

INDIANA GAMING COMMISSION
REGULAR MEETING

9:00 A.M., December 9, 1994
Auditorium
Indiana Government Center South
Indianapolis, Indiana 46204

MINUTES

PRESENT: Commission members Alan Klineman, Chair; Ann Marie Bochnowski, Vice-Chair; Gilmer Gene Hensley, Secretary; Thomas F. Milcarek; David Ross, M.D.; Robert Sundwick; Donald Raymond Vowels; Staff members Jack Thar, Floyd Hannon, Kay Fleming, Judy Greene, Pam Ayres, Frank Brady, Joanne Yeager, and Tina Thurnall and an audience.

Call to Order and Roll Call

Chairman Alan Klineman called the meeting to order at 9:12 a.m. All members of the Indiana Gaming Commission were present, a quorum was present.

Approval of the Minutes of the October 7, 1994, Meeting

The minutes were approved unanimously on motion by Gene Hensley, second by Bob Sundwick.

Report of the Executive Director

Executive Director Jack Thar introduced three new employees of the Gaming Commission: Frank Brady, Regional Audit Administrator; Joanne Yeager, Staff Attorney; and Tina Thurnall, Receptionist. He indicated that Mr. Brady recently retired from the Internal Revenue Service after 28 years of service, was a group manager in Indianapolis and prior to that had worked both in New Orleans and New York. Mr. Thar expressed his great appreciation that Mr. Brady is now on board. Ms. Yeager has been a hearing officer with the Indiana Department of Revenue for four years and most recently has served as counsel to the Secretary of State of Indiana, Mr. Joe Hogsett. Miss Thurnall will be serving as the Commission receptionist. Mr. Thar expressed his pleasure at the opportunity to hire all three to complement the Gaming Commission staff.

Mr. Thar reported that on November 21, 1994, the Indiana Supreme Court ruled in favor of the position of the Indiana Gaming Commission by reversing the previous decision of the Porter County Superior Court. The Supreme Court found the Indiana Riverboat Gambling Act to be constitutional in terms of its referendum status and dissolved the injunction, thereby allowing the Commission to

continue with its work.

Meetings with the Department of Natural Resources have continued, resulting in a Memorandum of Understanding as to the working relationship between the two agencies. This MOU is substantially identical to the working relationship that the Gaming Commission has established with the Army Corps of Engineers. The Department of Natural Resources will be taking an active position in advising the Commission on the suitability of different sites along the Ohio River.

Executive Director Thar reported that meetings have started among officials of Dearborn, Ohio and Switzerland counties concerning the preliminary plans for IGC meetings in those areas.

A new round of meetings has been re-scheduled with the Corps of Engineers in Louisville in anticipation of the hearings on the Ohio River.

Deputy Director Floyd Hannon and Executive Director Thar attended a meeting in Biloxi, Mississippi, at the beginning of November with regulators from other jurisdictions. The purpose of the meeting was to begin discussions regarding the establishment of a national organization for gaming regulating authorities.

Since the October IGC public meeting, the other work of staff has primarily focused upon the hiring of personnel and the setup of the new office, including the computer network; preparation for hearings in Evansville, including the finalization of the investigative and economic analysis reports for those hearings; commencement of the planning for hearings in the southeast corner of the state; and the continued drafting and preparation of rules for the Commission. Mr. Thar reported that additionally, the staff have prepared for today's meeting and the continuation of the hearings with regard to the Gary, Indiana licensing.

Chair Alan Klineman commended Mr. Thar and the IGC staff on the work that has been done. Upon the ruling of the Supreme Court, the Commission has been able to act very quickly because of the preparatory work of the IGC staff.

Old Business

Deadline for filing of Part I and Part II of the Riverboat Owner's License Application for Harrison and Crawford Counties

Chair Alan Klineman asked Jack Thar to present **Resolution 1994-39, A Resolution to Establish a Deadline for Applicants to File Part I and Part II of the Riverboat Owner's License Application Form for all Areas Participating in and Passing the May 3, 1994 Referendum (Crawford and Harrison Counties)** (see attached).

Mr. Thar explained that the main portions of the resolution are found in Sections 2, 3 and 4. Staff recommends that in keeping with the approximate timelines of prior deadlines, that Part I of the riverboat license for Harrison and Crawford Counties be filed on or before January 9, 1995, at noon (Indianapolis time). Staff would also recommend with regard to Part II that it be filed on or before March 13, 1995, which is also a noon deadline.

Executive Director Thar indicated that if these recommendations are accepted by the Commission, Section 2 would then read:

For those applicants pursuing an Indiana Riverboat Owner's License to be docked in those sites passing the May 3, 1994, referendum, more specifically the counties of Crawford and Harrison on the Ohio River, the deadline for filing Part I of the Indiana Riverboat Owner's License Application Form is noon (Indianapolis time) on January 9, 1995.

Section 3 sets forth the procedure for filing which includes the filing of a non-refundable \$50,000 in certified or cashier check form.

If accepted by the Commission, Mr. Thar reported that Section 4 should read:

Pursuant to 68 IAC 2-1-4(b)(3) (adopted pursuant to RESOLUTION 1994-14) nine (9) bound and three (3) unbound copies (a total of twelve (12) copies) of Part I of the Riverboat Owner's License Application Form and three (3) bound and two (2) unbound copies of the Personal Disclosure Form 1, for Key Persons and Substantial Owners only are to be filed simultaneously, no later than noon (Indianapolis time) on March 13, 1995. Part II pagination shall begin with the number immediately succeeding the last page number from Part I of the Riverboat Owner's License Application Form. Each page of Part II of the Riverboat Owner's License Application Form is to be numbered sequentially.

The resolution is effective immediately upon acceptance by the

Commission.

Upon motion by Don Vowels, second by Gene Hensley, Resolution 1994-39 was unanimously accepted with the insertion of January 9, 1995, at noon (Indianapolis time) as the deadline for the acceptance of Part I and March 13, 1995, at noon (Indianapolis time) as the deadline for the acceptance of Part II.

New Business

I. Report of the State Election Board, November 1994 Referendum

Chairman Klineman introduced Brad King, State Election Board Counsel, who gave a report (see attached) on the November 8, 1994 Perry County referendum concerning riverboat gambling with regard to the official election results on the public question and information concerning campaign expenditures by those supporting or opposed to the adoption of the local public question.

Mr. King reported that the vote favoring the licenses permitting riverboat gambling in Perry County was 4,450, or 56.77%. The vote in opposition was 3,388, or 43.23%. As of October 14, approximately \$2,678.00 was spent to gain approval. Mr. King added that no reports were filed indicating the expense in opposition.

The next filing deadline for campaign finance reports will be noon, January 17, 1995. This would apply to all applicants who have a political action committee that has not been officially recognized as of this time.

The State Election Board has had initial discussions with the IGC regarding the portion of the statute concerning compliance by applicants with the campaign finance statutes. The jurisdictions involved are Vanderburgh, Dearborn, Ohio and Switzerland Counties. Chairman Klineman thanked Mr. King for his report.

II. Deadlines for Filing of Part I and Part II of the Riverboat Owner's License Application for Perry County

Executive Director Thar presented **Resolution 1994-40, A Resolution to Establish a Deadline for Applicants to File Part I and Part II of the Riverboat Owner's License Application Form for all Areas Participating in and Passing the November 8, 1994 Referendum (Perry County)** (see attached). In terms of its reading, Resolution 1994-40 is identical to Resolution 1994-39 with the exception that it is for a different county.

Mr. Thar reported that the Indiana Gaming Commission recommends in Section 2 that the deadline for Part I of the Riverboat Owner's License Application be February 9, 1995 at noon, Indianapolis time,

and would also recommend that the deadline for Part II set forth in Section 4 would be April 10, 1995, at noon Indianapolis time.

Resolution 1994-40 was unanimously adopted upon motion by Dr. David Ross, second by Gene Hensley.

III. Request of Evansville Landing to Amend Part I and Part II of its Riverboat Owner's License Application

Chairman Klineman explained that an applicant in Vanderburgh County, the Evansville Landing group, had requested to amend Part I and Part II of its Riverboat Owner's License Application.

Mr. Thar presented **Resolution 1994-41, A Resolution Concerning the Request of Evansville Landing to Substantively Amend Part I and Part II of its Indiana Riverboat Owner's License Application** (see attached). He indicated that Evansville Landing had approached the Commission on December 5, 1994, seeking to amend its license for Evansville located in Vanderburgh County. They were advised that the cutoff dates for the submission of amendments for Evansville had passed some months before. Mr. Thar advised the Commission that the Indiana State Police investigative team reports with participation by the Department of Revenue and the Internal Revenue Service were in a final draft stage. The rough drafts have in fact been completed, reviewed, sent back, and are in the final, rough-draft stage.

The School for Public and Environmental Affairs, Center for Urban Policy and the Environment, has already received back from all Evansville applicants confirmation of the numbers to be utilized, and they are in the process of completing their analysis. Prior to December 5, Mr. Thar reported that Evansville Landing's position with regard to a hotel in Evansville as a part of their project was that a hotel was desirable only if triggered by one of the following four occurrences:

- 1) The State of Indiana allowed Evansville Landing unrestricted dockside gambling, or
- 2) Gross Gaming Win at Evansville Landing riverboat casino exceeded \$84 million per year in a twelve (12) month period, or
- 3) Existing hotels in the Evansville market were operating profitably and market conditions justified the construction of a Hyatt hotel development, or
- 4) Affiliates of Evansville Landing commenced land based casino gaming at Ellis Park Race Course.

(The individuals involved in Ellis Park Race Course are a substantial owner of Evansville Landing.)

Mr. Thar indicated that Evansville Landing did not propose a hotel as a firm aspect of their project, it would be completed only if triggered by one of those four items.

On December 5, they had advised the Commission that they had entered into negotiations and now had an option with the Executive Inn, a 500-room hotel located in the downtown area of Evansville. The agreement stated that if Evansville Landing was to get a license, it would in fact purchase that hotel, and if it did not get a license, the option would not automatically be triggered. They advised Mr. Thar that the total investment would be \$15,000,000, consisting of a 5.1 million dollar purchase price and 9.9 million dollars in renovations.

Evansville Landing was advised by the Indiana Gaming Commission staff that in view of the background investigations and the degree of completeness of the economic analysis portion, to take the additional investment at this point in time and attempt to integrate it into the analysis would most likely delay the Evansville hearings.

Executive Director Thar reported that there was then a discussion whereby Evansville Landing representatives indicated that rather than do a complete analysis of the multipliers that might come into effect through a certain amount of construction, analysis of payrolls, and the economic effect of the number of employees for the hotel, and the other economic benefits of the \$15,000,000 infusion, they requested (in a December 8, 1994 letter) that the Commission allow it to amend their application by simply showing the 15 million dollar investment, waiving any analysis of that 15 million dollar investment, and allowing them to amend their application in that regard.

After considering this request from the IGC staff's point of view, Mr. Thar indicated that it would be the staff's recommendation that this request to amend at this time be rejected for the following reasons: 1) Notwithstanding the waiver, the IGC cannot at this time do a re-analysis of the applicant or a re-analysis of the background investigation aspects that might be required for the economic and financial management analysis done by The Center for Urban Policy and the Environment without a substantial delay in the Evansville process, 2) more important, Mr. Thar indicated, is the overall fairness issue -- the Commission had cut off in September all Evansville applicants from further amendments to their applications, and staff believes that at this point in time

it would be unfair to allow this type of amendment at the "midnight hour".

Mr. Thar reported that IGC staff does not see any downside to the Commission allowing the applicant to bring this up in their presentation to the Commission, if they choose to do so. Staff would request that the Commission not be required to reintegrate this last-minute change at this point in time. Staff would recommend that Evansville Landing's request to amend be rejected, but that they be allowed to bring it up in their presentation if they choose to do so.

Chairman Klineman expressed his agreement that Evansville Landing representatives be allowed to bring up the issue at their presentation in Evansville.

Ann Bochnowski questioned if the Commission rejects the request, does that prevent Evansville Landing from going ahead with their plan. Executive Director Thar explained that rejecting the formal amendment does not prevent Evansville Landing from going ahead; it simply means that the Commission will not incorporate it as part of the application nor is it to be incorporated in any type of the analysis. It does not prevent the applicant from going ahead with the hotel project should it be awarded the license nor from presenting that aspect at the time of their presentation. When Evansville Landing met with the IGC staff, it had already been attempting to arrive at this type of situation with the Executive Inn over a period of some time, at least four to six months, and that due to business decisions and other conditions between the two parties, the negotiations were unable to be completed until recently. Had the Commission not been stopped by the Supreme Court action, the Evansville selection would have most likely already been made; it would have been a moot question. Mr. Thar indicated that from Evansville Landing's perspective, this is not a last minute change because they have been attempting to do this over a period of months.

Don Vowels noted that in their December 8 letter, Evansville Landing seemed to indicate a belief that the request would be rejected. Mr. Thar explained that he did not feel this was their intent. It was to show their \$15 million added investment in the project and to waive any other analysis. From subsequent discussions, Evansville Landing representatives were made aware that there was a high degree of possibility that IGC staff would not be recommending the acceptance of this request.

If Evansville Landing makes this added \$15 million investment a

part of their presentation, Mr. Thar explained, it would be a part of the public record. The Commission would hold them to it.

Resolution 1994-41 to amend Part I and Part II of Evansville Landing's application was adopted unanimously thereby rejecting the amendment request, upon motion by Gene Hensley, second by Ann Bochnowski.

III. Request of Riverfront Station, Inc. to Withdraw its Riverboat Owner's License Application

Chairman Alan Klineman asked Jack Thar to present **Resolution 1994-42, A Resolution Concerning the Request of Riverfront Station, Inc. to Withdraw its Application for a Riverboat Owner's License.** They have indicated that with the uncertainty surrounding the Indiana process they had made a business decision to focus on properties already owned in the State of Nevada and the State of Missouri. They have in fact as indicated in their November 22, 1994 letter (see attached to the resolution), satisfied all the requests of the Gaming Commission and the staff would recommend that their request be accepted and their application be withdrawn.

Upon motion by Don Vowels, second by Tom Milcarek, Resolution 1994-41 was unanimously adopted to allow Riverfront Station to withdraw its Riverboat Owner's License Application.

Other Business

Chairman Klineman presented Indiana Gaming Chief Counsel Kay Fleming who discussed the set of Indiana Gaming Commission draft rules found in each commissioner's packet. The IGC will accept informal public comment prior to publication. A deadline of December 30, 1994 has been established for the submission of these comments. These rules will cover general procedures; economic development reports; fair market value contracts; general reporting requirements; weapons; support facility standards; riverboat commission surveillance rooms, dockside offices and processing areas; approval of associated equipment; excursions, routes, and public safety; medical services and emergency response; ethics considerations for Commission members, Commission employees, Commission agents, and restrictions on gaming.

The packet is sequentially numbered and on the front cover the page number for the beginning of each section is noted. Ms. Fleming noted that those sections that are highlighted are those which are contained in the packets. The entire packet will cost \$14.00 and will be available in the Indiana Gaming Commission office on Monday, December 12, 1994. No IGC formal action is necessary at

this time because they will not be published in the Indiana Register until after the Commission receives the informal public comments and, if desired, has incorporated comments and action has been taken by the Commission. She added that the Gaming Commission will hold the formal comment public hearing after the publication in the Indiana Register.

Chairman Klineman explained that the draft rules contain the no ex parte contact clause between those people whom the Commission considers applicants and their representatives and those people who will ultimately administer the law. He is pleased to indicate that there have been no ex parte rule attempts at communicating with any of the Commission members. Mr. Klineman complimented the public, applicants, their representatives, etc. for their cooperation in abiding by this rule. If these draft rules are adopted, this will become permanent.

Next Meeting

The Indiana Gaming Commission will meet on February 1, 1995, in the Civic Center auditorium at 9:00 a.m., in Evansville, Indiana. February 1, 2 and 3 have been set aside for hearings on the applicants in Evansville.

Meeting adjourned on motion by Bob Sundwick, second by Gene Hensley at approximately 9:50 a.m.