

MISSOURI GAMING COMMISSION

COMMISSION RESOLUTION NO. 16-002-B
REGARDING WAIVER OF HEARINGS AND CONSENT ORDER

AUBUCHON ALSOBROOK AUXILIARY UNIT 389
AMERICAN LEGION
May 25, 2016

WHEREAS, the Missouri Gaming Commission issued proposed discipline against Aubuchon Alsobrook Auxiliary Unit 389 American Legion; and

WHEREAS, Aubuchon Alsobrook Auxiliary Unit 389 American Legion and the Commission have come to an agreement concerning the issues presented in the proposed discipline, (a copy of the Settlement Agreement is attached as Exhibit 1).

NOW, THEREFORE, BE IT RESOLVED, that the Commission hereby approves the Settlement Agreement concerning Aubuchon Alsobrook Auxiliary Unit 389 American Legion.

BE IT FURTHER RESOLVED that this Settlement Agreement shall become effective upon the date of this resolution and be considered a final decision of the Missouri Gaming Commission.

IN THE MISSOURI GAMING COMMISSION

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MISSOURI GAMING COMMISSION

In RE: Aubuchon Alsobrook Auxiliary)
Unit 389 American Legion)
License Number: B-1224) DC 16-001-B

SETTLEMENT AGREEMENT

The Missouri Gaming Commission takes up the above matter for consideration and disposition. The Missouri Gaming Commission ("MGC" or "Commission"), by Executive Director William K. Seibert, Jr., and Aubuchon Alsobrook Auxiliary Unit 389 American Legion ("Aux. Post 389"), by and through counsel, have reached a settlement in this matter and have consented to the issuance of this Settlement Agreement.

Findings of Fact

1. The Missouri Gaming Commission is a state commission created under Chapter 313, RSMo (2000)¹, with jurisdiction over gaming activities, including riverboat gambling and bingo activities, in the State of Missouri.
2. The Commission issued a Bingo License to Aubuchon Alsobrook Auxiliary Unit 389 American Legion (hereafter, "Aux. Post 389" or "Licensee") to conduct the game of bingo.
3. As the holder of a Bingo license, Licensee is subject to the provisions of sections 313.005 to 313.085, RSMo, and the regulations promulgated thereunder by the Commission.
4. A covert inspection by the MGC was conducted on September 18, 2015, in response to complaint received on September 2, 2015, regarding Licensee.
5. During the September 18, 2015 inspection, the following was observed:
 - a. Bingo workers were playing bingo;

¹ All statutory references are to RSMo (2000) unless otherwise specified.

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- b. Eight individuals worked the bingo occasion, namely Rosemary Holder, Xaveria Sturm, Paula Moit, Helen Welter, Janet Carroll, Frances Enderle, Yvonne (Marilyn) Burlbaugh, and Mike (last name unknown);
 - c. Paula Moit purchased and opened event tickets under the table while sitting at the sales table while she was working the bingo game;
 - d. Helen Welter, Janet Carroll, Frances Enderle, and Yvonne Burlbaugh played bingo while they were also working the bingo game; and
 - e. Mike bought and opened pull-tabs during the bingo game.
6. Of the eight people working bingo on September 18, 2015, Yvonne (Marilyn) Burlbaugh, Janet Carroll, Helen Welter, and Mike were not on the Aux. Post 389 approved worker list for that bingo occasion.
7. At no time as alleged herein was Mike a member of Aux. Post 389 or the American Legion Post 389.
8. Rosemary Holder admitted that Mike was neither a member nor on the approved worker list on September 18, 2015, when he worked the bingo occasion as the caller.
9. Rosemary Holder admitted that bingo workers played bingo and bought and opened pull tab and event tickets while also working the bingo games.
10. Rosemary Holder admitted telling bingo workers not to open their purchased pull-tabs at the sales table, but if they were to purchase them, to open them away from the sales table.
11. Aux. Post 389 listed Janet Carroll, Frances Ederle, Ladonna Yodice, Paula Moit, Helen Welter, Yvonne Burlbaugh, Xeveria Strurm, Rosemary Holder, and Melissa Smith, as members eligible to work bingo on September 18, 2015.
12. Of those individuals listed in Paragraph 11, above, as eligible to work bingo by

Aux. Post 389, only Helen Welter, Xeveria Strurm, Rosemary Holder, and Paula Moit met the two-year membership requirement necessary to work a licensed bingo game.

13. Janet Carroll, Ladonna Yodice, and Frances Ederle had not been members of Aux. Post 389 for at least two years, and were, therefore, ineligible to work the bingo occasion on September 18, 2015.

14. At all times as alleged herein, neither Melissa Smith nor Yvonne Burlbaugh were members of Aux. Post 389.

15. Licensee acknowledges and understands that it has the right to consult counsel at its own expense.

16. Licensee admits to the facts alleged by the MGC and outlined in this Settlement Agreement.

17. Licensee agrees that these facts constitute grounds to discipline its bingo license.

18. On or about November 24, 2015, and again on January 19, 2016, counsel for the Commission sent documentation to Licensee, which described the specific conduct for which discipline was sought and citation to the law allegedly violated, along with documents which were the basis thereof.

19. Licensee has been advised that it has 60 days to review the documentation provided and consider the proposed settlement offer.

20. Licensee acknowledges and understands that it may, either at the time the settlement agreement is signed by all parties, or within 15 days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for disciplining Licensee's bingo license.

21. Except as provided in paragraph 20, Licensee stipulates and agrees to waive any

rights it may have to a hearing before the Administrative Hearing Commission or the Commission and any rights to seek judicial review or other challenge or contest of the terms and conditions of this Settlement Agreement and forever releases and holds harmless the Commission, and the Executive Director and his agents from all liability and claims arising out of, pertaining to, or relating to this matter.

22. Licensee further acknowledges and understands that this administrative action should be disclosed on future applications and renewal applications, if required, and that it is its responsibility to comply with such reporting requirements.

23. Each signatory to this Settlement Agreement certifies by signing that he or she is fully authorized, in his or her own capacity, or by the named party he or she represents, to accept the terms and provisions of this Settlement Agreement in their entirety, and agrees, in his or her personal or representational capacity, to be bound by the terms of this Settlement Agreement.

24. The Commission is authorized to settle this matter and is authorized to issue this Consent Order in the public interest pursuant to §§ 313.004 and 536.060, RSMo, and §621.045, RSMo (Supp. 2013).

Conclusions of Law

25. The Missouri Constitution, Art. III, § 39(a), states, in pertinent part, as follows:

The game commonly known as bingo when conducted by religious, charitable, fraternal, veteran or service organizations is not a lottery or gift enterprise within the meaning of subdivision (9) of section 39 of this article if the general assembly authorizes by law that religious, charitable, fraternal, service, or veteran organizations may conduct the game commonly known as bingo, upon the payment of the license fee and the issuance of the license as provided for by law. Any such law shall include the following requirements:

* * *

(3) No person shall participate in the management, conduct or operation of any game unless that person:

(a) Has been a bona fide member of the licensed organization for the two years immediately preceding such participation, and volunteers the time and service necessary to conduct the game;

(b) Is not a paid staff person for the licensed organization[.]

26. Section 313.040, RSMo, provides, in pertinent part, as follows:

The conducting of bingo is subject to the following restrictions:

* * *

(2) No person shall participate in conducting or managing the game of bingo except a person who has been a bona fide member of the licensed organization for at least two years immediately preceding such participation, who is not a paid staff person of the licensed organization employed and compensated specifically for conducting or managing the game of bingo and who volunteers the time and service necessary to conduct the game. Subject to constitutional restrictions, if any, no person shall participate in the actual operation of the game of bingo under the direction of a person conducting or managing the game of bingo, except a person who has been a bona fide member of the licensed organization for at least one year immediately preceding such participation, who is not a paid staff person of the licensed organization employed and compensated specifically for operating the game of bingo and who volunteers the time and service necessary to operate the game. If any post or organization, by its national charter, has established an auxiliary organization for spouses, then members of the auxiliary organization shall be considered bona fide members of the licensed organization and members of the post or organization shall be considered bona fide members of the auxiliary organization for the purposes of this subdivision. ... The commission shall establish guidelines for the determination of whether a person is a paid staff person within the meaning of this subdivision and shall specifically approve any full-time employee or staff member of the organization before such employee or staff member may volunteer time and assistance in the conducting and managing of bingo games for any organization. The commission may suspend the approval of any employee or staff member.

27. Section 313.052, RSMo, provides, in relevant part, as follows:

A holder of any license shall be subject to imposition of penalties, suspension or revocation of such license, or other action for any act or failure to act by himself or his agents or employees, that is injurious to the public health, safety, good order and general welfare of the people of the state of Missouri, or that would discredit or tend to discredit charitable bingo operations in Missouri or the state of Missouri unless the licensee proves by clear and convincing evidence that he is* not guilty of such action. The commission shall take appropriate action against

any licensee who violates the law or the rules and regulations of the commission. Without limiting other provisions of sections 313.005 to 313.085, the following acts or omissions may be grounds for such discipline:

- (1) Failing to comply with or make provision for compliance with the provisions of sections 313.005 to 313.085, the rules and regulations of the commission or any federal, state or local law or regulation;
- (2) Failing to comply with any rule, order or ruling of the commission or its agents pertaining to bingo;

* * *

- (8) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties regulated by the provisions of sections 313.005 to 313.085.

28. Section 313.070, RSMo, provides that “any license issued under sections 313.005 to 313.080 shall be suspended or revoked by the commission if it is found that the licensee or any person connected therewith has violated any provision of sections 313.005 to 313.080 or any rule or regulation of the commission adopted pursuant to sections 313.005 to 313.080.”

29. Section 313.080 states that “Any person who violates any provision of sections 313.005 to 313.080 shall be guilty of a class A misdemeanor.”

30. Title 11 CSR 45-30.090(2) states as follows:

Also required with the application, each organization shall submit for approval a complete list of the officers of the applicant organization and a complete list of all two (2)-year bona fide members that will assist with the management, conduct, and operation of the bingo game. This list must include each individual’s Social Security number and date of birth. Changes to the list must be reported to the commission as they occur.

31. Title 11 CSR 45-30.100(1) authorizes the Commission to “deny ... renewal for failure to meet statutory requirements or noncompliance with Chapter 313, RSMo or official rules.”

32. Title 11 CSR 45-30.130(1) states as follows:

Every licensed organization shall designate a bona fide, active member of the organization to be in charge of, and primarily responsible for, each bingo occasion. The member in charge may change from occasion to occasion. The individual shall have been a member in good standing of the licensed organization for the last two (2) years and shall supervise all activities and be responsible for the conduct of all bingo games of which s/he is in charge. The member in charge shall be continually present on the premises during the occasion and shall be familiar with the provisions of the bingo law, applicable ordinances and these rules.

33. Title 11 CSR 45-30.135 states as follows:

- 1) A bingo worker is any person participating in the operation of the game of bingo. This includes the bingo chairperson or member in charge, callers and any person that helps to verify or pay bingo winners. It includes any person that sells bingo paper or pull-tabs, as well as any person involved in the management, conduct, or operation of the actual games, including those who help prepare bingo paper, count winning pull-tabs, or otherwise handle the bingo supplies, bingo equipment, or receipts.
- (2) For the purposes of this rule, the term "bingo worker" shall not include any person whose sole duty or responsibility is to prepare or sell concessions, provide janitorial or security services, sell raffle or sweepstakes tickets for a lawfully conducted raffle or sweepstakes, or sell markers, cushions, bags, and other incidentals, as well as any authorized representative of a licensed supplier whose sole duty or responsibility is to maintain Electronic Bingo Card Monitoring Devices (EBCMDs).

34. Title 11 CSR 45-30.140 states as follows:

- (1) Any eligible person may participate in the conduct, management or operation of bingo and play bingo during the same occasion but may not be both a player and a worker during the same game. An eligible person must pay to participate in the playing of a bingo game or pull-tab cards in the same manner and at the same cost as any other player. If an eligible person works the first portion of the occasion and then purchases bingo paper or pull-tab cards and becomes a player, the person may not assist with the management, conduct, or operation of bingo or the sale of pull-tab cards for the remainder of the occasion. If an eligible person plays the first portion of the bingo occasion and then ceases playing and becomes a worker, the person may not participate as a player of bingo or pull-tab cards during the remainder of the occasion. An eligible person may only switch from player to worker or worker to player once during an occasion, and a switch will only be permitted during the first half of the bingo occasion.

- (2) Bingo workers are prohibited from purchasing bingo paper and/or pull-tabs and having another player play for them.
- (3) Bingo workers are prohibited from playing bingo cards for a player.

35. Title 11 CSR 45-30.335(1) states as follows:

For purposes of section 313.040(2), RSMo, if any post or organization, by its national charter, has established an auxiliary organization for spouses, then members of the auxiliary organization shall be considered bona fide members of the licensed organization and members of the post or organization shall be considered bona fide members of the auxiliary organization. Regardless of which organization is licensed, the responsibility for the overall management, conduct and operation of bingo games shall be that of the members as defined in the licensee's constitution and/or bylaws.

36. Title 11 CSR 45-30.340 states, in pertinent part, as follows:

- (1) No full-time employee or full-time staff member employed by an organization licensed to conduct bingo may participate in the management, conduct or operation of bingo games until the time that the organization has submitted proof on forms prescribed by the commission to verify the eligibility of the employee or staff member to participate in the management, conduct, or operation of bingo. The commission shall approve or disapprove the participation of the full-time employee or full-time staff member within thirty (30) days of receipt of the proof of eligibility submitted by the organization. The commission may immediately suspend the participation of any full-time employee or full-time staff member upon determination by the commission that the employee or staff member is no longer eligible to participate in the management, conduct, or operation of bingo.

* * *

- (3) The burden of proof as to the eligibility of a full-time employee or full-time staff member to participate in the management, conduct, or operation of bingo shall at all times rest with the organization seeking approval for the employee or staff member's participation. The approval, disapproval, or suspension of the participation of a full-time employee or full-time staff member shall be within the sole discretion of the commission.

* * *

- (5) No part-time employee or part-time staff member of the organization licensed to conduct bingo may participate in the management, conduct or operation of the organization's licensed bingo games.

37. Title 11 CSR 45-30.355(1) defines a pull-tab card as

[a]ny disposable card or ticket which accords a person an opportunity to win something of value by opening, pulling, detaching, or otherwise removing tabs from the card or ticket to reveal a set of numbers, letters, symbols, or configurations, or any combination thereof. The term pull-tab card shall include any card known as a pickle ticket, pickle, break-open, or pull-tab card. Such pull-tab cards must award at least sixty percent (60%) of the gross revenues generated by the ultimate sale of the entire unit container or box to the final purchaser(s).

38. Pursuant to 11 CSR 45-30.515, a bona fide member is an individual “defined as a member in the organization's by-laws, constitution and/or articles of incorporation; has made an affirmative effort to join the organization, thereby, forming an identifiable association with the organization; and participates in the organization's activities other than bingo.”

39. Title 11 CSR 45-30.535(6), allows the Commission to suspend “any existing license required by the bingo statutes.”

40. Title 11 CSR 45-30.550(1) requires the following:

Licensees, workers, members, partners, agents, and employees of a licensee shall promptly report to the commission any facts which the licensee has reasonable grounds to believe indicate a violation of law (other than a traffic violation) or commission rule committed by any licensed bingo manufacturer, supplier, or organization, its workers or employees, including, without limitation, the performance of licensed activities different from those permitted under its license.

41. Licensee acknowledges and understands that under §§ 313.052(1), (2), and (8), and 313.070, RSMo, the Commission can suspend the Licensee’s bingo license because it violated §§ 313.005 to 313.085, RSMo, the rules and regulations of the commission, and/or order or ruling of the Commission or its agents pertaining to bingo, by allowing bingo workers to buy and play pull-tabs and event tickets and play bingo to while they also worked the bingo occasion.

42. Licensee acknowledges and understands that under §§ 313.052(1), (2), and (8), and 313.070, RSMo, the Commission can suspend the Licensee’s bingo license because it violated §§ 313.005 to 313.085, RSMo, the rules and regulations of the commission, and/or order

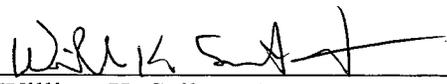
or ruling of the Commission or its agents pertaining to bingo, by allowing individuals who were either not members of the Aux. Post 389, members but not eligible to work bingo occasions, or not listed on its list of approved workers to work that bingo occasion.

ORDER

IT IS AGREED AND STIPULATED THAT as follows:

1. Aux. Post 389 will pay a fine of \$1,000.00, to be paid out of non-bingo proceeds. Said fine will be paid in four equal installments of \$250.00 each to be paid quarterly beginning within 30 days of the Missouri Gaming Commission's approval of this Settlement Agreement.
2. Aux. Post 389's bingo license (No. B-1224) will be SUSPENDED for one (2) regularly scheduled bingo days, said dates to be determined by the Commission after the Missouri Gaming Commission's approval of this Settlement Agreement.
3. Rosemary Holder will step down from her position as the Bingo Chairperson for Aux. Post 389's bingo operation. Ms. Holder can remain on the Aux. Post 389 bingo worker list, however, she can only work as a caller on bingo occasions.
4. Aux. Post 389 will agree to obey all laws, including, but not limited to, those concerning the operation of Bingo games, and will cooperate fully with the MGC in all investigations and inquiries into its bingo operations and license.

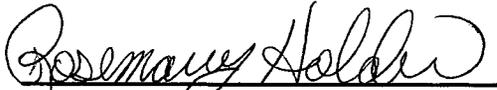
Dated: 4-13-2016



William K. Seibert, Jr.
Executive Director
Missouri Gaming Commission

CONSENT AND WAIVER OF HEARING

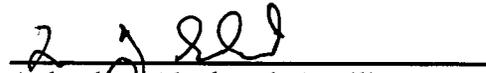
The undersigned persons understand and acknowledge that Aubuchon Alsobrook Auxiliary Unit 389 American Legion has the right to a hearing, but that Aubuchon Alsobrook Auxiliary Unit 389 American Legion has waived the hearing and consented to the issuance of this Consent Order.



Aubuchon Alsobrook Auxiliary
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By: Rosemary Holder
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April 6-2016

Date



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April 7, 2016

Date



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4-14-16

Date