

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: December 18, 2012

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 43rd public meeting. He announced that the Commission will hold its regular monthly meetings on Thursdays beginning in 2013, with the next meeting scheduled for Thursday, January 3 at 1:00 p.m.

Approval of Minutes:

See transcript pages 2-4.

Commissioner McHugh stated that the minutes for the meetings of December 4 and December 11 are ready for approval.

Motion made by Commissioner McHugh to accept the minutes of December 4, 2012 as written. Motion seconded by Commissioner Zuniga. The motion passed unanimously by a 5-0-0 vote.

Motion made by Commissioner McHugh to accept the minutes of December 11, 2012 as written. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Administration:

See transcript pages 4-23.

Report from Director of Administration - Director Glovsky stated that she has been working on Racing Division matters with Director Durenberger, who will address the status of that work.

Director Glovsky stated that she has nothing further to report. Chairman Crosby reviewed the master schedule. Director Glovsky stated that the Commission has added the process for procuring and installing a document management system to the schedule. Her goal is to implement the document management system in phases starting on April 1, 2013, with full implementation by the start of fiscal year 2014.

Personnel Searches – Chairman Crosby stated that the Commission is working toward meeting an end of December deadline for some of the new hires. He stated that there is a very small pool of qualified candidates for the executive director position, most of whom have been in and out of the regulatory side and have also worked in the private sector side. He raised the possibility that there may be a candidate who currently, or in the past, represented companies now bidding for a Massachusetts gaming license. Chairman Crosby would like the Commission to discuss how the Commission will handle such a candidate.

Commissioner Zuniga stated that a section of M.G.L. c. 23K creates a waiting period during which a prospective employee may not have worked for an applicant. Commissioner McHugh stated that the section that Commissioner Zuniga referenced is 3(n), and it states that no individual can be employed by the Commission if during the period commencing three years prior to employment that individual held a direct or indirect interest in, or was employed by a licensee. He stated that this section creates a statutory minimum that the Commission must meet. He recommended obtaining a ruling from the State Ethics Commission regarding any candidate for the executive director position that had an interest in a gaming applicant within the past three years. He also stated that the Commission is developing an enhanced ethics policy and will need to make certain that anyone who is hired will meet the criteria spelled out in that policy.

Commissioner Cameron stated that the Commission has received nine scope of licensing letters from eleven parties interested in a gaming license. She stated that she would not be comfortable hiring an executive director who had a direct relationship with one of the applicants within the three year period. Commissioner McHugh stated that the Commission needs to engage someone in the executive director position who has not had a relationship with one of the applicants within the three year period.

Employee Manual – Commissioner Zuniga stated that he has submitted for review and vote the last chapter of the Employee Manual, Chapter 6, dealing with communications and outreach. He would like the Commission to review this chapter, with the intention of voting on it at a subsequent Commission meeting. Commissioner Stebbins stated that the Commission should explain its social media policy, which is outlined in this chapter, to new hires so that they do not unknowingly violate the policy prior to reading the employee manual.

IEB Report:

See transcript pages 23-28.

Scope of Licensing – Commissioner Cameron stated that eleven potential applicants have requested meetings and/or conference calls regarding scope of licensing. The IEB has received information on exemption requests and questions regarding qualifiers from nine of those

potential applicants. The IEB has made determinations and sent out letters on who the qualifiers will be for five of these potential applicants.

Investigations Status Report – Commissioner Cameron stated that the IEB is finalizing a fingerprinting process with the assistance of its law enforcement partners. She stated that in the coming week the IEB will sign MOU's with the State of Ohio and the State of Nevada, among others, to allow the transfer of investigative information in a timely manner.

Key Policy Questions:

See transcript pages 28-67.

Key Policy Question No. 18: Should the Commission approve the wording of the concise summary required by M.G.L. c. 23K, § 15(13) before it is submitted to the public?

Chairman Crosby stated that the concise summary must be approved by referendum of the home ward or the full community. He reviewed the comments that the Commission received from the public relative to this question. He stated that the Commission believes that the legislative intent was that the concise summary be a concise summary of the host community agreement. He recommended that the Commission not vote to require the Commission's approval of the concise summary but that the Commission should reserve its right to intercede at any stage of the process in the event that something in the referendum is troubling. Commissioner Zuniga stated that having a copy of the concise summary for informational purposes would be helpful to the Commission.

Motion made by Commissioner Stebbins to issue a regulation stating that the "concise summary" accompanying the ballot question required by G.L. c. 23K, § 15(13) is a summary of the host community agreement. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Future Questions – Chairman Crosby reviewed additional policy questions that may need to be addressed soon. Commissioner Cameron recommended that the Commission schedule one day to handle all the questions, as they all have to be addressed prior to the next phase of regulations. Chairman Crosby stated that he had anticipated scheduling a week in January to discuss the remaining questions and asked Chief of Staff Reilly to coordinate the scheduling. He reviewed the work that each Commissioner must conduct as a result of the policy question meetings held last week.

Region C Status Review - Chairman Crosby stated that the Commission considered at a prior meeting a proposal to open in region c the commercial process on a parallel track with the Tribal process and invited public comment. He stated that in thinking about the proposal, the commission is trying to balance four interests. First is recognizing the legitimate historic and legal rights of federally recognized tribes in Massachusetts. Second is assuring equal treatment for the residents of southeastern Massachusetts in terms of jobs and economic development. Third is limiting southeastern Massachusetts to a single Category 1 casino license and limiting Massachusetts to no more than three casino licenses. Fourth is creating a stable, predictable gaming environment in southeastern Massachusetts.

He stated that none of the options in front of the Commission is risk free to the Commonwealth's interests. If the Commission waits for the Tribe for an extended period of time, and the Tribe is ultimately unsuccessful with the land in trust or the compact, the Commission will then start the commercial process, but southeastern Massachusetts will at that point be at a substantial disadvantage in terms of job generation and economic development. On the other hand, if the Commission proceeds with a commercial process and subsequently the tribe negotiates a compact and receives land in trust, then southeastern Massachusetts has the potential of opening two competing casinos, which is not desirable.

Chairman Crosby stated that the Commission received public commentary on this issue, and the comments are posted on its website. As part of this feedback, the Tribe has requested that the Commission wait 90-days to make a decision to allow the Tribe time to complete the compact. He stated that the tribe was concerned that the commission's adoption of a parallel process now could imply that the Commission has come to the conclusion that the Tribe will be unsuccessful in its efforts to obtain a compact or land, although the Commission has reached no such conclusion. A parallel process could also mean that commercial developers could make a large investment and never get to stage 2. Chairman Crosby therefore recommended that the Commission postpone for 90 days a vote on the next step, thereby giving the Tribe an opportunity to complete the compact. After 90 days the Commission can reassess the situation.

Commissioner McHugh stated that the Commission should separate the land in trust issue from the compact issue for the purpose of analyzing risk. He stated that if the tribe gets land in trust, with or without a compact, it will have an unencumbered right to operate Class 2 gaming without any state involvement. He stated that the Commission should try to ensure that Region C has an economically viable casino development and that effort will take some time. He stated that there seems to be a uniform perception that opening up a parallel track has sent a signal that the Commission believes that the Tribe is not likely to execute the compact, and this perception is having a deleterious effect on the ability of the negotiating team from the Tribe and the City of Taunton to succeed. He stated that in introducing the parallel track, the Commission was engaged in risk reduction and had made no judgment on the likelihood that the Tribe was going to negotiate a compact. He stated that he favors giving the Tribe a 90-day window before making a decision.

Commissioner Cameron stated that the legislation states that, if a compact is not signed by July 31, 2012, then the Commission shall open a commercial license process in October 2012. She stated that if the Commission allows this 90-day window and the Tribe does not sign a compact at that time, then the Commission should open the commercial license process. Commissioner Zuniga stated that for the compact to be signed within 90 days, the Tribe would need to reach an agreement, and that agreement would need to be approved by the legislature and the Bureau of Indian Affairs. He stated that if any of these things are not accomplished by March 18, 2013 the Commission would find itself in the same position it is in now.

Commissioner Cameron stated that without a date in place there is no urgency to move the Tribal process along. Commissioner McHugh stated that the dates in the legislation clearly did have a motivating effect on everyone to get the compact signed and approved. If substantial progress

has been made by March 18 and more time is needed for full approval, any request for additional time would have to be evaluated in light of the circumstances as they then appeared.

Motion made by Commissioner McHugh that the Commission postpone discussion of the course to take in Region C for a 90-day period without condition or prejudgment as to what course the Commission will take at the end of that period. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Racing Division:

See transcript pages 67-77.

Report from Director of Racing Division – Director Durenberger stated that the Racing Division is following the provisions regarding conflict of interest in G.L. c. 23K, § 3(n) when hiring Racing Division employees. She stated that the Division is on track with closing and cleaning out the laboratory. The Division is moving forward with interviews and background checks for former SRC employees who have applied for positions with the Racing Division. The Division is working to archive the large amount of documents from the DPL. Director Durenberger is pursuing the possibility of hiring a library science intern from Simmons College or U. Mass Boston who could assist with this process.

Director Durenberger stated that Racing Commissioners International held a meeting and announced that regulatory changes regarding medicine are moving forward. She stated that Massachusetts is in a good position for compliance with these regulations. She discussed local aid payments to racetrack host communities, stating that the Commission has an ongoing obligation to make these payments. The payments for FY 2013 are six months in arrears, with a payment that was due on September 30 and another that will be due next week. There is also an outstanding fourth quarter payment from FY 2012. She stated that there is a line item in the FY 2013 budget to make these payments, but the Commission will have to make a decision regarding the FY 2012 payments. She recommended that the Commission vote to make these payments.

Motion made by Commissioner McHugh that the Commission approve the payments for FY 2012 and FY 2013 that are due and will become due at the end of this year and authorize the appropriate person to make the distributions. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 5-0-0 vote.

Public Education and Information:

See transcript pages 77-82.

Report from the Ombudsman – Mr. Ziembra thanked several regional planning agencies that helped the Commission get out notice regarding the Region C conversation. He stated that he continues to have discussions with communities and applicants. He attended a meeting in the City of Everett to discuss the licensing process and details about what is planned for Everett. He stated that he and Commissioner Zuniga had a scoping meeting with three regional planning

agencies during which they held a discussion on potential assistance that the Commission can provide to surrounding communities, such as technical advice or other facilitation services, to help alleviate concerns about potential impacts caused by gaming. He stated that he and Commissioner Zuniga also met with other regional planning agencies at the MARPA meeting. They have followed up with the Mass Municipal Association, detailing some of the items about which they had concerns and outlining the process going forward.

Report from the Director of Communications and Outreach – Director Driscoll stated that she has asked the website designer to expedite work on the website. She stated that she is holding a meeting on Friday to begin transferring content from the current site. She stated that the Commission has secured massgaming.com as the site's URL. Her goal is to have this site up and running to coincide with the January 15 application deadline.

Charitable Gaming:

See transcript pages 82-84.

Commissioner McHugh stated that the Commission had set January 1 as the deadline to prepare legislation relative to charitable gaming in the Commonwealth. The Commission has draft legislation and he anticipates having the legislation ready for a vote at the Commission's January 3, 2013 meeting.

Enhanced Ethics:

See transcript pages 84-85.

Commissioner McHugh stated that the Commission is almost ready to distribute the enhanced ethics policy for a vote. He stated that Commissioner Cameron and Attorney Grossman have been working on this, along with the ABCC and State Police. They circulated a draft and are holding a meeting with all the stakeholders to review the draft. He anticipates that the policy will be ready for consideration at the Commission's January 3, 2013 meeting.

Research RFP:

See transcript pages 85-86.

Chairman Crosby stated that the RFP responses for the research agenda are due January 5 and the Commission has selected a procurement management team to review the RFPs and make a decision.

Other Business:

See transcript pages 86-88.

Commissioner Zuniga stated that the Department of Revenue has issued a draft document for public comment relative to the withholding of wagering winnings and its view of how the Gaming Act overlays statutes that pertain to the withholding of taxes. He provided a copy of this

draft document to the Commission for informational purposes. Chairman Crosby recommended that the Commission post a link to this document on its website to facilitate public comment.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission December 18, 2012 Notice of Meeting Agenda
2. Massachusetts Gaming Commission December 4, 2012 Meeting Minutes
3. Massachusetts Gaming Commission December 11, 2012 meeting minutes
4. Massachusetts Gaming Commission Section 6 of Employee Handbook
5. Key Policy Question #18
6. December 17, 2012 Memorandum Regarding Considerations for Licensing Status of Region C
7. December 17, 2012 Letter from State Representative Shaunna O'Connell
8. December 7, 2012 Letter from State Representative Antonio Cabral
9. December 17, 2012 Letter from K.G. Urban Enterprises
10. December 14, 2012 Letter from K.G. Urban Enterprises
11. December 11, 2012 Letter from Smith, Segel & Ruddock
12. December 18, 2012 Letter from the Town of Barnstable
13. December 14, 2012 Email from Representative Robert Koczera
14. December 17, 2012 Email from Dominic Tigano
15. December 16, 2012 Email from Carolyn Crowell
16. Working Draft for Practitioner Comment 12/17/2012 – Withholding on Wagering Winnings

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