



STATE OF WASHINGTON
GAMBLING COMMISSION

"Protect the Public by Ensuring that Gambling is Legal and Honest"

July Gambling Commission Meeting Minutes

The Hotel Murano
1320 Broadway Plaza Tacoma, WA

Public Meeting

July 12, 2018

Commissioners Present:

Bud Sizemore, Chair
Julia Patterson, Vice Chair
Chris Stearns
Ed Troyer
Alicia Levy

Ex Officio Members Present:

Senator Steve Conway

Staff Present:

Amy Hunter, Deputy Director; Brian Considine, Legal and Legislative Manager; Julie Lies, Tribal Liaison; Julie Anderson, Executive Assistant and John Meader, Assistant Attorney General.

Executive Session Call to Order

Chair Bud Sizemore called the July Gambling Commission Meeting to order at 10:00 a.m. The Chair announced that they would be going immediately into Executive Session where they will discuss pending investigations, tribal negotiations and litigation for 1 ½ hours until 11:30. The remainder ½ will be dedicated to closed session to discuss stay of summary suspension matter and/or petition for declaratory order RCW 42.30.140 with an estimated time of completion of noon.

Public Session Call to Order

Chair Bud Sizemore called the Gambling Commission meeting to order at 12:25 p.m. after Executive Session and a short break. **Chair Sizemore** asked for a moment of silence to recognize law enforcement officers across the country that were lost in the line of duty since we last met.

Chair Sizemore welcomed everyone to the Hotel Murano and thanked everyone for coming. He introduced the commissioners and Ex Officio Senator Conway.

There were 47 people in attendance.

Tab 1

Consent Agenda:

Commissioner Patterson moved to approve the consent agenda as presented by staff.

Commissioner Stearns seconded the Motion.

The Motion passed. 5:0

Commissioner Patterson moved to approve the Snoqualmie Tribe and Cowlitz Tribe of Indians Class III Gaming Employees Certifications as presented.

Commissioner Levy seconded the Motion.

The Motion passed. 4:0

Commissioner Stearns abstained.

Tab 2

Petition for Review of Summary Suspension Initial Order

Chair Sizemore introduced Greg Rosen, Senior Counsel for the Washington State Attorney General's office. **AAG Rosen** representing the Gambling Commission staff in the case involving Gregory P. Means of Federal Way, license number 68-07011 and case number CR2017-01110. At the Gambling Commission's June meeting, Gregory P. Means requested a continuance, which the commissioners, based on the lack of availability of the counsel. Commissioner Troyer recused himself from the deliberations.

At the July Gambling Commission Meeting the Commissioners heard from **Bryan G. Hershman, Attorney at Law** for Gregory P. Means. He handed out four copies of a Declaration of Gregory P. Means and presented his case. AAG Rosen presented staff's case. The four Commissioners deliberated in a separate room. The Commissioners reconvened after 10 minutes.

Chair Sizemore explained that the Commissioners' review is to be limited to the record; therefore, they would not be considering the Declaration of Mr. Means. He explained the Commissioners' decision is to uphold the ALJ's initial order denying Gregory Means' request to stay the summary suspension of his Public Card Room Employee License based on the record and findings in the initial order.

He explained that Commissioner Troyer recused himself.

Tab 3

Defaults

Staff Attorney, Haylee Mills presented the default materials.

1) Jordan S. Hjorth, CR 2018-00405, Class III Employee Certification Revocation.
Chair Sizemore asked if Mr. Jordan S. Hjorth was in the audience. He was not.

Commissioner Patterson moved to revoke the Class III Certification for Jordan S. Hjorth.

Commissioner Levy seconded the Motion.

The Motion passed. 4:0

Commissioner Stearns abstained.

2) Loren G. Maxey, CR 2018-00263, Public Card Room License Revocation.
Chair Sizemore asked if Mr. Loran G. Maxey was in the audience. He was not.

Commissioner Levy moved to revoke the Public Card Room License for Mr. Loren G. Maxey.

Commissioner Patterson seconded the Motion.

The Motion passed. 5:0

Tab 9

Petition for Declaratory Order- Big Fish

Legal and Legislative Manager Brian Considine presented the materials for this tab. Mr. Considine gave a brief overview of the Kater v. Churchill Downs Ninth Circuit Court of Appeals case that led to the petition coming before the Commission. Churchill Downs, Inc. previously owned Big Fish Games online casino website and the Ninth Circuit found that the allegations made by the Plaintiff Ms. Kater met the definition of gambling under Washington State's definition of "thing of value." The Ninth Circuit sent the case back to federal district court in Seattle for further action and the case is not finished yet. Mr. Considine identified that the petition asks the Commission to issue a declaratory order finding its games are not gambling under Washington State law. There were two letters in support of the petition and one letter opposing the petition asserting that Ms. Kater is a necessary party to this petition, and she does not consent to the Commission issuing a declaratory order.

Ms. Beth Brinkman from Covington & Burling LLP, represented the petitioner, Big Fish Games. Ms. Brinkman gave a summary of the petition, and addressed the three letters that were filed. The commissioners received a copy of these letters in their packets. She explained that the declaratory order confirms that Big Fish Games, Casino Games are not gambling because their virtual tokens cannot be redeemed for real money, they have no real world value and their terms of use expressly prohibit the transfer or resale for commercial gain.

Commissioner Troyer asked a series of questions related to the game play, ability to purchase more virtual chips/tokens, and the ability for minors to play these games. Commissioner Troyer mentioned that he and the other commissioners would like to learn more about this before making a decision. He suggested a couple months to learn more about this process before any decisions are made.

Commissioner Stearns asked how long these games have been in existence, and has any other jurisdictions had any issues with them. Ms. Brinkman explained that in 2013 these social games were already in circulation. **Senator Conway** asked if Ms. Brinkman was aware that the Washington State Legislature has been looking at this issue for some time and has not taken action on it. He also wanted to know what other states are doing regarding social online gaming and what states have taken any kind of action on this as a legislature. **Chair Sizemore** asked for clarification on the letter where the plaintiff lost thousands of dollars and was unable to recover.

Mr. Considine thanked the commissioners for their time and consideration on this matter. Chair Sizemore called for public comment.

Public Comment

Alexander Tievsky, counsel for Cheryl Kater addressed the commission. He stated the reasons why they sued Churchill Downs is because they used to own Big Fish. Big Fish has since been sold to an Australian gambling machine manufacturer for \$950 million. Mr. Tievsky said that his client, Ms. Kater, lost more than \$10,000 playing this game. Also, another client Adrian Benson from Spokane, Washington lost \$3,000 playing a similar game. He explained that these games are extremely addictive. He gave the commissioners a name of a book on addictive behaviors called Addiction by Design. In closing he offered to answer any questions the commission has. Commissioner Stearns asked Mr. Tievsky to clarify an earlier statement which he indicated that the game manufacturer designed this game to be addictive. Mr. Tievsky answered, yes,

absolutely. Commissioner Stearns asked if he thought the slot machines are designed to addictive too. Mr. Tievsky answered yes, that the company that owns Big Fish Casino makes slot machines. It's the same. Same people, same science.

Cyrus Ansari, from Davis Wright Tremaine representing Mr. Joe Sigrist, General Manager of DoubleDown Interactive. DoubleDown is a video game development company, headquartered and incorporated in this state, and they make social online games similar to the Big Fish games. Mr. Sigrist gave a brief comment. He explained that he has been in the industry for 10 years and is located in the Seattle area and would like to offer his company and staff as a resource for the commission if they want it.

Commissioner Troyer asked about the types of games at DoubleDown Casino. Mr. Sigrist explained that at DoubleDown Casino, they offer casino-style games such as, poker, video poker, blackjack, and slots. As is the case with this industry, slots is the predominantly played game within the category worldwide. He says that it's a \$4 billion category, mobile and online gaming category worldwide, and a large percentage of that comes through the play of slots which seem to be exciting for players to play online. He also said that there are no specific limits.

Mr. Considine reiterated to the commissioners their options under the Administrative Procedure Act and agency rule, including that a decision did not need to be made today. **Chair Sizemore** announced that the commissioners would be in deliberation now and will return in 10-15 minutes.

Chair Sizemore announced that in the matter of the petition of Big Fish Games Inc. for a declaratory order, the commissioners will be signing an order continuing review of the petition for declaratory order. He explained the order would state: this petition came on for review before the undersigned commissioners of the Washington State Gambling Commission at the commission's regular scheduled meeting on July 12th in Tacoma, Washington. The commission reviewed and considered the petition, comments by the petitioner and staff, and any written or oral comments by the public. The commission finds that it needs additional time to review the petition and allow for additional public comment, therefore, it is ordered that review of the petition for a declaratory order in this matter be continued and scheduled for further review and consideration at the Washington State Commission's August 9th and 10th, 2018 commission meeting in Pasco, Washington. Chair Sizemore stated that if anyone is interested in providing any additional information to the commission they have until the week before the commission meeting, August 2-3, 2018. They can submit their information to Brian Considine.

Tab 4

Cowlitz Indian Tribe Phase II

Deputy Director Amy Hunter introduced Special Agent Keith Kam. SAS Kam introduced himself and he introduced members of the Cowlitz Tribal Indian Council that were in the audience. Council member, Katherine Iyall-Vasquez; Chair of the Cowlitz Tribal Gaming Commission, Chair Jerry Iyall; Public Safety Director and Commissioner, Don Walkinshaw Sr.; Treasurer, Greg Ford; Attorney Ed Fleisher; representatives from the Cowlitz Tribal Gaming Agency: Executive Director Dick Kellogg, Assistant Director Paul Dasaro, and Assistant Director Kim VanCleave. From the ilani operations Kara Fox-LaRose, who is the President and General Manager, and Jeff Walker, Vice President of Gaming at ilani Casino. He also introduced Special Agent Adam Carolus, the lead agent assigned to the Phase II review. SAS Kam

introduced the Chairman of the Cowlitz Indian Tribe, Chairman Bill Iyall, to make his presentation.

Senator Conway asked how many people are employed at ilani Casino. Chairman Iyall stated that there are 1150 approximately in ilani operations, and then another approximately 300 in the restaurants that are in ilani, and the tribe owns three of those restaurants. They are approaching 1500 employees in that facility.

Commissioner Stearns said that ilani Casino is really doing amazing things and he thanked Chairman Iyall for his good work.

Commissioner Levy moved to approve the Cowlitz Indian Tribe to continue operating Phase II limits as presented by staff.

Commissioner Troyer seconded the motion.

The motion passed 5:0

Tab 5

FY 2019 Budget Revisions

Deputy Director, Amy Hunter introduced Budget Specialist, Cam Dightman. Mr. Dightman presented the materials for this tab. The commissioners didn't have any questions for Mr. Dightman.

Commissioner Levy moved to approve the FY 19 Budget Revisions as presented by staff.

Commissioner Troyer seconded the motion.

The motion passed 5:0

Tab 6

Electronic Gaming Lab Presentation

Deputy Director, Amy Hunter introduced the Lab Administrator, Melissa Valencia. Ms. Valencia presented the materials for this tab. Ms. Valencia explained that the Electronic Gambling Lab is a sub-unit of the Washington State Gambling Commission's IT department. The lab is the unit responsible for technical evaluation and analysis of electronic gambling equipment. They are the agency's subject matter experts on electronic gaming. The Lab continues to improve their processing time for submissions. She shared that James Maida, the founder of Gaming Laboratories, Inc., an independent testing lab, said that the Commission's testing lab processes submissions more quickly than any other regulatory agency.

Senator Conway asked specifically about testing equipment and identifying that equipment can also be software. Ms. Valencia explained that the Lab tests the equipment/software to make sure the payouts reach is meeting the state requirements.

Chair Sizemore asked about overtime, to which Ms. Valencia replied there hasn't been any overtime lately.

Tab 7

Tribal Compact Contribution Presentation

Deputy Director Amy Hunter introduced Special Agent Supervisors Dan Wegenast and Kelly Main. She also introduced Agent in Charge of the Tribal Gaming Unit, Cathy Harvey in the audience. SAS Wegenast explained the Tribal-State Compacts require certain contributions by the tribes for community impact, charitable problem, problem gambling and smoking cessation. The Tribal Gaming Unit's staff works with the tribes and verifies the numbers that are contributed every year. SAS Wegenast shared information about the community impacts as well

as the charitable contributions. SAS Main covered the smoking cessation/ problem gambling contributions. They shared examples of the organizations that had received these funds and the total amounts contributed.

Tab 8

Legislative Update /Agency Request Legislation

Legal and Legislative Manager Brian Considine presented the materials for this tab. At the July 2018 commission meeting, commissioners discussed six possible topics for agency request legislation. The six topics that were discussed are:

- Problem Gambling Self-Exclusion Program;
- Problem Gambling Task Force;
- Problem Gambling Prevalence Study;
- Skins/Loot Boxes;
- Involuntary Exclusion from Gambling Establishments for People who Commit Certain Crimes or Acts (suggested by staff); and
- General Fund appropriation for Gambling Commission's criminal enforcement activities.

After the discussion, the majority of the remaining commissioners agreed to not file agency request legislation for the 2019 legislative session. Commissioner Stearns stated his continued preference for a problem gambling study. Commissioners Patterson and Levy were not at the meeting during the agency request legislation discussion so Mr. Considine agreed to speak with them regarding the six topics to see if they wished to move any of them forward during the 2019 legislative session.

Other Business/General Discussion/Public Comment

Commissioner Stearns announced that July 31, 2018 would be Ann Gray's last day with the Department of Social and Health Services, Behavioral Health. She will be going back into the education system, working on a dual language program that includes Latino-Hispanic programs for students.

Victor Mena, President of the RGA and Chief Operating Officer for the Washington Gold Casinos, said he wanted to share some thoughts about the self-exclusion bill discussion. He said that even if the tribal governments decide to participate, the fact that you have so many pull-tab licenses is challenging, especially with the technology piece. He explained a lot of the tavern owners might not have the wherewithal to bring in that equipment. He said he hoped that there is some serious consideration as to how this would be funded from the commission. If there were a possible funds sweep from forfeiture, etc. that would be a big challenge. He said this was just some commentary to think about.

Chair Sizemore reminded the audience that the next Commission Meeting will be held at the Holiday Inn Express, in Pasco, Washington.

Public Comment

There was no public comment.

The Commission meeting adjourned at 4:30 pm.