



Meeting Minutes

Date: March 28, 2013

Time: 1:00 p.m.

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

Present: Commissioner Gayle Cameron
Commissioner James F. McHugh
Commissioner Bruce Stebbins
Commissioner Enrique Zuniga

Absent: Commissioner Stephen P. Crosby, Chairman

Call to Order:

Commissioner McHugh opened the 61st public meeting. He stated that Chairman Crosby will not be present at today's meeting. Commissioner McHugh chaired the meeting in Chairman Crosby's absence.

Approval of Minutes:

See transcript pages 2-3.

Commissioner McHugh stated that the Commission has no minutes to review today but he will prepare several sets for the next meeting.

Administration:

See transcript pages 3-5.

Master Schedule – Commissioner Zuniga stated that the Commission continues to contemplate the three scenarios regarding slots parlor processing and license issuing. He is preparing a framework to allow the Commission to reanalyze those scenarios and contemplates having this framework ready for discussion at the next Commission meeting. He stated that the Commission has tentatively scheduled the determination of suitability for the slots parlor applicants for April 30, with the possibility of being done sooner if the investigations proceed faster than scheduled.

Qualifier Status Review:

See transcript pages 5-11.

General Counsel Blue stated that she is bringing to the Commission a request for a vote on a qualifier. She stated that if an individual or entity has a significant interest in an applicant, that person must submit to the Commission qualification process or divest all of its interest in the applicant. She stated that Vornado, which has an interest in the Sterling Suffolk application, declined to participate in the qualification process so the Commission advised the entity and associated individuals that they would need to divest. The divestiture process might take more time than the Commission has scheduled for background investigations, so she has looked at other jurisdictions to determine if there is a way to address this issue. She stated that one other jurisdiction's approach suggests that Vornado could place that interest into a blind trust with an independent trustee who would then become the qualifier and submit to the qualification process. Any transfer out of that trust would be subject to the Commission's transfer regulations and the transferee would also have to qualify.

Ms. Blue stated that before the Commission today is a recommendation for approval of a request to withdraw the Vornado entities and related individuals from qualification if Vornado places its interest into a trust with an independent trustee, who is from the firm of Hemingway and Barnes, with the knowledge that Vornado will have no influence or impact on that interest while it is in the trust. The Vornado blind trust is a temporary measure created with the understanding that the trust would divest Vornado's entire interest to a new investor.

Commissioner Stebbins asked if the Commission has input into who Vornado selects as a trustee. Ms. Blue indicated that the Commission does not have input into the selection, but has reviewed the individual and believes that he is independent. Commissioner Zuniga asked if Vornado has a projected timeline for the divestiture. Ms. Blue stated that Vornado would like to do it as soon as possible.

Commissioner McHugh stated that if Vornado executes the trust agreement, then control of Vornado's interest will be solely in the hands of the trustee, who will go through the Commission's qualification process. Once the trustee transfers this interest to another person or entity, the transferee will also have to go through the Commission's qualification process. Commissioner Zuniga asked if the trust agreement will delay the Commission's determination of suitability. Ms. Blue stated that she has spoken with Director Wells who has indicated that the trust agreement should not delay the process.

Motion made by Commissioner McHugh that the Commission approve placement of the interests of the Vornado entities in Sterling Suffolk Racecourse into a blind trust over which Vornado has no control; and require that the trustee qualify through the Commission's normal qualification process; and upon the trustee's becoming a qualifier, permit the Vornado qualifiers to withdraw. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 4-0-0 vote.

Public Education and Information:

See transcript pages 11-13.

Report from the Ombudsman: Ombudsman Ziemba stated that he is still in the process of collecting all the information that would be needed for a full discussion of the Category 2 licensing schedule, so he would like to postpone that discussion until the Commission's next meeting. He stated that he continues to hold conversations with host and surrounding communities, and, when setting deadlines, the Commission should take into account the ability of both host and surrounding communities to understand the impacts of the proposed casino. He stated that he has set a deadline of this week for applicants to respond on whether or not they are interested in utilizing the RPA planning process. The response has been that applicants are very interested in having a planning session with the regional planning agencies, but a few do not yet want to commit to utilizing the RPAs.

Ombudsman Ziemba reported that he has held conversations with the Central Mass Regional Planning Commission regarding the additional applicant in Worcester, and he anticipates having a fruitful dialogue with it as the process continues.

Regulation Update:

See transcript pages 13-33.

Regulation Update – Counsel Grossman stated that the legal staff has attempted to incorporate into the regulations all of the Commissioners' comments from Monday and made a few additional adjustments. He stated that he also added to Sections 102-117 of the existing regulations a provision relative to legal challenges, stating in essence that no person or local government entity may challenge or seek to enjoin Commission action based on a claim that an applicant and/or the Commission has not complied with Commission regulations.

Mr. Grossman stated that the Commission has also made amendments to the language dealing with the confidentiality of the RFA-1 applications, expanding the process presently in place to include the RFA-2 applications. Commissioner McHugh stated that the Commission is dealing with 21,000 pages of personal information and some applicants have asked that additional information be kept confidential. The Commission is working through these requests and is making every effort to get through this process as quickly as it can. He stated that under Mass General Law the Commission is not permitted to release information that is exempt from disclosure for privacy reasons.

Mr. Grossman referred to Sections 118-131. He referenced additional language in Section 119.03(2) intended to clarify the evaluation criteria. He stated that under the Office of Campaign and Political Finance regulations, when the applicant reimburses the host community for the cost of the election, the applicant would have to disclose this information. He said that he added language to the regulations to reflect this requirement. He stated that he also added a section to deal with arbitration, if necessary, to determine the fair market value of a gaming establishment upon the transfer of the license.

Commissioner Stebbins referenced language requiring all applicants to disclose political contributions and asked why he included this language if all applicants are barred from making political contributions. Mr. Grossman stated that one section of the legislation deals with a ban on political contributions and another section deals with the disclosure of certain contributions, so the sections might appear to be inconsistent with one another. He stated that the prohibition is

on making contributions to an individual, politician, or candidate for office, however, the legislation contains no prohibition against making a contribution to a community or a division of a community. Applicants must disclose those types of community contributions.

Commissioner McHugh stated that these draft regulations represent an enormous amount of work done by Counsel Grossman and the Commission's consultants, and the draft regulations are something that the Commission can be proud to place before the public for comment.

Motion made by Commissioner McHugh to accept these draft regulations and authorize legal staff to forward them to the Local Government Advisory Committee and to carry out all the steps necessary for their formal promulgation following period of public comment antecedent to a public hearing. Motion seconded. The motion passed unanimously by 4-0-0 vote.

Schedule Update – Counsel Grossman stated that he will file the regulations with the Local Government Advisory Committee by tomorrow, and the Commission must then wait 14 days before taking the next step required by the Administrative Procedure Act. He stated that the goal is to file the regulations with the Office of Secretary of State by April 12, 2012 and the law requires a 21-day period between the filing and public hearing. The notice published in the Massachusetts Register must also precede the public hearing by seven days, so they are looking at a public hearing date of May 3, 2013. He stated that under this schedule the Commission can file the final regulations for publication by June 7, 2013 at the latest.

Evaluation Criteria – Commissioner McHugh stated that before the Commission is the Evaluation Criteria Matrix which incorporates all the changes discussed at Monday's Commission meeting. He stated that the Commission will further transform this matrix into the application form. He stated that if the Commission agrees, the Commission could post the matrix tomorrow and solicit public comment. The Commission agreed to post the matrix for public comment.

Racing Division:

See transcript pages 33-44.

Administrative Update – Director Durenberger stated that she will present at the Commission's next meeting the amendments to their proposed legislation accompanied by a draft report. She will also provide a first quarter update outlining where the Racing Division is at the end of its first 90 days of exclusive control over Massachusetts horse racing. She anticipates that her presentation will be lengthy.

Proposed Phase II Regulation Changes to 205 CMR 4.00, Rules Governing Racing – Director Durenberger stated that Counsel has brought to her attention that she must strike from the proposed regulations all language stating "or later revisions." She reviewed the applicable sections with the Commission.

She stated that before the Commission are written submissions received from the Jockeys' Guild, an email exchange from the Jockey Club, a submission from Mr. Paul Booker at Suffolk Downs, a 2011 submission from Suffolk Downs, and a packet with the proposed changes. She stated that she received clarification from the Secretary of the Commonwealth regarding the best way to

move forward with the Phase II rulemaking process. The Secretary recommended that she put the proposed changes before the Commission today for a vote to adopt the regulations on an emergency basis and to simultaneously proceed through the regular rulemaking process.

Commissioner Cameron made reference to the very positive letter received from the Jockeys' Guild and stated that Director Durenberger deserved these accolades. Director Durenberger stated that in the fall she will be undertaking Phase III rulemaking, which includes the definitions of the different racing officials and their duties.

Motion made by Commissioner McHugh to adopt the proposed changes to 205 CMR 4.00 that are before the Commission on an emergency basis, and simultaneously to commence the formal promulgation process for those rules by sending them tomorrow to the Local Government Advisory Committee and by authorizing Director Durenberger, in conjunction with the legal staff, to take all other steps necessary to have the regulations promulgated formally. Motion seconded by Commissioner Cameron. The motion passed unanimously by a 4-0-0 vote.

A brief recess was taken.

Commissioner McHugh reconvened the 61st public meeting.

Research Agenda:

See transcript pages 44-103.

Commissioner Zuniga introduced a team from UMass Amherst who responded to the Commission's research agenda RFP: Dr. Rachel Volberg and Dan Hodge, who were present at the meeting, and Rob Williams who participated remotely by telephone. He stated that the Commission invited the team today to help the Commission better understand the nuances of this project.

Dr. Volberg addressed the Commission. She stated that she was very excited to be discussing this research project with the Commission as she has been involved in full-time gambling research for 28 years and has always wanted to conduct this type of study. She stated that no other jurisdiction has included research as part of its gaming legislation and she is very happy that Massachusetts has done so. She stated that the data produced by their study will be very valuable to every citizen of the Commonwealth, the applicants, the operators, regulators, legislators, members of the host and surrounding communities, and perhaps the international community as well.

Dr. Volberg stated that she designed the project to ultimately generate early warning signs of potential changes in the social and economic impacts produced by new forms of gaming in Massachusetts. She stated that the information generated from this study will incorporate evidence-based and empirical data into the development of measures that will minimize harm associated with casino gambling and internet gambling in the future. She stated that her team consists of a multidisciplinary, scientifically rigorous Massachusetts based team that she recruited before the RFR came out. She expressed her belief that this research will be a shining example of a world-class gaming research study. She provided background information and an overview of the design of the study which will use a cross-sectional rather than a cohort

approach. Mr. Hodge stated that a cross-sectional design involves surveying the population at several different points in time, whereas a cohort study would generate a sample and track those individuals every year over time.

Dan Hodge described the economic research factors of the project. He stated that the goal is to look at the net economic and fiscal impacts of expanded gaming. He stated that this project will span multiple years, with the goal of measuring impacts as they occur over time by tracking and combining a number of economic and fiscal metrics. He provided information on how the study would accomplish these goals and answered questions from the Commissioners.

Commissioner McHugh asked how the Commission will pay for this study. Commissioner Zuniga stated that the legislation gave the Commission a tool to fund this effort by way of the Public Health Trust Fund, of which the Commission is a trustee. He stated that the legislation sets a floor that the Commission can assess on an annual basis and a tax on the gross gaming revenue funds this trust in later years. He emphasized the legislative requirement that the Commission undertake this research study and the Commission will have to begin the study before the state begins to feel impacts from gaming. He recommended that the Commission initially fund the study for a short period and then continue providing funds as the Commission receives revenue from the licensees.

Commissioner McHugh asked what the role of the Gaming Policy Advisory Committee will be, because that Committee is supposed to advise the Commission during the course of this study. Commissioner Zuniga stated that under the legislation, the Gaming Policy Advisory Committee sets the annual research agenda. However, the Committee, of which the Governor's appointee is the chair, has not yet been set up. Dr. Volberg stated that it is her intention to report research results to this Committee on a regular basis as soon as it is created.

Commissioner Stebbins asked how the researchers would interact with the Commission's Director of Research and Problem Gaming. Dr. Volberg stated that the Director can attend a number of conferences on problem gaming and benefit from introductions that her team could make. She stated that the team would plan to work very closely with the Director in terms of the various decisions that have to be made as a result of the team's research.

Commissioner McHugh expressed concern with the cash flow piece of this process and recommended moving ahead with the negotiations and contract, including a projection of cash flow to match up to the Commission's budgetary projections. The Commission would then approve the negotiated contract after reviewing the cash flow consequences that the contractual arrangements produced.

Motion made by Commissioner McHugh that the Commission authorize Commissioner Zuniga to begin the process of drafting the scope of work and undertaking contract negotiations for the research project with the team comprised of UMass Amherst et al, as part of their response to RFR #MGC-Research-2012, dated January 7, 2013, and bring the fruits of those negotiations, plus a cash flow analysis, back to the Commission for final approval. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 4-0-0 vote.

Commissioner McHugh stated that he and Commissioner Stebbins have been discussing the composition of the team to assist in reviewing the RFA-2 applications. Commissioner Stebbins

stated that the AIA has reviewed the evaluation criteria and provided him with a list of the types of professional consultants that the Commission should utilize for this application review. He recommended using a firm with experience in analyzing mergers and acquisitions to review the financial information. He stated that he would like to create a framework for an RFP for these services. Commissioner McHugh recommended continuing this discussion at the Commission's next meeting.

Commissioner McHugh announced that the Commission's April 4 meeting will begin at 9:00 a.m. due to the number of items on the agenda, which includes discussions on racing, scheduling, and Region C.

Commissioner McHugh stated that the Commission received a letter from the law firm of Todd & Weld contending that the Commission has no authority to open Region C to commercial gaming until it concludes that the Bureau of Indian Affairs would not take land into trust. He stated that he has a different opinion on this matter, but the Commission has not formally taken a position on the issue.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission March 28, 2013 Notice of Meeting and Agenda
2. March 28, 2013 Massachusetts Gaming Commission Memorandum Regarding Vornado Trust
3. Massachusetts Gaming Commission Draft Regulations Updates to 205 CMR 102.00 through 117.00
4. Massachusetts Gaming Commission Draft Regulations New 205 CMR 118.00 through 131.00
5. Massachusetts Gaming Commission Draft Evaluation Criteria
6. Massachusetts Gaming Commission – Racing Division March 28, 2013 Memorandum Regarding Proposed Regulatory Changes to 205 CMR 4.00 – Phase II Recommendation: Adoption of Proposed Regulations on Emergency Basis
7. Proposed Changes to 205 CMR 4.00
8. Written Submissions Received Regarding Proposed Changes to 205 CMR 4.00
9. UMass Amherst Presentation: Massachusetts Gaming Commission Research Agenda, Social & Economic Impacts of Gambling in Massachusetts

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