



**STATE OF WASHINGTON
GAMBLING COMMISSION**

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

May 3, 2022

John McNutt
109 Massey St Lot 33
Denton, TX 76205

4212 Galena St SE
Lacey, WA 98503

Subject: Final Order in CR 2021-00215

Dear John McNutt,

Administrative Law Judge Terry Schuh issued an Initial Order in CR 2021-00215 (Docket No. 06-2021-GMB-00181) on April 11, 2022 affirming the Gambling Commission's denial of your gambling license application.

A Petition for Review needed to be received by the Gambling Commission within twenty days from the date the Initial Order was issued. No Petition for Review was received; therefore this Initial Order is now a Final Order and your gambling license application is denied as of May 3, 2022.

If you have any questions concerning this matter, you may contact Adam Teal, Staff Attorney at by phone at (360) 486-3475 or by email at adam.teal@wsgc.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashlie Laydon".

Ashlie Laydon, Rules Coordinator
Licensing, Regulation, and Enforcement

Enclosures

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Docket No. 06-2021-GMB-00181

John H. McNutt,

INITIAL ORDER

Appellant/Applicant.

Agency: Wash. St. Gambling Commission
Agency No. CR 2021-00215

1. ISSUES

- 1.1. Did the conduct occur as alleged in Denial of Public Card Room Employee Application, case No. CR 2021-00215, dated May 19, 2021?
- 1.2. If so, did the conduct violate or fail to satisfy statutes and/or regulations as asserted in Denial of Public Cardroom Employee Application, case No. CR 2021-00215, dated May 19, 2021?
- 1.3. If so, is the Washington State Gambling Commission authorized to deny John H. McNutt's Public Card Room Employee License Application under RCW 9.46.075(1), RCW 9.46.153(1), WAC 230-03-085(1), and/or WAC 230-03-085(9)(a)?

2. ORDER SUMMARY

- 2.1. Yes. John H. McNutt was the general manager of a company intending to open a casino that operated an unlicensed card room dealer training school, and he was involved in the operation of that school.
- 2.2. Yes. John H. McNutt's conduct violated RCW 9.46.075(1), WAC 230-03-085(1), and WAC 230-03-085(9)(a) and because of that conduct he failed to satisfy RCW 9.46.153(1).
- 2.3. Yes. The Washington State Gambling Commission was authorized to deny John H. McNutt's Public Card Room Employee License Application under RCW 9.46.075(1), RCW 9.46.153(1), and WAC 230-03-085(1) and (9)(a).

3. HEARING

- 3.1. Hearing Date: Thursday, February 10, 2022
- 3.2. Administrative Law Judge: Terry A. Schuh
- 3.3. Applicant: John H. McNutt
- 3.4. Agency: Washington State Gambling Commission
 - 3.4.1. Representative: Doug Van de Brake, Assistant Attorney General

3.4.2. Witnesses:

3.4.2.1. Special Agent Robert Raimond, Washington State Gambling Commission

3.4.2.2. Tyson Wilson, Special Agent Supervisor, Washington State Gambling Commission

3.5. Exhibits: Washington State Gambling Commission Exhibits 1 through 4 were admitted into the records.

4. FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

Jurisdiction

4.1. On May 19, 2021, the Washington State Gambling Commission (“WSGC”) served on John H. McNutt (“Mr. McNutt” or “McNutt”) a Denial of Public Card Room Employee Application, case No. CR 2021-00215. Ex. 4.

4.2. Mr. McNutt filed his appeal on or about June 9, 2021.

Mr. McNutt helped operate an unlicensed card dealer training school

4.3. Lucky Dragonz Casino (“Lucky Dragonz”) hired Mr. McNutt as its general manager. Special Agent Robert Raimond (“Raimond”) Testimony. Lucky Dragonz was not yet licensed for gambling but intended to open as soon as it became licensed. Raimond Testimony.

4.4. Mr. McNutt applied for a Public Card Room Employee License on December 10, 2019. Special Agent Supervisor Tyson Wilson (“Wilson”) Testimony. Mr. McNutt’s license application was pending until Lucky Dragonz was licensed. Wilson Testimony. Mr. McNutt’s previous license had lapsed and so this was a new application. Wilson Testimony.

4.5. Lucky Dragonz and Mr. McNutt attempted to hire experienced card dealers. McNutt Testimony. However, they were unsuccessful because competing casinos required their card dealers to sign non-compete agreements as a predicate to being hired. McNutt Testimony. Accordingly, Lucky Dragonz and Mr. McNutt decided to train inexperienced people to become licensed card dealers that Lucky Dragonz could hire. McNutt Testimony.

4.6. They advertised and opened a dealer school on Lucky Dragonz premises beginning approximately July 2020. Raimond Testimony; Ex. 2, pp. 3, 14.

4.7. One of the students filed a complaint with WSGC and Special Agent Raimond was assigned to investigate the complaint. Raimond Testimony; Ex. 1. He visited

Lucky Dragonz's premises, interviewed former students, and interviewed Tran Nguyen and Mr. McNutt. Raimond Testimony; Ex. 1.

4.8. Tran Nguyen ("Ms. Nguyen") was the trainer. Ex. 2, pp. 2-3, 20.

4.9. There were approximately 30 students. Raimond Testimony.

4.10. Mr. McNutt was directly involved in the operation of the dealer school. Raimond Testimony; Ex. 1, p. 6 He knew about the school. Raimond Testimony; Ex. 1, p. 6. He observed its operation. Raimond Testimony; Ex. 1, p. 6. Students said that he supervised the school. Raimond Testimony. He was captured on video at some of the training sessions. Raimond Testimony. He knew about the dealer school agreements. Raimond Testimony.

4.11. Neither Lucky Dragonz, Mr. McNutt, nor Ms. Nguyen had a service supplier license. Wilson Testimony.

4.12. A school that trains card dealers for a fee must have a service supplier license. Raimond Testimony; Wilson Testimony. The operator of the school gets the primary license and employees get representative licenses. Wilson Testimony.

4.13. Lucky Dragonz required prospective students to sign an agreement that they would owe Lucky Dragonz \$750 for the training if they worked for anyone other than Lucky Dragonz or failed to complete their training. Raimond Testimony; Ex. 2, pp. 3, 6-9, 15, 20, 23; Ex. 3. Mr. McNutt confirmed that students had agreed to pay \$750 tuition if they did not work for Lucky Dragonz. Raimond Testimony. Some students were told the cost would be \$1250. Raimond Testimony; Ex. 2, pp. 3, 6-9, 23; Ex. 3.

4.14. Mr. McNutt told Special Agent Raimond that Lucky Dragonz did not attempt to collect the tuition fees and that the purpose of the agreement was to discourage students from working for other casinos. Raimond Testimony; Ex. 2, p. 31. Nevertheless, he said he did not know what Tran Nguyen may have done and that Lucky Dragonz would refund any tuition fees collected. Raimond Testimony. Ms. Nguyen attempted to collect tuition fees from some students and told them to pay her or Mr. McNutt. Raimond Testimony.

4.15. Further, Lucky Dragonz collected \$275 from several students as advanced payment for the license they were training for, without tendering the student a receipt for that payment. Ex. 2, pp. 2, 20.¹ In some instances, Lucky Dragonz collected \$250 for a licensing fee. Raimond Testimony. The fees were never submitted to WSGC. Ex. 2, p. 15. No such licenses ever issued. Ex. 2, p. 20.

¹ However, at least one student received a receipt for the \$275. Raimond Testimony; Ex. 2, p. 18.

- 4.16. Finally, Lucky Dragonz developed a penalty fee of \$1 to be paid by the student for each violation of a series of training rules. Raimond Testimony; Ex. 2, pp. 5, 15, 20. There is no evidence in the record that any of these penalty fees were ever collected.
- 4.17. Mr. McNutt told Special Agent Raimond that he was not aware of these rules and that he would not have approved them. Raimond Testimony. However, they were posted in the training area so he would have observed them. Raimond Testimony.
- 4.18. Mr. McNutt promised to cease using the dealer school agreements, to cease enforcement of penalties for rules violations by the students, and to get a service supplier license as soon as possible. Raimond Testimony; Ex. 2, p. 31.
- 4.19. There is no evidence in the record that any of the students were Lucky Dragonz employees or were compensated by Lucky Dragonz. Quite the contrary, any promised or implied employment was illusory. See, e.g., Ex. 2, pp. 20-21.
- 4.20. WSBGC denied Mr. McNutt's application for a Public Card Room Employee license because of his involvement in the unlicensed dealer training school. Wilson Testimony; Ex. 4.

5. CONCLUSIONS OF LAW

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

Jurisdiction

- 5.1. I have jurisdiction to hear and decide this matter under Revised Code of Washington ("RCW") 9.46.140, RCW 34.05.413, RCW 34.12.030(1), and Washington Administrative Code ("WAC") 230-17-025.

WSGC's denial of Mr. McNutt's public card room employee license application should be affirmed

- 5.2. WSGC may deny the license application of any person who "[h]as 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 on any premises occupied or operated by any such person or over which he or she has substantial control". RCW 9.46.075(1).
- 5.3. WSGC may deny a license application if the applicant "[c]ommits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075". WAC 230-03-085(1).

- 5.4. WSGC may deny a license application if the applicant “[p]oses 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 [p]rior activities”. WAC 230-03-085(9)(a).
- 5.5. “It shall be the affirmative responsibility of each applicant . . . 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”. RCW 9.46.153(1).
- 5.6. “Clear and convincing evidence” is not defined in Chapter 9.46 RCW or Title 9 RCW. When a term is not defined by a statute or regulation, one may rely upon a dictionary. *Hunter v. University of Washington*, 101 Wn.App. 283, 291, 2 P3d. 1022 (Div 1 2000); *State v. Kintz*, 169 Wn.2d 537, 547, 238 P.3d 470 (2010); *State v. Cooper*, 156 Wn.2d 475, 480, 128 P.3d 1234 (2006). Accordingly, “clear and convincing evidence” is that which is more than a mere preponderance of the evidence but less than evidence which is beyond a reasonable doubt. Black’s Law Dictionary 251 (6TH ed. 1990).
- 5.7. Any entity or individual that, for compensation, trains individual to conduct authorized gambling activities must have a gambling service supplier license. WAC 230-03-210(1)(g).
- 5.8. Here, Mr. McNutt was involved, in conjunction with Ms. Tran and Lucky Dragonz, in training individuals to be card dealers, i.e., to conduct authorized gambling activities. Mr. McNutt argued that this was merely an in-house activity. However, none of the students were Lucky Dragonz employees, and Mr. McNutt and Lucky Dragonz specifically realized that its students could seek employment elsewhere. More to the point, the students were told they would pay tuition if they failed to complete their training or chose to work at a different casino, they were required to pay a licensing fee with no assurance of a license, and they were told they would pay monetary penalties if they violated school rules. “Compensation” is remuneration for services rendered, including fees. Black’s Law Dictionary 283 (6th Ed. 1990). Apparently the only fees collected were the licensing fees and apparently those fees were refunded. However, but for the WSGC investigation, it appears likely that tuition that was being sought might have been collected and the licensing fees never returned. Again, more to the point, the students had no reason to believe that they would not be subject to any and all of these fees without reimbursement and without subsequent employment. Therefore, the fees constituted remuneration, which constituted compensation. Thus, I hold that Mr. McNutt was involved in operating a dealer school without a gambling service supplier license. That others may have shared that responsibility does not diminish his.

5.9. Accordingly, Mr. McNutt violated WAC 230-03-210(1)(g).

5.10. It is important within the contest of this matter to observe that WAC 230-03-210 was produced under the statutory authority of RCW 9.46.070, as evidenced by the comment directly following the regulation. Therefore, by violating WAC 230-03-210(1)(g), he violated a rule promulgated under the authority of Chapter 9.46 RCW. Thus, WSGC may deny his license application under RCW 9.46.075(1).

5.11. Accordingly, because WSGC may deny Mr. McNutt's license application under RCW 9.46.075(1), it may do so as well under WAC 230-03-085(1).

5.12. Furthermore, his participation in illegal activities increases the likelihood of subsequent similar conduct. Therefore, WSGC may deny his license application as well under WAC 230-03-085(9)(a).

5.13. Finally, Mr. McNutt's conduct prevents him from establishing by clear and convincing evidence that he is qualified to hold a Public Card Room Employee License. Accordingly, he failed to satisfy RCW 9.46.153(1).

5.14. Thus, for the foregoing reasons, WSGC's decision to deny Mr. McNutt's application for licensure should be affirmed.

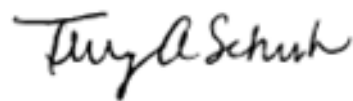
6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Washington State Gambling Commission's action is AFFIRMED.

6.2. The denial of John H. McNutt's application for a Public Cardroom Employee license is AFFIRMED.

Issued from Tacoma, Washington on the date of mailing.



Terry A. Schuh
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

APPEAL RIGHTS

PETITION FOR REVIEW

Any party to this proceeding may file a Petition for Review of this initial order. 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 (20) days from the date this initial order was mailed to the parties.² A copy of the petition for review must be sent to all parties of record. 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 other party's reply must be received at the address above, and served on all parties of record, within thirty (30) days from the date the petition for review was mailed.

Any party may file a cross appeal. Parties must file cross appeals with the Washington State Gambling Commission within ten days of the date the petition for review was filed with the Washington State Gambling Commission. Copies of the petition or cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed.

² WAC 230-17-090.

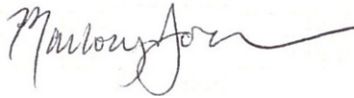
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 06-2021-GMB-00181

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

<p>John McNutt 109 Massey St Lot 33 Denton, TX, 76205 Appellant/Applicant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> E-mail: johnmcnutt@gmail.com</p>
<p>Doug Van de Brake, AAG Office of the Attorney General MS: 40100 PO Box 40100 Olympia, WA 98504 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input checked="" type="checkbox"/> E-mail: doug.vandebrake@atg.wa.gov jordan.nimon@atg.wa.gov GCEEF@atg.wa.gov</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"/> Campus Mail <input checked="" type="checkbox"/> E-mail: ashlie.laydon@wsgc.wa.gov legal@wsgc.wa.gov</p>

Date: Monday, April 11, 2022

OFFICE OF ADMINISTRATIVE HEARINGS



Mallory Jordan
Legal Assistant 2