

STATE OF WASHINGTON
GAMBLING COMMISSION

In the Matter of the Summary Suspension of the)
License to Operate Gambling Activities of:) NO. CR 2011-01103
)
Dustin A. Hamilton) **FINDINGS OF FACT,**
Kennewick, Washington,) **CONCLUSIONS OF LAW,**
) **AND ORDER OF SUMMARY**
) **SUSPENSION OF LICENSE**
Licensee.)
_____)

RCW 9.46.070(17) authorizes the Washington State Gambling Commission (Commission) to summarily suspend¹ a license, subject to final action by the Commission. The Director has reviewed this Order of Summary Suspension and has issued it for service.

This order takes effect when served on Dustin A. Hamilton, his representative, or agent. A Commission Special Agent shall seize Dustin A. Hamilton's license and the licensee must stop conducting gambling activities.

FINDINGS OF FACT

I.

Rick Day is Director of the Washington State Gambling Commission and issues this order. Jurisdiction of this proceeding is based on chapter 9.46 RCW, Gambling, chapter 34.05 RCW, the Administrative Procedure Act, and Title 230 WAC.

II.

The Washington State Gambling Commission issued Dustin A. Hamilton license number 68-21631, authorizing Card Room Employee activity, at Crazy Moose Casino in Pasco. The Commission issued this license, which expires on August 29, 2012, subject to the licensee's compliance with state gambling laws and Commission rules.

III.

After a thorough review of the report by a Commission Special Agent about the facts in this matter, the Director accepts the report as true and has determined that the summary suspension is necessary.

¹ WAC 230-17-165 defines summary suspension as immediately taking a license or permit from a person or organization which prevents them from operating or conducting gambling activities.

IV.

SUMMARY:

On July 12, 2011, Dustin A. Hamilton, licensee, was charged with three counts of Delivery of a Controlled Substance - Marijuana. The charges are currently pending.

FACTS:

- 1) On August 15, 2011, the licensee renewed his Card Room Employee license and disclosed that on July 8, 2011, he was charged with “3 counts of controlled substance (marijuana).”
- 2) A Commission Special Agent obtained and reviewed the certified court records related to Mr. Hamilton’s criminal charges.
- 3) On July 12, 2011, the licensee was charged by Information in Benton County Superior Court with three counts of Delivery of a Controlled Substance - Marijuana. The Information alleges that Mr. Hamilton “did knowingly and unlawfully deliver a controlled substance, to wit: marijuana...”
- 4) On July 12, 2011, a Motion for Arrest/Detention (Probable Cause) was filed in Benton County Superior Court and alleges that probable cause exists to arrest Mr. Hamilton for the following:
 - a) A Confidential Informant (CI) conducted controlled purchases of marijuana from Mr. Hamilton at Mr. Hamilton’s residence with money that the CI received from the police.
 - b) The substance the CI purchased from Mr. Hamilton field-tested positive for the presence of marijuana.
 - c) On July 8, 2011, officers served a search warrant on Mr. Hamilton’s residence, and found \$3,280 in cash, which included two twenty-dollar bills that the CI used to purchase marijuana from Mr. Hamilton.
 - d) Mr. Hamilton was arrested and read his Miranda rights. When asked about cooperating with the police by acting as an informant, Mr. Hamilton said “I did the crime; I’ll do the time.”

CONCLUSIONS OF LAW

I.

- 1) **RCW 9.46.070** provides that the Commission shall have the following powers and duties: The Commission may authorize the Director to temporarily suspend licenses subject to final action by the Commission.

2) **WAC 230-17-165(2)** provides that the Commission delegates its authority to the Director to summarily suspend any license if the Director determines that a licensee has performed one or more of the actions identified in RCW 9.46.075 as posing a threat to public health, safety, or welfare.

3) **WAC 230-17-165(3)** The Commission deems the following actions of a licensee constitute an immediate danger to the public safety and welfare:

(The following subsections apply.)

(a) Failing or refusing to comply with the provisions, requirements, conditions, limitations, or duties imposed by chapter 9.46 RCW or any rules adopted by the Commission;

(f) Being subject to current prosecution or pending charges, or appealing a conviction, for any of the offenses included under (d)² of this subsection.

(i) Having pursued or 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.

On July 12, 2011, Dustin A. Hamilton, licensee, was charged with three counts of Delivery of a Controlled Substance- Marijuana. The charges are currently pending.

A CI allegedly purchased marijuana from Mr. Hamilton with money that the CI received from the police. When the police searched Mr. Hamilton's residence, they found that money in Mr. Hamilton's residence.

By allegedly selling marijuana to a CI, Mr. Hamilton 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 an authorized gambling or related activity in this state.

The licensee's actions constitute an immediate danger to public safety and welfare based on WAC 230-17-165(3)(a), (f), and (i) and are a basis for Dustin A. Hamilton to immediately stop conducting gambling activities.

4) **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

² WAC 230-17-165(3) (d) includes (vii) Any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude.

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)³ 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.

5) 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.

6) 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.

On July 12, 2011, Dustin A. Hamilton, licensee, was charged with three counts of Delivery of a Controlled Substance - Marijuana. The charges are currently pending.

A CI allegedly purchased marijuana from Mr. Hamilton with money that the CI received from the police. When the police searched Mr. Hamilton's residence, they found that money in Mr. Hamilton's residence.

³ 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.

By allegedly selling marijuana to a CI, Mr. Hamilton 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.

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. Hamilton 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 Dustin A. Hamilton's license based on RCW 9.46.075(1), (8), (9), and (10) and WAC 230-03-085(1) and (8).

II.

The licensee's actions are an immediate danger to public safety and welfare, and the licensee has failed to comply with chapter 9.46 RCW or Commission rules. The immediate suspension of Dustin A. Hamilton's gambling activity is required to protect public safety and welfare.

ORDER

Based on the FINDINGS OF FACT AND CONCLUSIONS OF LAW and the Director's authority under RCW 34.05.422, RCW 9.46.070(17), and WAC 230-17-165, the Director orders that Dustin A. Hamilton's license is summarily suspended, pending a formal hearing by an Administrative Law Judge.

STATEMENT OF RIGHTS

(1) **You may ask for a stay of this Order.** To do so, you must complete and return to the Commission the enclosed Application for Stay Hearing form within fifteen (15) days from the date you receive this Order. If the Commission receives a timely request, we will hold a hearing within seven (7) days as required by WAC 230-17-170(3). The stay hearing will determine if your suspension should continue, or whether the suspension may be modified.

At the stay hearing, you will have to prove by clear and convincing evidence that:

- (a) You will likely win at hearing; and
- (b) If your suspension continues, you will suffer serious injury. Under this section, loss of income from licensed activities is not considered serious injury; and
- (c) Removing the immediate suspension will not hurt others in this case; and
- (d) The threat to the public safety or welfare does not justify continuing the suspension, or that modifying the suspension will adequately protect the public.

(2) **You also have a right to a hearing on the revocation of your license.** To do so, you must complete and return to the Commission the enclosed Application for Hearing form within twenty (20) days from the date you receive this order. If you do NOT request a hearing, we will enter an Order of Default revoking your license under RCW 34.05.440.

