



The Commonwealth of Massachusetts Massachusetts Gaming Commission

NOTICE OF MEETING and AGENDA

January 22, 2013 Meeting

Pursuant to the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25, notice is hereby given of a meeting of the Massachusetts Gaming Commission. The meeting will take place:

Tuesday, January 22, 2013

1:00 p.m.

Division of Insurance

1000 Washington Street

1st Floor, Meeting Room 1-E

Boston, Massachusetts

PUBLIC MEETING - #47

1. Call to order

2. Discussion of Policy Questions if time permits:	20
	35
	6
	23
	14
	21
	46
	7
	13 & 49
	25
	26

Additional questions if time permits.

3. Other business – reserved for matters the Chair did not reasonably anticipate at the time of posting

I certify that on this date, this Notice was posted as “Gaming Commission Meeting” at www.mass.gov/gaming/meetings, and emailed to: regs@sec.state.ma.us, melissa.andrade@state.ma.us, brian.gosselin@state.ma.us.

1/17/13
(date)

Stephen P. Crosby, Chairman

Date Posted to Website: January 17, 2013 at 1:00 p.m.

KEY POLICY QUESTIONS

Question 20 Analysis

Question 20 says

"What kind of the team with what kinds of skills and competencies does the Commission need to help assess the Phase 2 proposals?"

The Commission received the following comments on this question:

SHEFSKY & FROELICH: "We believe the MGC should consider the assistance of an urban planner/designer (to review the design of a project and its impact on the local community), a mitigation consultant (to review the impact of a project on police, fire, water, sewer, education and other infrastructure or services within a community or region), a financial consultant (to review financial wherewithal of an applicant, financial projections of an applicant and the economic impact and benefits of the applicant's project) and a traffic consultant (to review ingress and egress to a project). We believe, however, that the role of these consultants should be limited to reviewing and evaluating the reports and studies submitted by the applicant and, if applicable, the host community."

METROPOLITAN AREA PLANNING COUNCIL: "The team should include experts in gaming, economic development (including entertainment industry experts), transportation, social services, housing and environmental issues, as well as local, regional and state representatives. RPA'S are in a good position to work both as facilitators with local communities and applicants and with the Commission to identify key community and regional issues and concerns to be addressed in the proposed reviews."

Undoubtedly, the Commission will need to assemble a team of professionals with skills and competencies the Commission does not possess to help assess the Phase 2 applications. Both commentators suggested attributes the Commission likely to need. The Commission will undoubtedly need a financial consultant to help analyze the financial figures and plans applicants present. Unless the financial consultant has experience in construction financing, a separate individual with that experience would be a valuable part of the team. An architect or planner with experience in the large developments the applicants are likely to propose would be a third useful resource for the Commission. A traffic consultant would be a fourth. Regional Planning Associations will, of course, provide valuable insights and assessments with respect to each of the applications. For a variety of reasons, however, it would be helpful for the Commission to have its own mitigation assessor, likely someone with regional planning experience.

Although the five skills and competencies just described will likely be the essential ingredients of the advisory team that Commission assembles, the final makeup of that team will inevitably depend on the criteria the Commission ultimately choose as the basis for evaluating the Phase 2 proposals. For example, in recent meetings the Commission has discussed the gaming statute's focus on destination resorts and the expectation that gaming establishments will be built and marketed in a way that brings nonresident dollars into the Massachusetts economy. It would be helpful, therefore, to have someone on the team with deep experience in the tourism industry so that he or she can help the Commission determine whether an applicant's plans are viable, whether the plans could be improved and how the plans proposed by various applicants compare to each other.

Therefore, I recommend that

- The Commission now begin the process assembling a team consisting of a financial consultant, a construction financing consultant if that subspecialty is necessary, an architect and planner with experience in development of large facilities, a traffic consultant and an individual with regional planning experience to provide the Commission with advice during the Phase 2 evaluation process.
- The Commission begin discussions with RPA's to determine how to take advantage of their expertise and familiarity with the areas in which developers propose to build expanded gaming facilities.
- The Commission revisit the makeup of the advisory team after compiling the complete set of evaluation criteria it will use to assess Phase 2 proposals.

KEY POLICY QUESTIONS

Question 35 Analysis

January 21, 2013

Question 35 says

"[S]hould Commission formulate and communicate a scoring system prior to the receipt of proposals with the relative weight of different criteria? Should the Commission establish a minimum scoring for applicants?"

The Commission received the following comments regarding this question:

Sterling Suffolk Racecourse LLC: "Section 15 of the Gaming Act outlines myriad criteria each applicant for a gaming license must meet, ranging from the formulation of an affirmative action program that provides equal opportunities for minorities, women and veterans, M. G. L. c. 23K, §15(16), to payment of the \$400,000 license fee, id. §15 (11) and other such objective and achievable requirements. Under the statute each criterion must be met; the failure to establish any one or more criteria would render the application incomplete. Thus it would appear that no one criterion is entitled to more weight than any other.

Section 18 of the Gaming Act requires the Commission to evaluate 'how each applicant proposes to advance' 19 specific objectives, ranging from promoting local businesses in host and surrounding communities, M. G. L. c. 23K, §18 (2), to consideration of whether the applicant has the support of organized labor, id., §18 (18). While Section 18's criteria are more subjective in nature than are section 15's, we believe that any ranking or scoring of them would not aid the Commission in its RFA-2 determinations. Such determinations are, by their very nature evaluations of multiple and varied considerations that are best left to the informed exercise of the Commission's discretion and judgment."

Shefsky & Froelich: "No. See our response to question 26 above [which basically says that the statute contains all of the information the Commission needs]."

Metropolitan Area Planning Council: "A list of the general topics to be included in the scoring system should be communicated prior to the receipt of proposals, however the relative weights of the criteria and other technical aspects in the court scoring system should not. This will provide applicants with sufficient knowledge of the process, while encouraging all criteria to be fully vetted within each proposal. Upon completing the review, results will be published for transparency."

Joshua Levin: "Minimum standards should be established and scored, any proposal that does not meet minimum standards should be rejected."

Different approaches to the evaluation process had been taken by different commissions and planners. Those approaches fall into four basic categories. The first is a purely verbal assessment of the strength of each component of each application followed by an overall statement of reasons for selecting one applicant over the others. That is the approach followed by the Pennsylvania Gaming Control Board. The board's decisions are extensive, comprehensive, thorough and thoughtful but contain no numerical ranking either of the components of competing applications or of the overall applications themselves. According to the Board's general counsel, the Board does not attach numerical or other rankings to applications because it believes that doing so might decrease the discretionary power Pennsylvania statutes give it.

A second approach is found in Maryland statutes and consists of assigning a numerical weight to general categories but not to components of those general categories. In Maryland, the Legislature provided three broad categories – business and market factors, economic development factors, and location citing factors – for the commission to consider when making licensing decisions. For each broad category, the Legislature set out a list of specific but nonexclusive factors for the commission to consider. The Legislature also provided a weight for each of the broad categories – 70% for the first and 15% each for the other two – in making the licensing decision but did not assign a weight to any of the specific factors included in the broad categories.

In part at least, Missouri has taken a third approach, one that is heavily numbers driven. For the economic component of its licensing evaluation, the Missouri Gaming Commission looked at the impact on the Missouri economy of a two-year casino construction period, a succeeding five-year operations period and the total impact of the two. During the construction period, it looked at the impact of construction on gross domestic product, employment and net general revenues. During the operations period and when assessing the overall economic impact, it looked at those three factors plus casino adjusted gross receipts and taxes on gaming and admissions revenues. The commission asked the license applicants to specify their worst-case scenario, their average case scenario and their best case scenario for each of the factors. It then ranked the responses comparatively. The result was a highly numeric analysis of the economic component of the application but the numbers were based on objective criteria capable of measurement and verification. The economic analysis just described is can be found at www.mgc.dps.mo.gov/economicanalysis.pdf. The full set of Missouri criteria is set out at Ex. 17 to our Gaming Consultants' Strategic Plan.

Finally, there is the approach taken by the Pittsburgh Department of City Planning which conducted a site assessment that was entirely numbers driven. To perform the assessment, the Department picked six general categories – location, operator

performance, site plan, building design, socioeconomic benefits and impacts, transportation and parking analysis – and assigned to each a weight of 20. It then selected a number of subcategories for each of the categories and assigned a specific numerical weight to each subcategory. The subcategory weights ranged from .5 points to 6 points but together they added up to the 20 points assigned to the category. Five evaluators took part in the evaluation and each was asked to separately score each subcategory on a scale of 1 -5, 5 being the best. The individual scores for each subcategory were added and divided by five to create an average subcategory score. Then, the average subcategory scores were multiplied by the subcategory weight to arrive at final subcategory score. The subcategory scores were added to produce a total score for the category. Finally, the category scores were added to produce a total score for the application. The result was highly numeric but the many of the numbers were subjective, and not capable of measurement and verification. The Department's report appears at [www.city.pittsburgh.pa.us/cp/assets/06 Gaming Assessment.pdf](http://www.city.pittsburgh.pa.us/cp/assets/06_Gaming_Assessment.pdf) and the scoring matrix is attached.

In their strategic plan, our gaming consultants addressed the ranking and scoring issue in the following terms:

"The process in which bids are evaluated and contrasted should be grounded, to whatever extent possible, in a system that gives numerical weight to certain issues, based on their relative importance and the ability of each bid to meet those stated goals.

An evaluation system that is based solely on ratings and quantifiable criteria is neither suggested nor desirable. Qualitative evaluations in such areas as policy goals, quality of design, and achievability of strategies are all essential and defy ratings. The Commission will have to strike a balance. Moreover, in keeping with the overall themes of fairness and transparency, all qualitative and quantitative criteria should be made clear in advance to bidders."

The consultants then discussed a matrix the Kansas Lottery Gaming Facility Review Board created to evaluate a portion of casino license applications they received. That matrix, a sample of which appears at page 86 of the strategic plan, contains specific numbers for specific economic activities about which the board desired information, e.g., projected number of visitors, projected number of overnight visitors, retail square footage, number of FTE employees, etc. That matrix permitted easy and meaningful comparisons between applicants, at least in the economic area.

In the last analysis, the application process could be aided by use of two kinds of numbers. The first numbers are objective projections or estimates of actual operating results or plans. Those numbers can provide a sound basis for comparative evaluation of different applications. For the comparison to work, however, the operating results and plans must be described with precision so that the Commission can be certain that it is actually comparing the same things. Second,

as in the case of Maryland, numbers can signify the importance the Commission assigns to a certain component of the application. There is, though, a downside to using numbers in that fashion, for they may tend to cause an applicant to devote less energy and attention than it otherwise might to components of the application the Commission does not weigh as highly as others.

By the same token, numerical rankings of subjective criteria do little more than give the appearance of certainty to subjective decisions and, in the process, create the potential either for awarding a license to an applicant whose project is less desirable than that of another or lead to confusion and other difficulties if the Commission were to award a license to an applicant that did not achieve the highest total score. The evaluation process ought to be constructed in a manner that eliminates the possibility of both results.

With those thoughts in mind, I **recommend** that

- The Commission finalize as promptly as possible the criteria it will use to evaluate license applications.
- After finalizing the criteria, the Commission determine which criteria focus on actual operating projections and design forms that will require applicants to provide those operating projections in the same form so that meaningful comparisons between them will be possible.
- That the Commission not attempt to use numerical weights or scores for other components of the application but instead articulate its assessment of the way each applicant proposes to meet those criteria in the findings and conclusions with which its licensing decisions will be accompanied as required by M.G.L. c. 23K, §18.
- That the Commission publish its approach to application evaluations through regulations, specimen forms and policy statements promptly and, in any event, sufficiently before Phase 2 applications are due to provide applicants an adequate opportunity to prepare or gather the information the Commission requires.
- That the Commission not require a minimum "scoring" for any applicant but that it exercise its discretion to decline issuance of a license to any applicant that fails to propose a gaming establishment capable of fulfilling the objectives the expanded gaming legislation was designed to achieve.

Category	Sub - Category	Weight	Sub- total	Total
Location	Visibility	4		
	Access and impacts	3		
	Impact on immediate surroundings	5		
	Access to existing amenities and services	5		
	Current use	2		
	Environmental impact	1		
				20
Operator	Operation of other facilities	6		
	Financial performance	6		
	Labor relations history	2		
	Quality of existing facilities	5		
	Track record in other cities	1		
			20	
Site design	Site control	4		
	Visual access	3		
	Accessibility	2		
	Integration with adjacent amenities	3		
	Room for expansion of facilities	1		
	Existing structures	1		
	Site contamination	1		
	Sustainable measures	1		
	New public amenities	3		
	landscaping	1		
			20	
Building design	Compliance with zoning	1		
	Relationship to surroundings	4		
	Non-gaming uses and public spaces	2		
	Design approach	1		
	Façade	4		
	Building materials	2		
	Public art	0.5		
	Spatial organization	1		
	Design team	2		
	Environmentally friendly	0.5		
	Utilities	1		
	Lighting & signage	1		
			20	

Category	Sub - Category	Weight	Sub- total	Total
Socioeconomic	Job creation	1		
	Produce additional development	3		
	Job training for local residents	0.5		
	Recruitment of local residents	1		
	Diversity plan with measurable goals	1		
	Marketing to suburban and overnight patrons	3		
	Promote visitor spending outside casino	3		
	Complement convention, tourism, hotel, retail & restaurant activity	1		
	Use of local vendors inside casino	1		
	Positive feedback from community	1		
	Integration with existing neighborhood plans	0.5		
	Plan to fund aid to nearby communities	2		
	Community relations plan	1		
	History of community involvement	1		
				20
Transportation	Convenient regional highway access	4		
	Convenient local access by car	3		
	Accessible by public transit	3		
	Accessible to pedestrians	1		
	Provides adequate parking on or adjacent to the site	2		
	Adequate space for staging, loading, and unloading	3		
	Minimizes potential for traffic congestion	4		
				20
				120

Key Policy Question #6: What criteria should the commission use to determine whether a gaming license applicant should receive a gaming beverage license for the sale and distribution of alcoholic beverages and what application fee should the commission charge?

The relevant sections of the gaming law are M.G.L. c 23K § 26.

The MGC discussed this topic with leadership of the Alcoholic Beverage Control Commission. They recommended adopting their controlling statutes (C.138). By adopting C. 138, we would be covering both everyone inside the gaming establishment and outside equally. Similar jurisdictions including Connecticut, Colorado, Delaware and New Jersey have also adopted their state’s existing ABCC statutes. They recommended that there be no cross ownerships between suppliers, wholesalers and distributors.

The ABCC recommended that the casino licensee is also the licensee for the gaming beverage. So any request for change in the casino licensee would also require approval for change of the gaming beverage license.

We additionally drew questions about how separate operating restaurants or hotels within the same property be treated. There was a suggestion as to whether a licensee could enter into management agreements with the other establishments. The ABCC would be interested in working with us to create a better model for these management agreements. Additionally we would need to create a term for a gaming beverage license. Application fees should also reflect existing statutes.

We received 7 submissions on this question:

Respondent	Comment
SSR (Sterling Suffolk)	The Commission should incorporate by reference in its regulations the standards that are currently utilized in the Commonwealth under M.G.L. Chapter 138 and 204 CMR 2.00 et seq. Furthermore, the suitability and qualification standards applied to gaming license applicants and holders is at least as probative as any that would be applied to an alcoholic beverage distributor, thus no additional qualification requirement should be necessary.
Joshua Levin	Yes local officials should absolutely be prohibited from gambling in the casinos and there should be a prohibition on officials working for or profiting from the casinos once they are no longer in office
Paul Vignoli	Casinos should pay at least what they pay in other states. They should also be required to obtain Host Community Beverage and Entertainment Licenses. This would guarantee compliance with local mitigation agreements since Host Communities would be able to suspend their licenses if needed to enforce the agreement

<p>Philip Cataldo</p>	<p>The commission should set the beverage lic as a separate lic that can be rescinded for cause at any time and not at the end of the gaming lic. Criteria should be set by Gaming Commission, ABCC and host communities together. And any of these three groups can call for investigation or hearings into pulling alcohol lic if casino violates policies and procedures. And all of this should be done under public hearings and public votes of the three groups. I will also state that not alcohol should be served free or at a discount. Casinos can use other gifts and comps to keep people in the casinos and not free alcohol.!”</p>
<p>Martha Robinson</p>	<p>Alcoholic beverages take the edge off intellectual acuity. There should be no permission given for "free" alcoholic beverages at any gambling establishment in Massachusetts. Such permission would further stack the odds in favor of the house.</p>
<p>MGM Springfield</p>	<p>Massachusetts has some of the most effective alcohol control laws in the country and the Alcoholic Beverages Control Commission has proved to be a dutiful oversight and supervisory body. We believe that it is not necessary to deviate from the successful formula the Commonwealth has in place as it relates to the licensing, regulation, enforcement and fee structure for those involved in the sale of alcoholic beverages.</p> <p>Operators will essentially follow the same regulatory guidelines as established alcohol license holders adhere to now. With these regulatory guidelines in place the same set of standards that is in effect for the Commonwealth and individual municipalities as it relates to the licensing and fees should be the same set of rules for casino resorts</p>
<p>Shevsky Froelich/City of Springfield</p>	<p>The stringent suitability and probity investigation that a gaming license applicant must go through to receive the gaming license is much more stringent than most typical alcoholic beverage licensing investigations. Therefore, any applicant receiving a gaming license should also receive a gaming beverage license for the sale of alcoholic beverages. The fee for the gaming beverage license should be limited to no more than the minimum amount required to cover the cost of the MGC’s administration of such license.</p>

Recommendation: The MGC work with the ABCC staff to use existing regulations under C. 138.

Key Policy Question #14: Should the Commission require that a developer use a specified percentage of in-state or regional employees in the construction and operation of its facility?

Respondent	Further Define Surrounding Community	Comment
Paul Vignoli Jr.	Yes	<p>ALL available Non Managerial jobs should be given to qualified applicants in order: 'Host Communities' (Revere and EAST Boston), 'Directly affected 'Surrounding communities' (Chelsea and the REST of Boston—Winthrop and Lynn are not directly affected), within the casino zone, ONLY then applicants from anywhere else. It is imperative that Local Residents receive ALL front line jobs. The casinos should be required to train front line employees and then be allowed to hire experienced casino managers. For example: Security Guards, Shift Supervisors, Security Dispatchers would be local hires. Security Managers and Eye in the Sky Agents would need to be the most experienced employees available. Facility Managers, Food Service Managers, etc. would be local hires."</p>
Shevsky Froelich/City of Springfield	No	<p>"No. We believe that this matter should be left to the host community and be determined by such community and negotiated and memorialized in the host community agreement."</p>
Martha Robinson	Yes	<p>"This may not legally possible, but it should certainly be a requirement so as to benefit the largest number of Massachusetts citizens. There has to be an enforcement provision to deal</p>

		with infractions forcefully. Millions of dollars will accrue to the owners of the casinos and fines must be kept at a commensurate level to ensure compliance.”
Philip Cataldo	Yes	

Discussion: The promotion of new employment opportunities for Massachusetts citizens is clearly one of the pillar objectives of the Gaming Act. The act contemplates that applicants for gaming licenses will include detailed plans for promoting new employment in their applications. MGL c. 23K, §18(4) requires the Commission to evaluate how each applicant proposes to “[implement] a workforce development plan that utilizes the existing labor force, including the estimated number of construction jobs a proposed gaming establishment will generate, the development of workforce training programs that serve the unemployed and methods for accessing employment in the gaming establishment....” MGL c. 23K, §18(17)(i) also requires applicants to “[implement] a workforce development plan that ...(ii) utilizes the existing labor force in the commonwealth”. The Gaming Act also establishes a mechanism so that licensees are held to statements made in the application. MGL c. 23K, §21(1) states that the licensees “have an affirmative obligation to abide by every statement made in its application to the commission.” This would likely include any workforce development plan to utilize the existing labor force.

Although the license application requires applicants to detail their plans to employ the existing labor force in the Commonwealth both during construction and operation, this policy question contemplates that the establishment of a minimum percentage of in-state or regional employees may be necessary to further the Gaming Act’s goals of promoting local employment. Some of the arguments for each side on the question are as follows:

Arguments in Favor of Establishing a Minimum:

- Without a minimum, applicants may not hire a significant percentage of local residents in the construction or operation phase, thus defeating one of the major objectives of the Gaming Act.
- The employment of the existing labor force will be just one of many criteria evaluated by the Commission in awarding licenses. Therefore, even though applicants will likely work to include plans to promote local employment in their applications, the applications may not include a minimum percentage of workers.
- The establishment of such a minimum has precedent, including a minimum in Ohio.

- The practice of establishing such minimums has precedent in Massachusetts, such as the local hiring requirements for Tax Increment Financing agreements.

Arguments Against Establishing a Minimum Prior to the RFA-2 Application:

- Licensees have a strong incentive to hire local employees without any minimum requirement. Non-local hiring may indicate that the local labor pool does not yet have the specific skills or expertise needed for the positions.
- Such a requirement could potentially result in operating complications (such as poor gaming performance) due to less experienced workers.
- The establishment of the ideal minimum amount would be difficult. Too high a percentage could be unachievable and lead to enforcement difficulties. Too high a percentage could also lead to operational difficulties. Too low a percentage could establish a signal to applicants that their applications need not significantly exceed such percentage.
- Because of the competition in each of the regions, applicants are currently incentivized to maximize the projected hiring of local applicants.
- The hiring of local residents is a potential likely concern in community agreements.
- It would be difficult to determine how to define what regions should be considered in implementing a regulatory minimum.
- Establishing such a state standard could lead to similar requirements in other nearby states, impacting the ability of Massachusetts companies and workers to work in other states. This, in turn, could potentially lead to questions about the enforceability of such standards.
- The Commission has been working on many other less rigid methods to promote local employment, including work with the community colleges and work with other economic development organizations to maximize the benefit to Massachusetts.
- The Commission could evaluate whether the currently planned methods to promote local employment will work prior to establishing such a minimum.
- Although it is anticipated that slots licensees may be operational within a relatively short period, the Commission may have time to consider such a regulation at a later date for the construction and operation of Category 1 licensees, if determined necessary.

Recommendation: For the above reasons, it is recommended that the Commission not establish such a minimum at this time. Given the relative paucity of comments that have been received on this issue, if the Commission chooses to explore the establishment of such a minimum, the Commission should indicate that such a minimum is under consideration and again request comments for a further exploration of the issue before making a policy determination.

Key Policy Question #21: Should the Commission issue regulation or policy statement dealing with the portion of G.L. c. 21K, § 19 (a), 20(a) providing that the Commission may not award a gaming license if it is not convinced that the applicant has “provided convincing evidence that [it] will provide value” to the region, in the case of a Category 1 license, and to the Commonwealth, in the case of a Category 2 license?

We received 7 public comments on this question.

Respondent	Approval	Comment
Paul Vignoli	Yes	
Sterling Suffolk Racecourse	No	“convincing evidence” determined on a case-by-case basis
Shefsky & Froelich	No	Policy or regulation be duplicative of sections in the Act; more expansive rules and regs may provide basis for litigation
Metropolitan Area Planning Council	Yes	Policy statement would make clear that adding value and benefit is a requirement
Joshua Levin	Yes	City required to provide convincing evidence that casino will provide value to the region
Martha Robinson	Yes	Statement should be crafted in open meetings
Philip Cataldo	Yes	

After considering this question with our consultants and John, we concluded that it did not make sense to issue any further clarification of this point. We think that the Legislation is very clear and straightforward on this point. Furthermore, the Commission has made a high priority out of assuring robust competition for each license, and that robust competition is the best assurance that maximum value will be provided to the Commonwealth.

Key Policy Question #46: Should the Commission prohibit gambling by local officials in casinos located within their jurisdiction?

We received 6 public comments on this question.

Respondent	Approval	Comment
Revere	No	Existing laws already provide ample protection.
Paul Vignoli	Yes	Officials shouldn't enter any casinos on official business and should never be allowed to receive casino gifts or rewards.
Sterling Suffolk Racecourse	No	Use required code of ethics first; note that "no jurisdiction prohibits officials from gambling in local casinos"
Shefsky & Froelich	Yes	This is "best practice" and is customary in many jurisdictions"
Martha Robinson	No	Local officials gambling invites further corruption
Philip Cataldo	No	

As the public comments demonstrate, there are widely varying opinions on this issue, even as to whether or not such a restriction is common practice in other jurisdictions. Our consultants point out that most tribal casinos don't permit gambling by tribal officials, and point out that our local officials have rather dramatically more authority in the licensing and related processes than in most jurisdictions.

We've considered 3 options:

1. No restriction
2. A restriction only on extending credit or comps to local officials
3. Prohibiting gambling altogether

Although I understand that it may be a little onerous to prohibit gambling by local officials in a casino within their jurisdiction, since such a facility will presumably become a place of common entertainment group activities, I nevertheless feel that it is inappropriate from at least an appearance standpoint to have local officials gamble in facilities within their jurisdiction. Furthermore, I think it is not unrealistic to imagine that there is a real potential for genuine conflict in a local official's gambling behavior in such a facility. And finally, M.G.L. ch. 23K, §1(1) (the very first section of the Gaming Act) states that "ensuring public confidence in the integrity of the gaming licensing process and the strict oversight of all gaming establishments through a rigorous regulatory scheme is the paramount policy objective of this chapter".

It is true that the lion's share of the licensing role that local officials play will occur at the time of licensing, and not similarly reoccur until re-licensing, 15 years hence. But there will be many ongoing

functions—zoning, traffic management, water and sewer use, local taxes, etc.—in which local officials will have a significant role in ongoing regulation and management of the facility.

I look forward to hearing the other Commissioners reaction to this position, but my recommendation is that we answer this question in the affirmative.

I do note that this matter is related to the policy discussion (attached) on Question 31 (ethics standards for municipal officials) that was discussed in December. I believe that the specific issue of gambling by local officials in a gaming facility within their jurisdiction potentially raises more significant concerns than we discussed in December. However, the following excerpt from the Question 31 memorandum highlights some of the existing ethics laws that have a bearing on this question.

The state ethics laws (G.L. c.268A, G.L. c.268B, and 950 CMR) apply to the acts and omissions of municipal officials and employees. The following list, though not all-inclusive, contains some of the principal applicable provisions.

A. G.L. c.268A, Section 2(b). (illegal for municipal employee to accept anything of value intended to influence an official act or omission)

B. G.L. c.268A, Section 3(b). (illegal for municipal employee to accept anything of substantial value for or because of an official act or to influence an official act)

...

D. G.L. c.268A, Section 6(a). (any public official who in the discharge of his official duties would be required knowingly to take an action which would substantially affect such official's financial interests, unless the effect on such an official is no greater than the effect on the general public, shall file a written description of the required action and the potential conflict of interest with the state ethics commission)

...

F. G.L. c.268A, Section 19. (generally illegal for municipal employee to participate as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment or has a financial interest)

...

G. G.L. c.268A, Section 23(b)(2). (obtaining unwarranted privileges based on position)

...

H. G.L. c.268A, Section 23(b)(3). (impermissible to act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person)

If we do answer the question in the affirmative, there will be a second question, which is to carefully define the excluded local officials. I haven't thought this through fully, and there may need to be further comment from the public on the matter, but I would think that "local officials" would at least include: Mayor, Town Manager, City Council, Selectmen, Zoning Board of Appeal Members, and perhaps tax assessment and abatement officials.

Question 31 Analysis

I. Introduction

This memorandum will address the issues raised by question 31 of the Massachusetts Gaming Commission's Framework for Addressing Policy Questions. Question 31 asks: Will the Commission promulgate additional ethics or reporting standards for applicants and/or related municipalities? This memorandum will also, in part, address the issue as it pertains to licensees.

In making a determination as to whether additional ethics or reporting standards should be imposed upon applicants, licensees, and municipal employees and officials we must first review the existing governing laws. There are 2 primary sources: (1) G.L. c.23K, and (2) the state ethics laws (G.L. c.268A, G.L. c.268B, and 950 CMR). A number of the most relevant provisions will be set forth in the memorandum for purposes of illustrating the comprehensive nature of the statutory scheme that the Legislature crafted in an effort to ensure the highest level of integrity for the subject parties. It is also worthwhile to note that where the Legislature did include a mandate that the Commission draft an enhanced code of ethics for itself and its employees, it did not include such a mandate relative to applicants for licensure and affected municipal officials. See G.L. c.23K, §3(m). Instead, it appears to have supplemented the existing ethics laws with gaming specific provisions.

For these reasons, and those set forth below, it is recommended that the Commission focus on the enforcement of ethics standards found in the State Ethics Law and new standards put in place in the Gaming Act rather than issuing new broad based ethics guidelines for applicants, licensees, and involved municipal official. While there may be need for some exceptions to this general recommendation, it is recommended that any new standards be evaluated within the context of the coverage of existing law.

II. Standards for Applicants and Licensees

At present, there are comprehensive restrictions and obligations imposed upon applicants for a gaming license and licensees. The following list, though not all-inclusive, identifies some of the principal applicable provisions.

- A. *G.L. c.23K, Section 13(b)*. (continuing duty of applicants/licensees to cooperate)
- B. *G.L. c.23K, Section 13(c)*. (duty of applicant/licensee to provide full and truthful information)
- C. *G.L. c.23K, Section 21(a)(1)*. (obligation of licensees to abide by statements made in application)
- D. *G.L. c.23K, Section 21(a)(2)*. (obligation of licensees to comply with all laws of the Commonwealth)
- E. *G.L. c.23K, Section 21(a)(5)*. (licensee may not change business governing structure without Commission approval)
- F. *G.L. c.23K, Section 21(a)(6)*. (licensee may not operate, invest in or own, in whole or in part, another gaming licensee's license or gaming establishment)
- G. *G.L. c.23K, Section 21(a)(7)*. (obligation of licensee to cooperate with the commission and the attorney general in all gaming-related investigations)

- H. *G.L. c.23K, Section 21(a)(8)*. (obligation of licensee to cooperate with the commission and the attorney general with respect to the investigation of any criminal matter)
- I. *G.L. c.23K, Section 21(a)(10)*. (obligation of licensee to inform the commission of any action which the gaming licensee reasonably believes would constitute a violation of chapter 23K, and shall assist the commission and any federal or state law enforcement agency in the investigation and prosecution of such violation)
- J. *G.L. c.23K, Section 21(b)*. (no person shall transfer a gaming license, a direct or indirect real interest, structure, real property, premises, facility, personal interest or pecuniary interest under a gaming license or enter into an option contract, management contract or other agreement or contract providing for such transfer in the present or future, without the notification to, and approval by, the commission)
- K. *G.L. c.23K, Section 25(d)* (no gaming licensee shall alter its minimum internal controls until such system of minimum controls is approved by the commission)
- L. *G.L. c.23K, Section 25(g)* (no key gaming employee or any other gaming official who serves in a supervisory position shall solicit or accept a tip or gratuity from a player or patron in the gaming establishment where the employee is employed)
- M. *G.L. c.23K, Section 27(f)*. (Commission to draft regulations prohibiting licensees from accepting EBT/public assistance funds or extending credit to individuals on income based public assistance)
- N. *G.L. c.23K, Section 28*. (governing complimentary items and services)
- O. *G.L. c.23K, Section 39(e)*. (criminal provision dealing with use of cheating and swindling devices by licensees and employees at a gaming establishment)
- P. *G.L. c.23K, Section 46*. (prohibiting an applicant from making contributions to municipal, county, or state office holders, candidates, or groups supporting candidates)
- Q. *G.L. c.23K, Section 47*. (requiring a biannual disclosure of all political contributions or contributions in kind made by an applicant for a gaming license to a municipality or a municipal employee, of the host community of the applicant's proposed gaming establishment, and promulgation of regulations by the OCPF)
- R. *G.L. c.268A, Section 2(a)*. (illegal to give, offer, or promise anything of value to a state, county or municipal employee to influence an official act or omission)
- S. *G.L. c.268A, Section 3(a)*. (illegal to give, offer, or promise anything of substantial value to a state, county or municipal employee for or because of an official act or to influence an official act)
- T. *G.L. c.268A, Section 4(b)*. (illegal to give, offer, or promise compensation to a state employee in any particular matter in which the commonwealth is a party or has a direct and substantial interest)
- U. *G.L. c.268A, Section 17(b)*. (illegal to give, offer, or promise compensation to a municipal employee in any particular matter in which the city or town is a party or has a direct and substantial interest)

III. Standards for Municipal officers and employees

The state ethics laws (G.L. c.268A, G.L. c.268B, and 950 CMR) apply to the acts and omissions of municipal officials and employees. The following list, though not all-inclusive, contains some of the principal applicable provisions.

- A. *G.L. c.268A, Section 2(b)*. (illegal for municipal employee to accept anything of value intended to influence an official act or omission)
- B. *G.L. c.268A, Section 3(b)*. (illegal for municipal employee to accept anything of substantial value for or because of an official act or to influence an official act)
- C. *G.L. c.268A, Section 5(b½)*. (illegal for a former municipal employee who participated as such in general legislation on expanded gaming in the commonwealth or in the implementation, administration or enforcement of chapter 23K, to become an officer or employee of, or who acquire a financial interest in, an applicant for a gaming license or a gaming licensee under said chapter 23K within one year after his last municipal employment has ceased)
- D. *G.L. c.268A, Section 6(a)*. (any public official who in the discharge of his official duties would be required knowingly to take an action which would substantially affect such official's financial interests, unless the effect on such an official is no greater than the effect on the general public, shall file a written description of the required action and the potential conflict of interest with the state ethics commission)
- E. *G.L. c.268A, Section 17(a)*. (no municipal employee shall directly or indirectly receive or request compensation from anyone other than the city or town or municipal agency in relation to any particular matter in which the same city or town is a party or has a direct and substantial interest)
- F. *G.L. c.268A, Section 19*. (generally illegal for municipal employee to participate as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment or has a financial interest)
- G. *G.L. c.268A, Section 23(b)(2)*. (obtaining unwarranted privileges based on position)
- H. *G.L. c.268A, Section 23(b)(3)*. (impermissible to act in a manner which would cause a reasonable person, having knowledge of the relevant circumstances, to conclude that any person can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person)
- I. *G.L. c.268B, Section 5*. (obligation of all public employees in major policymaking positions and officials to file statement of financial interest)

IV. Analysis and Recommendation

Given the existing comprehensive set of statutory prohibitions and obligations placed upon gaming license applicants, gaming licensees, and municipal officials and employees it is difficult to identify specific areas in need of enhancement at this time. Where the Legislature did mandate the creation of an enhanced code of ethics for commissioners and employees, but did not do so for others, and where it enacted specific statutory enhanced ethics provisions, the promulgation of an enhanced code of ethics by the Commission for gaming license applicants, gaming licensees, and municipal employees and officials may be beyond the Legislative intent behind the *Act Establishing Expanded Gaming in the*

Commonwealth. Further, we must consider the difficulty in effectively enforcing an enhanced code of ethics upon municipal employees and officials who are already subject to vigorous oversight by the State Ethics Commission.

Clearly, the prospective regulations will impose a robust set of operational and administrative standards and obligations upon gaming licenses. To that end, as it applies to licensees, this opinion is limited to purely ethics based requirements. Certainly, as the process evolves, however, it may become necessary to create further ethical restrictions or obligations on any party subject to the Commission's regulations.

Massachusetts Gaming Commission

MEMORANDUM

Date: January 18, 2013
To: Commissioners
From: Gayle Cameron
Re: Policy Question # 7

Policy Question #7: What regulations should the commission issue with respect to distribution of alcohol and the forms of identification that may be presented to a gaming licensee to demonstrate proof that a person has attained the age of 21?

Legislative Summary:

G.L. c. 23K, §26(c): “Notwithstanding any regulation to the contrary, a licensee under this section may distribute alcohol free of charge and for on-premises consumption to patrons in the gaming area or as a complimentary service or item in the gaming establishment; provided, however, that the commission, in consultation with the alcoholic beverages control commission, shall promulgate regulations on such distribution and the forms of identification that may be presented to the gaming licensee to demonstrate proof that a person has attained the age of 21; and provided further, that such regulations shall include requirements relative to alcohol training certification for an employee who serves alcohol at a gaming establishment.”

Strategic Plan Summary:

The strategic plan does not discuss a resolution to this question.

Public Comment Summary:

- [Paul Vignoli Jr.]—All licensees should be required to have Door or Greeting Personnel at the entrance to the gaming floor to check ID’s of all patrons. Using commercially available ID verification equipment that will check for minimum patron ages as well as ‘Excluded’ patrons. These systems are currently being used in nightclubs and would ensure that both Minors and Excluded Persons be denied admittance.
- [Sterling Suffolk Racecourse LLC]— SSR recommends that the Commission issue regulations in conformance with M.G.L. Chapter 138, Section 34B, and regulations prohibiting distribution of alcohol to visibly intoxicated persons in conformance with M.G.L. Chapter 138, Section 69. This is similar to the approach taken by New Jersey, with the important provisos that its Division of Gaming Enforcement issues alcoholic beverage licenses to gaming establishments and has authority to adopt rules and regulations necessary for a casino’s unique operations.
- [Foley Hoag LLP]—Mohegan Sun encourages the Commission to consult with all interested parties, including existing casino surveillance and security personnel in New England, local and

state law enforcement agencies, Mothers Against Drunk Driving and other advocacy groups, insurance loss control experts and the many colleges and universities in the Commonwealth with existing or desired alcohol certification or training curricula. These regulations should be consistent with M.G.L. c. 138, § 34B. The Commission should also consider regulations that will permit casino security personnel to detain suspected intoxicated or underage patrons until law enforcement arrives and ensure that identification scanning technology comports with the Massachusetts Privacy Law, c. 93H.

- [Philip Cataldo]—“The same as used by all other venues that serve alcohol in the state.”

Recommendation:

We should work with the ABCC, which has agreed to provide us with draft regulations. The regulations should be consistent with current laws regarding alcoholic beverages.

I do not believe any deviation from the normal methods of identification are necessary, and a gaming establishment should accept a Massachusetts Driver’s License, a Massachusetts Liquor Identification Card, a Massachusetts Identification Card, a Passport Issued by the United States or a government that is officially recognized by the United States, a Passport Card for a Passport issued by the United States, and a Military Identification Card as specified in G.L. c. 138, § 34B.

One change to the laws that is necessary is to allow complementary drinks on the gaming floor, but not in the remainder of the casino premises. For example, there is no reason to treat a Legal Sea Foods within the casino grounds differently than a Legal Sea Foods three blocks away.

Massachusetts Gaming Commission

MEMORANDUM

Date: January 18, 2013
To: Commissioners
From: Gayle Cameron
Re: Policy Question # 25

Policy Question #25: When should the regulations pertaining to operations on the gaming floor be issued and what should those regulations contain? When should regulations regarding dealer tips, as specified in G.L. c23K 25(g) be issued and what should those regulations contain?

Legislative Summary:

G.L. c. 23K, § 25 describes certain operational requirements that the licensee must abide by including security precautions such as cameras and visibility of the gaming area, hours of operation, and efficient procedures to entertain the public.

G.L. c. 23K, § 25(g) “A dealer may accept tips or gratuities from a patron at the table game where such dealer is conducting play; provided, however, that such tips or gratuities shall be placed in a pool for distribution among other dealers. The commission shall determine how tips and gratuities shall be set aside for the dealer pool as well as the manner of distribution among dealers. No key gaming employee or any other gaming official who serves in a supervisory position shall solicit or accept a tip or gratuity from a player or patron in the gaming establishment where the employee is employed.”

Strategic Plan Summary:

Pages 107-109 speak about requirements for personnel on the gaming floor. The gaming consultants recommend the adoption of personnel best practices identifying levels of supervision and the assignation of responsibilities of each to assure acceptable levels of customer relations management and integrity of games operation.

The strategic plan does not discuss how the Commission should regulate dealer tips.

Public Comment Summary:

- [Sterling Suffolk Racecourse LLC]—Questions 24 to 28 and 30 all pertain to a gaming establishment’s internal control matters. SSR discussed the same procedures as for question 24.

Recommendation:

The regulations should be issued along with the RFA-2 regulations.

When writing the regulations we should include language to ensure that the gaming floor operations are run in accordance with the legislative intent. The regulations should include, at the very least, guidelines on security precautions, visibility of the gaming area, hours of operation, efficient procedures to entertain the public, and supervision of gaming floor personnel. The question is very broad but we should certainly go into more detail when writing the regulations.

Chapter 23K speaks directly to the content of the regulations for dealer tips, and our regulations should follow the legislative mandate in designing the dealer pools and distributions.

Massachusetts Gaming Commission

MEMORANDUM

Date: January 18, 2013
To: Commissioners
From: Gayle Cameron
Re: Policy Question # 26

Policy Question #26: When should regulations regarding issuance of credit be issued and what should those regulations contain?

Legislative Summary:

G.L. c. 23K, §27(a) A gaming licensee may issue credit to a patron of a gaming establishment in accordance with regulations promulgated by the commission. Such regulations shall include, but not be limited to:

- (i) procedures for confirming that a patron has an established credit history and is in good standing;
- (ii) whether the patron has a good credit history with the gaming establishment;
- (iii) authorization of any credit instrument;
- (iv) methods for acknowledging a credit instrument and payment of debt; and
- (v) information to be provided by the patron to the gaming establishment to be shared with the commission for auditing purposes.

G.L. c. 23K, §27(h) specifies that debt collections shall be limited to key gaming employees or attorneys acting directly on behalf of the gaming licensee. It further restricts debt collections of gaming employees who serve as a junket representative for the gaming licensee.

Strategic Plan Summary:

The strategic plan specifically deals with gaming credit on pages 123-128. Easy credit serves neither the patron nor the casino operators well. Credit evaluation should weigh whether the applicant is employed, the number of years employed, whether he or she is retired, or unemployed. Many states include in their regulations a framework for patron self-exclusion from all gaming or only credit issuance. The regulations should also include the procedure for accepting credit applications, verification of the financial suitability of the patron, and procedures for issuance of the credit to a patron found suitable.

Public Comment Summary:

- [Sterling Suffolk Racecourse LLC]—Questions 24 to 28 and 30 all pertain to a gaming establishment's internal control matters. SSR discussed the same procedures as for question 24.

Recommendation:

The regulations should be issued along with the RFA-2 regulations.

Our regulations should ensure that credit is only given to responsible patrons who are able repay their debts. The legislation is specific on the requirements of our regulations and we should follow that mandate. The regulations should address the procedure for accepting credit applications, verification of the financial suitability of the patron, and procedures for issuance of the credit to a patron found suitable. For determining the creditworthiness of a patron, we should require that licensees take into account various criteria, such as whether the patron is employed and the number of years employed.