

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: February 21, 2013

Time: 1:00 p.m.

Place: Division of Insurance
1000 Washington Street
1st Floor, Meeting Room 1-E
Boston, Massachusetts

Present: Commissioner Stephen P. Crosby, Chairman
Commissioner Gayle Cameron
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: None

Call to Order:

Chairman Crosby opened the 53rd public meeting.

Approval of Minutes:

See transcript pages 2-3.

Commissioner McHugh stated that he has distributed the February 14, 2013 minutes for review.

Motion made by Commissioner McHugh that the minutes of February 14, 2013 be approved as amended. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Administration:

See transcript pages 3-56.

Master Schedule – Chairman Crosby stated that the Commission is continuing to tighten up the schedule for regulation promulgation and processing RFA-2 applications.

Personnel Update – Chairman Crosby stated that the Director of Supplier Workforce and Diversity Development, Director of Research and Problem Gaming, and Director of Licensing

interview processes are ongoing and that Executive Director Day will be involved in these processes.

Commissioner McHugh stated that the Commission began the search for a General Counsel some months ago with the assistance of the search firm Isaacson Miller. He stated that Isaacson Miller contacted over 175 people in the course of this search, which resulted in a pool of 60 candidates from across the country. He stated that he and Isaacson Miller then narrowed this pool to ten individuals whom he interviewed. He introduced the finalist for this position, Catherine Blue, who is currently General Counsel at MassDevelopment, and provided information on her background and qualifications. Ms. Blue addressed the Commission and answered questions addressed to her relative to her background and the General Counsel position. The Commission was in agreement that Ms. Blue was a qualified candidate to assume the position of General Counsel.

Motion made by Commissioner McHugh that the Commission hire Catherine Blue as its first General Counsel under the terms previously agreed upon with an anticipated start date of March 11, 2013. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Sites for Western Massachusetts Meetings – Commissioner Stebbins stated that the Commission should determine whether to hold a Commission meeting in Western Massachusetts and where the Commission might hold such a meeting. He recommended not meeting in a surrounding community to avoid any misconceptions about the meaning of the chosen location. He recommended potentially meeting in Palmer and West Springfield. Commissioner McHugh recommended that the Commission also consider meeting in other locations that are not gaming hotbeds, as the gaming process affects the Commonwealth as a whole. Chairman Crosby asked Chief of Staff Reilly to work on setting up these meetings and locations. He stated that Ms. Reilly is also looking at space in western Massachusetts for a potential office location for the Commission.

Enhanced Code of Ethics – Commissioner McHugh stated that the Commission is under a statutory mandate to create an Enhanced Code of Ethics, in addition to those ethics codes already applicable to all state employees. This Code will apply to the Commission and its partners from the State Police and Alcoholic Beverages Control Commission. The Attorney General's Office will also have its own Enhanced Code of Ethics. He stated that he and Commissioner Cameron have met with representatives of the State Police and ABCC to work out this Enhanced Code of Ethics and have distributed to the Commission a draft which is the product of their collaborative effort.

Attorney Grossman stated that this requirement for an Enhanced Code of Ethics comes to the Commission by way of Chapter 23K, Section 3(m), which provides that the Commission shall establish a code of ethics for itself and all employees that is more restrictive than the existing ethics laws. He stated that the Commission intended that the Enhanced Code of Ethics supplement the existing ethics and campaign finance laws, but not be an all-encompassing, one-stop code. The existing ethics and campaign finance laws will still apply to the Commission. He stated that included in the draft Enhanced Code of Ethics is a provision for annual training for all

employees and Commissioners. He stated that employees and Commissioners may request advice from the Legal Department regarding compliance with the enhanced code and may reasonably rely on any advice that the General Counsel gives. He also stated that the Code includes annual filing requirements to allow the Commission to enforce the provisions of G.L. c.23K, §3, which prohibit certain involvement during the three years prior to employment with applicants or other entities involved in the gaming process. He stated that in order to avoid being overly burdensome on consultants, Chapter 23K allows designating consultants as special employees. He reviewed several of the key provisions in the Code including conflict of interest, prohibition of gifts, prohibition of use of licensee facilities, prohibition of wagering at a facility that is owned or operated by an entity that also has a license in Massachusetts, and conduct unbecoming an employee of the Commission. He reviewed restrictions that only apply to Commissioners relative to communications.

Commissioner Stebbins questioned the section that prohibits Commissioners from participating in fundraising events or being a guest speaker at such events. Commissioner McHugh stated that the Commission designed this restriction to avoid having people with an interest pending before the Commission flock to events and enrich the coffers of the event holder. Commissioner Cameron commended Attorney Grossman on the work he has done on the Enhanced Code of Ethics. Chairman Crosby asked whether the Commission should require that applicants disclose to the Commission any request they received to provide gifts or anything of value. Commissioner McHugh stated that Applicants are already required to disclose some of this information in the application. Chairman Crosby stated that he would like to continue discussion of applicant disclosure at the Commission's next meeting so that the Commission may receive public comment and conduct further research.

Motion made by Commissioner McHugh that the Commission adopt as its Enhanced Code of Ethics the draft described by Mr. Grossman. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Mr. Grossman stated that the Commission must file this document with the State Ethics Commission. However, the Attorney General's office has requested that the Commission wait until its enhanced ethics policy is ready and file both policies together.

Public Education and Information:

See transcript pages 56-86.

Report from the Ombudsman – Ombudsman Ziembra stated that he has been working with Commissioner McHugh and Attorney Grossman on protocols and procedures for resolving disputes between applicants and surrounding communities that have not reached an agreement by the time the applicant submits its RFA-2 application. He stated that he hopes to have this information available for discussion by as early as next week. He stated that he has received a number of comments on the surrounding community definition, and the Commission can discuss how to revise the definition at its next meeting. He stated that he continues to have meetings in the communities and continues to work on developing the Regional Planning Agency process.

Discussion of Preliminary Evaluation Criteria Matrix – Chairman Crosby stated that he has distributed a redraft of Commissioner McHugh’s structure for the preliminary evaluation criteria matrix. He asked that the Commissioners review this redraft and provide any comments for discussion at the next Commission meeting.

Preparation for Region C Discussion – Chairman Crosby stated that the question for the Commission is whether or not to open Region C for a commercial license. He asked whether the Commission should discuss this issue during a separate meeting or during a regular Commission meeting. Commissioner McHugh suggested holding a separate meeting and inviting interested parties to come before the Commission to provide ten minute presentations. Commissioner Zuniga agreed with Commissioner McHugh and pointed out that such a meeting would need to be scheduled soon because the March 15 decision date is quickly approaching. Chairman Crosby stated that the Commission will also need an update from the Governor’s office regarding the compact process. Commissioner Stebbins stated that it would be helpful to identify the parties that the Commission would like to hear from at a meeting and use established protocols for those who wish to sign up and offer comments. Chairman Crosby stated that the Commission has tentatively planned to set aside a major portion of the March 21, 2013 regular meeting to discuss Region C. The Commission will hold this meeting in Region C.

Report from Director of Communications and Outreach – Director Driscoll addressed the Commission regarding the new website. She stated that JackRabbit Designs, the company the Commission hired to create the website, has done a tremendous job and considers this to be one of the best websites it has ever created. She stated that the Commission has a historic opportunity to set an industry standard on effective external communication as it goes through the licensing process. She stated that the purpose of developing this site was to create a one stop resource for all of the expanded gaming now happening in the Commonwealth.

Director Driscoll played an introductory video, which was created to familiarize people with the Commission and its mission, with the goal of using this video at speaking engagements. She also provided a visual overview of the new Commission website, which is currently live and operational.

A brief recess was taken.

Chairman Crosby reconvened the 53rd meeting.

Regulation Update:

See transcript pages 86-90.

Review of Draft Regulations – Commissioner McHugh stated that the Commission’s internal target date for draft regulations is March 14, 2013. He invited Attorney Grossman to provide an update. Attorney Grossman stated that he is on track to meet the March deadline. He stated that he emailed a copy of the regulation grid to the Commission members and indicated that the Commission has met many of the target dates for first drafts of the regulations. He is currently

in the process of improving the draft language, with the goal of discussing actual language at the next Commission meeting.

License Fee Discussion – Commissioner McHugh stated that the Commission has posted a request for comments regarding license fees, with a deadline of Tuesday, February 26, 2013, so that the Commissioners may discuss the question at the next Commission meeting.

IEB Report:

See transcript pages 90-104.

Scope of Licensing – Commissioner Cameron stated that she will be reporting on the IEB's progress in Director Wells' absence. She stated that the IEB has completed the scope of licensing decisions, although it anticipates additional financial qualifiers for many of the applicants. She stated that two applicants, Mass Gaming and PPE Casino Resorts Mass, had previously not advised the Commission regarding which category of license they were seeking, but both applicants have now stated that they are interested in pursuing Category 2 licenses while also requested the right to change. She stated that the unknown situation in Region C has influenced these unanticipated developments. Chairman Crosby stated that the Commission should consider whether to allow applicants to change their application from Category 2 to Category 1. Commissioner McHugh recommended allowing changes up to the point of the RFA-2 application submittal. Commissioner Zuniga was in agreement with this suggestion.

Investigations Status Report – Commissioner Cameron stated that all eleven investigations are underway and the IEB will begin the interview process as soon as next week.

Discussion of Processing Public Records Requests for Applications – Commissioner Cameron stated that the State Police are working very hard on the redacted applications. She stated that most applicants have asked for additional redacted materials and the IEB will have to evaluate these requests. She believes that making a decision on dissemination would be premature. Commissioner Zuniga stated that the public records regulations exempt from disclosure those records that are part of an ongoing investigation and he questioned whether the Commission could disseminate the RFA-1 applications prior to completing investigations. Commissioner McHugh stated that the statute requires that the application be a public record and he believes that this investigatory exemption does not apply. He stated that the applicants have expressed a great deal of concern about posting the applications on the web and this concern should be alleviated when the redaction process is complete. Chairman Crosby stated that there is a public misconception that the Commission is trying to break new ground by posting the applications in an effort to continue its policy of transparency. However, the legislation has already mandated that the Commission make public the applications.

Racing Division:

See transcript pages 104-128.

Administrative Update – Director Durenberger reported that the Racing Division issued an RFP on December 5, 2012 for laboratory testing services to conduct equine drug testing for live horse racing, with a response deadline of January 7, 2013. She stated that she received and reviewed three responses. The respondent that ranked the highest was Truesdail Laboratories, Inc. She recommended that the Commission approve the initiation of a contracting process with this vendor.

Motion made by Commissioner Stebbins that the Commission support approval of executing a contract with Truesdail Laboratories, Inc. for equine drug testing and laboratory services. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Director Durenberger stated that she has a second RFP, which the Racing Division issued on January 16, 2013 for pari-mutuel auditing services, with a response deadline of February 11, 2013. She stated that she received one qualified response, and she recommended that the Commission approve the initiation of executing a contract with Pari-Global Solutions, Inc. She stated that Pari-Global Solutions, Inc. is proposing a web based program that will capture tote information from the tote providers and will integrate with the Commission's financial reporting software.

Motion made by Commissioner McHugh that the Commission support approval of executing a contract with Pari-Global Solutions, Inc. for auditing services. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Legislative Review Update – Director Durenberger stated that she distributed to the Commission the report on the current pari-mutuel and simulcast laws in the Commonwealth. David Murray, consultant, joined Director Durenberger to provide information on the draft report. He stated that once the Commission approves the ultimate recommendations related to simulcasting, abolition of restrictions on rebating, wagering on credit, and establishment of the backstretch improvement fund, he can proceed to finalize the statutory language.

He provided a summary for the Commission. He stated that the current system accounts for three types of racing: thoroughbred, harness, and dog racing. Dog racing is no longer permitted in the Commonwealth. He stated that they have tried to create a uniform system for simulcasting which would balance the interests of Suffolk Downs, Plainridge, and gaming establishments that are likely to request simulcasting licenses. He stated that, in considering all the interests, they are recommending that the Commonwealth: allow unlimited simulcasting, within which there would be a continued obligation to carry local signals; permit fee negotiation rather than setting fees for intrastate simulcasting; abolish premiums and signal limitations; put all the unclaimed winnings from both the racing and non-racing licensees into the racehorse development fund or directly into purses; and require all licensees to carry local harness and thoroughbred signals. He stated that they also propose abolishing restrictions on pari-mutuel wagering on credit and prohibiting rebating in the pari-mutuel context. He stated that they looked at the current system for capital improvements and promotional activities by licensees, and instead of making those monies available for use only by licensees, they recommended carving out of the old system a targeted, earmarked fund for backstretch improvements that benefit the most disadvantaged folks

associated with racing. Mr. Murray stated that they also recommend ending the periodic sunseting of racing laws.

Director Durenberger stated that the cleanest way to accomplish all of these changes would be to come up with a model chapter, which they would prepare next week. Chairman Crosby stated that the pari-mutuel and simulcasting review needs an introduction stating that the Commission has reviewed these laws and recommends replacing them in their totality. Commissioner McHugh stated that he found pages 10 through 12 very hard to follow and agreed with Chairman Crosby's recommendation for a more straightforward approach. Commissioner Zuniga recommended including some of the research that the Commission has done relative to other states and the context of some of the recommendations being made. Mr. Murray stated that he can incorporate these suggestions in short order and get the document back to the Commission. Commissioner McHugh stated that the changes suggested are not substantive and the document is ready for a vote. Commissioner Cameron stated that she agrees that the changes are stylistic and recommended that the Commission vote at this time.

Motion made by Commissioner Cameron to accept the report with the caveat that the changes discussed are made to add clarity. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission February 21, 2013 Notice of Meeting and Agenda
2. February 14, 2013 Massachusetts Gaming Commission Meeting Minutes
3. Resume of Catherine A. Blue
4. Massachusetts Gaming Commission Enhanced Code of Ethics First Edition
5. February 21, 2013 Memorandum Regarding Recommendation for Approval of a Primary Laboratory for Equine Drug Testing Services
6. February 21, 2013 Memorandum Regarding Recommendation for Approval of a Service to Provide Pari-Mutuel Auditing Services
7. Report of the Massachusetts Gaming Commission to the Senate and House of Representatives Pursuant to Chapter 194, Section 104, of the Acts of 2011, Analyzing the Commonwealth's Pari-Mutuel and Simulcasting Laws, with Recommendations as to Their Efficacy and Need to be Replaced

/s/ James F. McHugh
James F. McHugh
Secretary