

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Revocation of the)
License to Operate Gambling Activities of:) NO. CR 2011-00996

Paul V. Botting)
Burlington, Washington,) **NOTICE OF ADMINISTRATIVE**
) **CHARGES, AND OPPORTUNITY FOR**
) **AN ADMINISTRATIVE HEARING**
Licensee.)
_____)

I.

The Washington State Gambling Commission issued Paul A. Botting license number 68-13942, authorizing Card Room Employee activity, formerly at Palace Casino in Lakewood.

The Commission issued this license, which expires on April 10, 2012, subject to the licensee's compliance with state gambling laws and Commission rules.

II.

Rick Day, Director of the Washington State Gambling Commission, charges the licensee with the following violations of the Washington State Gambling Act, 9.46 RCW, and WAC Title 230.

SUMMARY:

On September 7, 2011, the licensee, Paul A. Botting, was charged with one count of Cheating in the Second Degree. The charges are currently pending. The Lakewood Municipal Court issued a bench warrant for \$5,000 on September 27, 2011, for the licensee's failure to appear in court as directed.

FACTS:

- 1) On October 4, 2011, in the context of an ongoing investigation, Commission staff became aware that the licensee had been charged with Cheating in the Second Degree in the Lakewood Municipal Court.
- 2) A Commission Special Agent (agent) obtained and reviewed the court records related to Mr. Botting's criminal charges.
- 3) On September 7, 2011, the licensee was charged by Criminal Complaint in Lakewood Municipal Court with one count of Cheating in the Second Degree. The Complaint alleges that Mr. Botting did employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator, or did engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator, or did engage in any act, practice, or course of operation while participating in a gambling activity with the intent of

cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; in violation of RCW 9.46.1962(2).

4) On September 20, 2011, the licensee failed to appear for his scheduled arraignment. A bench warrant for \$5,000 was issued for the licensee's arrest on September 27, 2011.

5) Due to the nature of the incidents giving rise to the licensee's criminal charges, Commission staff began an independent investigation into the licensee's suitability for licensure on June 13, 2011, after management at the Palace Casino in Lakewood notified an agent, that the licensee was observed not following proper poker procedures.

6) On June 13, 2011, the agent contacted Brian Beck, General Manager of the Palace Casino by phone. Mr. Beck informed the agent that he had reviewed surveillance footage of the licensee dealing poker. Mr. Beck explained that in most large pots,¹ the pot should be raked² \$3.00 for the house,³ and \$2.00 for the Player Supported Jackpot⁴ (PSJ). Mr. Beck explained that the licensee was incorrectly raking \$7.00 instead of \$5.00 from large pots. The licensee would deposit \$3.00 each rake in the drop box⁵ for the house and deposited \$2.00 for the PSJ. However, an extra \$2.00 remained in the licensee's chip tray each time, causing a \$2.00 overage on each occasion.

7) Mr. Beck explained that a poker dealer's chip tray should always be balanced. The poker dealer is issued a chip tray at the beginning of each shift, with a total of \$500 in chips. During their shift, a dealer exchanges chips within their tray for different denominations of chips. Dealers may sell chips to players out of their chip tray as well, but the chip tray should always have a balance of \$500.

¹ The total amount staked by all the players in one hand at cards.

² **Rake** – Is the term for fees collected for play in a poker game, which are based on amounts wagered by the players during a hand. Per the internal controls, the rake may not exceed \$3.00 per hand or ten percent of the total wagers for a hand, whichever is less. These fees are collected by the dealer during the play of the hand and placed in a designated area of the table. Once the maximum fee for a hand is accumulated, the dealer is required to spread the chips or coins to allow players and the surveillance system the ability to verify the amount collected. After verification, the chips are to be deposited into the drop box.

³ The **house** is a term used for the card room or casino.

⁴ The **PSJ** is a separate contest of chance directly related to the play and outcome of the poker game. It is not a card game itself. The funding for the PSJ comes from the player's wagers. When the aggregate amount the players have wagered (the poker pot) reaches \$20, the pot then qualifies to have \$1 removed from the player's pot and dropped into the PSJ lock box that is secured to the poker table. The PSJ funds collected in the drop box are counted daily and deposited into a separate bank account. Any interest earned by the PSJ account is also returned to the players as prize payments.

⁵ **Drop Box** – A locked container affixed to the gaming table in which cash is placed when players buy chips or wager with cash at the tables.

8) Mr. Beck explained further that the licensee's improper actions caused an overage within his chip tray, because the licensee repeatedly took an extra \$2.00 throughout his shift. Mr. Beck said however, that when the licensee returned his chip tray at the end of his shift, the tray was balanced. Mr. Beck believed that the licensee was removing the overage from his chip tray when he moved from table to table, and that the licensee's actions had defrauded the card room and players of money.

9) An agent met with the following Palace Casino management on June 16, 2011, to begin an investigation: Brian Beck, General Manager, Lance Dodd, Poker Room Manager, Ed Robinson, Surveillance Manager, and Monty Harmon, Director of Compliance. The group reviewed surveillance footage of the licensee dealing poker, which reflected the improper practices described by Mr. Beck. The agent was advised that the licensee's actions had come to management's attention upon the advice of a casino surveillance observer named Jay Skinner.

10) The agent's review of surveillance showing the licensee dealing poker on June 10, 2011, reflected that the licensee improperly caused his chip tray to increase by \$2.00 on 26 occasions throughout his shift. The agent's review of the poker dealer's bank reconciliation from June 10, 2011, showed that the licensee did not report a tray overage after his shift.

11) The agent attempted repeatedly to contact the licensee by phone, and the licensee returned the agent's call on July 11, 2011. The agent informed the licensee that he needed to speak with him regarding incidents in the poker room at Palace Casino. The licensee responded that his employment at Palace Casino had been terminated.

12) On July 21, 2011, two agents met with the licensee in a conference room at the Commission Everett Field office. The agents informed the licensee that he was not under arrest, and was able to leave at any time. An agent also read the licensee his Miranda Rights. The licensee stated that he understood his rights and signed the waiver.

13) The licensee informed the agents that he had worked as a poker dealer and manager in the gambling industry since 2001. The licensee stated that he had worked at Palace Casino for five years.

14) In response to general questioning by the agent, Mr. Botting explained that when dealers begin their shifts at Palace Casino, they sign out their chip tray, and it has \$500 in chips in the tray. Mr. Botting explained further that although during the course of the day chips are exchanged for various denominations of chips or cash, the balance in the tray should always be \$500. At the end of the dealer's shift, the tray is returned to the pit podium and reconciled. Mr. Botting told the agent that each day when he was assigned his chip tray, he would put a piece of tape on the chip tray with his name on it, and that when he took breaks, the tray was secured in a cabinet behind the poker podium.

15) The agent asked Mr. Botting to describe the rake procedures for the poker room at Palace Casino. Mr. Botting replied that when the pot gets over \$30, the dealer takes \$3.00 for house revenue and \$2.00 for the PSJ. Mr. Botting explained further that dealers are supposed to exchange three \$1.00 white chips for a \$3.00 yellow chip, and deposit the yellow chip in the

revenue box. They are supposed to exchange two \$1.00 white chips for one \$2.00 blue chip and deposit it into the PSJ box each time.

16) The agent asked Mr. Botting if he ever made mistakes when depositing chips, and Mr. Botting replied in the affirmative, explaining that the drop box for the PSJ was on the same side as his toke⁶ box. Mr. Botting told the agent that he was very careful not to co-mingle his tokes with the PSJ rake.

17) The agent asked Mr. Botting if he knew why the agent had asked to speak to him, and Mr. Botting replied in the negative. The agent told Mr. Botting that it had been reported to Commission staff that he was taking too much money from the pot. Mr. Botting stated that he would never take money on purpose, and that if he had taken too much, it was an accident. Mr. Botting told the agent that he did not remember not depositing the PSJ rake and/or keeping the rake in his chip tray on any occasion.

18) The agent then asked Mr. Botting if he ever took overages for himself from his chip tray, and he stated "no." Mr. Botting stated that when he reconciled his chip tray each day, if there was a shortage, he was required to pay the difference with his own money. In the alternative, if there was an overage, chips were taken out and put in the podium for the main bank, and the chip tray was shown as balanced with no difference. The agent telephoned Palace Casino management to confirm this practice. Lance Dodd informed the agent that if there was an overage of approximately \$10 or less, the overage was placed in the podium, and the tray would be shown as balanced. Mr. Dodd explained further that sometimes the overage was then placed in the drop boxes.

19) Mr. Botting repeatedly denied purposefully taking overages on any occasion from Palace Casino upon further questioning from the agent.

20) After interviewing Mr. Botting, the agent returned to Palace Casino and reviewed additional surveillance coverage of the licensee dealing poker from June 11, 2011. The agent observed the licensee cause an overage in his chip tray another 26 times on June 11, 2011, resulting in another \$50 overage in his chip tray. Review of the imprest sign-out log reflected no overage for the licensee.

21) The agent telephoned the licensee and asked about his behavior on June 11, 2011. The licensee denied any intentional wrongdoing on that day, and stated that any improper procedures were the result of mistake on his part.

22) Based on his actions, Mr. Botting poses a threat to the effective regulation of gaming and enhances the chance of unfair illegal practices. He also has failed to establish by clear and convincing evidence the necessary qualifications for certification under RCW 9.46.153(1).

Therefore under RCW 9.46.075(1), (8), (9), and (10), and WAC 230-03-085(1) and (8), grounds exist to revoke Paul V. Botting's license.

⁶ Tokes are gratuity received by card room dealers from players or patrons

VIOLATIONS

RCW 9.46.075 Denial, suspension, or revocation of license, application, or permit

The Commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein: (The following subsections apply.)

(1) Has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the Commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any Commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control.

(8) Fails to prove, by clear and convincing evidence, that he is qualified in accordance with the provisions of this chapter.

(9) Is subject to current prosecution or pending charges, or a conviction, which is under appeal, for any of the offenses included under subsection (4)⁷ of this section: PROVIDED, That at the request of an applicant for an original license, the commission may defer decision upon the application during the pendency of such prosecution or appeal.

(10) Has pursued or is pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates probable cause to believe that the participation of such person in gambling or related activities would be inimical to the proper operation of an authorized gambling or related activity in this state. For the purposes of this section, occupational manner or context shall be defined as the systematic planning, administration, management or execution of an activity for financial gain.

WAC 230-03-085 Denying, suspending, or revoking an application, license or permit

We may deny, suspend, or revoke any application, license or permit, when the applicant, certified employee, or anyone holding a substantial interest in the applicant's or certified employee's business or organization:

(The following subsections apply.)

(1) Commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075.

(8) Poses a threat to the effective regulation of gambling, or creates or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities, as demonstrated by: (a) Prior activities; or (b) Criminal record; or (c) Reputation; or (d) Habits; or (e) Associations.

⁷ RCW 9.46.075(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude.

RCW 9.46.1961 Cheating in the First Degree

(1) A person is guilty of cheating in the first degree if he or she engages in cheating⁸ and:

- (a) Knowingly causes, aids, abets, or conspires with another to engage in cheating; or
- (b) Holds a license or similar permit issued by the State of Washington to conduct, manage, or act as an employee in an authorized gambling activity.

(2) Cheating in the first degree is a class C felony subject to the penalty set forth in RCW 9A.20.021. In addition to any other penalties imposed by law for a conviction of a violation of this section, the court may impose an additional penalty of up to twenty thousand dollars.

RCW 9.46.190 Violations Related to Fraud or Deceit

Any person or association or organization operating any gambling activity who or which, directly or indirectly, shall in the course of such operation:

- (1) Employs any device, scheme, or artifice to defraud; or
- (2) Make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made not misleading, in the light of the circumstances under which said statement is made; or
- (3) Engage in any act, practice or course of operation as would operate as a fraud or deceit upon any person;

Shall be guilty of a gross misdemeanor subject to the penalty set forth in RCW 9A.20.021.

WAC 230-15-335 Internal Controls

Class F licensees must establish internal controls that ensure gambling activities are closely controlled and operated fairly.

(1) The internal controls must require, at a minimum:

- (a) Trained personnel; and
- (b) Segregation of duties for all employees involved in the operation; and
- (c) Fee collection and funds safeguarding procedures; and
- (d) Playing card and chip inventory.

(2) Licensees must inform their card room employees of the internal controls related to the employees' respective areas of responsibility.

(3) Licensees and all card room employees must follow the internal controls at all times.

RCW 9.46.153(1) Applicants and licensees-Responsibilities and duties

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted.

⁸ **RCW 9.46.196 Cheating Defined** - (1) Employ or attempt to employ any device, scheme, or artifice to defraud any other participant or any operator; (2) Engage in any act, practice, or course of operation as would operate as a fraud or deceit upon any other participant or any operator; (3) Engage in any act, practice, or course of operation while participating in a gambling activity with the intent of cheating any other participant or the operator to gain an advantage in the game over the other participant or operator; or (4) Cause, aid, abet, or conspire with another person to cause any other person to violate subsections (1) through (3) of this section.

On September 7, 2011, Paul A. Botting, was charged with one count of Cheating in the Second Degree for activities that violate RCW 9.46.196. The charges are currently pending. The Lakewood Municipal Court issued a bench warrant for \$5,000 on September 27, 2011, for the licensee's failure to appear in court as directed.

By allegedly cheating at gambling, Mr. Botting pursued economic gain in an occupational manner or context, which is in violation of the criminal public policy of this state and creates probable cause to believe that his participation in gambling or related activities would be inimical to the proper operation of gambling or related activity in this state. Additionally, Mr. Botting failed to follow internal controls, in violation of WAC 230-15-335.

The licensee's pending criminal charges demonstrate that the licensee poses a threat to the effective regulation of gambling, creates, or increases the likelihood of unfair or illegal practices, methods, and activities in the conduct of gambling activities.

Mr. Botting has failed to establish clearly and convincingly that he is qualified for licensure, as required by RCW 9.46.153(1). As a result, there are grounds to revoke Paul A. Botting's license based on RCW 9.46.075(1), (8), (9), and (10) and WAC 230-03-085(1) and (8).

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STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of the document upon all parties to record in the proceeding by mailing a copy thereof, properly addressed with postage prepaid, by regular and certified mail to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington this _____ day of _____, 2011.

Washington State Gambling Commission
Communications and Legal Department

III.

Jurisdiction of this proceeding is based on 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and WAC Title 230.

The licensee will have the opportunity to have a hearing on the alleged violations.

In order to have a hearing or discuss settlement options, the enclosed request for hearing must be completed and returned to the Gambling Commission within 23 days from the date of the mailing of this notice.

Based on RCW 34.05.440, failure to return a request for hearing will result in the entry of a default order REVOKING your license.

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

Rick Day, being duly sworn on oath, says: That he has read this Notice of Administrative Charges and Opportunity for An Adjudicative Proceeding, knows the contents of it, believes it to be true, that he is the Director of the Washington State Gambling Commission, and in that capacity has executed said Notice.



Rick Day

RICK DAY, DIRECTOR

SUBSCRIBED AND SWORN TO before me
this 7th day of NOVEMBER, 2011.

[Signature]

NOTARY PUBLIC in and for the State of
Washington residing at PUYALLUP, WA
My Commission expires on 7/16/2013

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of the document upon all parties of record in the proceeding by mailing a copy thereof, properly addressed with postage prepaid, by regular and certified mail to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington this 7 day of NOVEMBER, 2011

Mauraen Prtelli

Communications and Legal Department
Washington State Gambling Commission