



Executive Session Meeting Minutes

Date: January 27, 2021

Location: HD meeting. Given the unprecedented circumstances, Governor Baker issued an order to provide limited relief from certain provisions of the Open Meeting Law to protect the health and safety of the public and individuals interested in attending public meetings during the global Coronavirus pandemic. In keeping with the guidance provided, the Massachusetts Gaming Commission (“Commission”) conducted this public meeting and executive sessions utilizing remote collaboration technology.

Having first convened a meeting of the Commission in an open session pursuant to G.L. c.30A, §20, the chair initiated discussion in regard to agenda item 2(a) relative to entering executive session pursuant to G.L. c.30A, §21(a)(3) for the purpose of discussing strategy with respect to *DeCosmo v. Blue Tarp reDevelopment, LLC, et al.*, and *Schuster v. Encore Boston Harbor, et al.*, and declared that discussion in an open meeting may have a detrimental effect on the litigating position of the Commission; and in regard to item 2(b) relative to entering executive session to review minutes from previous executive sessions.

A motion to go into executive session for agenda item 2(a) was made by Commissioner Zuniga and seconded by Commissioner Cameron.

A roll call vote to move into executive session for this purpose was taken:

Commissioner Cameron: Aye
Commissioner O’Brien: Aye
Commissioner Zuniga: Aye
Chair Judd-Stein: Aye

The vote in favor was unanimous. Chair Judd-Stein stated that the Commission would not reconvene in public session at the conclusion of the executive session.

A motion to go into executive session for agenda item 2(b) was made by Commissioner Zuniga and seconded by Commissioner O’Brien.

A roll call vote to move into executive session for this purpose was taken:



Massachusetts Gaming Commission

Commissioner Cameron: Aye
Commissioner O'Brien: Aye
Commissioner Zuniga: Aye
Chair Judd-Stein: Aye

The vote in favor was unanimous. Chair Judd-Stein stated that the Commission would not reconvene in public session at the conclusion of the executive session.

The Commission then closed the public session and entered executive session.

Present:

Chair Judd-Stein, Commissioners Cameron, O'Brien, and Zuniga
Karen Wells, Executive Director
Todd Grossman, General Counsel
Carrie Torrisi, Associate General Counsel
Sarah Magazine-Yount, Director of Communications

The Chair brought the session to order and turned the matter to Director Wells and General Counsel Grossman to frame the issue. By way of background, Director Wells noted that the Commission convened an executive session on January 14, 2021 to discuss strategy relative to the question as to whether to file an amicus brief in the above referenced pending appeal before the SJC relative to the Commission's blackjack rules. Director Wells further noted that the Commission concluded at the previous executive session having determined not to take any action and to review the two instances in which the Commission had previously discussed the blackjack litigation publicly.

Director Wells explained that the Commission had since received a letter from plaintiff's attorney in the matter who raised a complaint concerning the propriety of the Commission's use of executive session to discuss this matter and submitted a public records request for related materials. There was discussion concerning the timing of a response to the public records request.

General Counsel Grossman explained that the preliminary issue for the Commission's consideration was whether the Commission wanted to file an amicus brief in this matter. He further noted that he had received a communication from the defense attorneys who had informed him that the amicus brief would likely be due the week of March 15th, which is earlier than initially thought.

The discussion turned to whether the Commission was interested in pursuing the filing of an amicus brief. It was noted that the Commission had discussed the pros and cons of filing at its previous executive session, including the attendant legal exposure, and had

since reviewed the recordings of the two past meetings during which the blackjack litigation was discussed. The Commission recognized that, importantly, it did not take issue with Assistant Director Bruce Band's analysis and conclusions that there was no violation of the Commission's blackjack rules by the licensee when he explained the issue to the Commission at its public meeting. Further, similarly, the Commission noted the IEB did not recommend, and has not taken any enforcement action against the licensees in relation to the implementation of the blackjack rules. By consensus, the Commission concluded that based upon the facts and circumstances, including those contained in the record of its previous review of the matter, the benefits were not compelling enough to pursue the filing of an amicus brief. The Commission decided an amicus brief was not necessary to ensure public confidence in the gaming operations in Massachusetts. The Commission also noted that this decision would prevent any suggestion that it was anything but neutral when it came to its oversight of the industry. Further, the Commission was mindful of the difficult time constraints it would have to navigate if it wanted to file such a brief.

There was discussion as to whether the Commission would reconsider its position relative to filing an amicus brief if a request to do so were to come directly from the SJC. It was agreed that the Commission would certainly reconsider its position in the event a direct request was received from the SJC.

The discussion turned to item 2(b) and Mr. Grossman explained the legal requirements with respect to the production and release of executive session minutes. The Commission reviewed a draft of minutes from its previous executive session on January 14. The Commission deferred action on the minutes at this time and Mr. Grossman will present the updated minutes to the Commission for vote at its next executive session.

There was discussion concerning review of executive session minutes at Commission meetings in compliance with the Open Meeting Law as well as release of those minutes when the purpose of the executive session was complete. There was further discussion about when the response to the public records request would be sent.

Commissioner Zuniga moved to adjourn this executive session. The motion was seconded by Commissioner Cameron.

By roll call vote:

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| Commissioner Cameron: | Aye |
| Commissioner O'Brien: | Aye |
| Commissioner Zuniga: | Aye |
| Chair Judd-Stein: | Aye |

The vote to adjourn was unanimous.