

MISSOURI GAMING COMMISSION  
COMMISSION RESOLUTION NO. 14-087

DAVID MERRITT  
December 3, 2014

WHEREAS, David Merritt ("Merritt"), requested a hearing to contest the proposed disciplinary action initiated against him on July 5, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-181; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on Merritt's request and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Order attached hereto (collectively the "Final Order") for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the Final Order and hereby issues to Merritt a one calendar day suspension of his occupational license in the above-referenced case in the matter of DC-13-181; and

BE IT FURTHER RESOLVED, that this shall be considered a final decision of the Missouri Gaming Commission.

**BEFORE THE MISSOURI GAMING COMMISSION**

In Re: David Merritt

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Case No. 13-181

License Number: 117371

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**FINDINGS OF FACT, CONCLUSIONS OF LAW AND FINAL ORDER**

The above-captioned matter comes before the Missouri Gaming Commission (hereinafter referred to as "Commission") upon receipt of an undated letter received August 2, 2013 making a request for a hearing by David Merritt (hereinafter referred to as "Petitioner"). Said request for hearing was in response to the Commission's Preliminary Order for Disciplinary Action dated July 5, 2013. The designated Hearing Officer, Bryan W. Wolford, conducted a hearing on September 25, 2014 where the Petitioner and the Commission's attorney, Ms. Carolyn Kerr, appeared to present evidence and arguments of law.

**FINDINGS OF FACT**

1. On December 1, 2012, Petitioner was employed by The Missouri Gaming Company ("Company") as a Pit Manager aboard the *Argosy Riverside Casino* ("Casino").
2. On December 1, 2012 Sergeant Christopher Watson ("Sgt. Watson") of the Missouri State Highway Patrol was informed of a suspected underage patron present on the gaming floor.
3. On December 1, 2012, Sgt. Watson was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
4. Sgt. Watson's investigation and review of surveillance video recordings revealed the following:
  - a) On December 1, 2012 at 3:37 p.m. an underage male patron approached Lead Security Officer Richard Estes at the Casino's main turnstiles and entrance to the gaming floor. Estes allowed the underage patron to enter onto the Casino's gaming floor without asking to see his identification.
  - b) Casino Services Representative Brandon Powers was also stationed at the Casino's entrance turnstiles and observed the underage patron as he entered onto the Casino's gaming floor. Powers also failed to ask the underage patron for identification before allowing him onto the Gaming Floor.

- c) At 3:40 p.m., the underage patron approached gaming table PG-20 where the Petitioner, Supervisor Bret Fischer, and Dealer Suzana Hotaj were gathered. During a brief conversation at table PG-20, none of the employees present at the table, including Petitioner, asked to see the underage patron's identification.
  - d) At 3:45 p.m. the underage patron began speaking with Dealer Carolyn Drew at table LR-4. During a brief encounter, Drew did not ask to see the underage patron's identification.
  - e) At 4:14 p.m. the underage patron began gambling at Roulette Table 6 where Dealer Timothy Colgan was working as the dealer. At 4:14 p.m. the underage patron bought in for \$40.00 and began placing wagers with Colgan. The underage patron made a total of five bets and after winning \$240, he stopped gambling at 4:32 p.m.
  - f) At 4:33 p.m. the underage patron approached Cashier Jessica Enochs at the Main Cage window #4 and asked to be cashed out. Enochs asked for and examined the underage patron's actual Kansas Driver's License, identifying him as a person who was under 21 years old.
5. Petitioner testified that he was aware that he had the duty to watch for underage patrons and to report any such underage patrons to security. He further testified that the underage patron did not look "way under age," and that people of the underage patron's ethnicity tend to look younger than they really are.
  6. Petitioner's actions or inactions in failing to ask an underage patron for his identification discredits the Missouri gaming industry and the State of Missouri, and violates Section 313.812.14 RSMo. (2012), Section 313.812.14(1), (2), & (9), RSMo. (2012), 11 CSR 45-4.260(4)(E), (F), & (Q), 11 CSR 45-5.053(5)(B); the Commission's Minimum Internal Control Standards ("MICS") Chapter N § 4.01, and the Company's Internal Control Standards ("ICS") Chapter N § 4.01.

#### **CONCLUSIONS OF LAW**

1. "The Commission shall have full jurisdiction over and shall supervise all gaming operations governed by Section 313.800 to 313.850." Section 313.805 MO. REV. STAT. 2010.
2. "A holder of any license shall be subject to the imposition of penalties, suspension, or revocation of such license, or if the person is an applicant for licensure, the denial of the

application, for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, morals, good order, and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit the Missouri gaming industry of the state of Missouri unless the licensee proves by clear and convincing evidence that it is not guilty of such action . . . the following acts may be grounds for such discipline: (1) Failing to comply with or make provision for compliance with Sections 313.800 to 313.850, the rules and regulations of the commission or any federal, state, or local law or regulation." Section 313.812.14 MO. REV. STAT. 2012.

3. "The burden of proof is at all times on the petitioner. The petitioner shall have the affirmative responsibility of establishing the facts of his/her case by clear and convincing evidence . . ." Regulation 11 CSR 45-13.060(2).
4. "Clear and convincing evidence" is evidence that "instantly tilts the scales in the affirmative when weighed against the opposing evidence, leaving the fact finder with an abiding conviction that the evidence is true." *State ex. rel. Department of Social Services v. Stone*, 71 S.W.3d 643, 646 (Mo. App. 2002).
5. "The state has a legitimate concern in strictly regulating and monitoring riverboat gaming operations. As such, any doubt as to the legislative objective or intent as to the Commission's power to regulate riverboat gaming operations in the state must be resolved in favor of strict regulation." *Pen-Yan Investment, Inc. v. Boyd Kansas City, Inc.*, 952 S.W.2d 299, 307 (Mo. App. 1997).
6. Under 11 CSR 45-9.060(3), violations of the Commission's Minimum Internal Control Standards ("MICS") by a Class A licensee or an agent or employee of the Class A licensee are deemed to be unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to administrative penalty pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
7. Under 11 CSR 45-9.060(4), violations of the Class A licensee's internal control system ("ICS") by a Class A licensee or an agent or employee of the Class A licensee shall be prima facie evidence of unsuitable conduct for which the Class A licensee and/or its agent or employee is subject to discipline pursuant to Section 313.805(6) RSMo. (2012) and 11 CSR 45-1 *et. seq.*; as amended from time to time.
8. 11 CSR 45-5.053(5)(B) states "Wagers may only be made by persons twenty-one (21) years of age or older."

9. The Commission's MICS Chapter N § 4.01 state that "persons under 21 years of age shall not be permitted access to the casino floor or be allowed to place a wager."
10. The Company's ICS Chapter N § 4.01 state that " persons under 21 years of age shall not be permitted access to the casino floor or be allowed to place a wager."
11. "The commission may . . . revoke or suspend an occupational license of any person . . . who has failed to comply with or make provision for complying with Chapter 313, RSMo, the rules of this commission, or any federal, state, or local law or regulation." Regulation 11 CSR 45-4.260(4)(E).

### **DISCUSSION**

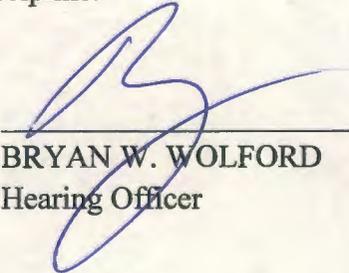
The law provides broad authority to the Commission regarding the regulation of the gaming industry in order to assure that the public health, safety, morals, and good order are maintained and protected. In this case, Petitioner has worked in the gaming industry for fifteen years, and on the day of the incident, the Petitioner was a Table Games Supervisor. As a Level II licensee and supervisor, the Petitioner had the responsibility to watch for underage patrons and to report any to Security. Petitioner encountered the underage patron on the gaming floor and, while Petitioner admitted that the underage patron did not look "way under age," Petitioner failed to check the underage patron's identification. As a result, a person twenty (20) years of age was allowed to remain on the gaming floor and to place wagers.

Petitioner's actions or inactions in failing to ask an underage patron for his identification discredits the Missouri gaming industry. Petitioner did not meet his high burden of proof of clear and convincing evidence in showing that no violation occurred.

### **FINAL ORDER**

WHEREFORE, IT IS ORDERED AND ADJUDGED that Petitioner is found to have violated Missouri law and is subject to discipline at the discretion of the Commission. The decision of the Commission dated July 5, 2013 to impose a **One (1) calendar day suspension** against Petitioner is affirmed as a proper and appropriate discipline.

DATED: October 24, 2014

  
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BRYAN W. WOLFORD  
Hearing Officer