

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Welcome Inn/Lounge,

Licensee/Appellant.

Docket No. 12-2019-GMB-00141

INITIAL ORDER

Agency: Washington State Gambling Commission

Program: License Fees & Reports

Agency No. CR 2019-02087

1. ISSUES

- 1.1. Did Welcome Inn/Lounge, License No. 05-09855, fail to timely submit quarterly license reports and quarterly license fees within thirty days following the end of third quarter 2019, ending September 30, 2019, or during the additional thirty-day late filing and payment period, in violation of WAC 230-05-124 and WAC 230-05-132(1)?
- 1.2. If so, what costs, fees and/or penalties are owed?
- 1.3. Is the Washington State Gambling Commission authorized to revoke Welcome Inn/Lounge's license pursuant to RCW 9.46.075(1), WAC 230-03-085(1) and (5)?

2. ORDER SUMMARY

- 2.1. The Washington State Gambling Commission's Notice of Administrative Charges, issued December 17, 2019, CR 2019-02087, is REVERSED.
- 2.2. Welcome Inn/Lounge's License No. 05-09855 became void under WAC 230-06-108(6), upon the sale of its business on June 29, 2019. For this reason, Welcome Inn/Lounge did not fail to submit quarterly license reports and fees due on or before October 30, 2019 pursuant to WAC 230-05-124(6), and is not subject to sanctions, including revocation of its license under WAC 230-05-132(1).
- 2.3. Welcome Inn/Lounge is not liable for any late filing fees under WAC 230-05-132(2).
- 2.4. Welcome Inn/Lounge is not entitled to attorney fees under RCW 4.84.185 or RCW 4.84.250.

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3. HEARING

- 3.1. Hearing Date: March 25, 2020
- 3.2. Administrative Law Judge: Jane Cantor Shefler
- 3.3. Licensee: Welcome Inn/Lounge
 - 3.3.1. Representative: Jordan Jones, Attorney at Law
 - 3.3.2. Witness: Kevin Bradshaw
- 3.4. Agency: Washington State Gambling Commission
- 3.5. Representative: Doug Van de Brake, Assistant Attorney General
- 3.6. Exhibits: Gambling Commission Exhibits 1 through 9 and Licensee Exhibits A – N were admitted.
- 3.7. Other: This hearing was conducted as a brief adjudicative proceeding under RCW 34.05.485 and WAC 230-17-150(5).

4. FINDINGS OF FACT

I find the following facts are undisputed:

Jurisdiction

- 4.1. The Washington State Gambling Commission (“Commission”) brought administrative charges, alleging Licensee Welcome Inn/Lounge (“Licensee” or “Welcome Inn”), holder of gambling license 05-09855, failed to timely submit quarterly license fees and quarterly license reports within thirty days following the end of the third quarter of 2019 (“Q3/19”), or within the additional thirty-day late filing and payment period.
- 4.2. The Commission referred the matter to the Office of Administrative Hearings to assign an administrative law judge to conduct a brief adjudicative proceeding hearing (BAP) as provided under Washington Administrative Code (WAC) 230-17-150(5).
- 4.3. The Commission served notice of the January 8, 2020 BAP on December 16, 2019.
- 4.4. The BAP was twice continued to allow the Licensee to obtain counsel and to provide counsel sufficient time to prepare for hearing. The hearing took place as rescheduled on March 25, 2020.

Failure to submit quarterly license reports and license fees

- 4.5. Licensee The Welcome Inn/Lounge is located in Hoquiam, Washington and, until June 29, 2019, was owned and operated Kevin and Carla Bradshaw. Licensee holds a gambling license for Commercial Punch Board/Pull-Tabs under License No. 05-09855. This license expires on March 31, 2020.
- 4.6. On June 27, 2019, Mr. Bradshaw informed a Commission representative of the impending sale of the business. *Exhibit 5; Testimony of Kevin Bradshaw ("Bradshaw Testimony")*.
- 4.7. On June 28, 2019, Barbara Pratt obtained a Commercial Punch Board/Pull-Tabs license, No. 05-21622, for the Welcome Inn premises. *Exhibits D – E*. The Commission did not cancel or void License No. 05-09855, when it issued a license to Ms. Pratt. However, the Commission marked License No. 05-09855 as "out-of-business" effective June 28, 2019, when it "issued a new license to a new entity at the same premises per WAC 230-06-108." *Exhibit 3, page 3*.
- 4.8. The business was sold to Ms. Pratt, effective June 29, 2019. *Exhibits H & I; Bradshaw Testimony*.
- 4.9. On July 14, 2020, Licensee's accountant, Steve Burley, filed the quarterly report due for the period of April 1 – June 30, 2019 ("Q2/19"). *Exhibit 4, page 4*. Licensee considered this to be the last report due, as the business had been sold prior to the beginning of the Q3/19. *Bradshaw Testimony*.
- 4.10. Beginning September 30, 2019 through October 25, 2019, the Commission sent several emails to the Licensee and its accountant, reminding them to file the quarterly report and fees for Q3/19. The emails were sent to the Licensee's and the accountant's email addresses of record. *Exhibits 6 – 8*. The Commission also mailed a letter dated October 31, 2019, again reminding the Licensee that its quarterly report for Q3/19 was past due. The letter was mailed to the Licensee's mailing address of record. *Exhibit 9*.
- 4.11. The quarterly report for Q3/19, under License No. 05-21622 issued to Ms. Pratt, was timely filed on October 12, 2019. *Exhibit F*.
- 4.12. On January 27, 2020, Licensee submitted a quarterly report for Q3/19 under License No. 05-09855. *Exhibit A*.

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5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter of this case under chapter 34.05 Revised Code of Washington (RCW), chapter 9.46 RCW and WAC 230-17-151(e).

Pertinent Laws and Regulations

- 5.2. Beginning July 1, 2018, all organizations licensed by the Commission must submit activity reports quarterly, regardless of whether they previously submitted reports annually, quarterly or semi-annually, and regardless of when their permit or license year ends. WAC 230-05-102.
- 5.3. For the period of July 1 through September 30, activity reports and quarterly license fees must be received by the Commission no later than October 30. WAC 230-05-102; WAC 230-05-124. Reports must be submitted "for any period of time the license was valid, even if there was no gambling activity or the gambling license was not renewed." WAC 230-05-124(6). A quarterly license report must be filed even if the business is closed. WAC 230-05-125(2)(f). Quarterly license fees must also be submitted on the same schedule, with the report, if due. WAC 230-05-124.
- 5.4. Licensees are afforded one thirty-day filing and payment period after their quarterly license reports and quarterly license fees are due. However, a twenty-five dollar fee will be charged for each day a licensee fails to file a quarterly license report or pay quarterly license fees during the thirty-day late filing and payment period. WAC 230-05-132(2).
- 5.5. Licensees who do not file their quarterly reports and/or pay quarterly license fees within thirty days from the end of each quarter are in violation of WAC 230-05-132(1).
- 5.6. WAC 230-06-108 provides that all gambling licenses held by an entity become void upon certain changes in ownership, including when the business is sold. WAC 230-06-108(6). A separate license must be obtained by the new owners before any gambling activities can take place at the premises.

Applicability of WAC 230-06-108(6)

- 5.7. Licensee argues that, pursuant to WAC 230-06-108(6), License No. 05-09855 became void upon the sale of its business effective June 29, 2019. Because the license was void, it no longer was required to submit quarterly reports for the

period between the date of sale and the expiration of the license on March 31, 2020.

- 5.8. In response, the Commission argues that WAC 230-06-108 voids a license only as to the operation of gambling activities upon the sale of a business, but does not exempt the licensee from the requirement to file quarterly licensee reports pursuant to WAC 230-05-124(6).

Statutory Interpretation

- 5.9. Resolution of this matter turns upon the meaning and application of the word “void” as it is used in WAC 230-06-108 and the relationship between that regulation and WAC 230-05-124.
- 5.10. The Commission is entitled to deference as to the construction and implementation of regulations it has adopted and statutes it is charged with enforcing. *Puget Sound Soundkeeper Alliance v. State, Pollution Control Hearings Board*, 189 Wn. App. 127, 136, 356 P.3d 753 (2015). A court will “accord great weight” to the agency’s interpretation of a statute which falls within the agency’s expertise, provided it does not conflict with the statute’s language or underlying intent. *Id.*
- 5.11. In interpreting a statute, the fundamental objective of judicial review is to “ascertain and carry out the Legislature’s intent, and if the statute’s meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” *Dep’t of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-11, 43 P.3d 4 (2002); *City of Spokane v. Spokane County*, 158 Wn.2d 661, 672-73, 146 P.3d 893 (2006). *In the Matter of the Transfer of Territory*, 130 Wn. App 806, 811, 125 P.3d 2018 (2005), the court found:

Our Supreme Court’s preferred approach to statutory interpretation is to discern the plain meaning of a statute not from each word considered in isolation but rather in context, from “all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question.” The statute is ambiguous if, after this inquiry, it remains susceptible to more than one reasonable meaning. Only at that point is it appropriate to resort to aids to construction, including legislative history. This approach ensures that the court will give appropriate deference to a statute. A court should not be hasty in finding an ambiguity because the result may be a construction of the statute that does not accurately reflect legislative intent. *[Citations omitted]*.

Analysis

- 5.12. Although the Commission is entitled to deference in the interpretation of its regulations, in this instance, it failed to differentiate the license reporting requirements when a business is sold (WAC 230-06-108) and when a business no longer conducts gambling activities under a valid license (WAC 230-05-124).

- 5.13. WAC 230-06-108 concerns the effect on a licensee with a change in ownership structure, including the sale of a business. As noted above, the Commission argues that, under WAC 230-06-108, a license becomes void only as to the operation of gambling activities at the licensed premises upon a change in ownership structure. However, the regulatory language makes no such distinction. The regulation is unambiguous: “All gambling licenses held by a business *will become void* when [certain] changes in ownership occur and a new license must be obtained before operating any gambling activities.” *Id.* (*Emphasis added.*)
- 5.14. The ordinary meaning of the word “void” in a legal context is “not valid or legally binding or enforceable” or “having no legal force or effect: null.” See, <https://www.dictionary.com>; <https://www.merriam-webster.com/dictionary/void>; <https://www.lexico.com/definition/void>.
- 5.15. Applying the plain meaning of the word “void” to this matter, under WAC 230-06-108(6), the Licensee’s License No. 05-09855 became invalid, with no legal force or effect, upon the sale of its business on June 29, 2019.
- 5.16. As of June 28, 2019, when the Commission issued a license to the prospective new owner, it changed the Licensee’s status to “out-of-business” pursuant to WAC 230-06-108. However, the regulation does not make any reference to an “out-of-business” status.
- 5.17. Under WAC 230-05-124(6), Licensee must submit quarterly reports “for any period of time the license was valid, even if there was no gambling activity or the gambling license was not renewed.” Here, License No. 05-09855 was no longer valid effective June 29, 2019 and thus, the Licensee was not required to submit quarterly license reports after the date of sale pursuant to WAC 230-05-102.

Attorney Fees

- 5.18. The Licensee argues it is entitled to attorney fees pursuant to RCW 4.84.250, which provides for the award of attorney fees to the prevailing party in any civil action where the amount pleaded for damages is less than \$10,000. The Licensee further argues that the Commission’s attempt to impose late filing fees upon the Licensee is similar to a “money grab” and the issuance of the Notice of Administrative Charges constitutes a frivolous claim.
- 5.19. RCW 4.84.185 concerns the recovery of expenses for opposing a frivolous action or defense:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of

attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense.

- 5.20. In an administrative proceeding, attorney fees may be awarded only if authorized by a specific statutory or regulatory provision. There is no general provision for the award of attorney fees pursuant to the Adjudicative Proceedings sections of the Administrative Procedure Act (APA). RCW 34.05.410 *et seq.*
- 5.21. The only reference to frivolous petitions in the APA is within the context of judicial review and civil enforcement. RCW 34.05.598 provides: "The provisions of RCW 4.84.185 relating to civil actions that are frivolous and advanced without reasonable cause apply to petitions for judicial review under this chapter."
- 5.22. The Licensee has not provided any statutory or regulatory authority allowing for the award of attorney fees in matters of this kind. RCW 4.84.185 and RCW 4.84.250 are not applicable to adjudicative proceedings under the APA.

6. INITIAL ORDER

IT IS HEREBY ORDERED:

- 6.1. The Washington State Gambling Commission's Notice of Administrative Charges, issued December 17, 2019, CR 2019-02087, is REVERSED.
- 6.2. Welcome Inn/Lounge's License No. 05-09855 became void under WAC 230-06-108(6), upon the sale of its business on June 29, 2019. For this reason, Welcome Inn/Lounge did not fail to submit quarterly license reports and fees due on or before October 30, 2019 pursuant to WAC 230-05-124(6), and is not subject to sanctions, including revocation of its license under WAC 230-05-132(1).
- 6.3. Welcome Inn/Lounge is not liable for any late filing fees under WAC 230-05-132(2).
- 6.4. Welcome Inn/Lounge is not entitled to attorney fees under RCW 4.84.185 or RCW 4.84.250.

Issued from Tacoma, Washington on the date of mailing.



Jane Cantor Shefler
Administrative Law Judge
Office of Administrative Hearings

APPEAL RIGHTS – PLEASE READ CAREFULLY

PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this initial order. WAC 230-17-152(1). The written petition for review must be mailed to the Washington State Gambling Commission at:

Washington State Gambling Commission
PO Box 42400
Olympia, WA 98504

The petition for review must be received by the Commission within twenty-one (21) days from the date this initial order was mailed to the parties. WAC 230-17-152(2). A copy of the petition for review must be sent to all parties of record. WAC 230-17-152(4). The petition for review must specify the portions of the initial order with which the party disagrees, and must refer to the evidence in the record which supports the party's position. The petition for review must contain any evidence or written material relevant to the matter that the party wishes the reviewing officer to consider. WAC 230-17-152(3).

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 12-2019-GMB-00141

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

<p>Welcome Inn/Lounge c/o Kevin Bradshaw 921 W. Whishkah St. Aberdeen, WA 98520 Appellant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Marianne K. Jones Jordan E. Jones Smythe & Jones PLLC 400 112th Ave NE, Suite 200 Bellevue, WA, 98004 Appellant Representatives</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail jej@smythejones.com</p>
<p>Ashlie Laydon Washington State Gambling Commission MS: 42400 PO Box 42400 Olympia, WA 98504 Agency Contact</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Doug Van de Brake, AAG Office of the Attorney General P.O. Box 40100 MS: 40100 Olympia, WA 98504 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Chad Standifer, AAG Office of the Attorney General P.O. Box 40100 MS: 40100 Olympia, WA 98504 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Cheri Jackson Washington State Gambling Commission P.O. Box 42400 MS: 42400 Olympia, WA 98504 Agency Contact	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
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Date: Thursday, April 02, 2020

OFFICE OF ADMINISTRATIVE HEARINGS



Carla Sullivan
Legal Assistant 2