

MISSOURI GAMING COMMISSION
COMMISSION RESOLUTION NO. 14-016

DIANE MCCLENDON
April 30, 2014

WHEREAS, Diane McClendon ("McClendon"), requested a hearing to contest the proposed disciplinary action initiated against her on March 28, 2013, by the Commission's issuance of a Preliminary Order for Disciplinary Action, DC-13-024; and

WHEREAS, pursuant to 11 CSR 45-13.010, et. seq., an administrative hearing has been held on McClendon'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 McClendon a one calendar day suspension of her occupational license in the above-referenced case in the matter of DC-13-024; and

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

5. On September 20, 2012, Cpl. McTheeney was assigned to the Gaming Division of the Missouri Highway Patrol as an agent of the Commission.
6. Cpl. McTheeney's investigation and review of surveillance video recordings revealed the following:
 - a) On September 20, 2012 at 1:29 a.m. an underage female patron, age 20, approached the Casino's entrance turnstiles and presented a false identification to Security Officer Charles Hall ("Hall"). The person depicted in the false identification was over the age of 21. Hall inspected the false identification, ran it through VERIDOCS, and then allowed the underage patron access to the gaming floor.
 - b) At 1:36 a.m. the underage patron sat down at an electronic gaming device and gambled three dollars.
 - c) At 1:45 a.m. the underage patron tapped Christopher Le ("Le"), Shift Manager/Casino Operations on the shoulder and engaged in a conversation with him for twenty-four seconds. Le did not check for identification.
 - d) At 1:47 a.m. the underage patron sat at Roulette table RO 222 and sat down, where Margaret Clark ("Clark") was dealing. At no time did Clark check the patron's identification.
 - e) At 1:58 a.m. the underage patron cashed out her winnings with cashier Robert Neumann ("Neumann"). At no time did Neumann check the patron's identification.
 - f) At 2:10 a.m. the underage patron exited the casino floor and spoke to Licensee. Licensee did not check the patron's identification.
7. Petitioner's actions in allowing an underage patron to gamble on the Casino's gaming floor 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), Section 313.817.4 RSMo. (2012); 11 CSR 45-4.260(4)(E), (F), & (Q); 11 CSR 45-5.053(5)(B); and the Commission's Minimum Internal Control Standards ("MICS") Chapter J, § 2.05 & 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. 2012.
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. "Wagers may only be made . . . (b)y persons twenty-one (21) years of age or older." Regulation 11 CSR 45-5.053(5)(B).
7. "Persons under 21 years of age shall not be permitted access to the casino floor or be allowed to place a wager." MICS Chapter N, § 4.01.

8. "Failure of the petitioner to appear at the hearing shall constitute an admission of all matters and facts alleged by the commission in its notice of commission action and a waiver of the petitioner's rights to a hearing . . ." Regulation 11 CSR 45-13.060.

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. Petitioner had the burden to show by clear and convincing evidence that the Commission should grant her a license. Petitioner failed to check the identification of the underage patron to determine and verify the age of the patron after speaking with the patron as the patron exited the gaming floor.

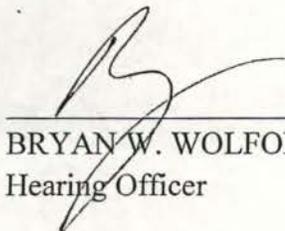
Petitioner's actions in allowing an underage patron to gamble on the Casino's gaming floor discredits the Missouri gaming industry and the State of Missouri. Petitioner did not meet her high burden of proof of clear and convincing evidence in showing that no violation occurred.

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 March 28, 2013 to impose a one (1) calendar day suspension against Petitioner is affirmed as a proper and appropriate discipline.

DATED: _____

March 25, 2014



BRYAN W. WOLFORD
Hearing Officer