percent salary increase in this biennium permanent. It offers a 3.2 percent salary increase beginning on July 1 and also adds a 2 percent increase beginning July of 2008. He noted the State tops out at a Step K salary schedule which has been increased to add a Step L. The Legislature must of course act on the Governor's budget recommendations and the negotiated salary increases. Following actions by the Legislature, the staff will bring back any adjustments to the budget for the Commission's consideration to accommodate the Legislative changes. The Commission will ultimately consider and act on them in final form in July or August.

As a reminder, **Director Day** noted the Commission's approved budget was approximately $32 million and the potential addition of $1.3 million moves the budget to approximately $33.4 million, which is approximately a million dollars over the Commission's projected revenue. As this process continues, staff will have to focus in on the budget revenues/expenditures as the Commission moves through the next biennium and the adjustment decision. **Chair Ellis** extended congratulations to the staff that assisted on the technical formulation and preparation of the budget, noting it was an accomplishment that the Governor's Office incorporated the recommendations that came directly from the Commission.

Agency Request Legislation:
Amy Hunter, Legislative Liaison reported the 2007 Legislative Session started on Monday, January 8—it will be a 105 day session scheduled to end in April 22. Ms. Hunted affirmed the Governor's Office approved the Commission's agency request proposal to allow the Director to issue temporary licenses to individual employees and to summarily suspend them, as well as allowing the military exemptions. She reported the Commission has about 20,000 individual license holders. Additionally, the Governor's Office approved the agency request legislation dealing with the penalties for under age gamblers and the barring list. Ms. Hunter anticipated obtaining the necessary sponsors required by the end of next week.

Ms. Hunter commented regarding the Commission's past practice of providing position statements in the form of a motion on gambling related legislation when timely and possible, and she affirmed that staff would like to continue that process when possible, adding that Legislators appreciate knowing whether the Commission has a particular statement on a bill.

Ms. Hunter reported on one gambling related bill that has been introduced, Senate Bill 5055, to remove the sunset clause on the limited waiver of sovereign immunity. The bill is sponsored by Senator Prentice, she sponsored the same bill last year—it was introduced and

died in rules. Last year the Commission voted in support of the bill with Commissioner Niemi abstaining from voting—the minutes were provided in the agenda packet for reference. Staff recommends the Commission support that bill again this year.

Commissioner Parker questioned whether deleting the limits on the waiver would raise potential opposition because of the policy implications. He asked Ms. Hunter to give the Commission a sense of whether there has been discussion about simply extending the time period versus simply a deletion. **Ms. Hunter** responded that she spoke with the Senate legislative staff working on the bill, asking for an indication if there might be more support if there was an extension of the sunset clause versus entirely removing the clause. Ms. Hunter advised she didn't hear anything back, which may mean they plan on introducing it the same way it was last year—by simply removing the sunset clause.

Commissioner Parker believed the Commissioners biggest negative point related to the wisdom of waiving sovereign immunity any time. Commissioner Parker spoke to the pros of the bill noting that it has provided an avenue of relief and has also been helpful during negotiations with the Tribes. They know that once they get a compact, if they don't think the State is acting in good faith, then there is a way to get it to court and to have that issue discussed. Commissioner Parker advised that he supported Washington State's policy of providing such a waiver as an expression of good faith, limited carefully like it is because it adds to the Tribal/State relationship and creates a better relationship. He affirmed that Washington compares well with other states who haven't addressed that question. Commissioner Parker advised that he would like to hear more in the future regarding the question of whether or not this should be a blanket waiver. **Ms. Hunter** affirmed. She also suspected there would not be a version of the bill introduced by the House.

Commissioner Niemi noted that her current objection to the bill is the same as last year—it is not the limited waiver with the sunset clause, she believed that should be extended. She expressed concern regarding the idea of freely getting rid of sovereign immunity even though we'll always continue it in our dealings with the Tribes. Commissioner Niemi advised that the state has removed so much sovereign immunity that our current Attorney General is very concerned and may be going to court regarding the idea of getting rid of sovereign immunity. Commissioner Niemi agreed that even if the bill goes to the Labor Committee it should also go to the Judiciary Committee so they may also discuss the waiver of sovereign immunity implications as well. Commissioner Niemi advised she would be glad to vote in support of the bill if it continued the sunset clause; but, not with a simple waiver.

Chair Ellis questioned if any of the Commissioners would care to make a motion as to whether the Commission should authorize Ms. Hunter to indicate that the Commission favors the bill as submitted or to favor the bill with possible revisions.

Commissioner Parker made a motion seconded by **Commissioner Niemi** that the Commission express its support for this proposal for the reasons discussed on the record—not making it a blanket but a limited waiver; and further, to support this bill if it is revised to

restore the sunset clause for a period of time to be determined by the Legislature. *Vote taken; the motion passed unanimously.*

Zoning:
Ms. Hunter addressed a bill dealing with zoning, noting the Commission has been talking about zoning for at least the last five to seven Legislative Sessions. Staff is recommending a position of neutral; but, with concerns. In the past, the Commission has taken a position against the zoning proposals. The proposals have varied, and this proposal blends two prior proposals into one, which is a reason the Commission may have a different position. In the past, the bills usually gave the city the authority to zone based on the gambling activity—not just zoning based on whether there was a restaurant or zoning for parking which are things the Commission always felt cities and counties could do—that it had been broader and they could zone based on the gambling activity. The current law says that cities may absolutely ban gambling, but they can't change the scope of the license. Cities have done many things over the years and the controversy came up after house-banked card rooms were allowed in 1997. Things have changed since 1997—there are now a handful of cases that have been litigated where cities are losing in court when they have executed incomplete bans or have tried to do other things. By law, they have the option to absolutely ban gambling or to allow gambling.

Over the interim, Representative Conway asked Commission staff to bring together the Association of Washington Cities, the Recreational Gaming Association, and other interested parties to discuss zoning. The proposed draft bill which has not been introduced (additional changes are anticipated) conveys a concept somewhere between a freeze and zoning. It would freeze the number of house-banked card rooms to those that have been operating or applied before January 1, 2007 (there are 87 house-banked card rooms currently approved and six more that are pending—for a total of 93). That number would be frozen.

Ms. Hunter affirmed there were some annexation provisions. While she didn't think they were of great concern overall, she did note concerns have been expressed by the industry and they are still being worked out. Under the current proposed draft, a city may under their comprehensive plan allow a gambling location to relocate if they have: 1) gone through the comprehensive plan process—an extensive public hearings process, and, 2) they have to allow at least one-third of the area that has been zoned for restaurants to allow zoning into those areas—and the land zoned has to be uniformly applied. The idea is to get rid of spot zoning. The city could prohibit a card room from within 500 feet of a church and schools, which is very similar to a Liquor Control Board provision. The draft also grants immunity to the Gambling Commission for licensing decisions if the Commission makes the wrong determination of a land use ordinance. The Commission has historically tried not to get in the middle of the battles between the card rooms and the cities and to let those parties litigate their issues. Staff believes the immunity clause is an important clause.

Lastly, the bill allows relocation. A new city would have to have a relocation ordinance, and the licensee would then have to prove the reason they are relocating is because of something that is outside of their control—there are some specific items listed, and they must verify the city they were in before a ban was passed.

Ms. Hunter shared staff's opinion that it wouldn't be a comfortable position for the Commission to be in, deciding what the priority reason was for relocation in part because they may be relocating for a totally different reason, even though they are able to demonstrate that one of the five listed things have occurred. Commission staff would also like it to be more like a licensing process, saying something to the effect of "have you done these certain things—yes or no" and not having to make primary decisions in those cases. Staff also didn't think the caveat around a specified amount of distance from a tribal casino location was a good idea. The Commission has a dual role between negotiating compacts and regulating house-banked card rooms, and staff didn't want to have any perceived conflict of interest as relocation issues are introduced.

Ms. Hunter reiterated staff's recommendation to remain neutral on the proposal, with concerns, noting the proposal is more restrictive than past proposals. There are limitations on the one-third of an area and the provision against spot zoning. It is directed more clearly than past proposals and easier to follow. It would bring resolution to the issue cities are concerned about having to do with their ordinances being struck down. She again acknowledged some of the cons—relating to the idea of the Commission having to decide what a primary reason is, and the criteria about distance from tribal casinos. Ms. Hunter noted part of the Commission's past reasoning for being against zoning directly related to the fact that when the Gambling Commission was created, it was created in a time of corruption. The state placed restrictions on everyone, the Commission, the cities, and the counties. This proposal puts a little hole in that framework because cities would have the ability to do some level of zoning based on gambling—which is not something they can do now and haven't been able to do for the last thirty years. The case law has also clarified the law, and if the law is changed, then she anticipated there will probably be more litigation.

Jerry Ackerman, Assistant Attorney General inquired who was responsible for the current draft. **Ms. Hunter** responded that Chris Cordes has been working on the draft at the request of Chair Conway. Mr. Ackerman questioned if a legal review has been done of the various provisions of this document as to the validity of what is being proposed to see if the different sections are in fact constitutional—and has the Commission reviewed the proposal with an eye to both its liability and costs, and the resources that will be imposed upon the Commission. Ms. Hunter replied that she has not specifically talked about the constitutional issues with the legislative staffers. While there have been some general discussions about liability, costs and resources, Commission staff have not drafted a fiscal note analysis.

Mr. Ackerman inquired if a legal analysis has been accomplished regarding the likelihood of the immunity provision being broad enough to pick up all of the potential liability. **Ms. Hunter** responded in the negative.

Mr. Ackerman referred to a provision on page 3 that says, "The Commission determines that the primary reason for relocation" and an insertion after the Commission which he couldn't tell whether it was supposed to be an alternative or if it is an affirmative attempt to insert an Administrative Law Judge appointed under Chapter 34.12 RCW at the request of the Commission. **Ms. Hunter** explained there had been a lot of discussion about who should be making the determination and one of the ideas proposed was that an

Administrative Law Judge should do this—staff then realized that didn't really help because there is an Assistant Attorney General presenting the information to the Administrative Law Judge, and the Directors know of that, so the idea was trying to address what staff's concern had been about the Commission sitting in this position of deciding whether they had proven their primary reason for their relocation. **Ms. Hunter** clarified the draft language is still under consideration and a bill has not been introduced—staff simply wanted to make the Commission aware of the proposed concepts and language; she anticipated seeing a bill within the next couple of weeks.

Mr. Ackerman concurred the Commissioners are absolutely able to say something like the zoning concept is worth pursuing or not pursuing; however, it seemed that it would be extremely difficult for them to support this or any other bill without seeing how all the pieces relate. He suggested the Commission has to consider its position as the designated target (the deep pockets for whoever wants to sue), over either the validity of the bill itself or actions taken under a bill that might become law.

Commissioner Niemi advised that before she took another good look at this bill, she thought it would probably die in its own wake, and that she was willing to be neutral with concerns. However, given the important issues Mr. Ackerman has raised, she would rather vote for a motion opposed to the bill as written with many concerns because of the Commission's liability, and other points as noted by Mr. Ackerman.

Deputy Director Reese commented that the bill as proposed does put the Commission in a new responsibility. She affirmed it creates a unique environment for the card rooms and yet it puts the Commission in the position of making decisions we've never made before. She assured the commissioners that Commission staff was quite direct in expressing the Commission's concerns about that at the meeting, and to the Director. She affirmed that as staff tried to assist the group with the language, there were some very opposing opinions about creating an environment like this and then pushing all the responsibility to the Commission. There was some perception that the cities could pick up some of this responsibility if they were going to make some of the decisions in terms of locations. They didn't receive that perception very well. Ms. Reese emphasized that a number of language changes will be forthcoming and she didn't anticipate it would end up looking like the current language.

Commissioner Rojecki advised that he didn't have a problem making a decision on the zoning issue itself, if the decision was actually related to a "Z" or "X" draft number—whereas the Commission cannot do that at this point and time. **Commissioner Niemi** expressed her concern about the Commission not doing anything and she questioned how the Commission would handle this issue if the bill is dropped before the next Commission meeting in February. She reiterated her suggestion to not support this bill as written.

Director Day affirmed the Commission has opposed all the zoning bill versions that have been introduced over the last few years. He agreed that normally a bill has been introduced which is brought before the Commission for consideration. In this case, he anticipated a bill would very likely be dropped and make it to the first hearing before the Commission meets

again. Staff thought it was very important to at least bring the draft forward because it has been drafted by the Legislative staffer at the direction of the Chair of that Committee. He affirmed it is moving along and is being changed in an attempt to address a number of issues the Commission raised in the past; for instance, concerns about expansion of gambling and the freeze bill. The list on location is clearly an area that merits concern. The provision to protect the Commission against law suits relative to the issues of the local ordinances is obviously another concern. Legislative staffers are questioning how the Commission feels about the proposals, and **Director Day** affirmed the point of the presentation today was to test the waters to see if there is any change based on the direction this draft is going. The past concern has been because it may provide a zoning option that would encourage cities that ban to open up new areas, which might result in unintended growth in gambling that the Commission or the Legislature hadn't intended—by freezing, they have essentially eliminated that option because there would only be 93 licenses regardless of where they move.

Commissioner Parker questioned if growth in gambling should be defined strictly on the number of businesses operating. He commented that a licensee that was a nominal operation and was then rezoned and allowed into a much more active marketplace could grow exponentially, and that would be an expansion of gambling. **Director Day** concurred and then noted that in the previous drafts, it was actually encouraged and there was no limit on the licenses; so it would have to be new licenses. He noted the committee has attempted to address the Commission's concerns about small areas, or favorite licenses, or specific licensees that might be favored in some smaller areas of zoning. The concept of "a-third of the commercial area" broadens that issue and incorporates it in their comprehensive plan to make it more of a public process not subject to immediate change, which directly relates to some of the Commissioner's prior concerns.

Commissioner Rojecki verified Mr. Ackerman's concern with the Commission making a decision without legal interpretation or a legal understanding as to the perceived expansion or perceived rezoning of a card room and without having more articulation as to where it goes, because of where it goes. **Mr. Ackerman** concurred, and noted his concern was broader than just a legal interpretation—he was concerned about shooting at a moving target—that the Commission may generally express approval of a particular concept and then a bill comes out that has a zoning piece which is diametrically opposed to the feelings of the majority of the Commission—that it may come back to haunt the Commission. He emphasized this was about zoning, and it seemed to put the Commission in a very awkward position on a bill that is undoubtedly going to change without the benefit of a significant section by section practical resource analysis as well as a potential legal analysis. Mr. Ackerman acknowledged it was very hard to do those things when the bill literally could change from day to day.

Once there is a bill, **Mr. Ackerman** believed it would be incumbent upon everyone to give some serious legal consideration regarding today's discussion regarding freezing the number of card rooms at 87, and whether there are privileges and immunities of the State Constitution, and whether that is even a lawful exercise of the Legislative power. Another consideration relates to the prohibition and the illegal monopolies in the State Constitution,

and whether this is a constitutional exercise of Legislative powers when they do these things. **Mr. Ackerman** reiterated that he was concerned about the nebulous nature of the entire draft and he noted that he has more questions than answers. Mr. Ackerman recommended the Commission take no action until the Commission receives an actual bill (or "Z" draft bill), and until the Commission receives additional supporting information including a legal analysis on the issues described. He also acknowledged Ms. Hunter's need to be able to interact with the Legislative group and to help to find possible solutions to the issues being addressed. He advised he wouldn't see a problem with (at the Commission's direction) Ms. Hunter going back to the group and noting this bill is very nebulous and stating the Commission's issues and to ask for answers to the questions that were raised. He affirmed she could share the sentiment that until more information is provided and something more concrete is provided, the Commission is not in a position to take a position and note that the Commissioners expressed concerns about some of the provisions that are in the current draft.

Chair Ellis called for comments from the Recreational Gaming Association. **Dolores Chiechi** - Executive Director affirmed the RGA has been intimately involved with the discussions on this issue over the interim. The RGA also appreciated the Gambling Commission's involvement in that process. She reported the RGA is hoping for a resolution relating to the cities fear of expansion of gambling in their jurisdictions. The City of Kenmore is a key example; they had one card room operator/bowling alley for over 30 years. Another licensee came into Kenmore and the city didn't want any more—they liked what they had; they didn't want to become a gambling Mecca, so they decided to pass a moratorium that allowed Kenmore Lanes but banned anyone else. The applicant sued the city, the city lost, and the applicant has appealed and the operation is still waiting for the outcome of the court case. Ms. Chiechi suggested that if the city would have had the opportunity to either set a zone or freeze the number of card rooms, Kenmore Lanes would have remained open and continued to employ people and to offer free bowling nights for senior citizens and the other things they do for the community. She affirmed the RGA members are gun-shy when a new applicant comes into a jurisdiction because the jurisdiction will have no recourse but to close everybody out in order to keep their numbers down. Ms. Chiechi advised the RGA has essentially accepted this proposal, in spite of the fact that some members agree and others disagree.

Ms. Chiechi addressed a new concern relative to the audited financial statements, which previous to this last outcome showed that more than half the industry was losing money. The numbers have changed—and she updated the numbers noting that 14 clubs have closed.

Ms. Chiechi also stated she appreciated the discussion that has taken place—she affirmed the RGA has taken a position, and it's changed. She agreed that as the bill changes the members come back to the drawing board for further consideration. She reported that her understanding (as of yesterday) is that the list of provisions for the primary reasons of movement is being stricken. The RGA wants to keep things simple and straight forward. The cities need this bill because they want to know what is going to be set up in their jurisdictions. If they know there are only 93 clubs with the applications pending, then they know what exists.

Ms. Chiechi appreciated Mr. Ackerman's constitutionality comments. She affirmed the cities and the RGA have worked with other interested parties to hammer out the proposed negotiated compromise; however, she cautioned that what is before the Commission today is different from yesterday, and will be different tomorrow. She appreciated the fact the Commission may not want to take a position until such time as a bill number with a sponsor has been dropped. She also cautioned that just because a bill has a bill number and has been introduced doesn't mean that it can't change. She emphasized the RGA would like to resolve the zoning issue this session. They are supportive of something that helps their members rest easy; that they can operate their businesses, pay their taxes, and provide an entertainment feature.

Chair Ellis inquired if any members of the Commission would like to make a motion on this topic—there were none. He commented that Ms. Hunter was hopefully armed with the numerous considerations that have been expressed and he authorized proceeding with dealing with the Legislature and the working group accordingly. **Ms. Hunter** affirmed and noted there were a couple of other bills that are still in a draft form which staff purposely will not bring up for discussion until the related bill is introduced.

Correspondence

Director Day proceeded with his Director's Report and addressed the following correspondence:

- Washington State Auditor annual audit results for the period of July 1, 2005, through June 30, 2006 - a report on the Commission's 2006 audit with a note that in the past five audits the Commission has had no findings.
- Total Service Inc. – an amusement game licensee expressing their appreciation and thanks to staff from the Licensing Unit for their work in processing associated applications.
- Response to Citizens Against Reservation Shopping – correspondence that there was a move to find an alternate location for the potential Cowlitz casino. The crux of the response letter from Chair Ellis advised that it would be inappropriate for the Commission to weigh in on the process because the Commission ultimately has to consider a potential compact from the Cowlitz Tribe in a neutral fashion; and that would essentially pre-prejudice the Commission in advance.
- Governor's Affirmative Action Policy Committee-2005 Annual Report – depicting the comparison of the Gambling Commission percent of minority staff against other state agencies as a follow-up to previous discussions about the agency's diversity.

Monthly Updates:

Director Day noted that in addition to the reports submitted in the agenda packets, the new Congress has just come into session. Staff is not aware of any movement on the bills the Gambling Commission is tracking at the federal level.

Agenda Change: **Chair Ellis** expressed concerns about the difficult driving conditions and in the interest of getting everyone home safely reported the Commission has decided to expedite today's agenda by deferring Item 2 - New Licenses and Tribal Certifications, and

Item 3 - the Defaults until Friday, January 12. For the record, Chair Ellis inquired if anyone was present who intended to represent a party in any of the default situations and to speak to the Commission in the matters relating to the default petitions for the FOE (Eagles) #00252 in Hoquiam, Christopher O'Dierno a card room employee, Christopher Bell a card room employee, or Justin Hunsaker an applicant for a card room employee license. No one stepped forward. **Chair Ellis** affirmed Item 2 and Item 3 would be held over to Friday's agenda immediately following the consideration of the minutes.

6. Other Business/General Discussion/Comments from the Public:
Chair Ellis called for public comments and there were none.

4. Summary Suspensions:

5. Petitions for Review:
Robert Ramelow, Applicant:
Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Robert Ramelow.** Mr. Ramelow and Mr. Marvin provided their testimony in the matter for review. A recording and a transcript of the hearing is available upon request. At the conclusion of the testimony, **Chair Ellis** recessed the meeting at 3:15 p.m. to deliberate the petition in executive session. The public meeting was reconvened 3:30 p.m.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to affirm the findings, conclusions, and orders of the administrative law judge in this matter, and affirming his order. V*ote taken; the motion passed unanimously.*

Petition for Review:
Joshua Hammons, Class III Employee
Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Joshua Hammons**, **Ms. Mariya Johanson**, and **Lena Hammons-TGA Director, Tulalip Tribe.** Mr. Hammons, Ms. Johanson, and TGA Director Hammons provided their testimony in the matter for review. A recording and a transcript of the hearing is available upon request. At the conclusion of the testimony, **Chair Ellis** recessed the meeting at 4:10 p.m. to deliberate the petition in executive session. The public meeting was reconvened at 4:50 p.m.

Commissioner Rojecki made a motion seconded by **Commissioner Niemi** to affirm the findings, conclusions, and orders of the Administrative Law Judge in this matter. *Vote taken; the motion passed with five aye votes.*

Chair Ellis directed his comments to TGA Director Hammons noting this was obviously a very difficult petition for the Commission, as demonstrated by the amount of time spent deliberating the matter. He explained that on one hand, the Commission is very mindful of the efforts the Tribe makes to deal with situations like

this and to use their judgment on how tribal member problems can be addressed, and to give them assistance in dealing with these kinds of problems. At the same time, the Commission has a responsibility to the people of the state to address these kinds of issues as well—where card room employees are found to have engaged in illegal conduct, fraudulent conduct, and theft; as was alleged here, and as was found by the Administrative Law Judge (ALJ). **Chair Ellis** stated there are many situations the Commission has confronted where the amount of money was a lot less than $3,300 and, for that reason the Commission feels they do have a responsibility to look at the broader picture. He emphasized that if the only issue at hand was gambling on the Tulalip Reservation, that may be one thing; but, as is apparent here, Mr. Hammons actually was a card room employee in a non-tribal casino. Based on his certification from the state, Chair Ellis emphasized the Commission must consider what we do when we issue that certification, and the Legislature has made it very clear that the Commission must apply the state laws very strictly; which the Commission has tried to do conscientiously. Chair Ellis noted that for those reasons, the Commission feels they have to affirm the ALJ's decision and order in this matter. He emphasized the Commission appreciated the fact that Director Hammons attended, and he affirmed the Commission certainly tried to listen carefully to the arguments; however, the Commission has affirmed the ALJ's decision.

Petition for Review:
Sokhan Srey, Card Room Employee
Assistant Attorney General Bruce Marvin was present for the State, as well as **Petitioner Sokhan Srey.** Mr. Srey and Mr. Marvin provided their testimony in the matter for review. A recording and a transcript of the hearing is available upon request. At the conclusion of the testimony, **Chair Ellis** recessed the meeting at 5:10 p.m. to deliberate the petition in executive session. The public meeting was reconvened 5:20 p.m.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to affirm the findings, conclusions, and order of the Administrative Law Judge in this matter. *Vote taken; the motion passed with five aye votes.*

Executive Session:
At 5:25 p.m., **Chair Ellis** called for an Executive Session to address pending investigations, tribal negotiations, and litigations. He called the meeting back to order at 6:28 p.m., and immediately adjourned the meeting.

Minutes submitted by,

Shirley Corbett
Executive Assistant

COMMISSION MEETING
FRIDAY, JANUARY 12, 2007
DRAFT MINUTES

Chair Ellis called the meeting to order at 9:30 a.m. at the DoubleTree Guest Suites located in Seattle.

MEMBERS PRESENT:	**COMMISSIONER JOHN ELLIS, Chair,** Seattle **COMMISSIONER JANICE NIEMI, Vice Chair,** Seattle **COMMISIONER ALAN PARKER,** Olympia **COMMISSIONER PEGGY ANN BIERBAUM**, Quilcene **COMMISSIONER KEVEN ROJECKI,** Tacoma **SENATOR MARGARITA PRENTICE, Seattle**
STAFF PRESENT:	**RICK DAY**, Director **SHARON REESE,** Deputy Director **MARK HARRIS,** Assistant Director–Field Operations **AMY HUNTER**, Administrator – Communications & Legal **JERRY ACKERMAN**, Assistant Attorney General **SHIRLEY CORBETT**, Executive Assistant

Chair Ellis announced the Commission deferred several items on Thursday's agenda to today in order to get people released earlier given the transportation conditions. As a result, the Commission started with Item 7 and then dealt with Items 2 and 3 from Thursday's agenda.

7. Approval of Minutes:

Commissioner Niemi made a motion seconded by **Commissioner Parker** to approve the minutes of the Special Meeting of November 15, 2006 as presented. *Vote taken; the motion passed with four aye votes – Commissioner Bierbaum abstained.*

Commissioner Parker made a motion seconded by **Commissioner Niemi** to approve the minutes of the regular meeting of November 16-17, 2006 as presented.

Vote taken; the motion passed with four aye votes – Commissioner Bierbaum abstained.

2. **New Licenses and Tribal Certifications:**

Keith Schuster, Special Agent Supervisor reported that based upon the licensing investigations, staff recommends approval of the new licenses and Class III certifications listed on pages 1 though 29 in the agenda packet.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-29. *Vote taken; the motion passed with five aye votes.*

3. **Defaults:**

FOE #00252, Hoquiam-Revocation: *(Not present)*
Amy Hunter, Administrator for the Communications and Legal Division reported that FOE #00252, an Eagles Club located in Hoquiam has disbanded and is no longer operating gambling activities. Staff is requesting their raffle and amusement game licenses be revoked based on not sending their activity reports in at all for the last couple of quarters—they have a long history of not sending in their reports. This was a violation of a past settlement agreement. The charges were sent by certified mail and regular mail. They were signed for and when staff tried to make a courtesy call, the number was disconnected. A Special Agent Supervisor confirmed the building had been closed and the organization had disbanded. By not responding, FOE #00252 has waived their right for a hearing and staff is requesting their gambling license be revoked.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** that the Commission revokes the licenses issued to the Fraternal Order of the Eagles #00252, Hoquiam, to conduct raffle and amusement gambling activities as presented by staff. *Vote taken*; the motion passed with five aye votes.

Christopher Odierno, Card Room Employee, Revocation: *(Not present)*
Ms. Hunter advised that staff is requesting that Christopher Odierno's card room employee license be revoked based on Mr. Odierno shorting a player by $100 at the card room where he worked in Bellingham. His activities were recorded on surveillance. He admitted that he took $30 from the cage; but, he denied that he took $100. The card room did terminate Mr. Odierno and he is not currently working in gambling activities. The charges were sent by certified mail and regular mail. The certified copy was returned as unclaimed. The other charges were not returned, they were delivered to the last known address on file. When staff tried to make a courtesy call, his number was found to be disconnected. By not responding, Mr. Odierno has waived his right to a hearing, and staff requests that a default order be entered revoking his card room employee license.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** that the Commission enters a final order in default revoking the card room employee license issued to Christopher Odierno to conduct gambling activities as presented by staff. *Vote taken; the motion passed with five aye votes.*

Christopher Bell, Card Room Employee-Revocation: *(Not Present)*
Ms. Hunter reported that Christopher Bell allowed a minor to play in a card game. Mr. Bell was given the opportunity to pay a Notice of Violation and Settlement Agreement (NOVAS). An agent writes a ticket to an individual or an organization and they may pay (in this case of an individual, a $200 fine). If the recipient wishes to contest, then Administrative charges are issued and the individual has a right to a hearing. In this matter, an agent wrote Mr. Bell a NOVAS. Mr. Bell did not want to sign it, and during the time the agent was waiting to see if Mr. Bell would sign, Mr. Bell was terminated by his employer. He is not currently working in gambling. The charges were sent by certified mail and regular mail. They were signed by someone named "Colin" Bell. Staff called Mr. Bell and left him a message regarding the deadline. Mr. Bell wrote back after the deadline had passed, and advised that he was waiving his right to a hearing. He also indicated that he had mailed his license in. Staff checked his license file, and there is not a record of his returning his license. Because Mr. Bell has waived his right to a hearing by his own request, staff is requesting a default order be entered revoking his card room employee license.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** that the Commission enters a final order of default revoking the card room employee license issued to Christopher Bell to conduct gambling activities as presented by staff. *Vote taken; the motion passed with five aye votes.*

Justin Hunsaker, Applicant-Denial: *(Not Present)*
Ms. Hunter stated that staff is requesting that Mr. Hunsaker's application for a card room employee license be denied based on his criminal history which includes numerous violations: Malicious Mischief, Criminal Trespass, Possession of Methamphetamines (a Class C Felony), and a history of not complying with court orders and not paying fines. The charges were sent to Mr. Hunsaker by certified mail and regular mail. The certified mail was returned as unclaimed. The other charges were not returned; they were sent to his last known address. Staff telephoned him and left him a message reminding him of the deadline. By not responding, Mr. Hunsaker has waived his right to a hearing and staff requests that a default order be entered denying his application.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** that the Commission enter a final order of default denying Justin Hunsaker's application for a card room license to conduct gambling activities as presented by staff. *Vote taken; the motion passed with five aye votes.*

8. <u>Petition for Rule Change – Seattle Jaycee Bingo:</u>
WAC 230-20-055.

Keith Schuster, Special Agent Supervisor reported this petition for a rule change was submitted by the Seattle Jaycee Bingo and it includes an amendatory section to WAC 230-20-055, which is titled Use of Proceeds for Authorized Activities by Charitable or Non-Profit Organizations. This rule has been before the Commission twice before and is up for final action. The petitioner has submitted this proposal based upon current events with the Internal Revenue Service regarding an issue of punch-board pull-tab deductions. There have been no statements opposing the proposed rule change. Staff recommends that WAC 230-20-055 be adopted with a proposed effective date 31 days from filing.

Commissioner Parker believed this was a good rule. **Chair Ellis** agreed; and with no further questions or comments, he called for public comments. There were none.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to adopt WAC 230-30-055 as presented by staff with an effective date 31-days from filing. *Vote taken; the motion passed with five aye votes.*

9. <u>License Fee Increase:</u>
WAC 230-04-202, 230-04-203, 230-04-204, and Rules Simplification Project WAC 230-05-030, 230-05- 25, 230-05-030 and WAC 230-05-035.

Mr. Schuster noted this rules package has also been before the Commission twice and includes amendments to WAC 230-04-202, 230-04-203, 230-04-204 and includes companion rules under the Rules Simplification Project WAC 230-05-030, 230-05-25, 230-05-030 and WAC 230-05-035. The proposed change for the first section will increase licensee fees by approximately three percent beginning on June 30 of this year. There have been no statements opposing the rule changes. Accordingly, staff recommends the proposed amendments to the Rules Simplification Companion Project rules also be adopted. Those rules would be effective January 1, 2008. With no further questions or comments, **Chair Ellis** called for public comments. There were none.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to adopt WAC 230-04-202, WAC 230-04-203, and WAC 230-04-204 as presented by staff with an effective date of June 30, 2007. *Vote taken; the motion passed with five aye votes.*

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to adopt Companion Rules Simplification Project Rules WAC 230-05-020, WAC 230-02-025, WAC 230-05-030, and WAC 230-05-035 with an effective date of January 1, 2008 as presented by staff. *Vote taken; the motion passed with five aye votes.*

10. <u>Card Room Tip Procedures:</u>
WAC 230-40-855.
Mark Harris, Assistant Director- Field Operations reported that Item10 is a staff proposed amendment to WAC 230-40-855 - Acceptance of Tips from Patrons for House-Banked Activities. This item has been before the Commission twice before and is up for final action. The proposed rule will require more detailed procedures for accountability of tips received by card room employees. Under the amendment the tips or "toke" boxes must be locked and remain under camera coverage at all times. The tips must be redeemed under surveillance and card room employees must accurately report all their tips to their employer. Tips received by cage cashiers must be counted by the shift or floor supervisor for security. The rule change will codify tip accountability requirements and provide consistent enforcement by staff. The rule change will ensure licensees have a consistent understanding of the requirements for tip accountability. Clarifying this rule will reduce the amount of time staff spends explaining the requirements and addressing consistency concerns expressed by licensees.

Mr. Harris noted that at the November 2006 Commission Meeting, Gary Murray spoke up opposing a rule regarding card room tips; and, at the October 2006 meeting, Max Faulkner thanked staff for working with the RGA to make the requirements more clear. He noted that the licensees directly impacted were the house-banked card rooms and their employees. Staff recommends adopting the proposed rule amendment and making it effective 31 days from filing. With no further questions or comments, **Chair Ellis** called for public comments.

Max Faulkner speaking on behalf of some of the smaller clubs, questioned if this rule would require the cashier to verify the dealer's tips. **Mr. Harris** responded that would not be a specific requirement; however, there would be controls, they would have to list in their internal controls. He noted that would vary from casino to casino, and they would have to establish how they would like to do that—he affirmed this is one option, but not the only option.

<u>**Commissioner Parker** made a motion seconded by **Commissioner Niemi** to adopt the proposed amendment to WAC 230-40-855 as presented by staff with an effective date 31-days from filing. *Vote taken; the motion passed with five aye votes.*</u>

11. <u>Scheduling Reconsideration Hearings:</u>
WAC 230-50-562.
Amy Hunter, Administrator-Communications and Legal Division explained this rule is up for final action—it was filed at the October meeting. This is a procedural rule dealing with petitions for reconsideration, which a licensee or staff may file after they've received a final order from the Commission. Under the Administrative Procedure Act, the Commission must take action on those petitions within 20 days. If the Commission doesn't take action, the petition is considered denied by operation of the statute. She explained that in the past, what has usually happened is the Commission will usually accept hearing the petition for reconsideration. Again,

because the Commission must act within 20 days, usually there is a rush for staff to complete the necessary paperwork to deliver the petition in advance of the meeting.

Ms. Hunter reported that a couple of years ago, when there wasn't a December meeting, the Commissioners had to hold a special telephonic meeting to listen to a petition for reconsideration. In 2006, there were three petitions for reconsideration, and under the proposed rule the petitions would automatically be scheduled. If a petition is received 15 business days before the next Commission meeting, the Commission will schedule the petition for their next upcoming meeting. If it is fewer than 15 days, the Commission would schedule that matter automatically at the following Commission meeting. Staff recommended adoption and requested the rule be effective 31 days after filing.

Commissioner Bierbaum noted that if RCW 350.54.070 requires hearing the petitions for reconsideration within 20 days, the Gambling Commission has the authority to vary the requirements of that statute and essentially extend the period of time during which they may act on them. **Assistant Attorney General Jerry Ackerman** affirmed that staff looked at that; however, the conclusion was that the Commission had to take action within 20 days, and the action that had to be taken was at least setting the matter for hearing.

With no further questions or comments, **Chair Ellis** called for public comments. There were none.

Commissioner Niemi made a motion seconded by **Commissioner Rojecki** to accept the proposed amendment, WAC 230-50-562 as presented by staff with an effective date 31-days from filing. *Vote taken; the motion passed with five aye votes.*

12. Petition for Rule Change – Washington Charitable and Civic Gaming Association (WCCGA):
WAC 230-20-059

Ms. Hunter reported this rule is up for final action. The Commission voted to file the petition at the November meeting. Commission rules require that organizations give a certain amount of money from gambling back to their stated purpose—that money is called cash flow. The WCCGA had a petition before the Commission in October which the Commission did not file, and they have now submitted this new petition which is significantly different. The WCCGA is asking to allow the Director to grant a waiver of up to 50 percent for calendar year 2006 only because some of the licensees are having trouble meeting the cash flow requirements. They have cited the smoking ban that went into effect in December of 2005 as one of the reasons.

Ms. Hunter advised this change would assist about 15 or 16 large bingo operators who have more than $1.5 million in gross receipts a year. Gross receipts are before prizes and other expenses. While this is somewhat similar, it is a twist on a current part of the cash flow rule. Currently, if an organization does not meet the cash flow

requirements for one year and they are within 25 percent, the Director automatically reduces their requirements by up to 25 percent for that year. The proposal suggests 50 percent for just 2006. **Ms. Hunter** directed attention to a few of the policy considerations listed in the rules summary. She also explained the Commission has seen the number of large bingo operators in the state decrease from about 45 to the existing 15 or 16 in six years. Ms. Hunter reported the agenda packet included a number of statistical pie charts showing how the market has changed and line graphs showing how the number of bingo operations has changed in addition to specific information about particular organizations. Responses to questions raised about payout percentages and information on gambling trends was also included in the agenda packet. A new statistical page depicts a projection of what would happen to organizations if their fourth quarter continued to be the same numbers they had for 2006—it suggests the following organizations would be out of compliance: Seattle Junior Hockey, Spokane Youth Sports Association, and the Jaycees of Seattle. It also revealed an organization that would need the 50 percent reduction, and two other organizations that are still within the 25 percent area—again, assuming their fourth quarter ends up looking a lot like their third quarter. Ms. Hunter noted that the fourth quarter is usually the worst quarter. Staff recommended adoption and requested an effective date 31-days after filing. **Chair Ellis** called for public comments.

Rick Newgard spoke on behalf of the Seattle Jr. Hockey Association and the Washington Charitable and Civic Gaming Association, expressing appreciation to the Commission for filing the petition. He urged Commission support because it would help a lot of games that are trying to rebound from the smoking ban. He affirmed his organization is one of the organizations out of compliance; a first time in their 30-years of operation. He affirmed the organization is working diligently to reduce expenses and to increase income, which is the ultimate goal. Mr. Newgard appreciated Commission staff working with the industry in getting this within a 60-day period, because that will be when the quarterly reports come in (at the end of January).

Linda Smith, Manager of Seattle Jaycee Bingo again asked the Commission to vote in favor of this rule amendment.

Dan Rios, 69th President of the Jaycees read into the record a letter from Stephen Mullet, Mayor of Tukwila:

> "Dear Commissioners, The city of Tukwila strongly supports the work of charitable fund raising organizations like the Seattle Jaycees and encourages the Gambling Commission to review and adjust the guidelines needed to protect our future non-profit status. Without the work of such groups hundreds of thousands of dollars would be lost to the charities dedicated to filling the gaps in our human service networks that provide that critical helping hand to our less fortunate citizens." Sincerely, Stephen M. Mullet, Mayor

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to approve the amendatory section to WAC 230-20-059 as presented by staff with an effective date 31-days from filing.

Chair Ellis notified the audience there has been an informal suggestion that the Commission change a long standing practice of the Commission—he clarified this would not be a rule change or a statutory change; but, a procedural change concerning the number of times that petitions for rule changes and related matters are included in the commissioners agendas. The Commission's practice has been to have at least three public hearings on every petition. One when the petition is submitted for filing and the Commission has to decide whether to accept the petition, the second being the interim public hearing when the matter is simply up for discussion but not for adoption. He noted there are actually times when there is a second one of those hearings if the timing is wrong, based on the time of filing with the Code Reviser's Office; and then, the final hearing when the matter is up for adoption or non-adoption.

Chair Ellis explained the point has been made that that is a lot of hearings on many of these rules which occupies the Commission's time unnecessarily. It requires staff time to prepare for the hearings and it occupies the time of people attending the meetings somewhat unnecessarily as it gives people more chances to say what they want to say about these petitions than may really be necessary or efficient. The issue is whether the Commission should go to a general practice of simply having two hearings on each petition; one when the petition is up for filing and the Commission needs to decide whether it is going to accept the petition for filing for further discussion, and then the final hearing when the petition is up for adoption. Chair Ellis reported that staff would schedule additional hearings if the petition is controversial or if there are amendments to the petition to be considered that people need to know about and to allow a chance to address the issue if they didn't have a chance to address it at the initial hearing when the petition was up for filing.

Chair Ellis reemphasized this is a proposed change in procedure, which does not require a change to any of the Commission rules as the statutes do not require any more than the two hearings. He affirmed the Commission will be considering the matter; however, it is not a change that will be immediately implemented. He invited the public to provide their thoughts on this concept before or at the February 2007 Commission Meeting

13. **Petition for Rule Change – Recreational Gaming Association:**
WAC 230-40-835, WAC 230-40-865, WAC 230-40-879, WAC 230-40-885:
Beth Heston, Rules Simplification Project Manager reported this item is a petition for rule change that was brought forward by the Recreational Gaming Association (RGA), and it deals with some accounting procedures. Currently accounting staff have to be on location to check the triplicate form that is in the locked dispenser fondly known as the Whiz Machine. They are required to send someone in on the weekend simply to empty or check this receipt. The proposed amendment takes away that requirement for a daily check and instead moves the actual checking to the next

business day that staff is present in the accounting department. This affects rules 230-40-835, 865, 879 and 885 because they reference the Whiz Machine. The RGA supports further discussion of the November amending version (on tan paper), and staff agreed with that recommendation. With no further comments or questions, **Chair Ellis** called for public comments.

Max Faulkner a service supplier consultant for some of the smaller clubs spoke in support of this petition.

With no further comments, **Chair Ellis** noted the item will be scheduled for final action in February.

14. <u>Rules Simplification Project:</u>
Chapter 230-15 – Card Room Rules
Ms. Heston reported she would be directing her comments regarding the Surveillance Rules in Chapter 15 and she addressed page 87, noting the language was tweaked a little to clarify that in non-house-banked card games, an additional fixed camera must focus over the dealer area, cover the chip rack, all the drop boxes, and the community card area. There was an inconsistency that was pointed out and the amendment fixes that problem.

Ms. Heston moved to page 91, a rules summary regarding using multiplex and quad recording devices in required surveillance. The former rule separated out the surveillance requirements and the two rules were merged. On page 94, staff changed the wording in Subsection 1 of 15-305 to remove quite a few unnecessary words. Focusing on Section 15-320 on page 95, Ms. Heston advised that staff will be altering the language in Subsection 1 before the February meeting. The Recreational Gaming Association advised they were concerned the Commission was limiting the people that could go into the surveillance room. They often take their local jurisdiction officials into the surveillance room so they may see the controls that are in place to prevent cheating and to safeguard gambling. Staff intends to open this up a little by adding some language about people entering the surveillance room for the purpose of education, intelligence, and maintenance; allowing the opportunity to bring people into the surveillance room for various reasons.

Moving to page 98, **Ms. Heston** advised the intent is to combine the surveillance requirements for Class F and house-banked licensees into one section—this is the employee's sign-in log. Informally a visitor's sign-in log was also used; this simply combines the two logs.

Addressing page 104, **Ms. Heston** explained Section 1(e) of the old rule was removed. It included requirements that security and surveillance be established in the internal controls. Class F card rooms and licensees are not required to have separate security and surveillance departments; therefore, this was an inconsistency in the old rule that staff is repairing. Page 106 is a repealer. The restrictions covered in the former 230-40-830 are now required in other sections and this language isn't needed.

Ms. Heston noted the revisions on page 116 are denoted in underlining, the addition of an "and" in 375 and the addition at the bottom of the page in 230-15-380 of the allowance to make an electronic bank transfer.

Page 119 is a rule summary for a change to the final section of the new rule. It formerly said, "this assessment shall be separately collected using the rake method." The language has been changed to say that licensees must "either" use the chip rack or the drop box method. A rake is a type of fee, and chip racks and drop boxes are methods of collection—staff is clarifying the use of the different terms in this chapter.

Page 123 is a repealer because this information is covered in other rules and it is not necessary to repeat the information.

Ms. Heston reported that page125 had some greater changes to the rules. In this case a universal standard phrase was added where licensees must maintain their bank accounts—staff added the phrase "a bank, mutual savings bank, or credit union in Washington State." That will be a phrase that will continue to come up through future rules. In Subsection 6 of this rule, staff added the phrase "before the end of the month" to indicate that to keep holding PSJs, they must make their transfers of money before the end of the month. In Section 7, a definition of "reconcile" was added because licensees were uncertain what was meant by reconcile.

Ms. Heston moved forward to page 129, also about PSJs. In this section the former rule said that licensees had to keep a winning hand for a period of seven days unless released by a Commission Agent. In general, the Commission does not know of any situation where licensees have been released from this requirement; therefore it is being removed. As a standard, they will keep it for seven days. On page 133, staff added the phrase "prize fund custodian" to each of these requirements in 2 and 3 so that it was clear what the prize fund custodian rights were to winning hands when they are participating in a card game. Page 135 adds an existing rule interpretation and instructions concerning taxing authority when seizing player supported jackpot funds. Previously these didn't have any instructions to licensees about what to do if a taxing authority seized those monies.

Lastly, **Ms. Heston** explained the new rule on page 137 reads that "staff will investigate complaints of all PSJ disputes and the Director may issue a written decision which is final." Staff changed this portion of the rule to allow the Director to decide whether to become involved in any dispute over a PSJ. Most of the time those disputes are solved without the Director needing to get involved. The intent is to give the Director discretion about becoming involved.

There were no further comments or questions – the rule will be present at the February Commission Meeting.

15. <u>Rules Simplification Project:</u>
WAC 230-15-319
Ms. Heston reported this rule was inadvertently dropped during a draft change—it is simply a re-write of a long-standing rule without any changes. With no further comments or questions, **Chair Ellis** called for public comments on the rules.

Gary Murray Recreational Gaming Association extended wishes for a Happy New Year. He affirmed this has been a very complex and large project. He thanked the Commission for endorsing a new and open process that allowed the time for the industry to make comments on every aspect of each proposed change. He appreciated the Commission's commitment to an open process where things don't change on a whim and he thanked the Commission and staff for making sure the industry is kept apprised of the current events and issues.

Mr. Ackerman noted that some of the rule summaries in the packet indicated the specific rules were up for discussion and possible filing. **Ms. Heston** concurred there was an error on the re-write of the rules summaries and affirmed the package has already been filed; they were intended to indicate for discussion only.

There were no further comments or questions – the rule will be presented at the February Commission Meeting.

16. <u>Petition for Rule Change-Increasing Poker Wagering Limits from $25 to $40:</u>
WAC 230-40-120
Assistant Director Mark Harris reported that Item 16 is a petition for rule change proposed by Andrew Kimmerle, a poker player. The agenda package provides a clarification that the increase requested is for a maximum wagering limit of $40. This item is up for discussion and possible filing. The petitioner is requesting that the poker wagering limits be increased from the current $25 limit to $40. The increase in poker limits was increased from $10 to $25 in May of 2000.

Mr. Harris provided examples of how this might affect the total possible wagers for a poker game. In Washington, for poker, 5 betting rounds are allowed with one bet and three raises. Under the current limits of $25 the potential maximum amount a person could wager if they bet $25 every time and raised $25 every time, would be $500; under the current proposal by Mr. Kimmerle that would increase to $800—again, only if everyone bet $40 all the way out, through the very end. Mr. Harris reported that most of the games in Washington are Texas Hold-Em or a variation of that where there are only four betting rounds—one bet and three raises and they are usually structured in a format of a 4-8, an 18-16; or, under the current limits the highest would be a 12-24. That means in a 12-24 game, the first bet limit would be $12, the second round it would be $12, and in the third round would go up to $24 which is a double—and, for the last round it would stay at $24 again. Under those current limits, the highest a person could wager if they bet the maximum all the way through would be $288. Under Mr. Kimmerle's proposal they could do a 20-40 game, which would put a maximum bet on the table of $480.

Mr. Harris reported the tribal facilities currently have a $500 wagering limit for poker and that most of their games are somewhere around the 20-40 game. He also noted that in October of 2005, the Commission filed a petition that was submitted by the RGA to raise the betting limits to $100. That would have created a maximum bet of $2,000 if a player bet the maximum all the way through. The Commission denied that petition in January 2006.

Mr. Harris noted that staff views the issue of increasing the wagering limits as a policy matter. He clarified there would not be any additional staff time to regulate an increased limit; staff would enforce the new higher limits under the current enforcement actions. Mr. Harris affirmed an increase in the limits may be perceived as an expansion of gambling. He noted the agenda packet contains the petition where approximately 82 poker players have signed in support of the petition. He clarified these are players, not licensees. Mr. Harris affirmed an increase would impact house-banked card room licensees that offer poker, D Class, E Class, and F Class card rooms. The Commission has three options for the petition: to file the petition, deny and state the reasons, or file an alternative. Staff recommends this is a policy decision for the Commission to decide and to determine if this proposal is consistent with the Legislative intent of RCW 9.46.010. **Chair Ellis** called upon petitioner Andrew Kimmerle.

Andy Kimmerle addressed the Commission noting he was just a construction worker and a poker player looking to raise the poker limit by a nominal increase of $15, which would give poker players the opportunity to play a 20-40 Texas Hold-Em game and to compete with the tribal facilities. He believed this would be good because tribal casinos have a hold over the other people—competition would be good among a lot of the card room houses, and it would be good for the consumer. The higher limits would give the consumer more of a chance to leave with the money instead of the money going down the drop, meaning the casino and the poker dealer's pocket. Mr. Kimmerle addressed the concept that people only play for fun. In reality, he emphasized that people were playing for money no matter how small the win. To illustrate his point he commented, "try losing every day and see how much fun it is."

Mr. Kimmerle advised that poker players are more educated in their playing strategies. Poker is highly competitive with people from all walks of life. The old ways of playing poker in a dark back room with less desirable and questionable people are a thing of the past. He believed the 20-40 structured Texas Hold-Em game gives the player a chance to make a little money and also bond if necessary with other players for amusement at the same time. He noted that a poker player playing a 4-5 Texas Hold-Em game at a table of nine players starting with $100 each, would in approximately six hours drop all the money down the hole (the casino and the dealer's pocket). Mr. Kimmerle indicated that it takes about a minute and a half to play a hand of poker. He countered that there aren't always nine players and not every one places the maximum bet in—most hands are over within a minute and a

half to two minutes. There is usually a bet, a raise, call, call, and then the flop, which is a mutual pool for all the players—and then there is usually a bet and maybe a raise and then a call. **Mr. Kimmerle** advised he has never witnessed where nine players are in for the maximum bet from the start to the flop, betting the maximum bet all the way to the end. He affirmed that he's heard of them, but he has never seen one.

Chair Ellis affirmed the commissioners were probably aware of that fact, and he noted that when Mr. Harris presented the numbers it was simply an illustration to show what the absolute maximum effect would be—not that this would be routine and that everybody would bet the maximum on every round.

Mr. Kimmerle explained that raising the limit would give the player an opportunity to actually make some money. He reemphasized that there are very few people who are playing just for fun. He suggested that the people playing for fun should play cribbage, war, hearts, or something of that nature because they are just there for fun and to socialize and maybe have a drink; whereas for poker, it is not a big social thing, people basically are there to make money no matter how small, or for bragging rights. Mr. Kimmerle reiterated the players would like the limit to be raised a little. He suggested that a $15 increase would not be a very big raise. He said the lion's share of people who play poker are playing the 4-8, 5-10, 10-20, sometimes the 15-30, or 20-40 games, and the $15 increase would be more than adequate at this time. He believed this would be good for a lot of people.

Mr. Kimmerle advised that he spent a couple of days asking people what they liked to play and whether an increase would keep the players and their money in this state instead of going to California or Las Vegas, or even going to the tribal casinos. He advised he provided his documentation to Mr. Harris. Lastly, he noted that not everyone lives next to a tribal casino.

Commissioner Parker inquired if Mr. Kimmerle was aware of the previous record when the Commission discussed this proposal or a very similar proposal. **Mr. Kimmerle** affirmed he read through some the previous petition to raise the limit from $25 to $100, which he thought was a little bit high. He advised he was looking for a very real figure for the lion's share of the people who play.

Commissioner Parker advised Mr. Kimmerle that he was trying to draw Mr. Kimmerle's attention to the record, noting there was a lot of debate and discussion when the Commission considered this proposal in its earlier form. He affirmed there was a difference between what was proposed then and what is proposed now; however, the discussion was focused on the policy question and not so much focused on the dollar figure that was being proposed. The policy question was whether or not as a matter of policy for the Commission to approve such a wage limit increase would constitute an expansion of gambling. After a lot of discussion and debate the Commission denied the previous application.

Commissioner Parker advised that he didn't see anything new in the current petition other than a change in the amount of dollars from a proposed $100 bet increase to a proposal for a $40 bet increase. He asked Mr. Kimmerle to consider what was new here that would change the policy issue. **Mr. Kimmerle** responded there shouldn't be anything new at all. Everything was the same, the games were run the same, there is no extra work, and there is no extra money going anywhere. This is strictly beneficial to the people who play. The house makes the same rake and the dealer makes the same wages no matter what. The game is the same and this strictly caters to the people who enjoy playing this game at a higher limit. He noted that as has been witnessed on television, poker has become highly competitive, and while he wasn't looking for games where people become multi-millionaires overnight; players are looking for and want higher limits. They don't want to put their time in just to play and throw all their money down the box—meaning the house and the dealer's pocket. Mr. Kimmerle emphasized they want to play and make money—it is not for fun. He also noted the limit is so low that there is no incentive for the criminal element such as organized crime to become involved. This was strictly a one-on-one, player against player activity.

Chair Ellis addressed the statutory language, recalling the Legislature made it clear in 9.46.010 that they were authorizing social card games as opposed to profit making card games for the players. He inquired if there were any other provisions of the statute that would expand or allow a more permissive approach to increasing limits so that players could pursue profit as their primary motivation. **Assistant Attorney General Jerry Ackerman** responded that RCW 9.46.070 places the wagering limits within the authority of the Commission. He noted the second paragraph of that legislative declaration was very instructive—where it is declared to be the policy of the Legislature, recognizing the close relationship between professional gambling and organized crime to restrain all persons from seeking profit from professional gambling activities in this state, to restrain all persons from patronizing such professional gambling activities, to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and, at the same time to both preserve the freedom of the press and to avoid restricting participation by individuals in activities and social past times which activities and social past times are more for amusement rather than for profit, that do not maliciously affect the public and do not breach the peace. Mr. Ackerman advised the other statutory provision is the section that authorizes house-banked card rooms and indicates that the purpose for allowing house-banked card rooms is to promote the sale of food and beverages rather than being an entity unto itself.

Mr. Kimmerle responded that he didn't see how the purpose of the house-banked games could be to promote food, beverages and the likes, because the food and beverages were extremely cheap in house-banked card room facilities. He emphasized the money and the increase was not to entice people to go there to have food and beverages; the basic idea was for people to play and to beat the house for money—the house simply supplies all the action the consumer can possibly handle.

Chair Ellis called for other public testimony.

John Lowmon commented that he didn't know Mr. Kimmerle; however, from his perspective he advised that players are going to play the way they want to play. If they can get together in one place like a neighborhood card room, and if they can play for a higher limit—they will stay there. Players are going to go to the casino where higher limits are available and they bring people with them, which contribute to the additional sales of food and liquor. Mr. Lowmon advised that he was not opposed to raising the limits. He thought it might even help the struggling licensees to survive against the larger operations—that it would give them another opportunity to keep their doors open another day.

George Teeny clarified that his comments were not intended to represent the RGA, that he was representing himself. He advised that he didn't know Mr. Kimmerle or Mr. Lowmon. He commented that if 82 people came to the Commission as players saying they would like to have a higher limit; that would lend itself towards the preamble of the Gambling Commission. The preamble says something to the effect that the Commission is supposed to support and protect the people. He questioned if he brought 850 signatures whether that would make a difference.

Mr. Teeny advised that he understood that Mr. Kimmerle was dealing with the game from a player's perspective; while Commissioner Parker's point of view related to the policy position, and lastly the media's decision about this potentially being an increase in gaming. The petition at hand is for a $15 increase in a poker game that the players want to play and the house makes no money. It would be an increase from $25 to $40; but, in the whole statewide picture, comparing the $15 increase to 4,700 actual slot machines, five casinos with no-limit poker, no-limit black jack, and giving credit, is a crumb compared to the cake. Mr. Teeny acknowledged that it may be politically incorrect to mention gaming on the reservation compared to non-tribal gaming. He affirmed the Commission has a responsibility to negotiate in good faith. However, to go from what exists on the reservation today to what is proposed by the Spokane Tribe (be it accepted or not), in his opinion was a tremendous increase—whereas the $15 increase Mr. Kimmerle is asking for and what he would ask for as a private owner, didn't seem like that big of a deal. Mr. Teeny suggested that in the fairness of things, what the players want and what it could potentially do for the private clubs would be a substantial thing.

Commissioner Niemi responded that she personally didn't disagree with most of the things that have been said. Unfortunately a statute exists that the Commission must abide by—in addition to a climate in which a lot of people in this state have said that they are extremely concerned about this kind of thing. Commissioner Niemi suggested the speakers should be talking to Legislators and not the Commission. She noted if they could find enough Legislators that would be willing to agree with their proposal, possibly they would do something by statute. However, currently there was not a lot the Commission could do whether the commissioners agreed or not.

With no further public testimony, **Chair Ellis** closed the public hearing on the proposed petition.

Commissioner Rojecki made a motion seconded by **Commissioner Bierbaum** to file WAC 230-40-120 for further discussion.

Commissioner Rojecki commented that he wasn't a member of the Commission in 2005 when the last debate was held on increasing the betting limits. He believed that as this discussion continues there will obviously be some discussion regarding the Spokane Compact and he believed that it would be good for the existing Commission to be on the record.

Commissioner Bierbaum advised that she has procedural and substantive reasons for seconding the motion and voting in favor of the motion. Procedurally she didn't believe she has ever voted not to accept a petition for filing, only because she feels that due process is important, and that the Commission should have an opportunity to discuss things. She also explained that there is no harm and no foul in having something accepted simply for the purpose of filing for discussion.

Commissioner Bierbaum noted that substantively, she also was not involved in the discussions about the expansion of gambling and whether raising limits on poker constituted an expansion of gambling. Like Commissioner Rojecki, she advised that she would also like an opportunity to have that discussion publicly because she was not sure that raising poker limits constituted an expansion of gambling. If as Mr. Ackerman says, the Commission is empowered to raise limits, it would imply that the Legislature has given the Commission that power--versus expanding gambling by allowing additional games or additional machines. Commissioner Bierbaum emphasized that she would like to at least have the discussion to determine whether raising limits in poker constitutes an expansion of gambling. She suggested that if the Legislature didn't want the Commission to set/raise wagering limits, they shouldn't give the Commission the authority to do so.

Commissioner Niemi commented that as a result of the Commission filing the petition in 2005, a bill was introduced by Senator Prentice to take away the Commission's ability to raise limits. Commissioner Niemi noted it didn't go anywhere; however, she couldn't imagine that won't happen again.

Commissioner Parker commented that he raised the question with the petitioner whether there was a distinction in the mind of the petitioner between the two different proposals; such that the Commission could consider as a substantive difference. The petitioner stressed his interest in raising the betting limits in such a way as to indicate that his interest was to make more money at the game, which Assistant Attorney General Ackerman so effectively reminded the Commission, reading from the statute, that it would seem to fall clearly in conflict with the underlying organic law that governs the Gambling Commission. On the other hand, the earlier petition, presented by the industry was pursued in sort of a "level the playing field" argument.

Commissioner Parker suggested the Commission has a different mission when considering compact amendments versus the questions of the non-tribal industry. He believed those issues were apples and oranges and he would not oppose filing the proposed petition. He supported the procedural due process in making sure everyone has their opportunity to have their proposal considered and emphasized the need for the petitioner to provide something for the record to show the Commission why this petition was something different than what was on the table before.

Chair Ellis agreed there are important policy and legal issues that Commissioners Bierbaum and Rojecki should have an opportunity to consider in the context of the petition. For that reason, even though he didn't believe he would ultimately be swayed—he thought that it was fair to allow the petition to be filed so they have an opportunity to think about it and expand their philosophy and understanding of the legal framework. Chair Ellis affirmed he intended to vote in favor of filing the petition.

With no further comments, *the vote was taken; the motion passed with four ayes, the nay vote was cast by Commissioner Niemi.*

17. Petition for Rule Change-Manufacturers Selling Product to Distributors: WAC 230-12-231

Assistant Director Mark Harris: Chair Ellis, Commissioners. Item number 17 is a petition for rule change by John Lowmon requesting that would require all manufacturers to make their licensed product available to any licensed distributor without prejudice. The petitioner is also requesting that all manufactures be required to accept any cash purchases in the absence of credit terms; and for the Commission to indefinitely revoke the license of any manufacturer, distributor, and their representatives who interfere with this rule. He reported that prior to October 2005; the Commission had rules that required manufacturer/distributors to offer their products and services to all licensees without discrimination. The rules were intended to prevent discriminatory pricing and to prevent market control. After discussion at three Commission meetings, the Commission decided to repeal these rules and the agency is no longer involved with pricing or determining which licensee manufacturers sell to; as long as the distributors they sell to are licensed. [Commissioner Parker left the meeting at 11:15]

A similar petition was submitted in March of 2006 by Magic Distributing, requesting discriminatory pricing restrictions be reinstated, and that discriminatory pricing restrictions required manufacturers and distributors to offer their products and services to all licensees without discrimination. The Commission denied that petition for the following reasons: regulating business relationships between distributors and manufacturers is generally outside the Commission's mission, and because there are other legal remedies (like antitrust laws) the petitioner could pursue instead of relying on the Commission. Before repealing the credit rules, the Commission carefully considered all the arguments for three months.

Mr. Harris noted that in June of 2006, Special Agents contacted six distributors and two manufacturers to find out how things were going now that the rule had been repealed. Four of the distributors said there was no impact. One said that a manufacturer had reduced the discount and required larger purchases from them; and, one said that one of the manufactures wouldn't sell to them anymore because they were too small. Of the two manufacturers that were contacted one said that there was no impact and the other said things were going okay. The impact of this proposal would require manufacturers to sell their products to distributors regardless of the distributor's business practice, credit problems, or bad debt. In the past, credit restriction rules (which have also been repealed) would have prevented the sale for products on past due accounts. The regulatory concerns—regulating the business practices between manufacturers and distributors are generally outside the scope of the Commission's mission to keep gambling legal and honest. Mr. Harris stated that if the request is adopted, it would add new regulatory requirements that would require the Commission to indefinitely revoke the manufacturer's license if they don't comply. He noted that prior to the rule being repealed it took approximately half an FTE to enforce the regulations; that half of an FTE would again be required if the rule is reenacted. Licensees that would be directly impacted would be the manufacturers, distributors, and operators.

Mr. Harris advised the Commission has three options for the petition, to file the petition, deny and state reasons, or file an alternative version. Staff recommends denying the petition for the similar reasons discussed with the prior recommendation. Regulating business relationships between distributors and manufacturers is generally outside the Commission's mission; and, there are other legal remedies that licensees could pursue outside Commission rules. The petitioner would request this rule become effective 31-days after filing. **Chair Ellis** called for questions and public comments.

John Lowmon licensed with Magic Distributing advised that he has been in the gambling business for about 20 years. Approximately three months ago, he and five of the seven other people that work for Mr. Ed's Distributing in Bellingham received a phone call on a Monday saying that as of Thursday the business sold, and they were terminating staff by that Friday. Another distributor bought the business and put two of the remaining people in the field. Mr. Lowmon noted that in the 20 years working with his customers he developed quite a few personal relationships—they always relied on him to be the person to bring them their product. When he found out he was no longer employed, he was forced out of distributing because that was the closest distributor servicing Whatcom County, Skagit County, and Point Roberts. He also reported that he called Ed Finnegan, the sales rep at Trade, who advised him their credit department decided they were not going to take on any new distributors in the State of Washington even if they pay cash. He affirmed there are distributors who want products and they are willing pay cash.

Mr. Lowmon stated that his original proposal reads "access to devices, materials, products, equipment or services defined. All manufactures licensed in Washington State shall make their licensed product available to any licensed distributor without prejudice provided that the distributor is current in the agreed upon method of purchasing terms, wherein there is an established credit. However, if the distributor has not previously entered into a credit method and is purchasing C.O.D. or F.O.B. there will be no interference by the manufacturer with respect to inventories and distributors access to the same." When the proposal didn't get anywhere, he reported that he contacted the Attorney General via e-mail and asked them to look into the antitrust matter, and he waited. When he followed up on his request, the Attorney General's Office advised they had no record of it and they suggested he resubmit his proposal and his request to look into the antitrust complaint. Surprisingly, they found it and responded; they said this wasn't an antitrust issue. Mr. Lowmon indicated he resubmitted his request with the WAC regarding the grievance for buying self prohibited (WAC 230-12-230); and asked if his complaint wasn't indeed valid. At that point, they refered Mr. Lowmon back to the Gambling Commission, which resulted in the request for a new rule.

Addressing the WAC, **Mr. Lowmon** felt the first section of WAC 230-12-230 clearly says "no person shall enter into any agreement expressly or implied with any other person which prohibits any person from purchasing or selling to any person any devices, materials, parts, equipment or services which are used or offered in any way with any gambling activity." Mr. Lowmon emphasized this rule is important because it will protect manufacturers that may not sell to some distributors—perhaps due to some outside influence or for their own reasons. He indicated that some of the manufacturers don't want to lose business from their customers that buy more product volume. Mr. Lowmon stressed the importance for the manufacturers to have a tool that allows them to say, "Hey Mr. Big Distributor, the Gambling Commission says I have to sell to everybody and I don't need your pressure."

Don Harris - H & H Pull-Tab in Yakima advised he was one of the little guys "they" said was too small to sell too—apparently $800,000 worth of product a year was not enough for Trade. He reported that Trade, Paramount, and Douglas will not sell to him for any reason. As a result, he reported he lost over $140,000 by not being able to get his product. His salesmen apparently said that he couldn't talk about the issue, and the sales manager would not return Mr. Harris' calls. He emphasized that even the little guys have to have product. He expressed his belief this was a discriminatory practice. As a former law enforcement officer, it was also his opinion this was racketeering. Don Harris emphasized the Gambling Commission needed to do something about this issue—if not, why have a Commission, and he assured the Commission there will be federal suites initiated that might involve the Commission; because in his view the Commission was allowing the larger companies (Mr. Ed's, Gasperetti's, and ZDI) to break the antitrust laws and the Rico Act. He advised that he argued against repealing the rule in 2005 along with Danny McCoy and Jim Lowmon.

Chair Ellis acknowledged there were a number of pages of material that were submitted to the Commission and distributed in connection with this petition which involved a rather extensive discussion of what was and what was not the Commission's job. The Commission has concluded twice in the recent past that it is not. If in fact there is an agreement between distributors and a manufacturer to refuse to deal with other distributors—that is an antitrust violation, assuming other requirements are met. Chair Ellis explained that is a matter for which there are extensive antitrust remedies, including triple damages, attorney fees, and etc, and state agencies and federal agencies may pursue those remedies as well as private litigation. Regarding the Commission's decision to repeal the rule, Chair Ellis clarified his rational in voting in favor of previous limitations in this area of the Commission's responsibility--noting that the Legislature, at least arguably, has not authorized the Commission to get involved in this area and that it was not central to the Commission's mission. Chair Ellis affirmed that clearly the Legislature wants the Commission to deal with keeping organized crime out of gambling and keeping any criminal element out of gambling. However, the Legislature has not made it clear that the Commission should be involved in terms of dealing with business relationships between manufacturers, distributors, and operators. Chair Ellis noted that some of the other Commissioners felt very strongly that way, and there is background on the Commission's thinking.

Don Harris responded that he has talked to Alex Deccio, Jim Clements, and Mary Skinner, and they all agree with him. He reported that then Representative Clements was an ex officio member of the Commission, and, "he said that is bull, you can't be doing that stuff." Mr. Harris became argumentative stating the Commission should know this is discrimination; that it is violating people's civil rights, and that racketeering is involved. He emphasized that the Commission charges enormous fees and "now you want a raise, why should we pay you guys—I mean, you guys aren't earning it."

Senator Prentice affirmed that now "Senator" Clements was briefly on this Commission and left when then "Representative" Cheryl Pflug was appointed and she served out the rest of his term. She also reported that Senator Alex Deccio and Representative Mary Skinner were very good friends and have never had anything to do with this gambling issue. Senator Prentice advised Mr. Harris that if she were his senator, she would be extremely sympathetic; however, she agreed with Chair Ellis and made it clear there are laws and agencies that deal with those remedies. The applicable laws are not initiated by the Gambling Commission, and it was her understanding that the Legislature has never even attempted to include that responsibility upon the Commission. **Don Harris** disagreed, stating the Legislature leaves it up to the Gaming Commission because that is what the Commission is for. He reiterated that he brought this scenario to Alex Deccio and Jim Clements; and, while they have not gotten involved they are saying this is what the Commission's job is supposed to be. Mr. Harris demanded to know why the Commission even passed this law; and who the people were that were for and against the law.

Director Day responded that Commission staff proposed the change because it was staff's determination during the debate and after looking at the rules and laws, that the regulation of the business practice between the manufacturers and distributors was not the Commission's direct responsibility—there were other agencies that had a direct responsibility. Director Day assured Mr. Harris that if there was some threat of violence or some criminal practice going on behind the scenes of gambling, that may implicate something the agency is responsible for; however, at this point the Commission hasn't received any evidence that has occurred.

Chair Ellis advised Mr. Harris that he had his opportunity to speak. He asked Mr. Harris to please sit down so that any other citizens who would like to address this proposal could have the same opportunity—he then called for other public comments.

Evonne Laisure - a licensed distributor representative for over 10 years from the Bellingham area reported that she was also part of the people that were let go when Mr. Ed's dissolved. She advised that she was given 48 hours to relinquish her license and position. Ms. Laisure reported that she and other employees that were released had a base of customers for 10, 15, and 20 years; and none of the people released were prepared to be without a job in 48-hours. She commented that the staff released didn't know that "our company, Mr. Ed's had been taking part in business practices to work with other manufacturers and distributors to keep the small guy out." She advised that she was told by representatives and manufacturers that Mr. Ed's, ZDI, and Weill were all very instrumental in making compacts with each other to get rid of the smaller guy. **Ms. Laisure** thought that when a small company can't get products, it borderlines on criminal, especially when the licenses have been paid for and the licensees are operating legally. She emphasized the importance of having an equal opportunity to go to another distributor or even open a company of her own in the Bellingham area. Ms. Laisure explained she currently works for Magic Distributors and she reported that Douglas Press won't sell to Magic Distributors. She questioned who the licensees should go to in order to present this case, and how can they get products to sell. She said she felt like she was being forced out of business, and now she was beginning to feel like the Washington State Gambling Commission was becoming a part of that force to force her out of business. She reported the General Attorney's Office is referring the licensees back to the Gambling Commission and the Gambling Commission's response is that it isn't the Gambling Commission's responsibility. She inquired if there was there anything that could be done in order to help her stay in business.

Chair Ellis responded that contacting the Attorney General's Antitrust Division and contacting the Seattle Regional Office of the World Trade Commission would be the most immediate ways to determine whether or not the affected licensees have a case. He assured Ms. Laisure that the Commission was very sympathetic with the situation and the Commission was aware that the business world is a tough world. In reference to the people being out of business and in this situation being out of jobs, he affirmed everyone was sympathetic with that; however, at the same time the Commission must deal with a legal structure and an authorization from Legislature. He emphasized the

Gambling Commission does not have a universal band-aid to take on every conceivable problem in the gaming industry.

Chair Ellis explained that the Commission looked at this issue very carefully about a year ago and reached some clear cut understandings of the Commission's authority. He stated that in our economic system, companies that manufacture products are going to sell to companies that distribute the products. The basic understanding is that you don't need any laws to ensure that distributors get products because manufacturers can't make money making products and putting them in warehouses and not selling them to anybody. If there is a problem and the distributors aren't getting the product; for it to become an antitrust problem, it requires in classic province a conspiracy. An agreement classically between the manufacturer and a dominant distributor that the dominant distributor is going to be the only distributor in an area and to the exclusion of all others—and if that agreement can be proven, it may be an antitrust issue and the Attorney General's Office or the Federal Trade Commission should be willing to sit down and see whether it is something they believe they can pursue. Chair Ellis cautioned that these aren't easy cases. People aren't stupid. The manufacturers and dominant distributors don't enter into written contracts invariably, although in some cases they do. He explained that exclusive dealing arrangements can be lawful.

Chair Ellis advised this was a tough area and while the Commission was sympathetic, it is not something the Commission is mandated to deal with. **Ms. Laisure** responded that when powerful distributors get together and threaten and work with manufacturers to put the little guy out of business, she believed that did fall under the Commission's heading. **Chair Ellis** again responded that was an antitrust issue and the licensees should contact the Attorney General's Office, or the Federal Trade Commission, or perhaps the Antitrust Division of the Federal Department of Justice; and, to inform them that the Gambling Commission has responded to the effect that they have no jurisdiction in this matter. He then called for further public testimony.

Eleanor Coffey Owner, Magic Distributing referenced Case Report #2006-02016, noting that Special Agent, Jennifer Kapp talked to some of the manufacturers and they stated that they had credit issues with Magic Distributing. She suggested there might have been some confusion and went on to explain there used to be a company called Bingo Magic solely owned by Wayne Crumb. Ms. Coffey advised she was one of four employees that worked for Mr. Crumb, and when he closed that company in May of 2005, she started Magic Distributing in June of 2005. Ms. Coffey advised she owns Magic Distributing solely and there has never been a credit issue with Magic Distributing and her company has an excellent credit history. Ms. Coffey stated that she agreed with the comments offered by the other speakers today.

Chair Ellis inquired if anyone else in the audience would like to address this petition. Seeing none, he closed the public hearing. He asked if there was a motion concerning the proposal that the Commission accept for filing and further discussion, the petition

for the rule change. Hearing none, he announced the request for the Commission to accept the petition for the rule change for filing and further discussion will be denied, on the grounds that no Commissioner moved that the petition be accepted.

Assistant Attorney General Jerry Ackerman noted that Chair Ellis spoke at some length explaining the Commission's reasons regarding the proposed petition. The agenda packet also contains the minutes from the last two decision making hearings that were held on this topic. Mr. Ackerman noted that under the rules, the Commission is required to state the reasons for denying the petition even though there was no vote. The fact that no motion was made effectively denies the petition. He suggested that if any of the individual Commissioners wish to add to what Chair Ellis has already said, and to what is in the packet, they should do so. However, if the Commissioners wish to rely upon the Chair's comments and the information which is in the packet, then that is an option for them also. He affirmed the written minutes and the transcript of this hearing will serve as the writing that is required under the APA.

Commissioner Niemi responded that her comments have also been included in the packet in the other meetings. She emphasized that as sympathetic as she may be to the people who spoke regarding this matter, she firmly believed that this is not within the mission of the Gambling Commission. This matter has nothing to do with gambling—it has a lot to do with antitrust. She totally concurred with Chair Ellis that the Attorney General, the Federal Trade (FTA), and the U. S. Attorney should put in writing why they won't take this matter up because they are the agencies that should be involved in this issue.

Commissioner Bierbaum commented that she practices law and often times she will have clients that ask her to do something that she is not good at. It may be something that she just don't know enough about; and while they really need her help, she sends them somewhere else to somebody who knows more about that area of law. She explained that bankruptcy is a good example—it is very complicated and it is like antitrust where there aren't that many lawyers that are good at it. Commissioner Bierbaum emphasized that in this case, it isn't that the Commission doesn't want to help; it's just not something the Commission is charged with doing, and it is something the Commission isn't necessarily good at doing. The other organizations identified would be so much better suited to serve the affected licensees. The Commission's agents are not trained in this area, the Commission doesn't have the resources, and it's not within the Commission's central mission. She hoped the licensees didn't feel put off by this vote.

18. <u>Other Business/General Discussion/Comments from the Public/Adjournment:</u>
Chair Ellis called for public comments.

Dolores Chiechi Executive Director of the Recreational Gaming Association spoke to the proposal raised on Thursday to change the Commission's practice to generally have two public hearings on each proposed petition. She advised the RGA we would

like additional time to make some inquiries within their membership to determine a position of their organization, and to provide formalized comments regarding the proposed change; unless the Commission was looking to implement that change immediately. She noted the two month proposal may be acceptable as long as a petitioner may submit a request for extended time to have the three months in case there are arguments that may need to be brought up that aren't able to be covered during the two months period. She questioned whether the change would give the public enough time to be aware of an issue and develop their thoughts to come before the Commission with their input. Ms. Chiechi noted that under the proposed two months structure, it would give Commission staff more time than the public to present arguments to the Commission; whether it is in writing or verbally at the meetings, and she asked the Commission to consider that advantage.

Chair Ellis thanked Ms. Chiechi for her comments, and with no further public comments adjourned the meeting at 11:50 a.m. He announced the next meeting of the Commission will be February 8 and 9 at the Red Lion Hotel in Olympia.

Minutes submitted by,

Shirley Corbett
Executive Assistant