

INDIANA GAMING COMMISSION
REGULAR MEETING

11:00 a.m., April 8, 1994 Conference Center Auditorium
Indiana Government Center South

MINUTES

PRESENT: Commission members Alan Klineman, Ann Marie Bochnowski, Gene Hensley, David E. Ross, Jr., Donald Raymond Vowels; Staff members Floyd B. Hannon, Judy Greene, Kay Fleming, Pam Ayres; from the United States Coast Guard, Commander William J. Morani, Jr. (Louisville-Inland), Captain Clay Fust (Chicago-Great Lakes), Commander Dave Pekoske (Chicago-Great Lakes), Lieutenant Commander Mark Kerski (Louisville), Lieutenant Commander Bruce Branham (Louisville), Lieutenant Commander Ron Hassler (Louisville), Lieutenant Bruce Fisher (Chicago), Lieutenant Paul Thorne (Louisville), Chief Warrant Officer Larry Doss (Louisville), Chief Warrant Officer Dave Cunningham (Louisville) and an audience.

ABSENT: Commission member Robert W. Sundwick and Indiana Gaming Commission Executive Director John J. Thar.

Call to order and approval of March 11, 1994, Minutes

Chairman Alan Klineman called the meeting to order at 11:03 a.m. noting that Commissioner Robert Sundwick was absent and a quorum was present. Due to previously scheduled plans, Executive Director Jack Thar was out of the state and unable to meet with the group.

Gene Hensley corrected the March 11 Commission meeting minutes on page 1, to read ~~Chairman~~ Mr. Thar introduced Bill Christman. . . . On page 4 he requested that the end of the last sentence of the first paragraph read, the amount of Forty-three Thousand Six Hundred Seventy-five Dollars and Seventy-six Cents (\$43,675.76) each.

Upon motion by Ann Bochnowski and second by Dr. David Ross, the minutes of the March 11, 1994, Commission meeting were approved as corrected.

Report from the Deputy Director

Deputy Director Floyd Hannon reported that the School of Public and Environmental Affairs (SPEA) has begun their assessment of the Gary applicants. They plan to travel to Gary and meet with city officials and riverboat management people in Joliet, IL as they begin to gather data for assessment use. The contract with SPEA is being drafted; they are currently operating on the basis of a letter of intent between the two agencies.

The investigative teams are nearly completely staffed. They are

clearing up loose ends from prior assignments but are essentially assigned full time to the Gary investigations. On March 15, 1994, a one-day orientation session was provided that included presentations by Bill Desmond, Jim Callahan and Joe Holibeck of the Illinois Gaming Board. They offered excellent suggestions and shared experiences in conducting background and financial checks.

Upon their review, the teams have determined shortcomings in some of the Gary applications. Through the Commission staff, they have requested clarification and additional data. The teams have initiated investigation in the Gary area and made preliminary contact with other regulatory agencies regarding the Gary applicants. They will be traveling to review those agency records and conduct other investigations as needed.

Upon a question from Ann Bochnowski regarding whether or not the investigative teams in Gary have been able to get a feel for how much time is required, Mr. Hannon indicated that since the teams have been involved for only about ten days, it's still a little too early to tell.

Indiana Gaming Commission (IGC) staff continue to meet with applicant representatives and local government officials to discuss their concerns. Mr. Hannon reported that staff attended seminars in Gary on March 19 and 26. The seminars were sponsored by the Mayor's Economic Development office and were part of the Readiness Assessment Process (RAP) program. They discussed occupational and suppliers' licenses. Executive Director Thar attended a meeting in Evansville on March 23 sponsored by the Mayor's office to discuss navigational issues on the Ohio River in the Evansville area. Included were representatives of the barge industry and the U.S. Coast Guard.

Mr. Hannon reported that IGC staff have been spending a considerable amount of time working with the State Budget Agency to develop a budget presentation for the next fiscal year. It appears the IGC will be operating well within the Two Million Dollar allotment from the General Fund. Negotiations continue with the Army Corps of Engineers to develop a working agreement that will facilitate the licensing process by both agencies. Staff have spent a great deal of time devoted to the rule-making process. Chief Council Kay Fleming will explain further. The State Election Board has requested that those riverboat applicants seeking a riverboat owner's license in a jurisdiction placing the riverboat question on the ballot in the May 1994 primary (Harrison, Crawford and Jefferson Counties) file a CFA-7 (Independent Expenditure Report by a Corporation or Labor Organization) no later than noon, prevailing local time, April 22, 1994.

inquiries related to the completion of Part II of the application. Deputy Director Hannon concluded his report.

Old business

Election Costs for the November 2, 1994, Referendum

Chairman Klineman inquired about the election costs for the November 2, 1994, referendum. Mr. Hannon explained that IGC staff performed a telephone survey that indicated all payments were made with the exception of Imperial Palace of Indiana, the only outstanding applicant.

Authorization of Executive Director to Amend Indiana Riverboat Owner License Application Part II for the Indiana Gaming Commission

Chairman Klineman explained that all applicants were notified by March 25, 1994, letter of the changes in Part II of the application. Mr. Hannon summarized **Resolution 1994-10, A Resolution Amending Part II of the Indiana Riverboat Owner's License Application** (see attached) which outlines the following changes:

Question 66 is omitted. The revised text of this question is being moved to the public section on page 17 as question 62A. The scope of the question is being limited to request applicable documents between the Applicant and Applicant's Substantial Owners. This question is amended to read:

"Submit as Exhibits 62A(a) through 62A(t), as applicable, copies of the following documents which apply between the Applicant and the Applicant's Substantial Owners:"

The remainder of the question which constitutes the exhibits will be amended only in the following manner:

- (d) certified copies of the articles of incorporation or corporate charters, and amendments thereto of Applicant and/or any of its Substantial Owners;
- (t) share certificates (both sides) of any Business entity held by or on behalf of Applicant.

Question 67 is omitted. The revised text of this question is being moved to the public section on page 17a as question 62B. The scope of the question is being

limited to request applicable documents between the Applicant and Applicant's Substantial Owners. This question is amended to read:

"If there are instruments, agreements or contracts which relate to the organization between the Applicant and the Applicant's Substantial Owners which are not listed in 62A above, submit as **Exhibit 62B** said instruments, agreements or contracts, if applicable, a full description of all oral agreements and contracts, including any which relate to future compensation or payment, regardless of form, including but not limited to contingencies, or payments based on percent of revenue.

Question 70 is omitted. The revised text of this question is being moved to the public section on page 17a as question 62C. The question is amended to ask for information about compensation, but limits the scope of the question to seek information about plans which are in existence or are to be created by or on behalf of the Applicant and eliminates the reference to Substantial Owners. This question is amended to read:

"Submit as **Exhibit 62C** a description of all compensation, bonus, profit sharing, pension, retirement, deferred compensation and similar plans in existence or to be created by or on behalf of the Applicant, including:"

Subsections 62C(a) through 62C(g) remain unchanged.

Question 75 will remain in its current position on page 24. That portion of the question requesting information about the Securities and Exchange Commission and disclosure documents is removed. Specifically, question 75 is amended to read:

"Submit as **Exhibit 75** a detailed statement concerning the capitalization of the proposed Riverboat Gambling Operation, including the amount and source of debt and equity involved, and the guarantees which Applicant can offer that Applicant will be able to operate a Riverboat Gambling Operation during the duration of the license; submit all documents

which support or contradict this statement, including surety agreements, guarantor agreements, loan commitments and agreements, a list of assets which will be used or liquidated to constitute all or part of the capitalization, appraisals, broker's market studies to support real estate values, brokerage and bank statements, and Financial Statements, certified if available."

Chairman Klineman explained that the effective date of this resolution was March 25, 1994, the date on which the changes were mailed to the applicants. Upon motion by Gene Hensley, second by Don Vowels, **Resolution 1994-10** was unanimously approved.

New Business

The Applications of Dunes Casino Corporation and Riviera Lakefront Casinos, Inc.

Deputy Director Floyd Hannon explained that the Riviera Lakefront Casinos, Inc. application was incomplete, resulting in an inability of staff to conduct a complete investigation, and omissions which constituted grounds for denial. Riviera had indicated that an "internal problem" between the parties to the partnership required a reshuffling that would have resulted in a new application and an additional \$50,000 fee. Mr. Hannon indicated that Riviera Lakefront Casinos can file a more complete application in the future in another jurisdiction that has not yet passed the Phase I application deadline. He read the proposed **Resolution 1994-12** (see attached) from Section 3. Action on Application of Riviera Lakefront Casinos on, denying the riverboat owner license application due to omissions in the application.

As there was no further discussion, Dr. David Ross moved that the resolution be accepted, second by Gene Hensley. The motion carried unanimously.

Chairman Klineman asked Mr. Hannon to report on the Dunes Casino Corporation application. On February 15, 1994, by mail, Dunes Casino Corporation was notified that IGC staff, based on prior IGC resolutions, could not honor Dunes' request to file PDF/forms as supplements. The Commission had previously established February 15, 1994, 12:00 noon, eastern standard time, as the deadline for the filing of a completed Part II along with the requisite number of completed Personal Disclosure Forms.

Dunes Casino Corporation was again notified on March 29, 1994, by certified letter that no response had been received to the IGC letter of February 15. In addition, they were requested to supply responses to several questions where information had not been

provided or was incomplete. On April 6, Dunes representatives responded by citing confusion with the city selection process, and a request for more time to allow them to restructure the organization of ownership interests, and the feasibility of continuing to pursue a license. Mr. Hannon pointed out that IGC staff again believed that a thorough investigation was impossible with the information already received and that adequate time had been allowed for them to comply. Ann Bochnowski indicated that it should be stressed that the IGC is not bound by city endorsements. She felt it was not a legitimate reason for them to withdraw. Chairman Klineman added that the IGC has reiterated at every Commission meeting that the Commission alone makes the final decision. Again, it was noted that the applicant would be able to file again in another jurisdiction by submitting a new application in a county where the deadline for Part I had not passed.

Beginning with Section 3, Mr. Hannon read **Resolution 1994-13 A Resolution Denying the Riverboat Owner's License Application Submitted by Dunes Casino Corporation Due to Omissions in the Application** (see attached). Upon motion by Don Vowels, second by Ann Bochnowski, the resolution was unanimously approved.

Request to Amend Application by Lakeside Resorts L.L.C.

Chairman Klineman indicated that the Commission would need to accept or reject the request to amend an application by Lakeside Resorts L.L.C. Beginning with Section 3, Mr. Hannon read **Resolution 1994-11 A Resolution Concerning the Request of Lakeside Resorts, LLC to Substantively Amend Part II of Its Indiana Riverboat Owner's License Application** (see attached). Upon motion by Gene Hensley, second by Ann Bochnowski, it was unanimously approved that the majority owner is no longer Casino Queen, but U.S. Gaming. The Kenny family of Illinois will increase its personal stake and U.S. Gaming becomes majority owner.

Request to Withdraw Application by Imperial Palace of Indiana, Inc.

IGC staff received a letter from Imperial Palace on March 23, 1994, indicating a desire to withdraw its application for Dearborn County and to have the \$50,000 application fee refunded. Chairman Klineman reiterated that the application fee is **nonrefundable**. Gene Hensley questioned if Imperial Palace was the applicant who had failed to reimburse for its share of the referendum costs and how much money it owed. Mr. Hannon indicated it owed around \$2,100 and a letter could be addressed to the applicant requesting it pay the amount due. Chairman Klineman indicated the Commission's request that Imperial Palace pay its pro rata share. At this time, however, only its request to withdraw is to be addressed. Dr. David Ross moved that Imperial Palace's request to withdraw its application for Indiana Riverboat Gambling License be granted effective April 8, 1994, and that the request for a refund of the application fee be denied. Upon second by Gene

Hensley, Resolution 1994-9 A Resolution Concerning the Request of Imperial Palace of Indiana, Inc. to Withdraw its Application for a Riverboat Owner's License (see attached) unanimously passed.

Rules and Regulations

IGC Chief Counsel Kay Fleming reported on the 102-page Indiana Gaming Commission Draft Rules prepared by Attorney John Kish and herself. She indicated that the front page of the draft is a guideline. Currently, only rules that are highlighted are in the draft. She indicated that the draft rules would be duplicated and made available to the public after 3:00 p.m. today. They can be purchased for \$15.00 at the IN Gaming Commission Office. The Gaming Commission will accept written public comment until April 22. Actually, Ms. Fleming reported, there will be two periods of public comment; the Commission wants feedback.

If the rules are adopted at the May 6 IGC meeting, the Commission will operate under them during the time period that the formal promulgation process goes forward. The rules and regulations will be reviewed by the State Budget Agency; submitted to the Indiana Legislative Services Agency 20 days before their publication date; and published in the Indiana Register on June, 1, 1994, along with a notice of a public hearing. Publication of this notice in Marion County newspapers is required and consideration of public comment is necessary before final rules are adopted. The final rules are then submitted to the Indiana Attorney General's Office; the A.G.'s office has up to 45 days to review and sign. The rules are then submitted to the Governor's office. He has up to 30 days in which to sign. They are then filed with the Secretary of State's office before becoming effective. Additional rules can go through the same process until all the rules are in place.

Other Business

Chairman Klineman welcomed representatives from the U.S. Coast Guard indicating that after the formal IGC meeting is concluded, they would be addressing the Commission and audience. A question-and-answer period will follow.

Next Meeting

The next meeting will be held at 11:00 a.m. on Friday, May 6, 1994, in the Vanderburgh Auditorium Gold Room in Evansville, Indiana. Prior to the meeting at 9:00 a.m., the Commission will tour the proposed docksites.

The Commission adjourned at 11:48 a.m. on motion by Gene Hensley, second by David Ross.

Presentation by U.S. Coast Guard

Deputy Director Floyd Hannon introduced Commander William J. Morani, Jr., commanding officer of the U.S. Coast Guard Marine

Safety Office, Louisville, Kentucky, and Captain Clay Fust, commanding officer of the Marine Safety Office in Chicago. In addition to Commanders Morani and Fust, several other key Coast Guard personnel were present.

Commander Morani thanked the Commission for the opportunity to address the group and brief them on the Coast Guard's role in vessel safety, in particular as it relates to gaming vessels and their operations. With the aid of slides, he explained that as the primary federal agency with maritime authority for the United States, the Coast Guard is a complex organization of ships, aircraft, boats and shore stations. Personnel respond to tasks in several mission and program areas. A vessel may carry out roles in law enforcement, search and rescue, marine environmental protection, maintenance of aids to navigation and even if need be, icebreaking. He emphasized that the Coast Guard's multi-mission approach permits a relatively small organization to respond to public needs in a wide variety of maritime activities and to shift emphasis on short notice when the need arises. The Coast Guard maintains constant military capabilities and readiness.

Commander Morani's responsibilities include overseeing the Marine Safety, Marine Law Enforcement, Environmental Protection, Waterways Management, and Port Safety and Security Programs, which includes all of the Ohio River bordering Indiana. The Ohio River is in the Second Coast Guard District. The area begins at Ohio River mile 374.8 near Vanceburg, Kentucky, and extends to mile 867.4 in the vicinity of Shawneetown, IL., over 492 miles. The zone encompasses three quarters of Kentucky, three quarters of Indiana, one quarter of Ohio, one fifth of Illinois, and includes three tributary rivers: Kentucky, Green, and Wabash.

Commander Morani does not consider Patoka Lake a navigable waterway, and though Indiana law requires a Patoka boat to be inspected by the Coast Guard and issued a Certificate of Inspection, he indicated that, "We have no jurisdiction over vessels operating on Patoka Lake." However, he indicated that if the state wishes their involvement, they might be able to work out some type of agreement.

On inland waters, only the pilots, masters, mates, and engineers must hold a Coast Guard license. These officers must meet minimum professional qualifications which involve specific experience and successful completion of a comprehensive examination covering a variety of subjects including seamanship, rules of the road, first aid, and stability. For an original license, they must also pass a physical examination with follow-up exams covering certain areas at time of renewal. Commander Morani indicated that the Coast Guard does not conduct a comprehensive background check on license applicants. He emphasized that the background checks that will be

done by the IGC will be far more detailed than theirs. The nearest place to examine applicants and issue Coast Guard licenses is at the Regional Examination Offices in Memphis, TN, or St. Louis, MO.

Laws and regulations require vessel owners to report certain types of accidents to the Coast Guard. They in turn investigate to determine the cause. Many of the Coast Guard's regulations were developed as a result of some marine disaster. Coast Guard investigating officers can issue subpoenas to compel testimony or the production of records. If crew performance is at issue, for example acts of negligence, misconduct, incompetence, violation of law or regulation, or drug use, they can bring the licensed or documented person before an administrative law judge and take action against his/her right to hold a Coast Guard License or Document. This process is similar to the Registry of Motor Vehicles suspending or revoking a driver's license. The Coast Guard has no such authority over unlicensed persons: bartenders and waiters are prime examples. If the responsible party does not hold a Coast Guard License or Document, or the responsible party is the owner or operator, they can submit a Report of Violation to a Coast Guard Hearing Officer which could result in an assessment of a monetary civil penalty. In extreme cases they can refer the violators to the U.S. Attorney for appropriate action.

The Coast Guard reviews vessel construction plans for compliance with Coast Guard standards. The Coast Guard "building inspector" is at the shipyard during construction, to make sure that the vessel is built to approved plans and Coast Guard regulations. After satisfaction that the vessel is in compliance is the issuance of a Certificate of Inspection. This certificate spells out how many licensed and unlicensed crew must be on board, the required number of lifesaving appliances and firefighting equipment, any special operating conditions, and the maximum number of passengers allowed.

Once in operation, the Coast Guard inspects the vessel at frequent intervals to ensure continued compliance. They are inspected while in operation and on drydock. If problems are uncovered, the Certification of Inspection can be removed. Time can be allowed for the vessel to correct the discrepancy. Any action depends on the severity of the problem. Deficiencies which pose immediate threats to vessel/personal safety must be corrected before the vessel will be allowed to operate.

Captain Clay Fust, commanding officer of the Marine Safety Office in Chicago, indicated that between mid-September and mid-May gaming vessels operating on the Great Lakes would have to carry thermal suits in addition to lifeboats. For a boat carrying 2,500 people, 100 lifeboats costing about \$6,000 each and suits costing \$250 each would be required, as well as 100 crew members. It is particularly important that operators build boats with reinforced hulls for the

Great Lakes use to prevent ice damage. He indicated that the federal agency would like the vessels to be docked if there is ice on the water or unfavorable conditions exist, such as high wind or fog.

Another area of major safety concern is the danger of fire. Captain Fust indicated that if a fire were to break out, passengers would be taken to an open deck until the blaze was put out. If there are signs the fire would be too difficult to extinguish, or if it were to burn out of control, evacuation would begin immediately. The high-capacity gambling vessels the Coast Guard will certify to ensure seaworthiness will feature the newest fire and life-saving equipment. Three full watches or shifts will be required for passenger safety. He indicated that the Coast Guard is not equipped to handle a major accident by themselves. He suggests the key will be good local emergency management plans and cooperative agreements.

Captain Fust noted that special Great Lakes certification would be required for boats docked at Gary's Buffington Harbor and at East Chicago because they are considered open harbors. He indicated Indiana should ask, "Is cruising on the Lake necessary for the success of gambling in Indiana?" He encouraged thinking about alternatives to alleviate safety problems.

The Coast Guard has already inspected six vessels in Illinois. Captain Fust indicated that some applicants have talked about routes that do not go beyond three miles and the Coast Guard may be able to grant some relaxation of life safety in those cases. In response to a question regarding applicant notification of restrictions, Captain Fust indicated that he has met with four applicants already.

Particular problems are apparent with each harbor location in Lake County. Captain Fust indicated that East Chicago has a recreational area that is very well enclosed, but if the operator wants to go outside of this area, the breakwall needs to be made longer. In Gary, dredging will be the biggest problem. Hammond has a very well enclosed harbor but no way to get the people in and out once they are there. Buffington Heights is not protected.

The Coast Guard representatives were very responsive to questions. Chairman Alan Klineman thanked them for their informative presentations and reiterated that the next IGC meeting will be on May 6, 1994, at 11:00 a.m. in the Vanderburgh Auditorium Gold Room, Evansville, Indiana.