

The Commonwealth of Massachusetts
Massachusetts Gaming Commission

Meeting Minutes

Date: January 3, 2013

Time: 1:00 p.m.

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

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

Absent: None

Call to Order:

Chairman Crosby opened the 44th public meeting.

Approval of Minutes:

See transcript pages 2-3.

Commissioner McHugh stated that all Commissioners have received the minutes for the December 18 meeting. Commissioner Stebbins noted one correction.

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

Administration:

See transcript pages 3-11.

Master Schedule – Chairman Crosby reviewed the Master Schedule. He stated that the IEB has received two or three license applications that are substantially complete and ready for background checks. Starting investigations on these applications early will put the background check process slightly ahead of schedule. He stated that all other critical application items are going well. Writing the regulations for Phase 2 is a major project that the Commission is currently working on. He stated that the Commission intends to move the slots process forward expeditiously, with a goal of having the background checks for slots completed by May 1, 2013.

Chairman Crosby stated that the Commission is performing background checks on the likely finalists for the Executive Director position, and once the background checks are completed, the Commission will bring in the finalists for public interviews.

Chairman Crosby stated that January 15 is the final due date for the substantially completed applications for a gaming license and the \$400,000 application fee.

Commissioner Stebbins recommended adding the community colleges casino careers process to the Master Schedule so that the Commission may follow its progress and success. Chairman Crosby agreed and recommended that Commissioner Stebbins discuss this task with Director Glovsky.

Employee Manual – Commissioner Zuniga recommended postponing a vote on Chapter 6 of the employee manual because Attorney Grossman has drafted a procedure pertaining to responding to public records requests that the Commission will incorporate into the employee manual. Commissioner Zuniga stated that he will distribute the updated Chapter 6 to the Commissioners and will bring it forward for a vote at the next Commission meeting. Chairman Crosby recommended including a reminder to employees that all emails are presumptively considered to be public records.

IEB Report:

See transcript pages 11-14.

Scope of Licensing – Commissioner Cameron stated that all scope of licensing determinations have been sent out. She stated that a potential applicant is speaking to the Commission consultants but has not progressed to the point of determining whether it will submit an application. The IEB is working with three applicants who would like to provide additional information regarding qualifiers.

Investigations Status Report – Commissioner Cameron stated that Plainridge Racecourse has submitted an application that the IEB has deemed sufficient, and the IEB turned over the application to investigators to begin the background check process in conjunction with the State Police. She stated that the IEB has received two submissions today, one from MGM and one from Penn National, and the IEB will begin reviewing the submissions immediately. She stated that all the applicants are aware of the January 15 deadline and she stressed the need for applicants to supply all requested documents in order to assist with a timely investigation process. She also asked that applicants consolidate their submissions onto as few CDs or USB drives as possible.

Key Policy Questions:

See transcript pages 14-15.

Future Questions – Chairman Crosby stated that the Commission has put in place a process to address the next set of policy questions. Chief of Staff Reilly indicated that she has scheduled meetings to discuss these questions for January 22 and 23, 2013.

Racing Division:

See transcript pages 15-20.

Report from Director of Racing Division – Director Durenberger stated that the Racing Division assumed operation of the racetracks on December 31, 2012. She stated that the Commission must still move some inventory and files from DPL to the Commission’s existing facility, and this process should be completed by January 9, 2013. She stated that she has supplied the Commission with a copy of the final transition audit from the Office of State Auditors. She reported that the Commission has processed the September 30 local aid payment on December 26, is processing the December 31 payment, and expects to pay the fourth quarter payment from FY 2012 soon. Commissioner McHugh stated that after receiving the state Auditor’s audit report, the Commission once again reviewed the legislation and concluded that the legislative intent was clear that these payments should be made. The cities and towns had budgeted for the payments and there were contingencies dependent upon the payments being made in a timely fashion.

Director Durenberger stated that the Section 104 legislative report is due at the end of January and she will be reporting on the four issues that the Racing Division has identified at the next Commission meeting. She stated that the Racing Division is on target with the recommended regulatory changes, which she will present at the January 17 Commission meeting. She stated that all the employees that the Racing Division brought on board are working. The Racing Division is currently undergoing the background check process on a couple of key hires, and she anticipates posting one additional position.

Public Education and Information:

See transcript pages 20-33.

Report from the Ombudsman – Chairman Crosby stated that Ombudsman Ziembra is not available today so he will be handling Ombudsman Ziembra’s report. He stated that the Governor’s office has notified the Commission that Brian Lang filled the labor seat on the Gaming Policy Advisory Committee. He stated that the Governor’s office still has to appoint a Chair of the Gaming Policy Advisory Committee and Ombudsman Ziembra is working to move that process along as quickly as possible.

Policy Question 12 – Chairman Crosby stated that Ombudsman Ziembra has done substantial work on Policy Question 12, which asks to what degree will an applicant be required to have progressed in federal, state, and local permitting, and other regulatory processes before submitting RFA-2 applications. He stated that representatives from the department of environmental Protection and the Department of Transportation will be present at the next Commission meeting for discussion of this issue. At that time, the Commission will fine tune a response and take a formal vote.

Chairman Crosby reviewed Ombudsman Ziembra’s recommendations and stated that the Commission will post these recommendations for public comment. He stated that the Commission has an interest in having the applicant progress through the federal, state, and local permitting and other regulatory processes as far as possible before filing a Phase 2 application in order to move the expanded gaming facilities to fruition as quickly as possible. If an applicant does not have all necessary permits in place before the Commission issues a license, then the Commission may grant a conditional license and revoke that license if the conditions are not met. Issuance of a conditional license, however, adds complexity to the process and may tend to slow it down. Ombudsman Ziembra recommended that the

Commission not specifically mandate completion of local and state permitting before filing an application, but instead require filing the environmental notification form (ENF) and encourage bidders to complete an expanded ENF. He also recommended that the Commission require proof of local zoning compliance.

Commissioner Zuniga stated that there are economic benefits to a facility opening as soon as practically possible, but the Commission should seriously consider risk mitigation. Commissioner McHugh stated that this subject is as important as any subject taken up thus far. He encouraged all who are interested to comment on this important issue so that the Commission will have the benefit of their insights as it proceeds to make judgments on what should be required in terms of the permitting process before the Phase 2 application is filed.

Charitable Gaming:

See transcript pages 33-51.

Commissioner McHugh stated that Section 4 of Chapter 23K gave the Commission some authority over charitable gaming effective July 31, 2012. The legislation also required the Commission to look at existing charitable gaming statutes, make recommendations as to changes, and file a report with the legislature. He stated that the Commission has completed these tasks and the report, which the Commission approved, recommended that all the charitable gaming regulation be transferred to the Lottery Commission, with continuing supervision over charities as a whole by the Attorney General's office. The Lottery Commission, the Treasury, and the Attorney General all agreed with the recommendation, with the understanding that the legislation would be filed by the year's end. He stated that the proposed legislation is now before the Commission for approval. This legislation seeks to repeal a portion of MGL Chapter 24K, Section 4, which gives the Commission authority over charitable gaming, as well as a segment of the legislation that gives beano licensees a particular route to running a lottery or a bazaar. He stated that the proposed legislation would modify MGL Chapter 271, Section 7A to clarify the statute, to clean up issues that have developed, and to consolidate in the Lottery and Attorney General's offices supervision of the functions a charitable gaming operator must perform. The proposed legislation will also increase penalties for running an unauthorized lottery or bazaar.

Commissioner McHugh recommended voting to adopt this legislation and to file it with a short letter to the legislative leadership seeking to have it introduced in the Legislature.

Commissioner Zuniga recommended defining the uses within the term "bazaar" to clarify the types of games allowed. He also raised a concern about poker nights, as some argue that poker is a game of skill and thus would not fall under the definition of gambling.

Commissioner McHugh stated that the Commission could postpone voting on this legislation until further research is conducted. Chairman Crosby recommended voting to accept the proposed legislation as written and then going back to the working group to ask the questions relative to the definition of bazaar and whether poker games are covered. The Commission could delegate judgment on the sufficiency of the language to the working group. Commissioners Zuniga and McHugh were in agreement with this approach. Commissioner Stebbins made note that the Commission should review the document to ensure that all the pronouns used are gender neutral.

Motion made by Commissioner McHugh that the Commission approve the language of the draft charitable gaming legislation that is before it, with the exception of the definition of bazaar in Section 7A pending further consideration by the Attorney General's office and the Lottery Commission, and pending alteration of the statutory language as necessary to ensure that all the pronouns are gender neutral, and that the legislation so approved be forwarded to the appropriate legislative leadership. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Practice of Law by Out-of-State Attorneys:

See transcript pages 51-56.

Attorney Grossman stated that the Commission's regulations state that anyone who practices law before the Commission must be a member of the Massachusetts Bar, unless he or she petitions the Commission for leave to practice. In doing so, petitioners would have to demonstrate that they are members of a bar in good standing in all of the jurisdictions where they are admitted, there are no disciplinary proceedings pending against them in any of those jurisdictions, and they have read and are familiar with the governing laws in Chapter 23K and 205 CMR. Members of the Massachusetts Bar, who themselves are in good standing, would then have to present the petition to the Commission. The presenter would then assume a number of obligations, including representing the client concurrently with the out-of-state attorney, appearing on the record in the particular matter with the out-of-state attorney, taking responsibility for the conduct of the out-of-state attorney, and cosigning all documents submitted on behalf of the client to the Commission. If those conditions are all met, then the regulations provide that an out-of-state attorney can practice before the Commission.

Attorney Grossman stated that the Commission has received two petitions to date and he recommended that the legal staff of the Commission review these petitions, approving those that meet all requirements of the regulations, and issuing the accordant notice to the petitioners. He also recommended that the Commission delegate to the legal staff the responsibility for reviewing and acting on similar petitions in the future unless the staff determined that the Commission itself should act on a particular petition.

Motion made by Commissioner McHugh that the recommendation made by Counsel for admitting lawyers from other jurisdictions to practice before the Commission be adopted. Motion seconded by Commissioner Stebbins. The motion passed unanimously by a 5-0-0 vote.

Chairman Crosby issued a reminder that the Commission will now hold its regular weekly meetings on Thursdays.

Motion made to adjourn, motion seconded and carried unanimously.

List of Documents and Other Items Used at the Meeting

1. Massachusetts Gaming Commission January 3, 2013 Notice of Meeting Agenda
2. Massachusetts Gaming Commission December 18, 2012 Meeting Minutes
3. Commonwealth of Massachusetts Office of the State Auditor Official Audit Report – State Racing Commission
4. Key Policy Question 12 Analysis

5. Charitable Gaming Legislation
6. Memorandum January 3, 2013 Regarding Practice of Law Before the Commission

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