



Massachusetts Gaming Commission Agenda Setting Meeting Minutes

Date/Time: February 17, 2021, 11:00 a.m.
Place: Massachusetts Gaming Commission
VIA CONFERENCE CALL NUMBER: 1-646-741-5292
PARTICIPANT CODE: 112 232 9216

Commissioners Present:

Chair Cathy Judd-Stein
Commissioner Gayle Cameron
Commissioner Eileen O'Brien
Commissioner Enrique Zuniga

Call to Order

Chair Judd-Stein called to order the 336th public meeting. She noted that given the unprecedented circumstances resulting from the global Coronavirus pandemic, Governor Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of individuals interested in attending public meetings, and that in keeping with the guidance provided, the Commission would conduct this meeting utilizing remote collaboration technology.

All four commissioners were present for the meeting.

Legal Update (1:55)

Executive Director Karen Wells explained that the Supreme Judicial Court of Massachusetts ("SJC") issued a solicitation for amicus briefs concerning litigation around blackjack rules in the Commonwealth determined by the Massachusetts Gaming Commission ("MGC").

General Counsel Todd Grossman explained that there are two ongoing cases concerning this solicitation: DeCosmo v. Blue Tarp reDevelopment, LLC and Shuster v. Wynn Resorts Holdings, LLC. Both cases concern blackjack rules formerly set by the MGC. The DeCosmo case was dismissed by the Massachusetts Superior Court ("MSC") but the Shuster case was not dismissed by

the United States District Court of Massachusetts (“USC”). The DeCosmo matter is being appealed before the SJC. Since these two cases are essentially about the same question, the SJC is asking for an amicus brief on the Shuster case to help resolve them both.

The Shuster case is scheduled to go before the SJC on April 7, 2021. The question on which these cases are founded is whether the blackjack rules published by the MGC on February 11, 2019 (in accordance with 205 CMR section 147.02) permitted casinos to pay 6:5 odds to winners while not otherwise playing by the 6:5 rule variation.

At an October 2020 meeting, the MGC amended the blackjack rules and post them on their public website. Ms. Wells noted that the MGC’s Investigations and Enforcement Bureau (“IEB”) had not taken enforcement action against the casinos for violations of these rules at any point.

Mr. Grossman was contacted by the firm that represents both defendants to inquire whether the MGC was interested in filing an amicus brief. Executive sessions on January 14 and 27, 2021 resulted in the MGC deciding not to file one, with the expectation that if a general request were issued by the SJC, the MGC would reconsider filing. The SJC subsequently invited such general submissions.

The amicus brief would be due by March 17th. If the MGC decides to file, the Attorney General’s Office (“AGO”) would need to authorize the request to file.

Commissioner O’Brien asked about the SJC’s general practice when certifying questions. Mr. Grossman indicated that the SJC frequently makes general requests for amici, and though it does on occasion issue a request that a specific party file a brief, it is not common. Commissioner O’Brien asked if any other entity had filed an amicus brief, to which Mr. Grossman answered that none had, as far as he knew. She then asked Mr. Grossman to elaborate on the AGO’s consideration of the “Commonwealth maintaining credibility in appellate courts”, when deciding whether to approve amicus brief filings. Mr. Grossman reflected that the AGO essentially just tries to ensure that all Commonwealth entities take consistent positions in matters before the courts.

Commissioner Cameron indicated that she did not necessarily consider the SJC’s general request a sufficient reason for the Commission to reconsider its earlier decision not to file a brief.

Commissioner Zuniga opined that as an agency with technical expertise in this matter, there could be a benefit to the public by offering perspective on the issue. Commissioner Cameron agreed.

Chair Judd-Stein opined that with the opportunity to illuminate this industry matter, the Commission could be of public service and provide helpful expertise.

Commissioner O'Brien and Cameron agreed that the Commission could be helpful to the public in this way, with Chair Judd-Stein and Commissioner Zuniga pointing out that their concern over remaining neutral *vis-a-vis* the gaming licensees was ameliorated by the fact that the SJC asked for an amicus brief and that ultimately the request to file had to be approved by the AGO.

Ms. Wells stated that if the Commission agreed, she and Mr. Grossman would begin the process of submitting a request to the AGO. Director of the IEB Lillios supported filing.

Commissioner O'Brien moved that the Commission submit a request to the State Solicitor General for authorization to file an amicus brief in the Shuster matter as discussed. Commissioner Zuniga seconded the motion.

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

Chair Judd-Stein and Ms. Wells agreed that Ms. Wells would update the Commission on this effort next meeting.

11:34 a.m. *Having no further business, Commissioner Zuniga moved to adjourn. Commissioner Cameron seconded the motion.*

Roll call vote:

Commissioner Cameron: Aye.

Commissioner O'Brien: Aye.

Commissioner Zuniga: Aye.

Chair Judd-Stein: Aye.

The motion passed unanimously.

List of Documents and Other Items Used

1. Massachusetts Gaming Commission, notice of meeting and agenda dated February 17, 2021