

DEC 07 2011

GAMBLING COMMISSION
COMM & LEGAL DEPTSTATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE GAMBLING COMMISSIONIn the Matter of the License to Conduct
Gambling Activities of:

DUSTIN A. HAMILTON,

Licensee.

OAH No. 2011-GMB-0044
GC No. CR 2011-01103FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND INITIAL ORDER**I. ISSUE**

- 1.1 Whether the Commission should revoke Mr. Hamilton's gambling license.

II. ORDER SUMMARY

- 2.1 The Commission shall revoke Mr. Hamilton's gambling license.

III. HEARING

- 3.1 **Administrative Law Judge:** Robert C. Krabill
- 3.2 **Licensee:** Dustin A. Hamilton
- 3.3 **Agency:** Washington State Gambling Commission (the "Commission")
- 3.3.1 **Commission Representative:** Stephanie U. Happold, AAG
- 3.3.2 **Commission Witness:** Special Agent Julie Sullivan
- 3.4 **Hearing Date:** November 21, 2011
- 3.5 **Hearing Location:** Gambling Commission Office, 4565 7th Avenue SE, Lacey, Washington
- 3.6 **Exhibits:** The Commission's Exhibits 1-6 were presented and admitted to the record. Mr. Hamilton's Exhibit 7 was presented and admitted on the day of hearing. Mr. Hamilton's Exhibit 8 was described at the hearing, but not filed until November 29, 2011. He mailed it on November 22, 2011. Though he filed it after the submission of documents deadline, I have admitted it anyway because I had not yet written the order and it only corroborates testimony in the hearing.

IV. FINDINGS OF FACT

I find the following facts more probable than not under the preponderance of the evidence standard, unless otherwise noted:

Jurisdiction

4.1 Mr. Hamilton currently holds a Public Card Room Employee gambling license. It is suspended pending the outcome of this hearing.

4.2 On January 7, 2011, the Director of the Commission issued a Notice of Hearing. The Notice alleged grounds for revocation of Mr. Hamilton's gambling license under RCW 9.46.075(1), RCW 9.46.075(9), RCW 9.46.075(10), WAC 230.03.085(8), RCW 9.46.075(8), and RCW 9.46.153(1).

Pending Charges

4.3 On July 12, 2011, the State of Washington charged Mr. Hamilton with three counts of delivery of marijuana in violation of RCW 69.50.401(2)(c), a class C felony. Information, July 12, 2011, *State v. Hamilton*, Benton Cy. Sup. Ct., Cause No. 11-1-00703-4, Exhibit 3. He subsequently entered a deferred prosecution through Benton County Superior Court's drug court program on October 12, 2011. Motion and Order for Drug Court, October 12, 2011, *State v. Hamilton*, Benton Cy. Sup. Ct., Cause No. 11-1-00703-4, Exhibit 8. The State has not dropped the charges, so the charges are still pending. If Mr. Hamilton successfully completes the drug court program, the State will dismiss the prosecution. *Id.*

4.4 On August 15, 2011, the claimant filed a CRE license renewal application with the Commission. In his renewal application, Mr. Hamilton accurately and honestly disclosed the pending charges. Renewal Application, August 15, 2011, Exhibit 2.

4.5 The Kennewick Police Department arrested Mr. Hamilton on July 8, 2011. Motion for Arrest/Detention, July 12, 2011, *State v. Hamilton*, Benton Cy. Sup. Ct., Cause No. 11-1-00703-4, Exhibit 4. At the arrest, Kennewick police officers offered Mr. Hamilton leniency in exchange for information about others. *Id.* He declined to "snitch" saying, "If I did the crime, I'll do the time." Testimony of Dustin Hamilton. Had Mr. Hamilton known nothing about marijuana dealing, he would have instead denied having any information to give. Because he was concerned about "snitching", he knew something he could "snitch" about. That knowledge implies association with the unauthorized delivery of marijuana business.

4.6 Kennewick Police used a confidential informant to buy marijuana from Mr. Hamilton on three occasions. Mr. Hamilton possessed some of the marked buy

money at the time of his arrest. Mr. Hamilton admits to making a "mistake" without clarification. Because (a) Mr. Hamilton admits making a "mistake" related to his arrest, (b) he is associated with the unauthorized delivery of marijuana business, and (c) he did not deny possession of the marked money shortly after a controlled buy, Mr. Hamilton engaged in the unauthorized delivery of marijuana as a business by a preponderance of the evidence.

4.7 Unauthorized delivery of marijuana as a business is a threat to the effective regulation of gambling. Case Report, September 14, 2011, Exhibit 1, p. 5. Because Mr. Hamilton engaged in that business, he is a threat to the effective regulation of gambling. *Id.*

V. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, I make the following conclusions of law:

Jurisdiction

5.1 I have jurisdiction over in this matter under RCW 9.46.140; Chapter 34.05 RCW and Title 230 WAC.

Revocation

5.2 The Commission may revoke a gambling license for any reason it deems to be in the public interest. RCW 9.46.075. Among those reasons is when a licensee has violated Chapter 9.46 RCW or the Commission's rules. RCW 9.46.075(1). The Commission may revoke a gambling license for any act that constitutes grounds for revocation under RCW 9.46.075. WAC 230-03-085(1). The Commission may revoke a gambling license when the licensee has pending charges for any of the offenses included under RCW 9.46.075(4). RCW 9.46.075(9). Those offenses include forgery, larceny, extortion, conspiracy to defraud, any crime involving gambling, any crime involving physical harm, and any crime "involving moral turpitude". RCW 9.46.075(4). The Commission may revoke a gambling license for committing crime as a business "if [the business] 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 Washington. RCW 9.46.075(10). The Commission may revoke a gambling license whenever the license fails to prove by clear and convincing evidence that he is qualified. RCW 9.46.075(8); RCW 9.46.153(1). Finally, the Commission may suspend or revoke a gambling license if the licensee poses a threat to the effective regulation of gambling. WAC 230-03-085(8).

Pending Charges

5.3 Here, the State filed charges against Mr. Hamilton on July 12, 2011 for three counts of delivery of marijuana in violation of RCW 69.50.401(2)(c), a class C felony. It has not yet dismissed those charges, and they remain pending. Those charges do not involve forgery, larceny, extortion, conspiracy to defraud, any crime involving gambling, or any crime involving physical harm. Conviction of delivery of marijuana provides grounds for automatic revocation only if it is a "crime...involving moral turpitude" under RCW 9.46.075(4).

5.4 In 1970, the Court of Appeals applied community standards and held that unauthorized "possession and sale of narcotics...is a crime which by its very nature involves 'moral turpitude.'" *State v. Hennings*, 3 Wn.App. 483, 489 (1970). The Legislature repealed the statute the Hennings defendant violated, former RCW 69.33.230, in 1971. RCW 69.50.606(3). Under the replacement statute, Chapter 69.50 RCW, "narcotic drug" is defined separately and exclusively of "marijuana". RCW 69.50.101(q), (r). Furthermore, Washington law has recently recognized marijuana smoke as a naturopathic treatment for several terminal or debilitating medical conditions. RCW 69.51A.010(6). Because (a) *Hennings* involved unauthorized possession and sale of heroin, (b) the law has changed to distinguish marijuana from the "narcotics" class of controlled substances, and (c) community standard have changed so far as to authorize naturopathic treatment with marijuana smoke, the rule in *Hennings* does not apply to marijuana possession, if it ever did. No other evidence or argument presented establishes delivery of marijuana as a crime of moral turpitude. Therefore, delivery of marijuana in violation of RCW 69.50.401(c) is not a crime of moral turpitude. Because it is not, the Commission cannot automatically revoke Mr. Hamilton's gambling license under RCW 9.46.075(9), even though he has pending charges for delivery of marijuana.

Committing Crime as a Business

5.5 As a core principle, the State seeks to exclude criminals from participation in licensed gambling. RCW 9.46.010. Because Mr. Hamilton engaged in a criminal business, he offended that principle. Because he engaged in a criminal business, his conduct provides probable cause to believe that his participation in license gambling would be inimical to the proper operation of authorized gambling. Therefore, the Commission may revoke his license under RCW 9.46.075(10).

Threat to Effective Regulation

5.6 As a criminal businessman, Mr. Hamilton poses a threat to the effective regulation of gambling. Therefore, the Commission may revoke his license under WAC 230-03-085(8).

Failure to Prove Qualification

5.7 Because of the multiple grounds for revoking Mr. Hamilton's license, he has failed to establish by clear and convincing evidence that he qualifies for a gambling license by clear and convincing evidence. Therefore, the Commission may revoke his license under RCW 9.46.075(8).

Failure to Comply with Chapter 9.46 RCW

5.8 Because of the grounds for revoking Mr. Hamilton's license under RCW 9.46.075(10) and WAC 230-03-085(8), he has violated the requirements and exceeded the limitations of Chapter 9.46 RCW and the Commission's rules. Therefore, the Commission may revoke his license under RCW 9.46.075(1) and WAC 230-03-085(1).

Conclusion

5.9 Because of the multiple separate grounds for revoking Mr. Hamilton's license, the Commission should revoke his license under RCW 9.46.075 and WAC 230-03-085.

VI. ORDER

IT IS HEREBY ORDERED:

6.1 The Commission shall revoke Mr. Hamilton's gambling license.

DATED at Olympia, Washington, this 6th day of December, 2011.



Robert C. Krabill
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

Under the Washington State Gambling Commission Rules, WAC 230-17-035 and WAC 230-17-090, you have twenty-three days from the date this initial order was mailed to file an appeal of this order known as a "petition for review". The petition for review should specify the parts of the initial order which you disagree with and should refer to the evidence in the record that supports your position. If you decide to petition for review, you must serve copies of your petition on all parties or their representatives at the same time you file it with the Gambling Commission. If a petition for review is not received by the Gambling Commission within 23 days of the date this initial order was mailed, the Commission will automatically adopt this order, and it will thereby become final.

Any party may file a written response to a petition for review, known as a reply. If you wish to file a reply, it must be filed with the Commission within thirty days of the date you are served with the petition. You must serve copies of the reply on all parties or their representatives at the same time you file your reply.

Any party may file a cross appeal. Cross appeals must be filed with the commission within ten days of the date when the petition for review was filed with the Commission, under WAC 230-17-090 and WAC 230-17-040. If you wish to make a cross appeal, you must serve copies of the cross appeal upon all other parties or their representatives at the same time you file your cross appeal.

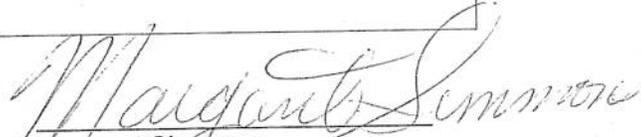
If a petition for review is timely filed with the Commission, then the Commission shall review the petition within 120 days after the petition is filed and render a final order.

Certificate of Service – OAH Docket No. 2011-GMB-0044

I certify that true copies of this document were served from Olympia, Washington on the following as indicated.

Address: Dustin A. Hamilton 2332 Howard Ave., Apt. C Everett, WA 98203	First Class Mail, Postage Prepaid
Address: Stephanie U. Happold Assistant Attorney General Office of the Attorney General PO Box 40100 Olympia, WA 98504-0100	First Class Mail, Postage Prepaid
Address: Washington State Gambling Commission PO Box 42400 Olympia, WA 98504-0100	First Class Mail, Postage Prepaid

Date December 6, 2011


Margaret Simmons
Legal Secretary